

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL L1FN AUDITORIUM
WEDNESDAY, FEBRUARY 22, 2017**

MEMBERS PRESENT AT BRIEFING: Scott Hounsel, Vice-Chair, Joe Carreon, regular member, Wini Cannon, regular member, Matt Shouse, regular member, and Robert Agnich, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Scott Hounsel, Vice-Chair, Joe Carreon, regular member, Wini Cannon, regular member, Matt Shouse, regular member, and Robert Agnich, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Kanesia Williams, Asst. City Attorney, Laura Morrison, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Lloyd Denman, Asst. Director Engineering, Neva Dean, Asst. Director, Phil Erwin, Chief Arborist, Donna Moorman, Chief Planner, Jennifer Munoz, Senior Planner and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Kanesia Williams, Asst. City Attorney, Laura Morrison, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Lloyd Denman, Asst. Director Engineering, Phil Erwin, Chief Arborist, Donna Moorman, Chief Planner, Jennifer Munoz, Senior Planner and Trena Law, Board Secretary

11:02 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **February 22, 2017 docket.**

1:04 P.M.
The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise

indicated, each use is presumed to be a legal use. Each appeal must necessarily stand upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel B January 18, 2017, public hearing minutes.

BOARD OF ADJUSTMENT ACTION: FEBRURY 22, 2017

MOTION: None

The minutes were approved.

FILE NUMBER: BDA167-012(SL)

BUILDING OFFICIAL'S REPORT: Application of Nancy Rodriguez/Mark Molthan Construction for special exceptions to the fence standards at 5506 Deloache Avenue. This property is more fully described as Lot 15, Block 7/5597, 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 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: 5506 Deloache Avenue

APPLICANT: Nancy Rodriguez/Mark Molthan Construction

REQUESTS:

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

- 1) A special exception is made to complete and maintain a fence higher than 4' in height in the Deloache Avenue front yard setback (a 7' 6" high open wrought iron fence and gate with 8' high stone columns) and in the Hollow Way Road front yard setback (a 7' 6" high open wrought iron fence and gate with 8' high stone columns, and a 7' 6" high board-on-board wood fence with 8' high stone columns); and
- 2) A special exception is made to complete and maintain fence panels with surface areas that are less than 50 percent open (a 7' 6" high board-on-board wood fence with 8' high stone columns) located on the Hollow Way Road front lot line (or less than 5' from this front lot line).

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:

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

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to the fence standards since the basis for this type of appeal is when in the opinion of the board, the special exception will not adversely affect neighboring property.

BACKGROUND INFORMATION:

Zoning:

Site: 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 being 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. BDA989-150, Property located at 5506 Deloache Avenue (the subject site) On January 19, 1999, the Board of Adjustment Panel B granted a request for a special exception to the fence height regulations of 3' 6" and imposed the submitted revised site plan, landscape plan, and elevation as a condition. The case report stated that the request was made in conjunction with constructing and maintaining a 6' predominantly open metal fence, 6' 6" high brick columns, 7' 4" high brick entry columns, and a 7' high open metal entry gate in the front yard setback along Deloache Avenue and Hollow Way.

2. BDA156-053, Property located at 9362 Hollow Way Road (the lot south of the subject site)

On May 18, 2016, the Board of Adjustment Panel B granted a request for special exception to the fence height regulations of 6', and imposed the submitted site plan/elevation as a condition.

The case report stated that the request was made mostly a 6' – 6' 6" high "decorative wrought iron" fence with 8' high masonry columns parallel to the street; two entry features: on the north side, an 8' – 8' 6" high "secondary" entry gate with 8' high columns; on the south side, a 10' high "main" entry gate with 10' high columns flanked by two approximately 10' long, 8' high solid masonry wing walls; and a 6' high solid masonry fence with a 7' high stone column perpendicular to the street on the south side of the site in the 40' front yard setback, and a 7' 9" high solid masonry fence with an 8' stone column perpendicular to the street on the north side of the site in the 40' front yard setback.

3. BDA95-131, Property located at 5505 Deloache Avenue (the lot north of the subject site)

On November 14, 1995, the Board of Adjustment granted requests for special exceptions to the fence height and visual obstruction regulations, and imposed the following condition to the request: Compliance with a revised site/landscape plan and elevation to be submitted to staff by the applicant to comply with the spirit and intent of the foregoing portion of this motion (a maximum height of 6' for the fence, 6.5' for the columns, and 8' for the entrance gate/columns) is required.

4. BDA978-106, Property located at 5424 Deloache Avenue (the lot west of the subject site)

On December 16, 1997, the Board of Adjustment Panel C granted a request for special exception to the fence height regulations of 9', and imposed the following condition to the request: Compliance with the submitted site plan, elevation plans, and landscape plan is required.

The case report stated that the request was made in conjunction with constructing and maintaining generally an 8' high open wrought iron fence with 12' high gates/entry columns.

GENERAL FACTS/STAFF ANALYSIS:

- These requests for special exceptions to the fence standards of 4' focus on completing and maintaining a fence higher than 4' in height in the Deloache Avenue front yard setback (a 7' 6" high open wrought iron fence and gate with 8' high stone columns) and in the Hollow Way Road front yard setback (a 7' 6" high open wrought iron fence and gate with 8' high stone columns, and a 7' 6" high board-on-board wood fence with 8' high stone columns); and completing and maintaining fence panels with surface areas that are less than 50 percent open (a 7' 6" high board-on-board wood fence with 8' high stone columns) located on the Hollow Way Road front lot line (or less than 5' from this front lot line) on a site being developed with a single family home.
- The subject site is zoned R-1ac(A).
- Note the following with regard to the request for special exceptions to the fence standards pertaining to the **height** of the proposed fences in the front yard setbacks:
 - The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
 - The site is located at the southeast corner of Deloache Avenue and Hollow Way Road.
 - Given the single family zoning and location of the corner lot subject site, it has two 40' front yard setbacks – a front yard setback along Deloache Avenue (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 Hollow Way Road, (the longer of the two frontages which is typically considered a side yard where on this R-1ac(A) zoned property a 9' high fence could be erected by right). However the site has a front yard setback along Hollow Way Road in order to maintain continuity of the established front yard setback along this street frontage where homes/lots to the south of the subject site "front" on Hollow Way Road.
 - The applicant has submitted a site plan and elevation of the proposal in the front yard setbacks with notations indicating that the proposal reaches a maximum height of 8'.
 - The following additional information was gleaned from the submitted site plan:
 - Along Deloache Avenue: The proposal over 4' in height is represented as being approximately 210' in length parallel to the street, and approximately 40' in length perpendicular to the street on the east side of the site in the front yard setback.
 - Along Deloache Avenue: The fence proposal is represented as being located approximately on the front property line or approximately 10' from the pavement line. (The gate is represented as being located 10' from the front property line or approximately 20' from the pavement line).
 - Along Hollow Way Road: The proposal over 4' in height is represented as being approximately 260' in length parallel to the street (approximately 190' in length that is open wrought iron, approximately 70' in length that is solid board-on-board).

- Along Hollow Way Road: The fence and gate proposal is represented as being located approximately on the front property line or approximately 22' from the pavement line.
- Note the following with regard to the request for special exception to the fence standards pertaining to the **location and materials** of the proposed fence in the Hollow Way Road front yard setback:
 - 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. (This does not apply to retaining walls).
 - With regard to the special exception to the fence standards pertaining to the location and materials of the proposed fence on Hollow Way Road, the applicant has submitted a site plan and elevation of the fence panels with surface areas that are less than 50 percent open (solid stone fences/wing walls) located approximately on the Hollow Way Road front lot lines (or less than 5' from this front lot line).
 - The following additional information was gleaned from the submitted site plan:
 - The fence panel with a surface area that is less than 50 percent open located less than 5' from the Hollow Way front lot line is an approximately 7' 6" high board-on-board wood fence approximately 70' in length on this front lot line.
- One single family lot with a fence higher than 4' in its front yard fronts the proposed fence on Deloache Avenue (an approximately 6' high open fence behind significant landscape materials that appears to be the result of a fence height special exception granted by the Board in 1995: BDA95-131), and no single family lot fronts the proposed fence on Hollow Way Road.
- The Board Administrator conducted a field visit of the site and surrounding area and noted two other fences that appeared to be above 4' in height and located in a front yard setback. One is located immediately west and is an approximately 8' high open metal fence its front yard that appears to be a result of a granted fence height special exception in 1997 (BDA978-106); the other is located immediately south of the subject site and is an approximately 6' 6" high open wrought iron fence that appears to be a result of a granted fence special exception in 2016 (BDA156-053).
- As of February 10, 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 over 4' in the front yard setbacks and materials/height/location of the proposed fences 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 setbacks and with fence panels with surface areas less than 50 percent open located less than 5' from the front lot line of Hollow Way Road to be completed and maintained in the location and of the heights and materials as shown on these documents.

Timeline:

November 11, 2016: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

January 6, 2017: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, “If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case.”

January 6, 2017: The Board Administrator emailed the following information to the applicant:

- 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 February 1st deadline to submit additional evidence for staff to factor into their analysis; and the February 10th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

February 7, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Assistant Director, the Sustainable Development Department Assistant Director Engineering, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION FEBRUARY 22, 2017

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION #1: **Hounsel**

I move that the Board of Adjustment, in Appeal No. **BDA 167-012**, Nancy Rodriguez/Mark Molthan Construction, **grant** the request of this applicant to construct and maintain two eight-foot high fences as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Cannon

AYES: 5 – Hounsel, Carreon, Cannon, Shouse, Agnich

NAYS: 0

MOTION PASSED 5 – 0 (unanimously)

MOTION #2: Hounsel

I move that the Board of Adjustment, in Appeal No. **BDA 167-012**, Nancy Rodriguez/Mark Molthan Construction, **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 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 elevation is required.

SECONDED: Cannon

AYES: 4 – Hounsel, Carreon, Cannon, Shouse,

NAYS: 1 - Agnich

MOTION PASSED 4 – 1

FILE NUMBER: BDA167-016(JM)

BUILDING OFFICIAL’S REPORT: Application of Thaddeus Thigpen for a special exception to the front yard setback regulations for tree preservation at 1549 El Campo Drive. This property is more fully described as Lot 12, Block K/5318, and is zoned R-10(A), NSO 5, which requires a front yard setback of 50 feet. The applicant proposes to construct and maintain a single family residential structure and provide a 44 foot front yard setback, which will require a 6 foot special exception to the front yard setback regulations for tree preservation.

LOCATION: 1549 El Campo Drive

APPLICANT: Thaddeus Thigpen

REQUEST: A special exception to the front yard setback requirements of up to 6' to preserve up to three existing trees is made to construct and maintain a single family structure, which is proposed to be located as close as 44' from the site's El Campo Drive front property line or as much as 6' into the 50' front yard setback.

STANDARD FOR A SPECIAL TO THE FRONT YARD REQUIREMENTS TO PRESERVE AN EXISTING TREE:

The Dallas Development Code specifies that the board may grant a special exception to the minimum front yard requirements to preserve an existing tree. In determining whether to grant this special exception, the board shall consider the following factors:

- A) Whether the requested special exception is compatible with the character of the neighborhood.
- B) Whether the value of the surrounding properties will be adversely affected.
- C) Whether the tree is worthy of preservation.

STAFF RECOMMENDATION (special exception to the front yard requirements to preserve an existing tree):

Denial

Rationale:

- While the City of Dallas Chief Arborist has indicated that there are three trees on this site in close proximity to the proposed single family structure that are worthy of preservation, staff concluded that the applicant had not substantiated how the requested special exception is compatible with the character of the neighborhood, and how the value of the surrounding properties would not be adversely affected.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	R-10(A) (Single family district 10,000 square feet)
<u>Northwest:</u>	R-10(A) (Single family district 10,000 square feet)
<u>Northeast:</u>	R-10(A) (Single family district 10,000 square feet)
<u>Southeast:</u>	R-10(A) (Single family district 10,000 square feet)
<u>Southwest:</u>	R-10(A) (Single family district 10,000 square feet)

Land Use:

The subject site is under construction with a single family home. All surrounding areas

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 (special exception to front yard requirements to preserve an existing tree):

- This request for a special exception to the front yard setback requirements of up to 6' to preserve up to three existing trees focuses on constructing and maintaining a single family structure, which is proposed to be located as close as 44' from the site's El Campo Drive front property line or as much as 6' into the 50' front yard setback.
- Structures on lots zoned R-10(A) are required to provide a minimum front yard setback of 30'; however, structures zoned R-10(A) NSO 5 are required to provide a minimum front yard setback of 50'.
- Prior to the creation of the NSO (Neighborhood Stabilization Overlay) district in 2007, the minimum front yard setback was 30'.
- The subject site is located on the west line of El Campo Drive, west of San Saba Drive.
- According to the submitted site, an attached wooden porch would be constructed 44' from the front property line or as much as 6' into the 50' front yard setback. The submitted site plan denotes a number of existing trees on the site. While the initial application states that the applicant is seeking a special exception to the front yard regulations for the preservation of two trees, three trees are noted as the trees for preservation on the submitted site plan.
- The Dallas Development Code allows the Board of Adjustment to consider this proposed structure encroachment in a front yard setback by an application for a special exception to the front yard requirements for tree preservation with a standard largely based on compatibility, property values, and whether the trees located on the site are worthy of preservation.
- According to calculations taken from the site plan, the 282 square foot covered front porch would account for about 5.64% of the required front yard (5,000 square feet).
- The City of Dallas Chief Arborist submitted an opinion via email regarding this request (see Attachment A). The email stated that staff had visited the site and found that there were three trees worthy of preservation. The arborist continued to describe the trees as very healthy, well pruned, with no mistletoe.
- The applicant has the burden of proof in establishing the following related to the front yard special exception request:
 - Whether the requested special exception is compatible with the character of the neighborhood.
 - Whether the value of the surrounding properties will be adversely affected.
 - Whether the tree is worthy of preservation.
- If the Board were to grant the request for a special exception to the front yard requirements of up to 6' to preserve the existing trees, imposing a condition whereby the applicant must comply with the submitted site plan, the structures in the front yard setback would be limited to that what is shown on this plan – which in this case consists of an attached wooden porch as part of a single family structure, which are proposed to be located as close as 44' from the site's El Campo Drive front property line or as much as 6' into this 50' front yard setback.

Timeline:

- December 14, 2016: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- January 6, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- January 26, 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 February 1st deadline to submit additional evidence for staff to factor into their analysis; and the February 10th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the requests; and
 - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”
- January 27, 2017: The City of Dallas Chief Arborist submitted an opinion via email regarding the request for a special exception to the front yard setback regulations of up to 6’ for tree preservation (see Attachment A).
- February 7, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Assistant Director, the Sustainable Development Department Assistant Director Engineering, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.
- February 10, 2017: The applicant submitted additional information/evidence to support the request (see Attachment B). This information was not taken into consideration when staff opinion was formulated at the January 26th staff review meeting.

BOARD OF ADJUSTMENT ACTION FEBRUARY 22, 2017

APPEARING IN FAVOR:

Gretchen Thigpen, 1549 El Campo Drive, Dallas, TX
Thaddeus Thigpen, 1549 El Campo Drive, Dallas, TX
Chuck Cale, 1544 El Campo Drive, Dallas, TX
Daniel Schmalzer, 1421 El Campos Drive, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Carreon**

I move that the Board of Adjustment, in Appeal No. **BDA 167-016**, on application Thaddeus Thigpen, **grant** the request of this applicant for a special exception of six feet to the front yard setback regulation to preserve an existing tree, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that this special exception is compatible with the character of the surrounding neighborhood, the value of surrounding properties will not be adversely affected, and the tree is worthy of preservation. 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 – Hounsel, Carreon, Cannon, Shouse, Agnich

NAYS: 0

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA167-017(SL)

BUILDING OFFICIAL’S REPORT: Application of Chris Johnson for a variance to the off-street parking regulations at 2214 Routh Street. This property is more fully described as Lot 1A, Block D/557, and is zoned PD 225 (H/25, Tr. 1), which requires a parking space to be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley. The applicant proposes to located and maintain parking spaces in an enclosed structure with a setback of 13 feet 6 inches, which will require a variance of 6 feet 6 inches to the off-street parking regulations.

LOCATION: 2214 Routh Street

APPLICANT: Chris Johnson

REQUEST:

A request for a variance to the off-street parking regulations of 6’ 6” is made to locate and maintain parking spaces in enclosed structures (garages for a duplex structure use proposed on the undeveloped site) located 13’ 6” from the Routh Street front property/right-of-way line or 6’ 6” into the required 20’ distance that parking spaces in enclosed structures must be from this street right-of-way.

STANDARD FOR A VARIANCE:

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

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

STAFF RECOMMENDATION:

Denial

Rationale:

- While staff has concluded that the subject site is unique and different from other lots in PD 225 by being of a restrictive area (only approximately 3,000 square feet), and that the applicant has provided documentation that shows how the proposed structure is commensurate with development found on other properties in PD 225 that are more typical in size, (more specifically, that the average structure in the same zoning district is approximately 5,700 square feet, and the proposed structure size is approximately 3,700 square feet; and that the proposed project has a FAR of 1.23:1 square feet, and that the maximum FAR for PD 225 Historical Core zoning district is 1.5:1), staff concludes that this request should be denied because the Sustainable Development Department Assistant Director Engineering has submitted a Review Comment Sheet marked “Recommends that this be denied” commenting “vehicles will park in front of the garage door and block the public sidewalk”.

BACKGROUND INFORMATION:

Zoning:

Site: PD 225, H/25 (Planned Development, Historic)
North: PD 225, H/25 (Planned Development, Historic)
South: PD 225, H/25 (Planned Development, Historic)
East: PD 225, H/25 (Planned Development, Historic)
West: PD 225, H/25 (Planned Development, Historic)

Land Use:

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

Zoning/BDA History:

1. BDA167-017, Property at 2214 Routh Street (the subject site)

On November 16, 2016, the Board of Adjustment Panel B denied a request for variance to the off-street parking regulations of 6' 6" without prejudice.

The case report stated the request was made to locate and maintain enclosed parking spaces in garages for a duplex structure use proposed on the undeveloped site located 13' 6" from the Routh Street front property/right-of-way line or 6' 6" into the required 20' distance that enclosed parking spaces must be from this street right-of-way.

GENERAL FACTS/STAFF ANALYSIS:

- The request for a variance to the off-street parking regulations of 6' 6" focuses on locating and maintaining parking spaces in enclosed structures (garages for a duplex structure use proposed on the undeveloped site) located 13' 6" from the Routh Street front property/right-of-way line or 6' 6" into the required 20' distance that parking spaces in enclosed structures must be from this street right-of-way.
- The site is zoned PD 225, H/25 Core where the minimum front yard for main buildings on an interior or corner lot must have a front yard setback that is within 5 percent of the average setback of all main buildings in the same blockface.
- The applicant has stated that he meets all setback requirements in PD 225 Historic Core District, and that "Routh Street is our block face and the average setback is 10' - 0".
- The Dallas Development Code states that a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in enclosed structure and if the space faces upon or can be entered directly from a street or alley.
- The applicant has submitted a site plan and floor plan denoting a duplex structure located between 10' - 13' 6" from the front property line with four parking spaces in two enclosed structures (garages) located 13' 6" from the Routh Street right-of-way line or approximately 20' from the Routh Street pavement line.
- The applicant has provided information that states that the average structure in the same zoning district is approximately 5,700 square feet, and the proposed structure size is approximately 3,700 square feet; and that the proposed project has a FAR of 1.23:1 square feet, and that the maximum FAR for PD 225 Historical Core zoning district is 1.5:1.

- The applicant has provided a letter stating that the owner will not be allowing cars to park in front of the garage doors or block the sidewalk.
- According to DCAD records, there are “no improvements” for the property addressed at 2214 Routh Street.
- The subject site is flat, rectangular in shape (60’ x 50’), and according to the submitted application is 0.069 acres (or approximately 3,000 square feet) in area. The site is zoned PD 225, H/25.
- The Sustainable Development Department Assistant Director Engineering submitted a review comment sheet along with photos (see Attachment B). The review comment sheet was marked “Recommends that this be denied” with the following additional comment: “Vehicles will park in front of the garage door and block the sidewalk (see illustration photo)”.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the off-street parking regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD 225 zoning classification.
 - The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD 225 zoning classification.
- If the Board were to grant the variance request, staff recommends imposing the following conditions:
 1. Compliance with the submitted site plan is required.
 2. Automatic garage doors must be installed and maintained in working order at all times.
 3. At no time may the areas in front of the garages be utilized for parking of vehicles.

(These conditions are imposed to help assure that the variance will not be contrary to the public interest).

Timeline:

December 16, 2016: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

January 6, 2017: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, “If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case.”

- January 6, 2017: The Board Administrator emailed the following information to the applicant:
- 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 February 1st deadline to submit additional evidence for staff to factor into their analysis; and the February 10th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- January 27, 2017: The Sustainable Development and Construction Department Historic Preservation Chief Planner emailed the following comment to the Board Administrator: "BDA167-017 (2214 Routh Street) is located in the State-Thomas historic district. The Applicant has been working with both Staff and Landmark Commission on their conceptual plans for the structure, with the understanding that BOA approval is required to proceed with a final review from Landmark Commission".
- January 30, 2017: The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded additional information to the Board Administrator beyond what was submitted with the original application (see Attachment A).
- February 7, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Assistant Director, the Sustainable Development Department Assistant Director Engineering, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.
- February 10, 2017: The Sustainable Development Department Assistant Director Engineering submitted a review comment sheet along with photos (see Attachment B). The review comment sheet was marked "Recommends that this be denied" with the following additional comment: "Vehicles will park in front of the garage door and block the sidewalk (see illustration photo)".

BOARD OF ADJUSTMENT ACTION FEBRUARY 22, 2017

APPEARING IN FAVOR: Chris Johnson, 2214 Routh Street, Dallas, Tx

APPEARING IN OPPOSITION: Judy Hearst, 2512 Thomas Ave., Dallas, TX

MOTION: **Cannon**

I move that the Board of Adjustment, in Appeal No. **BDA 167-017**, on application of Chris Johnson, **deny** the off-street parking variance requested by this applicant **with prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: **Agnich**

AYES: 5 – Hounsel, Carreon, Cannon, Shouse, Agnich

NAYS: 0

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA167-023(SL)

BUILDING OFFICIAL’S REPORT: Application of Mike Backlund for a variance to the off-street parking regulations at 3403 N. Fitzhugh Avenue. This property is more fully described as Lot 14, Block 2/1521, and is zoned PD-193 (GR), which requires off-street parking to be provided. The applicant proposes to construct and maintain a structure for a restaurant without drive-in or drive-through service use and provide 21 of the required 37 parking spaces, which will require a 16 space variance to the off-street parking regulations.

LOCATION: 3403 N. Fitzhugh Avenue

APPLICANT: Mike Backlund

February 22, 2017 Public Hearing Notes:

- The applicant submitted additional written documentation to the Board at the public hearing.

REQUEST:

A request for a variance to the off-street parking regulations of 16 parking spaces (or a 43 percent reduction of the 37 off-street parking spaces that are required) is made to lease and maintain an approximately 3,700 square foot structure (that is currently approximately 3,000 square feet) with a “restaurant without drive-in or drive through service” use, and provide 21 of the 37 required off-street parking spaces (3 off-street parking spaces provided on the site and 18 off-street parking spaces provided in recognized remote parking agreements).

STANDARD FOR A VARIANCE:

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

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

STAFF RECOMMENDATION:

Denial

Rationale:

- While the Sustainable Development Department Assistant Director Engineering has submitted a Review Comment Sheet marked “Has no objections”, staff has concluded that the features of the somewhat sloped, rectangular in shape, approximately 6,500 square foot subject site do not restrict the applicant from developing/leasing the existing structure and/or the site with uses permitted in this zoning where the number of off-street parking spaces could be provided without a variance, and that the variance is made in this application only to relieve a self created hardship.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is developed with a vacant office structure. The areas to the north, east, and south are developed with nonresidential uses; and the area to the west is the Katy Trail.

Zoning/BDA History:

1. BDA145-090, Property at 3403 N. Fitzhugh Avenue (the subject site)

On September 23, 2015, the Board of Adjustment Panel B granted a request for a special exception to the landscape regulations and imposed the submitted revised landscape plan as a condition.

The case report stated that the request was made to transition/enlarge an existing vacant 2-story medical office use/structure to a restaurant use, and not fully providing required landscaping.

GENERAL FACTS /STAFF ANALYSIS:

- The request for a variance to the off-street parking regulations of 16 spaces focuses on leasing and maintaining an approximately 3,700 square foot structure (that is currently approximately 3,000 square feet) with a “restaurant without drive-in or drive through service” use where the City only recognizes 21 of the 37 required off-street parking spaces for the proposed use at the proposed square footage (3 off-street parking spaces provided on the site and 18 off-street parking spaces provided in recognized remote parking agreements).
- The site is zoned PD 193 (GR Subdistrict).
- PD 193 requires an off-street parking requirement of 1 space per 100 square feet of “restaurant without drive-in or drive-through service” use.
- PD No. 193 additionally provides certain “special parking regulations” with a “general standard” stating: “At least 50 percent of the off-street parking required for any other main use must be located on the same lot as that use or on a lot directly adjacent to or across an alley from that use”.
- The application and Building Official’s report states that variance is sought for 16 spaces where the City recognizes the applicant providing 21 (or 56 percent) of the 37 off-street parking spaces required in conjunction leasing approximately 3,700 square feet of structure with “restaurant without drive-in or drive-through service” use.
- The parking provisions mentioned above allow the City to recognize only 21 (or 56 percent) of the 37 off-street parking spaces required for this sized structure leased with this specific use even though the applicant states he is providing all 37 spaces – 3 off-street parking spaces on the site, and the remaining 34 off-street parking spaces via 3 remote parking agreements with property across Buena Vista Street.
- The applicant states the request is to allow more than 50 percent of the required parking to be provided off the lot but all within 370 feet or less of the entrance to the proposed restaurant.
- The site is somewhat sloped, rectangular in shape, and according to the application, 6,533 square feet in area. The site is zoned PD 193 (GR).
- DCAD records indicate that the “improvements” at 3403 N. Fitzhugh Avenue is an “office building” with 3,050 square feet built in 1963.

- The Sustainable Development Department Assistant Director Engineering has submitted a Review Comment Sheet marked “Has no objections.”
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to off-street parking regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 193 (GR) zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD No. 193 (GR) zoning classification.
- If the Board were to grant this request, the applicant could lease and maintain an approximately 3,700 square foot structure (that is currently approximately 3,000 square feet) with a “restaurant without drive-in or drive through service” use, and provide 21 of the 37 required off-street parking spaces for the proposed use at the proposed square footage.

Timeline:

- December 28, 2016: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- January 6, 2017: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- January 6, 2017: The Board Administrator emailed the following information to the applicant:
 - 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 February 1st deadline to submit additional evidence for staff to factor into their analysis; and the February 10th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”
- February 1, 2017: Additional information was submitted on behalf of the applicant to staff beyond what was submitted with the original application (see Attachments A and B).

February 7, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Assistant Director, the Sustainable Development Department Assistant Director Engineering, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

February 9, 2017: The Sustainable Development Department Assistant Director Engineering submitted a Review Comment Sheet marked "Has no objections."

1:54 P.M.: Break
2:01 P.M.: Resumed

BOARD OF ADJUSTMENT ACTION FEBRUARY 22, 2017

APPEARING IN FAVOR: Mike Backlund, 709 Edward CT, Dallas, TX
Tommy Mann

APPEARING IN OPPOSITION: Randy Kender, 4116 Stonebridge Drive, Dallas, TX
Frank Miller, 4120 Stonebridge Dr., Dallas, TX
Paul Martinez, 4102 Buena Visat St, Dallas, TX
Jim Bennett, 3502 N Fitzhugh, Dallas, TX

MOTION #1: Hounsel

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

SECONDED: Agnich

AYES: 5 – Hounsel, Carreon, Cannon, Shouse, Agnich

NAYS: 0

MOTION PASSED 5 – 0 (unanimously)

MOTION #2: Agnich

I move that the Board of Adjustment, in request No. **BDA 167-023**, on application of Mike Backlund, **deny** the off-street parking regulations variance **without prejudice** because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant, and it is not a restrictive parcel of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning, and is a self-created or personal hardship.

SECONDED: Hounsel

AYES: 5 – Hounsel, Carreon, Cannon, Shouse, Agnich
NAYS: 0
MOTION PASSED 5 – 0 (unanimously)

MOTION: **Shouse**

I move to adjourn this meeting.

SECONDED: **Cannon**

AYES: 5 – Hounsel, Carreon, Cannon, Shouse, Agnich
NAYS: 0
MOTION PASSED 5 – 0 (unanimously)

2:56 P.M. Board Meeting adjourned for **February 22, 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.