

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1 AUDITORIUM
TUESDAY, MAY 17, 2016**

MEMBERS PRESENT AT BRIEFING:

Clint Nolen, Vice Chair, Mark Rieves, regular member, Michael Gibson, regular member, Robert Agnich, alternate member, and Lorlee Bartos, alternate member

MEMBERS ABSENT FROM BRIEFING:

No one

STAFF PRESENT AT BRIEFING:

Steve Long, Board Administrator, Mary McCullough, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Clayton Buehrle, Engineering, Phil Erwin, Chief Arborist, Donna Moorman, Chief Planner, and Trena Law, Board Secretary

MEMBERS PRESENT AT HEARING:

Clint Nolen, Vice Chair, Mark Rieves, regular member, Michael Gibson, regular member, Robert Agnich, alternate member, and Lorlee Bartos, alternate member

MEMBERS ABSENT FROM HEARING:

No one

STAFF PRESENT AT HEARING:

Steve Long, Board Administrator, Mary McCullough, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Clayton Buehrle, Engineering, Donna Moorman, Chief Planner, and Trena Law, Board Secretary

11:05 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **May 17, 2016** docket.

1:10 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 April 19, 2016 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: MAY 17, 2016

MOTION: None

The minutes were approved without a formal vote.

FILE NUMBER: BDA156-051(SL)

BUILDING OFFICIAL'S REPORT: Application of Santos T. Martinez for a special exception to the landscape regulations at 3001 Knox Street. This property is more fully described as Lot 1A, Block J/1534, and is zoned PD 193 (LC), 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: 3001 Knox Street

APPLICANT: Santos T. Martinez

REQUEST:

A request for a special exception to the landscape regulations is made to add floor area to a site develop with an existing retail center (Knox Park Village), and not fully provide required landscaping.

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

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

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted revised alternate landscape plan dated May 2, 2016 is required.

Rationale:

- Staff concurs with the Chief Arborist and recommends approval of this request with the condition imposed above because this special exception will not compromise the spirit and intent of the landscape requirements of PD 193.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	PD 193 (LC) (Planned Development District, Light Commercial)
<u>North:</u>	PD 193 (LC) (Planned Development District, Light Commercial)
<u>South:</u>	PD 193 (LC) (Planned Development District, Light Commercial)
<u>East:</u>	PD 193 (LC) (Planned Development District, Light Commercial))
<u>West:</u>	PD 193 (LC) (Planned Development District, Light Commercial)

Land Use:

The subject site is developed with a retail center use (Knox Park Village). The areas to the north, south, and west are developed retail uses; and the area to the east is North Central Expressway.

Zoning/BDA History:

1. BDA023-090, Property at 4527 N. Central Expressway (the subject site)

On May 27, 2003, the Board of Adjustment Panel A granted a request for a special exception to the landscape regulations and imposed the following condition: Compliance with the submitted landscape plan is required.

The case report stated that the request was made in conjunction with maintaining an existing office/retail structure (Knox Park Village), and not fully providing required landscaping.

GENERAL FACTS/ STAFF ANALYSIS:

- This request focuses on adding floor area to a site developed with an existing retail center (Knox Park Village), and not fully providing required landscaping. More specifically, according to the City of Dallas Chief Arborist, this application is triggered by new construction of additional floor area with the resulting site changes to a previous alternative landscape plan imposed as a condition as part of a request for a special exception to the landscape regulations granted on this site in 2003 (BDA023-090).

- The Chief Arborist notes that the amendments from the landscape plan imposed as a condition to the landscape special exception request granted in 2003 is primarily for the replacement of trees along Central Expressway which are no longer existing but were on the original alternative landscape plan; and secondarily for minor adjustments made to the layout for the Knox Street and Central corner.
- PD 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind.
- The Chief Arborist listed several factors for consideration in his memo pertaining to this application (see Attachment C):
 1. A proposed pedestrian plaza/parklet is proposed to replace a vehicular use area.
 2. A new configuration is proposed for street trees along Central which will cluster evergreen trees while also allowing for an amount of visibility to the site. Otherwise, existing landscape conditions will be continued under the new plan.
- The Chief Arborist recommends approval of the revised alternate landscape plan because the plan meets the spirit and intent of PD 193 Part 1 regulations.
- The applicant has the burden of proof in establishing the following:
 - The special exception (where a revised landscape plan has been submitted that is deficient in street tree requirements of the PD 193 landscape regulations) will not compromise the spirit and intent of Section 51P 193-126: "Landscape, streetscape, screening, and fencing standards".
- If the Board were to grant this request and impose the submitted revised landscape plan dated May 2, 2016 as a condition, the site would be granted exception from full compliance to the street tree requirements of the PD 193 landscape regulations.

Timeline:

- March 23, 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.
- April 12, 2016: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."
- April 12, 2016: The Board Administrator emailed the applicant the following information:
 - an attachment that provided the public hearing date and panel that will consider the application; the April 27th deadline to submit additional evidence for staff to factor into their analysis; and the May 6th deadline to submit additional evidence to be incorporated into the Board's docket materials;

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

April 27, 2016:	The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).
May 3, 2016:	The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Sustainable Development and Construction Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the Sustainable Development and Construction Board of Adjustment Senior Planner, and the Assistant City Attorneys to the Board.
May 4, 2016:	The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment B).
May 9, 2016:	The City of Dallas Chief Arborist submitted a memo regarding the request (see Attachment C).

BOARD OF ADJUSTMENT ACTION: MAY 17, 2016

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Bartos**

I move to grant that the Board of Adjustment grant application **BDA 156-051(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 revised alternate landscape plan dated May 2, 2016, is required.

SECONDED: **Nolen**

AYES: 5 – Nolen, Rieves, Gibson, Agnich, Bartos

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA156-052(SL)

BUILDING OFFICIAL'S REPORT: Application of Karl A. Crawley of Masterplan to enlarge a nonconforming use at 4601 Veterans Drive. This property is more fully described as an unplatted approximately 21.23 acre tract, Block 4893, and is zoned R-7.5(A), which limits the legal uses in a zoning district. The applicant proposes to enlarge a nonconforming public or private school use, which will require a request to enlarge a nonconforming use.

LOCATION: 4601 Veterans Drive

APPLICANT: Karl A. Crawley of Masterplan

REQUEST:

A request is made to enlarge a nonconforming public or private school use (Whitney M. Young, Jr. Elementary School) on the 21 acre subject site. The enlargement in this application is made more specifically for the following:

- maintaining an approximately 23,000 square foot addition to the school structure made in 1995;
- maintaining two, approximately 1,500 square foot portable structures added on the site in 2009; and
- constructing and maintaining an 800 square foot "dry storage/freezer/cooler building addition to the school structure.

STANDARD FOR ENLARGING A NONCONFORMING USE:

The board may allow the enlargement of a nonconforming use when, in the opinion of the Board, the enlargement: 1) does not prolong the life of the nonconforming use; 2) would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and 3) will not have an adverse effect on the surrounding area.

STAFF RECOMMENDATION:

No staff recommendation is made on a request to enlarge a nonconforming use since the basis for this type of appeal is based on when, *in the opinion of the Board*, the enlargement: 1) does not prolong the life of the nonconforming use; 2) would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and 3) will not have an adverse effect on the surrounding area.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5(A) (Single family residential)

North: R-7.5(A) (Single family residential)
South: R-7.5(A) (Single family residential)
East: R-7.5(A) (Single family residential)
West: R-7.5(A) (Single family residential)

Land Use:

The 21-acre subject site is developed as a nonconforming “public or private school” use (Whitney M. Young, Jr. Elementary School). The area to the north is undeveloped, the area to the east is a park (Veterans Park); the area to the south is developed with an institutional use (Harry Stone Montessori School); and the west is developed with office use.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on the enlargement of a nonconforming public or private school use (Whitney M. Young, Jr. Elementary School), specifically maintaining an approximately 23,000 square foot addition to the school structure made in 1995; maintaining two, approximately 1,500 square foot portable structures added on the site in 2009; and constructing and maintaining an 800 square foot “dry storage/freezer/cooler building addition to the school structure on the 21 acre subject site.
- The subject site is zoned R-7.5(A) (Single family residential).
- A public or private school use is permitted in R-7.5(A) districts with an SUP (Specific Use Permit).
- A public or private school use in an R-7.5(A) zoning district is a *conforming* use once it has obtained an SUP (Specific Use Permit) from the City Council through a public hearing process.
- The Dallas Development Code defines a nonconforming use as “a use that does not conform to the use regulations of this chapter, but was lawfully established under regulations in force at the beginning of operation and has been in regular use since that time.”
- The Dallas Development Code states that enlargement of a nonconforming use means any enlargement of the physical aspects of a nonconforming use, including any increase in height, floor area, number of dwelling units, or the area in which the nonconforming use operates.
- The applicant submitted a revised site plan that represents the size and location of the enlargements on the site (see Attachment B).
- This application is made to enlarge a nonconforming *use*. The application is *not* made to enlarge a nonconforming *structure*. Since no request for variance or special exception has been made to any other code provision, it would appear that existing enlargements made to the school structure, the existing portable structures added

on the 21 acre site, and the proposed enlargement to the existing structure are and/or would be conforming structures as it relates to development code requirements. The existing and proposed "enlargements" are part of a broader land use classification (public or private school) that can only be deemed a conforming use once and if the zoning is changed/or an SUP is obtained from City Council.

- Records from Building Inspection Department indicate that the public or private school use has been identified by Building Inspection as a nonconforming use.
- The applicant has been informed of the Dallas Development Code provisions pertaining to "Nonconforming Uses and Structures," and how nonconforming uses can be brought to the Board of Adjustment for amortization where if the board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for that nonconforming use - a compliance date that is provided under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.
- The applicant has the burden of proof to establish that the enlargement of the non-conforming use:
 1. does not prolong the life of the nonconforming use;
 2. would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and
 3. will not have an adverse effect on the surrounding area.
- If the Board were to grant this request, with a condition imposed that the applicant comply with the submitted revised site plan, the enlargement of the nonconforming use would be limited to what is shown on this document.

Timeline:

- March 24, 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.
- March 15, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- March 15, 2016: 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 March 30th deadline to submit additional evidence for staff to factor into their analysis; and the April 8th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the nonconforming use provisions from the Dallas Development Code; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

- May 3 2016: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).
- May 3, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Sustainable Development and Construction Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the Sustainable Development and Construction Board of Adjustment Senior Planner, and the Assistant City Attorneys to the Board.
- No review comment sheets were submitted in conjunction with this application.
- May 5, 2016: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachments B).

BOARD OF ADJUSTMENT ACTION: MAY 17, 2016

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

APPEARING IN OPPOSITION: No one

MOTION: **Rieves**

I move that the Board of Adjustment, in Appeal No. **BDA156-052**, on application of Karl Crawley, **grant** the request of this applicant to enlarge a nonconforming use because our evaluation of the property and testimony shows that the enlargement does not prolong the life of the nonconforming use and would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right and will not have an adverse effect on the surrounding area. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan is required.

SECONDED: **Bartos**

AYES: 5 – Nolen, Rieves, Gibson, Agnich, Bartos

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA156-055(SL)

BUILDING OFFICIAL'S REPORT: Application of Leonardo Gonzalez, represented by Audra Buckley of Permitted Development, for a variance to the front yard setback regulations at 7002 La Vista Drive. This property is more fully described as Lot 1 and a portion of Lot 2, Block 2764, 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 5 foot front yard setback measured at the foundation (with a 2 foot 8 inch roof eave overhang), which will require a 20 foot variance to the front yard setback regulations.

LOCATION: 7002 La Vista Drive

APPLICANT: Leonardo Gonzalez
Represented by Audra Buckley of Permitted Development

REQUEST:

A request for a variance to the front yard setback regulations of 20' is made to replace an existing one-story single family home structure with a two-story single family home structure and detached two-story accessory structure, part of which are to be located 5' from one of the site's two front property lines (West Shore Drive) or 20' 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, 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:

- 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. Most lots in

- this zoning district have one 25' front yard setback. The 60' – 63' wide subject site has approximately 30' – 33' 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' – 63' wide site would have 50' – 53' of developable width.
- Furthermore, the applicant provided information documenting that the total living area of the proposal is approximately 4,400 square feet, and that the average living area of 10 other homes she identified in the same R-7.5(A) zoning district is approximately 4,600 square feet, or approximately 200 square feet larger than what is proposed on the subject site.

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 structure that the applicant intends to demolish and replace 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:

- This request focuses on replacing an existing one-story single family home structure with a two-story, single family home structure (with an approximately 2,600 square foot building footprint and approximately 4,400 square feet of living space) and detached two-story accessory structure (with an approximately 500 square foot building footprint and approximately 460 square feet of living space), part of which are to be located 5' from one of the site's two front property lines (West Shore Drive) or 20' 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 La Vista Drive and West Shore Drive. Regardless of how the existing structure is proposed to be oriented to front La Vista Drive, the subject site has two 25' front yard setbacks along both streets. The site has a 25' front yard setback along La Vista 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 25' front yard setback along West Shore Drive, 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 West Shore Drive frontage that would function 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 lot to the south that fronts/is oriented westward towards West Shore Drive.

- A scaled site plan has been submitted indicating that a portion of the proposed main structure and proposed accessory structure is located 5' from the West Shore Drive front property line or 20' into this 25' front yard setback.
- According to DCAD records, the "main improvement" for property addressed at 7002 La Vista Drive is a structure built in 1949 with 1,460 square feet of living/total area with the following "additional improvements": a 280 square foot attached garage, and a 286 square foot attached carport.
- The subject site is relatively flat and rectangular in shape, and according to the submitted application is 0.19 acres (or approximately 8,300 square feet) in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- 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.
- According to the applicant approximately 14 percent of the approximately 2,600 square foot house footprint and approximately 91 percent of the approximately 500 square foot accessory structure footprint is located in the 25' West Shore Drive front yard setback.
- The applicant has submitted information that represents the total living area of the proposal is approximately 4,400 square feet. The average living area of 10 other homes that the applicant has identified in the same R-7.5(A) zoning district is approximately 4,600 square feet.
- The 60' – 63' wide subject site has approximately 30' – 33' 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' – 63' wide site would have 50' – 53' 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 structures in the front yard setback would be limited to what is shown on this document— which in this case are portions of a main and an accessory structure that would be located 5' from the site's West Shore Drive front property line (or 20' into this 25' front yard setback).

Timeline:

- March 22, 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.
- April 12, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- April 12, 2016: The Board Administrator emailed the applicant’s representative the following information:
 - a copy of the application materials including the Building Official’s report on the application;
 - an attachment that provided the public hearing date and panel that will consider the application; the April 27th deadline to submit additional evidence for staff to factor into their analysis; and the May 6th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”
- April 22 & 27, 2016: The applicant’s representative submitted additional documentation on this application beyond what was submitted with the original application (see Attachments A and B).
- May 3, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Sustainable Development and Construction Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the Sustainable Development and Construction Board of Adjustment Senior Planner, and the Assistant City Attorneys to the Board.
- No review comment sheets were submitted in conjunction with this application.

BOARD OF ADJUSTMENT ACTION: MAY 17, 2016

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Bartos**

I move to grant that the Board of Adjustment grant application **BDA 156-055(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: **Nolen**

AYES: 5 – Nolen, Rieves, Gibson, Agnich, Bartos

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA156-033(SL)

BUILDING OFFICIAL'S REPORT: Application of Ann Barbier-Mueller, represented by Tara Stevenson, for a special exception to the visual obstruction regulations at 5941 Averill Way. This property is more fully described as Lot 1, Block 5619, and is zoned R-1ac(A), which requires a 45 foot visibility triangle at street intersections. The applicant proposes to locate and maintain items in a required visibility triangle, which will require a special exception to the visual obstruction regulations.

LOCATION: 5941 Averill Way

APPLICANT: Ann Barbier-Mueller
Represented by Tara Stevenson

REQUEST:

A request for a special exception to the visual obstruction regulations is made to modify/remove and maintain existing plant materials in the 45' visibility triangle where Averill Way intersects with Preston Road on a site developed with a single family use.

(Note that this application is immediately north of a property where the same applicant and owner seeks a similar visual obstruction special exception from the Board of Adjustment Panel A that was heard on April 19th and delayed on that day until May 17th : BDA156-034).

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

The Board shall grant a special exception to the requirements of the visual obstruction regulations when, in the opinion of the Board, the item will not constitute a traffic hazard.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted revised site plan dated May 4, 2016 is required.

Rationale:

- The Sustainable Development and Construction Department Project Engineer has no objections to the revised request with the condition that the board imposes the submitted revised site plan dated May 4, 2016 as a condition to this request – a site plan that indicates the removal of certain landscape materials in the 45' visibility triangle at the intersection of Preston Road and Averill Way.
- The applicant had substantiated how the location of certain unspecified plant materials in the 45' visibility triangle where Averill Way intersects with Preston Road as shown on the revised site plan dated May 4, 2016 do not constitute a traffic hazard.

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

Zoning/BDA History:

1. BDA156-034, Property at 5942 Averill Way (the property to the south of the subject site)

On April 19, 2016, the Board of Adjustment Panel A considered a request for a special exception to the visual obstruction made to maintain a number of unspecified plant materials in the 45' visibility triangle where Averill Way intersects with Preston Road on a site developed with a single family use, and delayed action until their next public hearing to be held on May 17th.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on modifying/removing and maintaining existing plant materials in the 45' visibility triangle where Averill Way intersects with Preston Road on a site developed with a single family use.
- The Dallas Development Code states the following: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections, and 20 foot visibility triangles at drive approaches and at alleys on properties zoned single family); and
 - between two and a half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- A site plan and an elevation had been submitted with the original application indicating a number of unspecified plant materials located in the 45' visibility triangle where Averill Way intersects with Preston Road.
- In April of 2016, the Sustainable Development and Construction Department Project Engineer had submitted a review comment sheet in April marked "Recommends that this be denied" commenting: "The shrubbery encroaching into the 45' x 45' visibility triangle is detrimental to the safety of the public."
- After the April 19th public hearing, the applicant submitted a revised site plan and a revised elevation indicating unspecified plant materials some of which were to be removed and some of which were to be retained in the 45' visibility triangle where Averill Way intersects with Preston Road (see Attachment D).
- On May 5, 2016, the Sustainable Development and Construction Department Project Engineer submitted a review comment sheet in May marked "Has no objections if certain conditions are met" commenting: "subject to imposing the attached site plans dated May 04, 2016" (see Attachment E).
- The applicant has the burden of proof in establishing how granting this request for a special exception to the visual obstruction regulations to modify/remove and maintain plant materials in the 45' visibility triangle at where Averill Way intersects with Preston Road does not constitute a traffic hazard.
- Granting this request with a condition imposed that the applicant complies with the submitted revised site plan dated May 4, 2016 would limit the items located in the 45' visibility triangle where Averill Way intersects with Preston Road to that what is shown on these documents – plant materials.

Timeline:

February 15, 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.

March 15, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

March 15, 2016: 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 March 30th deadline to submit additional evidence for staff to factor into their analysis; and the April 8th 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."

March 28 & 30,
2016:

The applicant's representative submitted additional documentation on this application beyond what was submitted with the original application (see Attachments A and B).

April 5, 2016:

The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Sustainable Development and Construction Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Project Engineers, the City of Dallas Chief Arborist, the Sustainable Development and Construction Board of Adjustment Senior Planner, and the Assistant City Attorneys to the Board.

April 7, 2016:

The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" commenting: "The shrubbery encroaching into the 45' x 45' visibility triangle is detrimental to the safety of the public."

April 19, 2016:

The Board of Adjustment Panel A conducted a public hearing on this application. The Board delayed action on this application until their next public hearing to be held on May 17, 2016.

April 21, 2016:

The Board Administrator wrote the applicant's representative a letter that provided the board's action; and the April 27th deadline to submit additional evidence for staff to factor into their analysis; and the May 6th deadline to submit additional evidence to be incorporated into the Board's docket materials.

April 27, 2016:

The applicant's representative submitted additional documentation on this application beyond what was submitted with the original application and beyond what was submitted at the April 19th public hearing (see Attachment C).

- May 3, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Sustainable Development and Construction Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the Sustainable Development and Construction Board of Adjustment Senior Planner, and the Assistant City Attorneys to the Board.
- May 4, 2016: The applicant's representative submitted additional documentation on this application beyond what was submitted with the original application and beyond what was submitted at the April 19th public hearing (see Attachment D).
- May 5, 2016: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" commenting: "Subject to imposing the attached site plans dated May 04, 2016" (see Attachment E).

BOARD OF ADJUSTMENT ACTION: APRIL 19, 2016

APPEARING IN FAVOR: Tara Stevenson, 2501 N Harwood, Dallas, TX
Melody Paradise, 2501 N. Harwood, Dallas, TX
Trieu Hoang, 2501 N. Harwood, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Rieves

I move that the Board of Adjustment in Appeal No. **BDA 156-033**, table this matter until the end of the meeting.

SECONDED: Hill

AYES: 1 – Hill

NAYS: 4 - Nolen, Rieves, Agnich, Lewis

MOTION FAILED: 1-4

MOTION #2: Nolen

I move that the Board of Adjustment in Appeal No. **BDA 156-033**, hold this matter until advisement until **May 17, 2016**.

SECONDED: Agnich

AYES: 5 – Nolen, Rieves, Agnich, Hill, Lewis

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: MAY 17, 2016

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Bartos**

I move to grant that the Board of Adjustment grant application **BDA 156-033(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 revised site plan dated May 4, 2016, is required.

SECONDED: **Nolen**

AYES: 5 – Nolen, Rieves, Gibson, Agnich, Bartos

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA156-034(SL)

BUILDING OFFICIAL'S REPORT: Application of Ann Barbier-Mueller, represented by Tara Stevenson, for a special exception to the visual obstruction regulations at 5942 Averill Way. This property is more fully described as a 1.077 acre parcel in Block 5622, and is zoned R-1ac(A), which requires a 45 foot visibility triangle at street intersections. The applicant proposes to locate and maintain items in a required visibility triangle, which will require a special exception to the visual obstruction regulations.

LOCATION: 5942 Averill Way

APPLICANT: Ann Barbier-Mueller
Represented by Tara Stevenson

REQUEST:

A request for a special exception to the visual obstruction regulations is made to modify/remove and maintain existing plant materials in the 45' visibility triangle where Averill Way intersects with Preston Road on a site developed with a single family use.

(Note that this application is immediately south of a property where the same applicant and owner seeks a similar visual obstruction special exception from the Board of Adjustment Panel A that was heard on April 19th and delayed on that day until May 17th: BDA156-033).

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

The Board shall grant a special exception to the requirements of the visual obstruction regulations when, in the opinion of the Board, the item will not constitute a traffic hazard.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted revised site plan dated May 4, 2016 is required.

Rationale:

- The Sustainable Development and Construction Department Project Engineer has no objections to the revised request with the condition that the board imposes the submitted revised site plan dated May 4, 2016 as a condition to this request – a site plan that indicates the removal of certain landscape materials in the 45' visibility triangle at the intersection of Preston Road and Averill Way.
- The applicant had substantiated how the location of certain unspecified plant materials in the 45' visibility triangle where Averill Way intersects with Preston Road as shown on the revised site plan dated May 4, 2016 do not constitute a traffic hazard.

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

Zoning/BDA History:

1. BDA156-033, Property at 5941 Averill Way (the property to the north of the subject site)

On April 19, 2016, the Board of Adjustment Panel A considered a request for a special exception to the visual obstruction made to maintain a number of unspecified plant materials in the 45' visibility triangle where Averill Way intersects with Preston Road on a site developed with a single family use, and delayed action until their next public hearing to be held on May 17th.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on modifying/removing and maintaining existing plant materials in the 45' visibility triangle where Averill Way intersects with Preston Road on a site developed with a single family use.
- The Dallas Development Code states the following: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections, and 20 foot visibility triangles at drive approaches and at alleys on properties zoned single family); and
 - between two and a half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- A site plan and an elevation had been submitted with the original application indicating a number of unspecified plant materials located in the 45' visibility triangle where Averill Way intersects with Preston Road.
- In April of 2016, the Sustainable Development and Construction Department Project Engineer had submitted a review comment sheet in April marked "Recommends that this be denied" commenting: "The shrubbery encroaching into the 45' x 45' visibility triangle is detrimental to the safety of the public."
- After the April 19th public hearing, the applicant submitted a revised site plan and a revised elevation indicating unspecified plant materials some of which were to be removed and some of which were to be retained in the 45' visibility triangle where Averill Way intersects with Preston Road (see Attachment D).
- On May 5, 2016, the Sustainable Development and Construction Department Project Engineer submitted a review comment sheet in May marked "Has no objections if certain conditions are met" commenting: "subject to imposing the attached site plans dated May 04, 2016" (see Attachment E).
- The applicant has the burden of proof in establishing how granting this request for a special exception to the visual obstruction regulations to modify/remove and maintain plant materials in the 45' visibility triangle at where Averill Way intersects with Preston Road does not constitute a traffic hazard.
- Granting this request with a condition imposed that the applicant complies with the submitted revised site plan dated May 4, 2016 would limit the items located in the 45' visibility triangle where Averill Way intersects with Preston Road to that what is shown on these documents – plant materials.

Timeline:

February 15, 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.

March 15, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

March 15, 2016: 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 March 30th deadline to submit additional evidence for staff to factor into their analysis; and the April 8th 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."

March 28 & 30,
2016:

The applicant's representative submitted additional documentation on this application beyond what was submitted with the original application (see Attachments A and B).

April 5, 2016:

The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Sustainable Development and Construction Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Project Engineers, the City of Dallas Chief Arborist, the Sustainable Development and Construction Board of Adjustment Senior Planner, and the Assistant City Attorneys to the Board.

April 7, 2016:

The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" commenting: "The shrubbery encroaching into the 45' x 45' visibility triangle is detrimental to the safety of the public."

April 19, 2016:

The Board of Adjustment Panel A conducted a public hearing on this application. The Board delayed action on this application until their next public hearing to be held on May 17, 2016.

April 21, 2016:

The Board Administrator wrote the applicant's representative a letter that provided the board's action; and the April 27th deadline to submit additional evidence for staff to factor into their analysis; and the May 6th deadline to submit additional evidence to be incorporated into the Board's docket materials.

April 27, 2016:

The applicant's representative submitted additional documentation on this application beyond what was submitted with the original application and beyond what was submitted at the April 19th public hearing (see Attachment C).

- May 3, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Sustainable Development and Construction Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the Sustainable Development and Construction Board of Adjustment Senior Planner, and the Assistant City Attorneys to the Board.
- May 4, 2016: The applicant's representative submitted additional documentation on this application beyond what was submitted with the original application and beyond what was submitted at the April 19th public hearing (see Attachment D).
- May 5, 2016: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" commenting: "Subject to imposing the attached site plans dated May 04, 2016" (see Attachment E).

BOARD OF ADJUSTMENT ACTION: APRIL 19, 2016

APPEARING IN FAVOR: Tara Stevenson, 2501 N Harwood, Dallas, TX
Melody Paradise, 2501 N. Harwood, Dallas, TX
Trieu Hoang, 2501 N. Harwood, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Nolen**

I move that the Board of Adjustment in Appeal No. **BDA 156-034**, hold this matter until advisement until **May 17, 2016**.

SECONDED: **Agnich**

AYES: 5 – Nolen, Rieves, Agnich, Hill, Lewis

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: MAY 17, 2016

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Bartos**

I move to grant that the Board of Adjustment grant application **BDA 156-034(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 revised site plan dated May 4, 2016, is required.

SECONDED: Nolen

AYES: 5 – Nolen, Rieves, Gibson, Agnich, Bartos

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA156-050(SL)

BUILDING OFFICIAL'S REPORT: Application of Hemant Patel, represented by Courtney Davidson, for a variance to the off-street loading regulations at 310 S. Houston Street. This property is more fully described as Lot 5A, Block 22/24, and is zoned CA-1(A), which requires for hotels and motels, one required off-street loading space must be of the large size, and at least 75 percent of the required spaces must be of the large or medium size. The applicant proposes to construct and maintain a structure for a hotel or motel use requiring three off-street loading spaces and provide one medium size off-street loading space, which will require a variance of one large size space and one of either large or medium size to the off-street loading regulations.

LOCATION: 310 S. Houston Street

APPLICANT: Hemant Patel
Represented by Courtney Davidson

May 17, 2016 Public Hearing Notes:

- The applicant's representative submitted a revised site plan to the Board at the public hearing (see Attachment G).

REQUEST:

A request for a variance to the off-street loading regulations of 2 loading spaces is made to construct and maintain an approximately 162,000 square foot, 12-floor, 167 guestroom hotel on a site currently developed as a surface parking lot, and provide 1 of the 3 required loading spaces.

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:

- Staff recognized from the evidence submitted up until the May 3rd staff review team meeting that the subject site was of a restrictive size compared to other lots in the same CA-1(A) zoning district (approximately 16,000 square feet in area with only 64' of frontage along Houston Street and only 105' of frontage on Record Street), and of an irregular shape. However, staff concluded the applicant had not fully substantiated how the variance was necessary to permit development of the subject site with a hotel of a size that required 3 off-street loading spaces where the applicant can only provide 1 of these 3 spaces.
- Staff concluded that the applicant had not substantiated at the time of the May 3rd staff review team meeting how granting the variance would not be contrary to public interest. On May 5, 2015, the Sustainable Development and Construction Department Project Engineer submitted a review comment sheet and recommended denial of the request. The project engineer commented that the Department of Street Services does not support maneuvering for, or the action of, loading/unloading activities within City right-of-way that would obstruct vehicular and/or pedestrian traffic. In addition, the staff engineer commented that from a traffic safety and infrastructure analysis, it does not appear that Record, Wood, nor Houston has the parking capacity to accommodate the 2 remaining required truck dock loading spaces for the proposed development; that any truck loading operations within the public traffic lanes may have an adverse impact on traffic safety and infrastructure and would therefore be contrary to the public interest.

BACKGROUND INFORMATION:

Site: CA-1(A) (Central area)
North: CA-1(A) (Central area)
South: CA-1(A) (Central area)
East: CA-1(A) (Central area)
West: CA-1(A) (Central area)

Land Use:

The subject site is developed as a surface parking lot. The area to the north is developed with retail and office uses; the area to the east is developed with retail and surface parking uses; the area to the south is developed with a surface parking use; and the area to the west is developed with right-of-way green space.

Zoning/BDA History:

1. BDA156-018, Property at 310 S. Houston Street (the subject site)

On February 16, 2016, the Board of Adjustment Panel A denied a request to variance to the off-street loading regulations of 3 loading spaces without prejudice. The case report stated that the request was made to construct and maintain an approximately 162,000 square foot structure for a hotel or motel use on a site currently developed as a surface parking lot, and provide none of the 3 required loading spaces

GENERAL FACTS/ STAFF ANALYSIS:

- The request focuses on constructing and maintaining an approximately 162,000 square foot, 12-floor, 167 guestroom hotel on a site currently developed as a surface parking lot, and providing 1 of the 3 required off-street loading spaces.
- The Dallas Development Code requires the following off-street loading requirements for a hotel and motel use:
 - 0 to 10,000 square feet: NONE
 - 10,000 to 50,000 square feet: 1
 - 50,000-100,000 square feet: 2
 - Each additional 100,000 square feet or fraction thereof: 1 additional
- The Dallas Development Code requires the following additional loading requirements pertaining to "location and design standards":
 1. Except as specifically provided in this section, required off-street loading spaces must be provided on the same lot as the use served.
 2. The first required off-street loading space must be of the medium or large size and at least 40 percent of the required off-street loading spaces must be of the medium or large size except for hotels and motels, one required off-street loading space must be of the large size, and at least 75 percent of the required spaces must be of the large or medium size.
- The applicant submitted plans that document a hotel or motel use with approximately 112,000 square feet of "conditioned areas" and approximately 162,000 square feet of "total areas".
- The Building Official's report states that the applicant proposes to construct a hotel or motel use requiring 3 off-street loading spaces and provide one medium size off-street loading space which will require a variance of one large size space and one of

either large or medium size (or a total of two loading spaces) to the off-street loading space regulations.

- The site is flat, irregular in shape, and according to the application, 0.38 acres (or approximately 16,600 square feet) in area. The site is zoned CA-1(A). The site has two front yards as would any lot with two street frontages that is not zoned single family, duplex, or agricultural.
- DCAD records indicate that “no improvements” at 310 S. Houston Street.
- On May 5, 2016, the Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Recommends that this be denied.” The project engineer provided the additional comments: “The Department of Street Services does not support maneuvering for, nor the action of, loading/unloading activities within City right-of-way that would obstruct vehicular and/or pedestrian traffic. From a traffic, safety, and infrastructure analysis, it does not appear that Record, Wood, nor Houston has the parking capacity to accommodate the 2 remaining required truck dock loading spaces for the proposed development. Any truck loading operations within the public traffic lanes may have an adverse impact on traffic safety and infrastructure. For these reasons, we believe the granting of this variance would be contrary to the public interest.”
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to off-street loading 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 CA-1(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 CA-1(A) zoning classification.
- If the Board were to grant this request and impose the submitted revised site plan as a condition, the applicant would be required to provide only 1 of the 3 off-street loading spaces in conjunction with constructing/maintaining an approximately 162,000 square foot, 12-floor, 167 guestroom hotel.

Timeline:

- March 21, 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.
- April 12, 2016: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, “If a subsequent case is filed concerning the

same request, that case must be returned to the panel hearing the previously filed case.”

- April 12, 2016: The Board Administrator emailed the applicant’s representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the April 27th deadline to submit additional evidence for staff to factor into their analysis; and the May 6th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”
- April 28, 2016: The applicant’s representative submitted additional documentation on this application beyond what was submitted with the original application (see Attachments A and B).
- April 28, 2016: The Building Inspection Senior Plans Examiners/Development Code Specialist forwarded a revised Building Officials’ report to the Board Administrator (see Attachment C).
- May 2, 2016: The applicant’s representative submitted additional documentation on this application beyond what was submitted with the original application (see Attachment D).
- May 3, 2016: A person affiliated with the application submitted additional documentation on this application beyond what was submitted with the original application (see Attachment E).
- May 3, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Sustainable Development and Construction Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the Sustainable Development and Construction Board of Adjustment Senior Planner, and the Assistant City Attorneys to the Board.
- May 5, 2106 The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Recommends that this be denied.” The project engineer provided the additional comments: “The Department of Street Services does not support maneuvering for, nor the action of, loading/unloading activities within City right-of-way that would obstruct vehicular and/or pedestrian traffic. From a traffic, safety, and infrastructure analysis, it does not appear that Record, Wood, nor Houston has the parking

capacity to accommodate the 2 remaining required truck dock loading spaces for the proposed development. Any truck loading operations within the public traffic lanes may have an adverse impact on traffic safety and infrastructure. For these reasons, we believe the granting of this variance would be contrary to the public interest."

May 6, 2016: A newly designated representative by the applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment F). Note that this information was not factored into the staff recommendation since it was submitted after the May 3rd staff review team meeting.

BOARD OF ADJUSTMENT ACTION: MAY 17, 2016

APPEARING IN FAVOR: Jonathan Vinson, 2323 Ross Ave, Dallas, TX
David Nevarez, 400 S Houston St, Dallas, TX
Winford (Buck) Lindsay, 344 W Pike St., Lawrenceville GA

APPEARING IN OPPOSITION: No one

MOTION: **Nolen**

I move that the Board of Adjustment, in Appeal No. **BDA156-050**, hold this matter under advisement until **June 28, 2016**.

SECONDED: **Agnic**

AYES: 5 – Nolen, Rieves, Gibson, Agnich, Bartos

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA156-054(SL)

BUILDING OFFICIAL'S REPORT: Application of Pedro Gonzalez for a variance to the front yard setback regulations at 402 Grandview Avenue. This property is more fully described as Lot 13, Block 28/1613, and is zoned PD 134 (Subarea A), which requires a front yard setback of 10 feet. The applicant proposes to construct and/or maintain a structure and provide a 5 foot front yard setback, which will require a 5 foot variance to the front yard setback regulations.

LOCATION: 402 Grandview Avenue

APPLICANT: Pedro Gonzalez

REQUEST:

A request for a variance to the front yard setback regulations of 5' is made to maintain an approximately 1,400 square foot carport/porch added/aligned to a one story, approximately 1,400 square foot single family home/nonconforming structure, part of

which is located 5' from one of the site's two front property lines (Sante Fe Street) or 5' into this 10' 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, 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 subject site is unique and different from most lots zoned PD 134 (Subarea A) in that it has two front yard setbacks, the applicant had not substantiated at the time of the May 3rd staff review team meeting how the features of the flat, rectangular-shaped, and approximately 7,200 square foot lot precluded him from developing it in a manner commensurate with other developments found on similarly-zoned PD 134 (Subarea A). While the site has two, 10' front yard setbacks, this feature does not appear to restrict the applicant from developing/maintaining it with a commensurately-sized single family home structure/use that can comply with setbacks. The 50' wide subject site has 35' of developable width available once a 10' front yard setback is accounted for on the west and a 5' side yard setback is accounted for on the east.

BACKGROUND INFORMATION:

Zoning:

Site: PD 134 (Planned Development)
North: PD 134 (Planned Development)
South: PD 134 (Planned Development)
East: PD 134 (Planned Development)
West: MF-2(A) Multifamily residential)

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:

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on maintaining an addition made to an existing single family home/nonconforming structure, part of which is located 5' from one of the site's two front property lines (Sante Fe Street) or 5' into this 10' front yard setback. (No variance is requested to locate any structure in the site's 10' front yard setback along Grandview Avenue).
- The property is located in PD 134 (Subarea A). PD 134 was created in 1982. The PD states that the minimum lot area per structure is 7,250 square feet.
- Structures on lots zoned PD 134 (Subarea A) are required to provide a minimum front yard setback of 10'. (The PD states "standards for development must be in accordance with all other provisions of the R-7.5 Single Family District").
- The subject site is located at the east corner of Grandview Avenue and Sante Fe Street Street. Regardless of how the existing structure is oriented to front Grandview Avenue, the subject site has two 10' front yard setbacks along both streets. The site has a 10' front yard setback along Grandview Avenue, 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 10' front yard setback along Sante Fe Street, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where 5' side yard setback is required. But the site's Sante Fe Street frontage that functions as 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 lot to the northeast that fronts/is oriented northwestward towards Sante Fe Street.
- A scaled site plan has been submitted indicating that a portion of the existing single family home and existing "proposed covered porch" and existing "proposed carport" is located 5' from the Sante Fe Street front property line or 5' into this 10' front yard setback.
- According to DCAD records, the "main improvement" for property addressed at 402 Grandview Street is a structure built in 1930 with 1,600 square feet of living/total area with no "additional improvements."
- The applicant has chosen only to seek variance to the front yard setback regulations for the addition to the existing structure on the site, and not to seek variance to remedy/address the nonconforming aspect of the existing nonconforming main single family home structure that is also located in the 5' away from the site's Sante Fe Street property line or 5' into this 10' front yard setback.

- 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 subject site is flat, rectangular in shape (145' x 50'), and according to the submitted application is 0.166 acres (or approximately 7,230 square feet) in area. The site is zoned PD 134 where the minimum lot area per structure is required to be 7,250 square feet.
- Most lots in the PD 134 zoning have one 10' front yard setback, two 5' side yard setbacks, and one 5' rear yard setback; this site has two 10' front yard setbacks and two 5' side yard setbacks.
- According to calculations taken by the Board Administrator from the submitted site plan, the existing "proposed covered porch/proposed carport" structure addition in the Sante Fe Street front yard setback accounts for about 14 percent of the total square footage of the existing structure on the subject site.
- The 50' wide subject site has 35' of developable width available once a 10' 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 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 PD 134 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 134 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 portion of a structure located 5' from the site's Sante Fe Street front property line (or 5' into this 10' front yard setback).
- Granting this request for variance would not provide relief to any nonconforming structure on the site in a setback, or any existing/proposed noncompliance with the fence height or visual obstruction regulations.

Timeline:

March 24, 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.

April 12, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

April 12 and 21, 2016: 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 April 27th deadline to submit additional evidence for staff to factor into their analysis; and the May 6th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the provisions from the Dallas Development Code pertaining to nonconforming structures; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

May 3, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Sustainable Development and Construction Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the Sustainable Development and Construction Board of Adjustment Senior Planner, and the Assistant City Attorneys to the Board.

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

BOARD OF ADJUSTMENT ACTION: MAY 17, 2016

APPEARING IN FAVOR: Santos Martinez, 900 Jackson St., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Agnich

I move that the Board of Adjustment, in Appeal No. **BDA156-054**, on application of Pedro Gonzalez, **grant** a 5-foot variance to the front yard setback regulations 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: Nolen

AYES: 4 – Nolen, Rieves, Gibson, Agnich,

NAYS: 1 - Bartos

MOTION PASSED: 4 – 1

MOTION: Rieves

I move to adjourn this meeting.

SECONDED: Agnich

AYES: 5 – Nolen, Rieves, Gibson, Agnich, Bartos

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

2:41 P. M.: Board Meeting adjourned for May 17, 2016

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.