

**BOARD OF ADJUSTMENT, PANEL A  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, L1FN AUDITORIUM  
TUESDAY, FEBRUARY 18, 2014**

MEMBERS PRESENT AT BRIEFING: Clint Nolen, Acting Vice Chair, Larry French, regular member, Lindsey Williams, regular member, Hector Leija, regular member and Mark Rieves, regular member

MEMBERS ABSENT FROM BRIEFING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Laura Morrison, Asst. City Attorney, Jamilah Way, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, Ali Hatefi, Neva Dean, Interim Asst. Director and Trena Law, Board Secretary

MEMBERS PRESENT AT HEARING: Clint Nolen, Acting Vice Chair, Larry French, regular member, Lindsey Williams, regular member, Hector Leija, regular member and Mark Rieves, regular member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Laura Morrison, Asst. City Attorney, Jamilah Way, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, Ali Hatefi, Engineer, Neva Dean, Interim Asst. Director and Trena Law, Board Secretary

**11:05 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **February 18, 2014** docket.

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**1:05 P.M.**

The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand

upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel A **January 21, 2014** public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 18, 2014**

**MOTION: Rieves**

I move **approval** of the Tuesday, **January 21, 2014** public hearing minutes.

**SECONDED: Leija**

**AYES:** 5– Nolen, French, Williams, Leija, Rieves

**NAYS:** 0 -

**MOTION PASSED:** 5 – 0(unanimously)

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**MISCELLANEOUS ITEM NO. 2**

**FILE NUMBER:** BDA 123-086

**REQUEST:** To extend the time period in which to file an application for a building permit or certificate of occupancy an additional 12 months beyond the 180 days from the Board of Adjustment's favorable action on the requests for variances to the front yard setback regulations of 19', to the lot coverage regulations of 465 square feet; and to the off-street parking regulations of 5' 6" granted by Board of Adjustment Panel A on October 22, 2013.

**LOCATION:** 5410 Melrose Avenue

**APPLICANT:** Robert V. Hunt  
Represented by Brittany Harris

**STANDARD FOR EXTENDING THE TIME PERIOD IN WHICH TO APPLY FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY:**

- The Dallas Development Code states:  
The applicant shall file an application for a building permit or certificate of occupancy within 180 days for the date of the favorable action of the board, unless the applicant files for and is granted an extended time period prior to the expiration of the 180 days. The filing of a request for an extended time period does not toll the 180 day time period. If the applicant fails to file an application

within the time period, the request is automatically denied without prejudice, and the applicant must begin the process to have his request heard again.

- The *Board of Adjustment Working Rules of Procedure* state the following with regard to extensions of the time period for making application for a building permit or certificate of occupancy:
  - A panel may not extend the time period for making application for a building permit or certificate of occupancy beyond 180 days from the date of its favorable action unless it makes a *specific finding* based on evidence presented at a public hearing that there are no substantially changed conditions or circumstances regarding the property to the satisfaction of the panel. In no event, however, may the board extend the time period beyond 18 months from the date of its favorable action.

### **Timeline:**

October 22, 2013: The Board of Adjustment Panel A granted variances to the front yard setback regulations of 19', to the lot coverage regulations of 465 square feet; and to the off-street parking regulations of 5' 6", and imposed the following conditions to these requests: 1) compliance with the submitted revised site plan is required, 2) automatic garage doors must be installed and maintained in working order at all times, and 3) at no time may the areas in front of the garage be used for parking of vehicles. The case report stated that requests were made in conjunction with constructing and maintaining a two-story single family home structure on a site that is currently developed with a one-story nonconforming duplex structure that the applicant intends to demolish, and not complying with front yard, lot coverage, and off-street parking regulations. (See Attachment A for a copy of the case materials related to this application).

January 28, 2014: The Board Administrator emailed the applicant's representative acknowledging her January 28<sup>th</sup> request for the Board to extend the time period in which to file an application for a building permit or certificate of occupancy an additional 12 months beyond the 180 days that the applicant had to do so from the October 22, 2013 favorable action (see Attachment B). The Board Administrator emailed the applicant's representative the following information:

- an attachment that provided the public hearing date of the request; and deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- an attachment of materials related to BDA 123-086; and
- The Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 18, 2014**

**APPEARING IN FAVOR:** Robert Hunt, 5811 Gaston Ave., Dallas, TX

**APPEARING IN OPPOSITION:** No one

**MOTION:** French

I move to extend the time period in which to file an application for a building permit or certificate of occupancy an additional 12 months beyond the 180 days from the Board of Adjustment's favorable action on the requests for variances to the front yard setback regulations of 19', to the lot coverage regulations of 465 square feet; and to the off-street parking regulations of 5' 6" granted by Board of Adjustment Panel A on October 22, 2013.

**SECONDED:** Rieves

**AYES:** 5– Nolen, French, Williams, Leija, Rieves

**NAYS:** 0 -

**MOTION PASSED:** 5 – 0(unanimously)

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**FILE NUMBER:** BDA 134-011

**BUILDING OFFICIAL'S REPORT:** Application of Ed Simons for special exceptions to the landscape and visual obstruction regulations at 2359 Reagan Street. This property is more fully described as Lot 7 and part of Lot 8 to be re-platted as Lot 7A, Block 29/2281, and is zoned PD-193 (LC), which requires a 20 foot visibility triangle at driveway approaches and requires mandatory landscaping. The applicant proposes to construct/maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations, and to locate/maintain items in a required visibility triangle, which will require a special exception to the visual obstruction regulations.

**LOCATION:** 2359 Reagan Street

**APPLICANT:** Ed Simons

**REQUESTS:**

The following appeals have been made on a site that is undeveloped:

1. A special exception to the landscape regulations is requested in conjunction with constructing and maintaining a "building"/structure, and not fully providing required landscaping.
2. A special exception to the visual obstruction regulations is made in conjunction with locating and maintaining a 6' high open iron fence in the 20' visibility triangle at the driveway approach into the site from Reagan Street.

(Note that this application abuts a property to the northeast where the same applicant seeks similar landscape and visual obstruction special exceptions from Board of Adjustment Panel A on February 18th: BDA 134-012).

**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.

**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 (landscape):**

Approval, subject to the following condition:

- Compliance with the submitted landscape plan is required.

Rationale:

- The applicant has substantiated how granting this request would not compromise the spirit and intent of the landscaping requirements of PD 193.
- The City of Dallas Chief Arborist supports the request because the applicant has demonstrated the unified plan reasonably complies with the spirit and intent of PD 193.

**STAFF RECOMMENDATION (visual obstruction):**

Approval, subject to the following condition:

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

Rationale:

- The applicant has substantiated how granting this request to locate/maintain an open iron fence in the 20' visibility triangle at the driveway approach into the site from Reagan Street would not constitute a traffic hazard.
- The Sustainable Development and Construction Department Senior Engineer has no objections to this request.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 193 (LC) (Planned Development, Light Commercial)  
North: PD 193 (TH-3) (Planned Development, Townhouse)  
South: PD 193 (I-2) (Planned Development, Industrial)  
East: PD 193 (LC) (Planned Development, Light Commercial)  
West: PD 193 (LC) (SUP 215) (Planned Development, Specific Use Permit)

**Land Use:**

The subject site is undeveloped. The areas to the north, east, and south appear to be mostly undeveloped land; and the area to the west is developed with an institutional use (Phoenix House).

**Zoning/BDA History:**

1. BDA 134-012, Property at 2363 Reagan Street (the lot immediately northeast of subject site)

On February 18, 2014, the Board of Adjustment Panel A will consider requests for special exceptions to the landscape and visual obstruction regulations requested in conjunction with paving an undeveloped lot and not fully providing required landscaping, and locating items in the 20' visibility triangle at the driveway approach into the site from Reagan Street.

2. BDA 101-001, Property at 2345 Reagan Street (the lot immediately southwest of subject site)

On March 14, 2011, the Board of Adjustment Panel C granted a special exception to the landscape regulations requested in conjunction with constructing and maintaining a "proposed building expansion" on a site developed with an institutional use/structure (Phoenix House). The board imposed the following conditions to this request: Compliance with the submitted alternate landscape plan is required; If a sidewalk is required by the City, a sidewalk waiver must be approved for Sylvester Street. If a waiver is not required, a sidewalk with a minimum width of four feet (or as required by the Director of Sustainable Development and Construction) must be provided along Sylvester Street; Any tree on the landscape plan that dies must be replaced with at least one tree at a minimum of 3.5" and in close proximity to the original established tree; and no new landscaping may be located in required visibility triangles.

**Timeline:**

- December 13, 2013: 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 15, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- January 15, 2014: The Board Administrator contacted the applicant and shared the following information via email:
- an attachment that provided the public hearing date and panel that will consider the application; the January 29<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the February 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the requests;
  - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence”.
- February 4, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Interim Assistant Director, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Senior Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.
- February 6, 2014: The City of Dallas Chief Arborist submitted a memo regarding the landscape special exception request within this application (see Attachment A).
- February 6, 2014: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment B).
- February 6, 2014: The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet regarding the applicant’s request for a special exception to the visual obstruction regulations marked “Has no objections.”

**GENERAL FACTS/ STAFF ANALYSIS (landscape):**

- This request focuses on constructing and maintaining a “building”/structure, and not fully providing required landscaping, and not fully providing required landscaping.
- 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 City of Dallas Chief Arborist states in a memo (see Attachment A) that the request in this case and the related adjacent case (BDA 134-012) is triggered by new construction on both vacant properties.
- The Chief Arborist notes that the submitted landscape plan is deficient in that the combined properties (BDA 134-011 and BDA 134-012) do not fully provide the Landscape Site Area (LSA) in the front yard, that street trees along Reagan Street are not in the required tree planting zoned of 2.5' – 5' from back of curb, and specific to BDA 134-012, there are no street trees or sidewalk provided along the Dallas Tollway street frontage.
- The Chief Arborist listed several factors for consideration on this request and to the related adjacent case (BDA 134-012):
  1. the plan is presented as a single, unified development but the project is to be built on two separate properties with their own landscape requirements;
  2. the plan provides for the required number of trees along Sylvester Street and Reagan Street and screens all off-street parking; all other standards apply;
  3. trees along Reagan Street are set back to lessen the conflict with overhead utility lines;
  4. the plan calls for screening vines to grow along the Tollway frontage; and
  5. there is no pedestrian access to the Tollway.
- The Chief Arborist recommends approval of the landscape special exceptions for this application and the adjacent application (BDA 134-012) because the applicant has demonstrated the unified plan reasonably complies with the spirit and intent of PD 193, Part 1.
- The applicant has the burden of proof in establishing the following:
  - The special exception (where a site plan has been submitted that is deficient in meeting the sidewalk, tree, and landscape site area 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, the site would be granted exception from full compliance to sidewalk, tree, and landscape site area requirements of the landscape requirements of the Oak Lawn PD 193 landscape ordinance.

#### **GENERAL FACTS/STAFF ANALYSIS (visual obstruction):**

- This request focuses on locating and maintaining a 6' high open iron fence in the 20' visibility triangle at the driveway approach into the site from Reagan Street.
- 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).
- PD 193 defines “visibility triangle” as
  1. where a street designated on the city’s thoroughfare plan intersects another street, the portion of a corner lot within a triangular area formed by connecting together the point of intersection of adjacent curb lines (or, if there are no street curbs, what would be the normal street curb lines) and points on each of the street curb lines 45 feet from the intersection;
  2. where two streets not designated on the city’s thoroughfare plan intersect, the portion of a corner lot within a triangular area formed by connecting together the point of intersection of adjacent curb lines (or, if there are no street curbs, what would be the normal street curb lines) and points on each of the street curb lines 30 feet from the intersection;
  3. where an alley or driveway intersects with a street, the portion of a lot within a triangular area formed by connecting together the point of intersection of the edge of a driveway or alley and adjacent street curb line (or, if there are no street curbs, what would be the normal street curb line) and points on the driveway or alley edge and the street curb line 20 feet from the intersection.
- A site/landscape plan has been submitted indicating portions of a 6’ high open iron fence in the 20’ visibility triangle at the driveway approach into the site from Reagan Street.
- An elevation has been submitted indicating that the fence is 6’ high and comprised of open metal rails.
- The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet regarding the applicant’s request for a special exception to the visual obstruction regulations marked “Has no objections.”
- The applicant has the burden of proof in establishing how granting the request for special exception to the visual obstruction regulations to locate/maintain a 6’ high open iron fence in the 20’ visibility triangle at the driveway approach into the site from Reagan Street does not constitute a traffic hazard.
- Granting this request with a condition imposed that the applicant complies with the submitted site/landscape plan and elevation would limit the item located in the 20’ visibility triangle at the driveway into the site from Reagan Street to that what is shown on these documents - a 6’ high open iron fence.

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 18, 2014**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Williams**

I move that the Board of Adjustment grant application **BDA 134-011** 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/landscape plan and elevation is required.

**SECONDED: French**

**AYES:** 5 – Nolen, French, Williams, Leija, Rieves

**NAYS:** 0 -

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

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**FILE NUMBER:** BDA 134-012

**BUILDING OFFICIAL’S REPORT:** Application of Ed Simons for special exceptions to the landscape and visual obstruction regulations at 2363 Reagan Street. This property is more fully described as Lot 9 and part of Lot 8, Block 29/2281, and is zoned PD-193 (LC), which requires a 20 foot visibility triangle at driveway approaches and requires mandatory landscaping. The applicant proposes to increase the nonpermeable coverage on the lot and provide an alternate landscape plan, which will require a special exception to the landscape regulations, and to locate/maintain items in a required visibility triangle, which will require a special exception to the visual obstruction regulations.

**LOCATION:** 2363 Reagan Street

**APPLICANT:** Ed Simons

**REQUESTS:**

The following appeals have been made on a site that is undeveloped:

1. A special exception to the landscape regulations is requested in conjunction with paving/increasing the nonpermeable coverage of the lot, and not fully providing required landscaping.
3. A special exception to the visual obstruction regulations is made in conjunction with locating and maintaining a 6’ high open iron fence in the 20’ visibility triangle at the driveway approach into the site from Reagan Street.

(Note that this application abuts a property to the northeast where the same applicant seeks similar landscape and visual obstruction special exceptions from Board of Adjustment Panel A on February 18th: BDA 134-011).

**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.

## **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 (landscape):**

Approval, subject to the following condition:

- Compliance with the submitted landscape plan is required.

Rationale:

- The applicant has substantiated how granting this request would not compromise the spirit and intent of the landscaping requirements of PD 193.
- The City of Dallas Chief Arborist supports the request because the applicant has demonstrated the unified plan reasonably complies with the spirit and intent of PD 193.

### **STAFF RECOMMENDATION (visual obstruction):**

Approval, subject to the following condition:

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

Rationale:

- The applicant has substantiated how granting this request to located/maintain an open iron fence in in the 20' visibility triangle at the driveway approach into the site from Reagan Street would not constitute a traffic hazard.
- The Sustainable Development and Construction Department Senior Engineer has no objections to this request.

## **BACKGROUND INFORMATION:**

### **Zoning:**

<u>Site:</u>	PD 193 (LC) (Planned Development, Light Commercial)
<u>North:</u>	PD 193 (TH-3) (Planned Development, Townhouse)
<u>South:</u>	PD 193 (I-2) (Planned Development, Industrial)
<u>East:</u>	PD 193 (LC) (Planned Development, Light Commercial)
<u>West:</u>	PD 193 (LC) (Planned Development, Light Commercial)

### **Land Use:**

The subject site is undeveloped. The areas to the north, south, and west appear to be mostly undeveloped land; and the area to the east is the Dallas North Tollway.

### **Zoning/BDA History:**

1. BDA 134-011, Property at 2359 Reagan Street (the lot immediately southwest of subject site)

On February 18, 2014, the Board of Adjustment Panel A will consider requests for special exceptions to the landscape and visual obstruction regulations requested in conjunction with constructing a structure on an undeveloped lot and not fully providing required landscaping, and locating items in the 20' visibility triangle at the driveway approach into the site from Reagan Street.

2. BDA 101-001, Property at 2345 Reagan Street (two lots immediately southwest of subject site)

On March 14, 2011, the Board of Adjustment Panel C granted a special exception to the landscape regulations requested in conjunction with constructing and maintaining a "proposed building expansion" on a site developed with an institutional use/structure (Phoenix House). The board imposed the following conditions to this request: Compliance with the submitted alternate landscape plan is required; If a sidewalk is required by the City, a sidewalk waiver must be approved for Sylvester Street. If a waiver is not required, a sidewalk with a minimum width of four feet (or as required by the Director of Sustainable Development and Construction) must be provided along Sylvester Street; Any tree on the landscape plan that dies must be replaced with at least one tree at a minimum of 3.5" and in close proximity to the original established tree; and no new landscaping may be located in required visibility triangles.

**Timeline:**

December 13, 2013: 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 15, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

January 15, 2014: The Board Administrator contacted the applicant and shared the following information via email:

- an attachment that provided the public hearing date and panel that will consider the application; the January 29<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the February 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the requests;

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

February 4, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Interim Assistant Director, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Senior Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

February 6, 2014: The City of Dallas Chief Arborist submitted a memo regarding the landscape special exception request within this application (see Attachment A).

February 6, 2014: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment B).

February 6, 2014: The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet regarding the applicant’s request for a special exception to the visual obstruction regulations marked “Has no objections.”

**GENERAL FACTS/ STAFF ANALYSIS (Landscape):**

- This request focuses on paving/increasing the nonpermeable coverage of an undeveloped lot, and not fully providing required landscaping.
- 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 City of Dallas Chief Arborist states in a memo (see Attachment A) that the request in this case and the related adjacent case (BDA 134-011) is triggered by new construction on both vacant properties.
- The Chief Arborist notes that the submitted landscape plan is deficient in that the combined properties (BDA 134-011 and BDA 134-012) do not fully provide the Landscape Site Area (LSA) in the front yard, that street trees along Reagan Street are not in the required tree planting zoned of 2.5’ – 5’ from back of curb, and specific to BDA 134-012, there are no street trees or sidewalk provided along the Dallas Tollway street frontage.
- The Chief Arborists listed several factors for consideration on this request and to the related adjacent case (BDA 134-011):

1. the plan is presented as a single, unified development but the project is to be built on two separate properties with their own landscape requirements;
  2. the plan provides for the required number of trees along Sylvester Street and Reagan Street and screens all off-street parking; all other standards apply;
  3. trees along Reagan Street are set back to lessen the conflict with overhead utility lines;
  4. the plan calls for screening vines to grow along the Tollway frontage; and
  5. there is no pedestrian access to the Tollway.
- The Chief Arborist recommends approval of the landscape special exceptions for this application and the adjacent application (BDA 134-011) because the applicant has demonstrated the unified plan reasonably complies with the spirit and intent of PD 193, Part 1.
  - The applicant has the burden of proof in establishing the following:
    - The special exception (where a site plan has been submitted that is deficient in meeting the sidewalk, tree, and landscape site area 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, the site would be granted exception from full compliance to sidewalk, tree, and landscape site area requirements of the landscape requirements of the Oak Lawn PD 193 landscape ordinance.

**GENERAL FACTS/STAFF ANALYSIS (Visual obstruction):**

- This request focuses on locating and maintaining a 6' high open iron fence in the 20' visibility triangle at the driveway approach into the site from Reagan Street.
- 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).
- PD 193 defines "visibility triangle" as
  1. where a street designated on the city's thoroughfare plan intersects another street, the portion of a corner lot within a triangular area formed by connecting together the point of intersection of adjacent curb lines (or, if there are no street curbs, what would be the normal street curb lines) and points on each of the street curb lines 45 feet from the intersection;
  2. where two streets not designated on the city's thoroughfare plan intersect, the portion of a corner lot within a triangular area formed by connecting together the point of intersection of adjacent curb lines (or, if there are no street curbs, what would be the normal street curb lines) and points on each of the street curb lines 30 feet from the intersection;
  3. where an alley or driveway intersects with a street, the portion of a lot within a triangular area formed by connecting together the point of intersection of the edge of a driveway or alley and adjacent street curb line (or, if there are no

street curbs, what would be the normal street curb line) and points on the driveway or alley edge and the street curb line 20 feet from the intersection.

- A site/landscape plan has been submitted indicating locating and maintaining a 6' high open iron fence in the 20' visibility triangle at the driveway approach into the site from Reagan Street.
- An elevation has been submitted indicating that the fence is 6' high and comprised of open metal rails.
- The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet regarding the applicant's request for a special exception to the visual obstruction regulations marked "Has no objections."
- The applicant has the burden of proof in establishing how granting the request for special exception to the visual obstruction regulations to locate/maintain a 6' high open iron fence in the 20' visibility triangle at the driveway approach into the site from Reagan Street does not constitute a traffic hazard.
- Granting this request with a condition imposed that the applicant complies with the submitted site/landscape plan and elevation would limit the item located in the 20' visibility triangle at the driveway into the site from Reagan Street to that what is shown on these documents - a 6' high open iron fence.

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 18, 2014**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Williams**

I move that the Board of Adjustment grant application **BDA 134-012** 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/landscape plan and elevation is required.

SECONDED: **French**

AYES: 5 – Nolen, French, Williams, Leija, Rieves

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

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FILE NUMBER: BDA 134-013

**BUILDING OFFICIAL'S REPORT:** Application of Santos T. Martinez for a special exception to the landscape regulations at 2829 (AKA 2807) W. Northwest Highway. This property is more fully described as Lots 1-8, Block B/5786 and is zoned CR, which requires mandatory landscaping. The applicant proposes to construct/maintain a

structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

**LOCATION:** 2829 (AKA 2807) W. Northwest Highway

**APPLICANT:** Santos T. Martinez

**REQUEST:**

A special exception to the landscape regulations is requested in conjunction with constructing and maintaining a general merchandise or food store greater than 3,500 square feet use/structure (RaceTrac) on a site currently under development, and not fully meeting the landscape regulations.

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

The board may grant a special exception to the landscape regulations of this article upon making a special finding from the evidence presented that:

- (1) strict compliance with the requirements of this article will unreasonably burden the use of the property;
- (2) the special exception will not adversely affect neighboring property; and
- (3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

In determining whether to grant a special exception, the Board shall consider the following factors:

- the extent to which there is residential adjacency;
- the topography of the site;
- the extent to which landscaping exists for which no credit is given under this article;
- and
- the extent to which other existing or proposed amenities will compensate for the reduction of landscaping.

**STAFF RECOMMENDATION:**

Approval, subject to the following conditions:

1. Compliance with the submitted alternate landscape plan is required.
2. The remainder of the subject site outside the portion designated as an “artificial lot” as shown on the landscape plan must comply with Article X of Chapter 51A.

Rationale:

- The applicant has substantiated how strict compliance with the requirements of the landscape regulations of the Dallas Development Code will unreasonably burden the use of the property, and that the special exception will not adversely affect neighboring property. The applicant’s alternate landscape plan complies with all requirements of Article X of Chapter 51A other than providing only one of two required design standards, a deficiency caused by existing utilities on the site.
- The City’s Chief Arborist recommends approval of the applicant’s request.

## **BACKGROUND INFORMATION:**

### **Zoning:**

<u>Site:</u>	CR (Community retail)
<u>North:</u>	CR (Community retail)
<u>South:</u>	CR (Community retail)
<u>East:</u>	CR (Community retail)
<u>West:</u>	CR (Community retail)

### **Land Use:**

The site is currently under development. The area to the north, south, east, and west appear to be developed mostly with commercial/retail 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.

### **Timeline:**

December 18, 2013: 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 15, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

January 15, 2014: 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 January 29<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the February 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

January 27, 2014: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).

February 4, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the

Sustainable Development and Construction Department Current Planning Division Interim Assistant Director, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Senior Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

February 6, 2014: The City of Dallas Chief Arborist submitted a memo regarding the request (see Attachment B).

**GENERAL FACTS/STAFF ANALYSIS:**

- This request focuses on constructing and maintaining a general merchandise or food store greater than 3,500 square feet use/structure (RaceTrac) on a site currently under development, and not fully meeting the landscape regulations. More specifically, according to the City of Dallas Chief Arborist, the site does not comply with the landscape regulations in that it only provides for one of two required design standards.
- The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period.
- The City of Dallas Chief Arborist submitted a memo regarding the applicant's request (see Attachment B). The memo states how this request is triggered by new construction within a portion of a greater property over two acres in size.
- The Chief Arborist's memo lists the following factors for consideration:
  1. The site for approval is an area located within an "artificial lot" at the southwest corner of the larger property. An artificial lot is "an area within the building site that is delineated by the building official or the director of park and recreation for the sole purpose of satisfying the requirements of this article (see Section 51A-10.122)."
  2. The plan presents all required street trees for the artificial lot to be placed along the Community Drive frontage in order to avoid conflict with utilities.
  3. A small portion of screening plant material for one parking space near Community Drive extends off-site into the right-of-way. The owner is responsible for obtaining any necessary authorization or licensing that may be required for placement of these plant materials.
  4. The site complies with all other requirements of Article X.
- The City of Dallas Chief Arborist recommends approval of this request for the provided building site area but states that as a condition, the remainder of this property must comply with Article X, as amended.
- The applicant has the burden of proof in establishing the following:
  - Strict compliance with the requirements of the landscape regulations of the Dallas Development Code will unreasonably burden the use of the property; and the special exception will not adversely affect neighboring property.

- If the Board were to grant this request and impose the submitted landscape plan as a condition to the request, the site would be provided exception from full compliance with the design standard requirements of Article X.

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 18, 2014**

**APPEARING IN FAVOR:** No one

**APPEARING IN OPPOSITION:** No on

**MOTION:** Williams

I move that the Board of Adjustment grant application **BDA 134-013** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development code:

- Compliance with the submitted alternate landscape plan is required.
- The remainder of the subject site outside the portion designated as an “artificial lot” as shown on the landscape plan must comply with Article X of Chapter 51A.

**SECONDED:** French

**AYES:** 5 – Nolen, French, Williams, Leija, Rieves

**NAYS:** 0 -

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

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**FILE NUMBER:** BDA 134-014

**BUILDING OFFICIAL’S REPORT:** Application of Irma Elias for a special exception to the fence height regulations at 9805 Bowman Boulevard. This property is more fully described as Lot 7, Block O/6144, and is zoned R-7.5(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct/maintain an 8 foot high fence, which will require a 4 foot special exception to the fence height.

**LOCATION:** 9805 Bowman Boulevard

**APPLICANT:** Irma Elias

**REQUEST:**

A special exception to the fence height regulations of 4’ is requested in conjunction with maintaining an 8’ high combination cedar board-on-board/stone fence, and replacing an existing approximately 6’ high wood fence with an 8’ high combination cedar board-on-board/stone fence in the one of the site’s two 25’ front yard setbacks (Park Lane) on a site that is developed with a single family home.

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

Section 51A-4.602 of the Dallas Development Code states that the board may grant a special exception to the height requirement for fences 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 height regulations 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-7.5(A) (Single family district 7,500 square feet)  
North: R-7.5(A) (Single family district 7,500 square feet)  
South: R-7.5(A) (Single family district 7,500 square feet)  
East: R-7.5(A) (Single family district 7,500 square feet)  
West: R-7.5(A) (Single family district 7,500 square feet)

**Land Use:**

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

**Zoning/BDA History:**

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

**Timeline:**

December 13, 2013: 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 15, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

January 15, 2014: The Board Administrator contacted the applicant’s daughter and shared the following information via email:

- an attachment that provided the public hearing date and panel that will consider the application; the January 29th deadline to submit additional evidence for staff to factor into their analysis; and the February 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;

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

February 4, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Interim Assistant Director, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Senior Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

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

### **GENERAL FACTS/STAFF ANALYSIS:**

- This request focuses on maintaining an 8’ high combination cedar board-on-board/stone fence and replacing an existing approximately 6’ high wood fence with an 8’ high combination cedar board-on-board/stone fence in the one of the site’s two 25’ front yard setbacks (Park Lane) on a site that is developed with a single family home.
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4’ above grade when located in the required front yard.
- The site is located at the northwest corner of Park Lane and Bowman Boulevard. The site has a 25’ front yard setback along Bowman Boulevard, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in a single-family zoning district. The site also has a 25’ front yard setback along Park Lane, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where only a 5’ setback is required. But the site’s Park Lane frontage is a side yard treated as a front yard setback nonetheless to maintain the continuity of the established front yard setback established by the lots developed with single family homes west of the site that front/are oriented southward towards Park Lane. Regardless of how the existing home is oriented to front onto Bowman Boulevard (and “side” to Park Lane), the site has two 25’ front yard setbacks where the focus of the applicant’s request in this application is only to maintain and replace/maintain a fence higher than 4’ in the site’s front yard setback on Park Lane. (No part of the application is made to address any fence in the site’s Bowman Boulevard front yard setback).
- The applicant has submitted a site plan and elevation of the proposal in the front yard setback with notations indicating that the fence reaches a maximum height of 8’ – a 6’ high cedar board-on-board fence atop a 2’ high stone base.
- The following additional information was gleaned from the submitted site plan:

- The proposed fence that would replace the existing fence in the front yard setback is represented as being approximately 75' in length parallel to the Park Lane; and the existing fence to be maintained in the Park Lane front yard setback is approximately 25' in length perpendicular to Park Lane.
- The proposal is represented as being located on the Park Lane front property line or about 13' from the Park Lane pavement line.
- The proposal is located across from two single family homes neither which have a fence in their front yard setbacks.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences that appeared to be above 4' in height and located in a front yard setback.
- As of February 10, 2014, four letters/emails have been submitted in support of the request, and no letters/emails have been submitted in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' will not adversely affect neighboring property.
- Granting this special exception of 4' with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding 4' in height in the front yard setback to be maintained and/or constructed maintained in the location and of the heights and materials as shown on these documents.

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 18, 2014**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Williams**

I move that the Board of Adjustment grant application **BDA 134-014** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development code:

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

SECONDED: **French**

AYES: 5 – Nolen, French, Williams, Leija, Rieves

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

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**MOTION: Williams**

I move to adjourn this meeting.

**SECONDED: Rieves**

**AYES: 5–Nolen, French, Williams Leija, Rieves**

**NAYS: 0 -**

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

**1:10 P. M.:** - Board Meeting adjourned for **February 18, 2014.**

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CHAIRPERSON

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BOARD ADMINISTRATOR

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BOARD SECRETARY

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