

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, 6ES
TUESDAY, APRIL 22, 2014**

MEMBERS PRESENT AT BRIEFING: Clint Nolen, 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
Jamilah Way, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief, Arborist Ali Hatefi, Engineer and Trena Law, Board Secretary

MEMBERS PRESENT AT HEARING: Clint Nolen, 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
Jamilah Way, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief, Arborist Ali Hatefi, Engineer and Trena Law, Board Secretary

11:05 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **April 22, 2014** docket.

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.

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel A **February 18, 2014** public hearing minutes.

BOARD OF ADJUSTMENT ACTION: APRIL 22, 2014

MOTION: French

I move **approval** of the Tuesday, **February 18, 2014** public hearing minutes.

SECONDED: Williams

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

NAYS: 0 -

MOTION PASSED: 5 – 0(unanimously)

FILE NUMBER: BDA 134-033

BUILDING OFFICIAL’S REPORT: Application of Santos T. Martinez for a variance to the off-street parking regulations and a special exception to landscape regulations at 2201 Bennett Avenue. This property is more fully described as Lot 1A, Block D/1990, and is zoned MF-2(A), which requires that no required or excess parking may be placed in the required front yard, and requires mandatory landscaping. The applicant proposes to construct and maintain a structure and provide required or excess parking in the 15 foot front yard setback, which will require a variance to the off-street parking regulations, and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 2201 Bennett Avenue

APPLICANT: Santos T. Martinez

REQUESTS:

The following requests have been made to construct/maintain attached single family homes (a shared access development) on a site that is undeveloped:

1. A variance to the off-street parking regulations is requested to locate/maintain required or excess parking in the required 15’ front yard setback.
2. A special exception to the landscape regulations is requested to construct/maintain attached single family homes (a shared access development), and not fully meet the landscape regulations.

(This application abuts a property to the northwest where the same applicant seeks a similar parking variance and landscape special exception from Board of Adjustment Panel A on April 22nd: BDA 134-034).

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.

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 (variance):

Denial

Rationale:

- Staff is unable to conclude that there is an unnecessary hardship as the parcel/subject site does not differ from other parcels of land by being of such restrictive area, shape, or slope that it cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same MF-2(A) zoning classification. The subject site is flat, rectangular in shape (50' x 180', and according to the application, is 0.20 acres (or approximately 9,000 square feet) in area.

- The features of this flat, rectangular, 9,000 square foot site do not preclude the applicant from developing it in a manner commensurate with development found on other properties zoned MF-2(A).
- The applicant has not substantiated how granting the variance would not be made to relieve a self-created or personal hardship, nor for financial reasons only.

STAFF RECOMMENDATION (landscape):

Denial

Rationale:

- The applicant has not substantiated how strict compliance with the requirements of the landscape regulations of the Dallas Development Code will unreasonably burden the use of the property.
- The City’s Chief Arborist recommends denial of the applicant’s request.

BACKGROUND INFORMATION:

Zoning:

Site: MF-2(A) (Multifamily)
North: PD 860 (Planned Development)
South: MF-2(A) (Multifamily)
East: MF-2(A) (Multifamily)
West: MF-2(A) (Multifamily)

Land Use:

The site is currently undeveloped. The areas to the north, south, east, and west appear to be developed with a mix of duplex and multifamily uses.

Zoning/BDA History:

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. BDA 134-034, Property at 2207 Bennett Avenue (the lot immediately northwest of subject site) | <p>On April 22, 2014, the Board of Adjustment Panel A will consider requests for a variance to the off-street parking regulations and a special exception to the landscape regulations requested to locate/maintain required or excess parking in the required 15’ front yard setback and to construct/maintain the single family homes, and not fully meet the landscape regulations on an undeveloped lot.</p> |
|---|--|

Timeline:

February 26, 2014: 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 12, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- March 12, 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 March 26th deadline to submit additional evidence for staff to factor into their analysis; and the April 11th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the requests; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- March 25, 2014: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).
- April 4, 2014: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment B).
- April 8, 2014: 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 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, the Sustainable Development and Construction Department Current Planner, and the Assistant City Attorney to the Board.
- April 9, 2014: The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet regarding the applicant’s request for a variance to the off-street parking regulations marked “Has no objections.”
- April 11, 2014: The City of Dallas Chief Arborist submitted a memo regarding the request for a special exception to the landscape regulations (see Attachment C).

GENERAL FACTS/STAFF ANALYSIS (variance):

- This request focuses on constructing/maintaining attached single family homes (a shared access development) on an undeveloped site, and locating/maintaining required or excess parking in the required 15’ front yard setback.
- Structures on lots zoned MF-2(A) are required to provide a minimum front yard setback of 15’.

- In an MF-2(A) district, no required or excess parking may be placed in the required front yard.
- A site/landscape plan has been submitted that denotes the subject site and the site immediately adjacent (the subject site for BDA 134-034). There are two areas on this site/landscape plan denoting “guest parking” located in the front yard setback on either side of a driveway and fire lane leading into this site (and the adjacent site for BDA 134-034) from Bennett Avenue.
- The subject site is flat, rectangular in shape (50’ x 180’, and according to the application, is 0.20 acres (or approximately 9,000 square feet) in area. The site is zoned MF-2(A).
- According to DCAD records, there are “no improvements” at 2201 Bennett Avenue.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the off-street parking regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same MF-2(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 MF-2(A) zoning classification.
- If the Board were to grant the variance request, and impose the submitted site/landscape plan as a condition, the variance would be limited to allowing required or excess parking in the site’s front yard setback.

GENERAL FACTS/STAFF ANALYSIS (landscape):

- This request focuses on constructing and maintaining the attached single family homes (a shared access development) on an undeveloped site, and not fully meeting the landscape regulations. More specifically, according to the City of Dallas Chief Arborist, the site would not comply with the landscape regulations that require 20 percent landscape area, nor comply with landscape requirements for shared access developments.
- 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.
- A site/landscape plan has been submitted that denotes the subject site and the site immediately adjacent (the subject site for BDA 134-034).
- The City of Dallas Chief Arborist submitted a memo regarding the applicant’s request for a special exception to the landscape regulations on this property and on

the adjacent property that is the subject site for the related application made at 2207 Bennett Street: BDA 134-034 (see Attachment C). The memo states how this request is triggered by new construction for both properties.

- The City of Dallas Chief Arborist's memo lists deficiencies as: 1) the proposed landscape plans are deficient the 20 percent landscape area required for each property; and 2) the site does not fully conform to landscape required for shared access developments.
 1. The Chief Arborist's memo lists the several factors for consideration some of which are:
 2. The submitted landscape plan was designed to identify the site as a single shared access development. According to the applicant, as a combined unit, the landscape area, excluding the proposed permeable paved areas on the front yard, is measured at 17.6 percent. For area within the property boundaries (base on the 15' setback line), a confirmation cannot be made where more than 15 percent per individual lot is provided, excluding the permeable pavement area.
 3. The five site trees count is acceptable based on the combined 18,000 square foot of property.
 4. No additional vertical landscape elements are placed within any portion of the side yards for the properties. A 3' wide drainage easement may restrict certain types of tree planting between the fence and the building. However any cumulative future conversion of landscape areas in these locations to impervious surfaces and residential uses would significantly reduce the overall landscape area. The plans do not indicate any restrictions to new pavement or outdoor uses in the reduced landscape area.
 5. Permeable pavement is specifically restricted from landscape area calculations for the shares access development in this zoning.
- The City of Dallas Chief Arborist recommends denial of this request for each property because the application of the requirements of the landscape ordinance will not unreasonably burden the use of the property. The Chief Arborist suggests that if the Board approves the request, he recommends that a condition be imposed that requires that application for private license for parkway improvements be fully submitted for each property prior to the issuance of a building permit for construction. In addition, the Chief Arborist recommends that a condition of no more than 20 percent of the approved landscape area for 2201 Bennett, and also for 2207 Bennett, as shown on the landscape plan, may be removed and/or converted to impervious surface.
- 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 site/landscape plan as a condition to the request, the site would be provided exception from full compliance to the landscape regulations that require 20 percent landscape area, and to landscape requirements for shared access developments.

BOARD OF ADJUSTMENT ACTION: APRIL 22, 2014

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

APPEARING IN OPPOSITION: No one

MOTION #1: Leija

I move that the Board of Adjustment, in request No. **BDA 134-033**, on application of Santo T. Martinez, **deny** the requested off-street parking variance **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: Rieves

AYES: 4– Nolen, Williams, Leija, Rieves

NAYS: 1 - French

MOTION PASSED: 4 – 1

MOTION #2: Leija

I move that the Board of Adjustment, in request No. **BDA 134-033**, on application of Santos T. Martinez, **deny** the requested special exception to the landscape regulations **without prejudice**, because our evaluation of the property and testimony shows that granting the application would compromise the spirit and intent of the Dallas Development Code.

SECONDED: Rieves

AYES: 4– Nolen, Williams, Leija, Rieves

NAYS: 1 - French

MOTION PASSED: 4 – 1

FILE NUMBER: BDA 134-034

BUILDING OFFICIAL’S REPORT: Application of Santos T. Martinez for a variance to the off-street parking regulations and a special exception to the landscape regulations at 2207 Bennett Avenue. This property is more fully described as Lot 2A, Block D/1990, and is zoned MF-2(A), which requires that no required or excess parking may be placed in the required front yard, and requires mandatory landscaping. The applicant proposes to construct and maintain a structure and provide required or excess parking in the 15 foot front yard setback, which will require a variance to the off-street parking regulations, and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 2207 Bennett Avenue

APPLICANT: Santos T. Martinez

REQUESTS:

The following requests have been made to construct/maintain attached single family homes (a shared access development) on a site that is undeveloped:

1. A variance to the off-street parking regulations is requested to locate/maintain required or excess parking in the required 15' front yard setback.
2. A special exception to the landscape regulations is requested to construct/maintain attached single family homes (a shared access development), and not fully meet the landscape regulations.

(This application abuts a property to the southeast where the same applicant seeks a similar parking variance and landscape special exception from Board of Adjustment Panel A on April 22nd: BDA 134-033).

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.

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:

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

STAFF RECOMMENDATION (variance):

Denial

Rationale:

- Staff is unable to conclude that there is an unnecessary hardship as the parcel/subject site does not differ from other parcels of land by being of such restrictive area, shape, or slope that it cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same MF-2(A) zoning classification. The subject site is flat, rectangular in shape (50' x 180', and according to the application, is 0.20 acres (or approximately 9,000 square feet) in area.
- The features of this flat, rectangular, 9,000 square foot site do not preclude the applicant from developing it in a manner commensurate with development found on other properties zoned MF-2(A).
- The applicant has not substantiated how granting the variance would not be made to relieve a self-created or personal hardship, nor for financial reasons only.

STAFF RECOMMENDATION (landscape):

Denial

Rationale:

- The applicant has not substantiated how strict compliance with the requirements of the landscape regulations of the Dallas Development Code will unreasonably burden the use of the property.
- The City's Chief Arborist recommends denial of the applicant's request.

BACKGROUND INFORMATION:

Zoning:

Site: MF-2(A) (Multifamily)
North: PD 860 (Planned Development)
South: MF-2(A) (Multifamily)
East: MF-2(A) (Multifamily)
West: MF-2(A) (Multifamily)

Land Use:

The site is currently undeveloped. The areas to the north, south, east, and west appear to be developed with a mix of duplex and multifamily uses.

Zoning/BDA History:

- | | |
|---|---|
| 1. BDA 134-033, Property at 2201 Bennett Avenue (the lot immediately southeast of subject site) | On April 22, 2014, the Board of Adjustment Panel A will consider requests for a variance to the off-street parking regulations and a special exception to the landscape regulations requested to locate/maintain required or excess parking in the required 15' front yard setback and to construct/maintain the single family homes, and not fully meet the landscape regulations on an undeveloped lot. |
|---|---|

Timeline:

- February 26, 2014: 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 12, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- March 12, 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 March 26th deadline to submit additional evidence for staff to factor into their analysis; and the April 11th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the requests; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- March 25, 2014: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).
- April 4, 2014: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment B).
- April 8, 2014 : 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 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, the Sustainable Development and Construction Department Current Planner, and the Assistant City Attorney to the Board.

April 9, 2014: The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet regarding the applicant's request for a variance to the off-street parking regulations marked "Has no objections."

April 11, 2014: The City of Dallas Chief Arborist submitted a memo regarding the request for a special exception to the landscape regulations (see Attachment C).

GENERAL FACTS/STAFF ANALYSIS (variance):

- This request focuses on constructing/maintaining attached single family homes (a shared access development) on an undeveloped site, and locating/maintaining required or excess parking in the required 15' front yard setback.
- Structures on lots zoned MF-2(A) are required to provide a minimum front yard setback of 15'.
- In an MF-2(A) district, no required or excess parking may be placed in the required front yard.
- A site/landscape plan has been submitted that denotes the subject site and the site immediately adjacent (the subject site for BDA 134-034). There are two areas on this site/landscape plan denoting "guest parking" located in the front yard setback on either side of a driveway and fire lane leading into this site (and the adjacent site for BDA 134-033) from Bennett Avenue.
- The subject site is flat, rectangular in shape (50' x 180', and according to the application, is 0.20 acres (or approximately 9,000 square feet) in area. The site is zoned MF-2(A).
- According to DCAD records, there are "no improvements" at 2207 Bennett Avenue.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the off-street parking regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same MF-2(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 MF-2(A) zoning classification.

- If the Board were to grant the variance request, and impose the submitted site/landscape plan as a condition, the variance would be limited to allowing required or excess parking in the site's front yard setback.

GENERAL FACTS/STAFF ANALYSIS (landscape):

- This request focuses on constructing and maintaining the attached single family homes (a shared access development) on an undeveloped site, and not fully meeting the landscape regulations. More specifically, according to the City of Dallas Chief Arborist, the site would not comply with the landscape regulations that require 20 percent landscape area, nor comply with landscape requirements for shared access developments.
- 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.
- A site/landscape plan has been submitted that denotes the subject site and the site immediately adjacent (the subject site for BDA 134-033).
- The City of Dallas Chief Arborist submitted a memo regarding the applicant's request for a special exception to the landscape regulations on this property and on the adjacent property that is the subject site for the related application made at 2201 Bennett Street: BDA 134-033 (see Attachment C). The memo states how this request is triggered by new construction for both properties.
- The City of Dallas Chief Arborist's memo lists deficiencies as: 1) the proposed landscape plans are deficient the 20 percent landscape area required for each property; and 2) the site does not fully conform to landscape required for shared access developments.
- The Chief Arborist's memo lists the several factors for consideration some of which are:
 1. The submitted landscape plan was designed to identify the site as a single shared access development. According to the applicant, as a combined unit, the landscape area, excluding the proposed permeable paved areas on the front yard, is measured at 17.6 percent. For area within the property boundaries (base on the 15' setback line), a confirmation cannot be made where more than 15 percent per individual lot is provided, excluding the permeable pavement area.
 2. The five site trees count is acceptable based on the combined 18,000 square foot of property.
 3. No additional vertical landscape elements are placed within any portion of the side yards for the properties. A 3' wide drainage easement may restrict certain types of tree planting between the fence and the building. However any cumulative future conversion of landscape areas in these locations to impervious surfaces and residential uses would significantly reduce the overall landscape area. The plans do not indicated any restrictions to new pavement or outdoor uses in the reduced landscape area.
 4. Permeable pavement is specifically restricted from landscape area calculations for the shares access development in this zoning.

- The City of Dallas Chief Arborist recommends denial of this request for each property because the application of the requirements of the landscape ordinance will not unreasonably burden the use of the property. The Chief Arborist suggests that if the Board approves the request, he recommends that a condition be imposed that requires that application for private license for parkway improvements be fully submitted for each property prior to the issuance of a building permit for construction. In addition, the Chief Arborist recommends that a condition of no more than 20 percent of the approved landscape area for 2201 Bennett, and also for 2207 Bennett, as shown on the landscape plan, may be removed and/or converted to impervious surface.
- 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 site/landscape plan as a condition to the request, the site would be provided exception from full compliance to the landscape regulations that require 20 percent landscape area, and to landscape requirements for shared access developments.

BOARD OF ADJUSTMENT ACTION: APRIL 22, 2014

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

APPEARING IN OPPOSITION: No one

MOTION #1: Leija

I move that the Board of Adjustment, in request No. **BDA 134-034**, on application of Santo T. Martinez, **deny** the requested off-street parking variance **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: Rieves

AYES: 4– Nolen, Williams, Leija, Rieves

NAYS: 1 - French

MOTION PASSED: 4 – 1

MOTION #2: Leija

I move that the Board of Adjustment, in request No. **BDA 134-034**, on application of Santos T. Martinez, **deny** the requested special exception to the landscape regulations **without prejudice**, because our evaluation of the property and testimony shows that granting the application would compromise the spirit and intent of the Dallas Development Code.

SECONDED: Rieves

AYES: 4– Nolen, Williams, Leija, Rieves

NAYS: 1 - French

MOTION PASSED: 4 – 1

FILE NUMBER: BDA 134-035

BUILDING OFFICIAL’S REPORT: Application of Gladys Bowens and Dallas Cothrum of Masterplan for a special exception to the landscape regulations at 3000 Carlisle Street. This property is more fully described as Lot 1A, Block 16/966, and is zoned PD-193(O-2), which requires mandatory landscaping. The applicant proposes to maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 3000 Carlisle Street

APPLICANT: Gladys Bowens and Dallas Cothrum of Masterplan

April 22, 2014 Public Hearing Notes:

- The Board Administrator circulated a revised landscape plan submitted by the applicant to the Board at the briefing – a revised plan that had received support from the City of Dallas Chief Arborist.

REQUEST:

A special exception to the landscape regulations is requested in conjunction with maintaining a high-rise multifamily structure (Streetlights at Carlisle), and not fully providing 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:

Denial

Rationale:

- The applicant has not 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 recommends denial of this the request because the applicant has not demonstrated how the request does not compromise the spirit and intent of the landscaping requirements of PD 193.

BACKGROUND INFORMATION:

Site: PD 193(O-2) (Planned Development, Office)
North: PD 193(MF-2) (Planned Development, Multifamily)
South: PD 193 (PDS 2) (Planned Development, Planned Development)
East: PD 193(O-2) (Planned Development, Office)
West: PD 193(O-2) (Planned Development, Office)

Land Use:

The subject site is developed with a multifamily structure. The areas to the north, east, south, and west are developed with a mix of land uses.

Zoning/BDA History:

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| 1. BDA 123-100, Property at 3100 Carlisle Street (the subject site) | On October 22, 2013, the Board of Adjustment Panel A affirmed the decision of the administrative official and denied an application requesting that the Board of Adjustment reverse/overturn the Building Official’s August 12, 2013 decision “to extend the expiration date of the Temporary Certificate of Occupancy relating to Unit Floors 1, 2, and 3 and Parking Garage B1 thru 4 th Floor.” |
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Timeline:

- February 26, 2014: 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 12, 2014: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- March 12, 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 March 26th deadline to submit additional evidence for staff to factor into their analysis; and the April 11th 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 8, 2014 : 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 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, the Sustainable Development and Construction Department Current Planner, and the Assistant City Attorney to the Board.

April 11, 2014: The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment A).

GENERAL FACTS/ STAFF ANALYSIS:

- This request focuses on maintaining a high-rise multifamily structure (Streetlights at Carlisle), 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 is triggered by new construction.
- The Chief Arborist notes that the proposed plan is compliant with regulations with the exception of “Garage screening and landscaping” standards of Section 51P-193.126(b)(3)(D). Deficiencies include required plant materials for the east face and paved parking encroachment into the 10’ buffer on the west face.
- The Chief Arborist listed several factors for consideration on this request:
 1. Garage screening and landscaping regulations require that “aboveground parking structures must have a 10-foot landscaping buffer on any side facing a public right-of-way, residential district, or residential use. This landscape buffer must contain one tree for every 25 feet of frontage and evergreen shrubs planted at three feet on center. Initial plantings must be capable of obtaining a solid appearance within three years.”
 2. The property is fully surrounded by public right-of-way. The east side of the garage is adjacent to O-2 zoning and a residential subdistrict. The west side of the garage faces O-2 zoning and a residential subdistrict.
 3. The east side of the garage requires trees and evergreen shrub row. The shrub row is omitted but there is no indication why this requirement should be excepted.

- 4. The west side of the garage maintains required plant materials for the permeable areas but has parking space encroachment into the buffer to the face of the structure. The listed baldcypress tree selection for this location is acceptable.
- The Chief Arborist recommends denial of the request based on the lack of landscaping shrubs on the east perimeter. (The Chief Arborist notes that the applicant has not given an appropriate justification for removing the planting provision for the east wall).
- 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 “Garage screening and landscaping” standards”) 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 landscape plan as a condition, the site would be granted exception from full compliance to “Garage screening and landscaping” standards of PD 193 landscaping requirements.

BOARD OF ADJUSTMENT ACTION: APRIL 22, 2014

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **French**

I move that the Board of Adjustment, in request No. **BDA 134-035**, on application of Gladys Bowens and Dallas Cothrum, Masterplan, **grant** the request to provide an alternate landscape plan as a special exception to the landscape regulations in PD193(0-2) code because our evaluation of the property and the testimony shows that the special exception will not compromise the spirit and intent of the Oak Lawn Ordinance. I further move that the following conditions be imposed to further the purpose and intent of the Oak Lawn Ordinance:

- Compliance with the submitted revised landscape plan is required.

SECONDED: **Williams**

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

NAYS: 0 -

MOTION PASSED: 5 – 0(unanimously)

MOTION: French

I move to adjourn this meeting.

SECONDED: Rieves

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

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

2:08 P. M.: - Board Meeting adjourned for **April 22, 2014.**

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.