

**BOARD OF ADJUSTMENT, PANEL C  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, L1FN AUDITORIUM  
MONDAY, APRIL 21, 2014**

MEMBERS PRESENT AT BRIEFING: Bruce Richardson, Chair, Ross Coulter, regular member, Joe Carreon regular member, and Marla Beikman, regular member

MEMBERS ABSENT FROM BRIEFING: Peter Schulte, regular member

MEMBERS PRESENT AT HEARING: Bruce Richardson, Chair, Ross Coulter, regular member, Joe Carreon, regular member, Peter Schulte, regular member and Marla Beikman, regular member

MEMBERS ABSENT FROM HEARING: No one

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

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

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**11:15 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **April 21, 2014** docket.

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**1:02 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 C March 17, 2014 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: April 21, 2014**

**MOTION: Beikman**

I move **approval** of the Monday, March 17, 2014 public hearing minutes.

**SECONDED: Schulte**

**AYES: 5– Richardson, Coulter, Carreon, Schulte, Beikman**

**NAYS: 0 –**

**MOTION PASSED: 5– 0 (unanimously)**

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**FILE NUMBER:** BDA 134-027

**BUILDING OFFICIAL’S REPORT:** Application of Fred Shelton for a special exception to the duplex use regulations to authorize more than one electrical utility service or more than two electrical meters at 1414 Record Crossing Road. This property is more fully described as Lot 30, Block 5629, and is zoned PD-465 (Area 2), which requires that in a duplex district, a lot for a duplex use may be supplied by not more than one electrical utility service and metered by not more than two electrical meters. The applicant proposes to construct and maintain a duplex use in a duplex district and have more than one electrical utility service, or more than two electrical meters, which will require a special exception to the duplex use regulations.

**LOCATION:** 1414 Record Crossing Road

**APPLICANT:** Fred Shelton

**April 21, 2014 Public Hearing Notes:**

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

**REQUEST:**

A special exception to the duplex use regulations is requested to install and maintain an additional electrical meter on a site developed with a duplex structure/use that the applicant intends to enlarge/expand.

**STANDARD FOR A SPECIAL EXCEPTION TO THE DUPLEX USE REGULATIONS TO AUTHORIZE AN ADDITIONAL ELECTRICAL UTILITY SERVICE AND MORE THAN TWO ELECTRICAL METERS:**

The board may grant a special exception to authorize more than one electrical utility service or more than two electrical meters for a duplex use on a lot in a duplex district when, in the opinion of the board, the special exception will: 1) not be contrary to the public interest; 2) not adversely affect neighboring properties; and 3) not be used to conduct a use not permitted in the zoning district where the building site is located.

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to authorize more than one electrical utility service or more than two electrical meters for a duplex use on a lot in a duplex district since the basis for this type of appeal is when in the opinion of the board, the special exception will: 1) not be contrary to the public interest; 2) not adversely affect neighboring properties; and 3) not be used to conduct a use not permitted in the zoning district where the building site is located.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 465 (Area 2) (Planned Development District)  
North: MU-3 (Mixed Use)  
South: PD 465 (Area 3) (Planned Development District)  
East: PD 465 (Area 2) (Planned Development District)  
West: PD 465 (Area 2) (Planned Development District)

**Land Use:**

The subject site is developed with a duplex structure/use. The area to the north is undeveloped; and the areas to the east, south, and west appear to be developed with either single family or duplex 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:**

January 19, 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 C.

March 12, 2014: The Board Administrator contacted the applicant and emailed him the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the March 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the April 11<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.

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.

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

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

- This request focuses on installing and maintaining a third electrical meter on a site developed with a duplex structure/use that the applicant intends to enlarge/expand.
- The Dallas Development Code states that in the PD 465 (Area 2) zoning that allows residential uses that include duplex, handicapped group dwelling unit, and single family, a lot for a duplex use may be supplied by not more than one electrical service, and metered by not more than two electrical meters.
- The applicant has submitted a site plan/survey plat of the 0.25 acre subject site that denotes the locations of the two existing electrical meters allowed on the site and two alternate locations of where the third electrical meter would be located on the site.
- The site plan denotes that the existing floor plan is 2,082 square feet and the proposed floor plan is 1,972 square feet with a total floor plan of 4,054 square feet.
- The application states that "request one additional electrical meter since it will not be detrimental to the neighborhood."
- The applicant has the burden of proof in establishing that the additional electrical meter to be installed and/or maintained on the site will: 1) not be contrary to the public interest; 2) not adversely affect neighboring properties; and 3) not be used to conduct a use not permitted in the zoning district.

**BOARD OF ADJUSTMENT ACTION: April 21, 2014**

**APPEARING IN FAVOR:** Fred Shelton, 1414 Record Crossing, Dallas, TX

**APPEARING IN OPPOSITION:** No one

**MOTION:** Schulte

I move that the Board of Adjustment, in request No. **BDA 134-027**, on application of Fred Shelton, **deny** the special exception requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property, will be contrary to the public interest, or will not be used to conduct a use not permitted in the district where the building site is located.

**SECONDED:** Beikman

**AYES:** 4 – Richardson, Coulter, Carreon, Schulte,

**NAYS:** 1 – Beikman

**MOTION PASSED:** 4– 1

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**FILE NUMBER:** BDA 134-028

**BUILDING OFFICIAL’S REPORT:** Application of Mark Llanes for special exceptions to the fence height and visual obstruction regulations at 501 Hollywood Avenue. This property is more fully described as Lot 7, Block 4/3451, and is zoned R-7.5(A), which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct and maintain an 8 foot high fence, which will require a 4 foot special exception to the fence height regulations, and to locate and maintain items in a required visibility triangle, which will require a special exception to the visual obstruction regulations.

**LOCATION:** 501 Hollywood Avenue

**APPLICANT:** Mark Llanes

**REQUESTS:**

The following appeals have been made on a site that is currently developed with a single family home/use:

1. A request for a special exception to the fence height regulations of 4’ is made to construct/maintain an 8’ high solid wood fence in one of the site’s two, 25’ front yard setbacks – 12<sup>th</sup> Street.
2. A request for special exception to the visual obstruction regulations is made to locate/maintain a portion of the proposed 8’ high solid wood fence in the 20’ visibility triangle on east side of the driveway into the site from 12<sup>th</sup> Street.

**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.

**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 (fence height):**

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.

**STAFF RECOMMENDATION (visual obstruction):**

Approval, subject to the following condition:

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

Rationale:

- The Sustainable Development and Construction Department Senior Engineer has indicated that he has no objection to this request.
- The applicant has substantiated how locating/maintaining a portion of the proposed 8' high solid wood fence in the 20' visibility triangle on east side of the driveway into the site from 12<sup>th</sup> Street does not constitute a traffic hazard.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-7.5(A) (Single family district 7,500 square feet)  
North: R-7.5(A) & CR (Single family district 7,500 square feet and Community Retail)  
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: CR (Community Retail)

### **Land Use:**

The subject site is developed with a single family home. The area to the north is developed with a combination of single family residential and retail uses; the areas to the east and south are developed with single family uses; and the area to the west is developed with 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:**

February 13, 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 C.

March 12, 2014: The Board Administrator contacted the applicant and emailed him following information:

- an attachment that provided the public hearing date and panel that will consider the application; the March 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the April 11<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; 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 9, 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 (fence height):**

- This request focuses on construct/maintain an 8' high solid wood fence in one of the site's two, 25' front yard setbacks – 12<sup>th</sup> Street.
- 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 southwest corner of 12<sup>th</sup> Street and Hollywood Avenue. The site has a 25' front yard setback along Hollywood Avenue, 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 12<sup>th</sup> Street, 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 12<sup>th</sup> Street 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 retail uses west of the site that front/are oriented northward towards 12<sup>th</sup> Street. Regardless of how the existing home is oriented to front onto Hollywood Avenue (and to "side" to 12<sup>th</sup> Street), the site has two 25' front yard setbacks where the focus of the applicant's request in this application is only to construct/maintain a fence higher than 4' in the site's front yard setback on 12<sup>th</sup> Street. No part of the application is made to address any fence in the site's Hollywood Avenue front yard setback.
- The applicant has submitted a site plan/elevation of the proposal in the 12<sup>th</sup> Street front yard setback that reaches a maximum height of 8'.
- The following additional information was gleaned from the submitted site plan/elevation:
  - The proposal is represented as being approximately 60' in length parallel to the 12<sup>th</sup> Street and approximately 10' and 19' in length perpendicular to 12<sup>th</sup> Street on the east and west sides of the site in the 12<sup>th</sup> Street front yard setback.
  - The proposal is represented as being located approximately on the property line or about 9' from the 12<sup>th</sup> Street pavement line.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences above 4 feet high which appeared to be located in a front yard setback.
- No home fronts the proposal since the lot developed with a single family home to the north on 12<sup>th</sup> Street faces/fronts eastward towards Hollywood Avenue as does the home on the subject site.
- As of April 14, 2014, no letters have been submitted in support of or in opposition to this 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/elevation would require the proposal exceeding 4' in height in the front yard setback to be constructed/maintained in the location and of the heights and materials as shown on this document.

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

- This request focuses on locating/maintaining a portion of the proposed 8’ high solid wood fence in the 20’ visibility triangle on east side of the driveway into the site from 12<sup>th</sup> 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).
- A site plan/elevation has been submitted indicating portions of an 8’ high solid wood fence in the 20’ visibility triangle on east side of the driveway into the site from 12<sup>th</sup> Street.
- 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 a special exception to the visual obstruction regulations to locate/maintain portions of an 8’ high solid wood fence in the 20’ visibility triangle on the east side of the driveway into the site from 12<sup>th</sup> Street does not constitute a traffic hazard.
- Granting this request with a condition imposed that the applicant complies with the submitted site plan/elevation would require the item (an 8’ high solid wood fence in the 20’ visibility triangle on the east side of the driveway into the site from 12<sup>th</sup> Street) to be limited to and maintained in the locations, height and materials as shown on this document.

**BOARD OF ADJUSTMENT ACTION: APRIL 21, 2014**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITON: No one

**MOTION: Beikman**

I move that the Board of Adjustment grant application **BDA 134-028** 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/elevation is required.

**SECONDED: Schulte**

AYES: 5– Richardson, Coulter, Carreon, Schulte, Beikman

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

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**FILE NUMBER:** BDA 134-037

**BUILDING OFFICIAL’S REPORT:** Application of Ken Reese, represented by Robert Reeves of Robert Reeves and Associates, Inc., for a variance to the side yard setback regulations and a special exception to the landscape regulations at 3000 Turtle Creek Plaza. This property is more fully described as Lot 1R, Block A/993, and is zoned PD-193, PDS 61, which requires a 43 foot 1/2 inch side yard setback and requires mandatory landscaping. The applicant proposes to construct and maintain a structure and provide a 10 foot side yard setback, which will require a 33 foot 1/2 inch variance to the side yard setback regulations, and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

**LOCATION:** 3000 Turtle Creek Plaza

**APPLICANT:** Ken Reese  
Represented by Robert Reeves of Robert Reeves and Associates, Inc.

**REQUESTS:**

The following appeals have been made on a site that is currently under development:

1. A variance to the side yard setback regulations of 33’ ½” is requested to construct/maintain a three-story, approximately 66’ high, approximately 169,000 square foot office structure, part of which would be located in the site’s required 43’ ½” side yard setback on the east side of the property; and
2. A special exception to the landscape regulations is requested to construct/maintain the aforementioned structure, and not fully provide required landscaping on the site.

**STANDARD FOR A VARIANCE:**

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

- (A) the variance is 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) the variance is 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) the variance is 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 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 (variance):**

Approval, subject to the following condition:

- compliance with the submitted site plan is required.

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Rationale:

- The applicant has substantiated how the subject site is unique and different from most lots zoned PD 193 in that subject site is: 1) somewhat irregular in shape; 2) of restrictive area caused by 33 percent of it as floodway easement (non-buildable area); and 3) sloped with a 24 foot change in grade from near the center of the site westward to Cedar Springs Road.
- In addition, granting the variance is not contrary to the public interest in that the proposed structure at 66' in height is significantly less than the 240' allowed in the zoning district, and because the proposed structure is located approximately 25' below the adjacent use to the east – the Katy Trail.

**STAFF RECOMMENDATION (landscape):**

Approval, subject to the following condition:

- A landscape plan that complies with 51P-193.126 for O-2 office districts must be submitted for permit with the exception to be provided for: 1) front yard designated landscape areas, 2) sidewalks, and 3) tree planting zones. Trees and landscape areas must be installed according to diagrams in the Landscape Code Enlargement exhibit and the tree specifications required in 51P-193.126(b)(5)(C).

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 with the staff suggested condition imposed because the tree-lined Turtle Creek corridor and the isolated condition of the property along with additional required landscaping supports the premise that the final completed landscape plan will meet the spirit and intent of the PD 193 landscape regulations.

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: PD 193 (PDS 61) (Planned Development, Planned Development)
- North: PD 193 (O-2) (Planned Development, Office)
- South: PD 184 (Planned Development)
- East: PD 193 (O-2 & PDS 94) (Planned Development, Office and Planned Development)
- West: PD 193 (O-2) (Planned Development, Office)

**Land Use:**

The subject site is under development. The area to the north is Turtle Creek; the area immediately east is the Katy Trail, the area to the south is developed with office uses, and the area to the west is office use and undeveloped land.

**Zoning/BDA History:**

- |   |  |
|---|--|
| <ol style="list-style-type: none"> <li>1. BDA 967-251, Property at 2920 Turtle Creek Plaza ( the subject site)</li> </ol> | <p>On May 19, 1997, the Board of Adjustment Panel C granted a request for a variance to the height regulations of 60 feet. The case report states that the request was made to construct and maintain an approximately 300,000 square foot, 300 foot high condominium tower use.</p>   |
| <ol style="list-style-type: none"> <li>2. BDA 112-085, Property at 3000 Turtle Creek Plaza ( the subject site)</li> </ol> | <p>On September 17, 2012, the Board of Adjustment Panel C granted a request for a variance to the off-street parking regulations of 110 spaces (or a 25 percent reduction of the 441 off-street parking spaces that are required) is requested in conjunction with constructing and maintaining an approximately 161,500 square foot office use/structure on a site that is currently undeveloped. The applicant proposes to provide 331 (or 75 percent) of the required 441 off-street parking spaces in conjunction with constructing and maintaining this use with this square footage.</p> |

## **Timeline:**

- February 24, 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 C.
- March 12, 2014: The Board Administrator emailed the applicant’s representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the March 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the April 11<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; and
  - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- March 25, 2014: The applicant’s representative submitted additional information to staff beyond what was submitted with the original application (see Attachment A).
- 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 10, 2014: The City of Dallas Chief Arborist submitted a memo regarding the landscape special exception request within this application (see Attachment B).

## **GENERAL FACTS/ STAFF ANALYSIS (variance):**

- This request focuses on constructing and maintaining a three-story, approximately 66’ high, approximately 169,000 square foot office structure, part of which would be located in the site’s required 43’ ½” side yard setback on the east side of the property on a site that is currently under development.

- The subject site is zoned PD 193 (PDS 61). While PDS 61 makes setback/yard requirements for “retirement housing community” use, the PDS states that in general, the yard, lot, and space regulations for the O-2 Office Subdistrict apply in this subdistrict
- The side yard provisions for properties in the O-2 Sudistrict are as follows: If a nonresidential building is erected or altered to exceed 36 feet in height, and additional setback must be provided that is equal to one-half the total height of the building, up to a maximum total setback of 50 feet. The additional setback is only required for that portion of a building that exceeds 36 feet in height.
- The applicant has submitted a site plan denoting the total height of the structure at 66’ 1” and the location of the proposed building with a shaded area of 8,863 square feet (or 5.24% of the total floor area) located in the additional setback required for the portion over 36’ in height- a structure at this height located as close as 10’ from the eastern side property line or 33’ ½” into the required 43’ ½” side yard setback.
- The applicant has submitted an section/elevation document that denotes the setback encroachment of the proposed structure as it relates to the side yard setback.
- The subject site is somewhat irregular in shape and, according to the application, 5.853 acres in area. The applicant has submitted documents that indicate that the 33 percent of the site is floodway easement (non-buildable area) and has a 24 foot change in grade from near the center of the site westward to Cedar Springs Road.
- DCAD records indicate “no improvements” for property at 3000 Turtle Creek Plaza.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the side yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance is necessary to permit development of the subject site (that differs from other parcels of land by being of such a restrictive area, shape, or slope) that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD 193 (PDS 61) 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 PD 193 (PDS 61) zoning classification.
- If the Board were to grant the variance request, and impose the submitted site plan, the structure in the side yard setback would be limited to what is shown on this document– which in this case is for the portion of the 66’ 1” high structure over 36’ in height located as close as 10’ from the site’s eastern side property line (or as much as 33’ ½” into this 43’ ½” side yard setback).

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

- This request focuses on constructing and maintaining an office structure on the site, 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 B) that the request is triggered by new construction.
- The Chief Arborist notes that the proposed limited landscape plan identifies proposed alternative landscape conditions for: 1) the designated landscape areas for the required front yard; 2) sidewalk; and 3) the tree planting zone. The limited plan does not reveal the locations of required landscape areas on the property and does not identify any compliance with PD 193, Part 1, regulations for O-2 Office Subdistrict landscaping.
- The Chief Arborist listed several factors for consideration on this request):
  1. The property is regulated under PDS 61. The standards for designated landscape areas are based on O-2 Office Subdistrict requirements as determined under S-61.105(2), Main Uses Permitted. The required front yard designated areas are identified on the Landscape Code Enlargements exhibit.
  2. The property is surrounded on the west and north sides by Turtle Creek and on the east by the Katy Trail. The property is also under the regulations of the Turtle Creek Environmental Corridor Overlay District which exists “to protect and preserve the environmentally sensitive Turtle Creek area.”
  3. The site plan, provided with the letter for a separate variance by the applicant, is not designated as the landscape plan. PD 193 requires, “when feasible, the board shall require the applicant submit and that the property comply with a landscape plan as a condition to granting a special exception.”
  4. The applicant has stated the site can comply with all of the conditions of PD 193 Part 1 regulations with the exceptions identified in this application.
- The Chief Arborist has no objection to the request for the special exception, if it is the determination of the Board that a full landscape plan cannot be feasibly produced at this time, and that a partial landscape plan with conditions is acceptable for its review. The Chief Arborist believes that the extent of the protection of the tree-lined Turtle Creek corridor and the isolated condition of the property, along with additional required landscaping, supports the premise that the final completed landscape plan will be the spirit and intent of the PD 193 landscape regulations.
- The Chief Arborist recommends that the following provision be applied: A landscape plan that complies with 51P-193.126 for O-2 office districts must be submitted for permit with the exception to be provided for: 1) front yard designated landscape areas, 2) sidewalks, and 3) tree planting zones. Trees and landscape areas must be installed according to diagrams in the Landscape Code Enlargement exhibit and the tree specifications required in 51P-193.126(b)(5)(C).
- The applicant has the burden of proof in establishing the following:
 

The special exception 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 imposed the staff suggested condition, the site would be granted exception from full compliance to the designated landscape area requirements for the required front yard, sidewalk, and tree planting zoned requirements of the Oak Lawn PD 193 landscape ordinance.

**BOARD OF ADJUSTMENT ACTION: APRIL 21, 2014**

APPEARING IN FAVOR: Robert Reeves, 900 Jackson St., Dallas, TX

APPEARING IN OPPOSITON: No one

**MOTION #1: Schulte**

I move that the Board of Adjustment, in request No. **BDA 134-037**, on application of Ken Reeves, **grant** a 33-foot ½ inch variance to the side yard setback regulations because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

**SECONDED: Coulter**

AYES: 5– Richardson, Coulter, Carreon, Schulte, Beikman

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

**MOTION #2: Coulter**

I move that the Board of Adjustment, in request No. **BDA 134-037**, on application of Ken Reese, **grant** the request to provide an alternate landscape plan as a special exception to the landscape regulations in PD 193 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:

- A landscape plan that complies with 51P-193.126 for O-2 office districts must be submitted for permit with the exception to be provided for: 1) front yard designated landscape areas, 2) sidewalks, and 3) tree planting zones. Trees and landscape areas must be installed according to diagrams in the Landscape Code Enlargement exhibit and the tree specifications required in 51P-193.126(b)(5)(C).

**SECONDED: Carreon**

AYES: 5– Richardson, Coulter, Carreon, Schulte, Beikman

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

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**FILE NUMBER:** BDA 134-038

**BUILDING OFFICIAL'S REPORT:** Application of Ed Simons for a variance to the height regulations at 3723 Greenville Avenue. This property is more fully described as Lot 10, Block C/2907, and is zoned CR, which limits the maximum building height to 30 feet due to a residential proximity slope. The applicant proposes to construct and maintain a structure with a building height of 36 feet, which will require a 6 foot variance to the maximum height regulations.

**LOCATION:** 3723 Greenville Avenue

**APPLICANT:** Ed Simons

**REQUEST:**

A request for a variance to the height regulations (specifically to the residential proximity slope) of 6' is requested to raise the height of an existing cell tower on a site that is currently developed with an office/retail use/nonconforming structure (Spryrocket Work Space and Business Lounge). The proposed raised/heightened cell tower structure that would reach 36' in height would be located above the RPS (residential proximity slope) line that begins at the D(A) duplex residentially-zoned property immediately west of the site developed as a surface parking lot.

**STANDARD FOR A VARIANCE:**

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

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

**STAFF RECOMMENDATION:**

Denial

Rationale:

- While granting the variance made to the raise the height of an existing 30' cell tower structure by 6' does not appear to be contrary to public interest given that the D(A) zoned area in which the RPS line originates from is a surface parking; 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 CR zoning classification. The subject site is rectangular in shape and, according to the application, is 0.17 acres (or approximately 7,400 square feet) in area. The site zoned CR(D) MD-1 has two front yard setbacks as would any property with two street frontages not zoned agricultural, single family, or duplex.
- The features of this site do not preclude the applicant from use of the property as an office/retail use/nonconforming structure with a cell tower.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: CR(D) MD-1 (Community Retail, Dry, Modified Delta)  
North: CR(D) MD-1 (Community Retail, Dry, Modified Delta)  
South: CR(D) MD-1 (Community Retail, Dry, Modified Delta)  
East: CR(D) MD-1 (Community Retail, Dry, Modified Delta)  
West: D(A) (Duplex)

**Land Use:**

The subject site is currently developed with an office/retail use/nonconforming structure (Spryrocket Work Space and Business Lounge). The area to the north is developed with multifamily use; the areas to the east and south are developed retail uses; and the area to the west zoned D(A) Duplex is a surface parking lot.

**Zoning/BDA History:**

1. BDA 123-128, Property at 3723 Greenville Avenue (the subject site)

On December 16, 2013, the Board of Adjustment Panel C granted a request for a variance to the side yard setback regulations of 20' and imposed the following conditions to this request: compliance with the submitted site plan is required; and the variance automatically and immediately terminates if and when the lot to the west of the subject site is developed with a residential use. The case report stated that the request was made to construct/maintain structures (power cabinets and inspection panels) related to cell phone service equipment to be located inside/behind an existing solid CMU/brick veneer walled/approximately 120 square foot subleased area, all of which would were to be located in the site's western 20' side yard setback on a site that was developed with an office use/nonconforming structure (Spryrocket Work Space and Business Lounge).

**Timeline:**

- February 27, 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 C.
- March 12, 2014: The Board Administrator shared the following information with the applicant via email:
- an attachment that provided the public hearing date and panel that will consider the application; the March 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the April 11<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."

March 26, 2014: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).

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.

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

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

- This request focuses on raising the height of an existing cell tower on a site that is currently developed with an office use/nonconforming structure (Spryrocket Work Space and Business Lounge). The proposed raised/heightened cell tower structure that would reach 36' in height would be located above the RPS (residential proximity slope) line that begins at the D(A) duplex residentially-zoned property immediately west of the site developed as a surface parking lot.
- The maximum height for a structure in a CS zoning district is 54', however, any portion of a structure over 26' in height cannot be located above a residential proximity slope. In this case, given that the subject site is immediately adjacent to residentially-zoned property zoned D(A) duplex to the west (with a land use as a surface parking lot), the height of a structure must comply with a 1:3-slope (or 1 foot in height for every 3 foot away from property in a residential zoning district). The RPS slope on the subject site begins at the D(A) zoned property immediately west of the site.
- The application and Building Official's Report states that a variance to the height regulations of 6' is requested since there is a structure proposed to reach 36' in height or 6' higher/beyond than the 30' height allowed for the structure as it is located on this subject site.
- The subject site is located at the southwest corner of Greenville Avenue and Matalee Road). Regardless of how the structures are oriented, the subject site has two 15' front yard setbacks along both streets as would any property with two street frontages not zoned agricultural, single family, or duplex; one 0' side yard setback on the south (where the adjacent zoning is CR); and one 20' side yard setback on the west (where the adjacent zoning is D(A)).
- A site plan has been submitted that denotes that the location of the "proposed 6' extension on existing 30' slimline stealth light pole with canisters" located what appears to be approximately 96' west of the property zoned D(A).

- An elevation has been submitted that denotes a 36' total tower height with "Proposed 6' extension to match existing slimline stealth light pole with stealth canisters for cellular antennas."
- DCAD records indicate the improvements for property at 3723 Greenville Avenue is a "converted service station" with 1,711 square feet constructed in 1955.
- The subject site is rectangular in shape and according to the application, is 0.17 acres (or approximately 7,400 square feet) in area. The site is zoned CR(D) MD-1. The subject site has two front yard setbacks as would any property with two street frontages not zoned agricultural, single family, or duplex.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the height 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 CR 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 CR zoning classification.
- If the Board were to grant the request and impose the submitted site plan and elevation as a condition, the structure encroaching above and beyond the residential proximity slope would be limited to what is shown on the submitted plan and elevation, which in this case is a 36' high, cell tower structure located approximately 96' west of the property zoned D(A) and used as a surface parking lot..

**BOARD OF ADJUSTMENT ACTION: APRIL 21, 2014**

APPEARING IN FAVOR: Ed Simons, 900 Jackson Street, Ste 640, Dallas, TX  
 Greg Yocom, 607 Movell, Dallas, TX  
 Beth Martindale, 1141 Pomell Rd., Lantana, TX

APPEARING IN OPPOSITON: No one

**MOTION #1: Beikman**

I move that the Board of Adjustment, in request No. **BDA 134-038**, on application of Ed Simons, **deny** the 6-foot height 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: NO SECOND**

\*Motion failed for lack of a second.

**MOTION #2: Schulte**

I move that the Board of Adjustment, in request No. **BDA 134-038**, on application of Ed Simons, hold this matter under advisement until **May 19, 2014**.

**SECONDED: Coulter**

\*Motion was withdrawn by the maker and no vote was called.

**MOTION #3: Schulte**

I move that the Board of Adjustment, in request No. **BDA 134-038**, on application of Ed Simons, **grant** a 6-foot variance to the height regulations because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan and elevation is required.
- The variance automatically and immediately terminates if and when the lot immediately to the west of the subject site is developed with a residential use.

**SECONDED: Coulter**

**AYES:** 3 – Coulter, Carreon, Schulte,

**NAYS:** 2 – Richardson, Beikman

**MOTION FAILED:** 3– 2

**\*SINCE THE MOTION TO GRANT DID NOT GET 4 CONCURRING VOTES, THE MOTION FAILED AND WAS THEREFORE DEEMED DENIED WITH PREJUDICE.**

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**MOTION: Schulte**

I move to adjourn this meeting.

**SECONDED: Beikman**

**AYES:** 5– Richardson, Coulter, Carreon, Schulte, Beikman

**NAYS:** 0 -

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

**3:16 P. M. - Board Meeting adjourned for April 21, 2014.**

\_\_\_\_\_  
CHAIRPERSON

\_\_\_\_\_  
BOARD ADMINISTRATOR

\_\_\_\_\_  
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.