

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL L1FN AUDITORIUM
WEDNESDAY, JANUARY 17, 2018**

MEMBERS PRESENT AT BRIEFING: Scott Hounsel, Vice-Chair, Marla Beikman, regular member, Matt Shouse, regular member, Lorlee Bartos, alternate member, Nicholas Brooks, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Scott Hounsel, Vice-Chair, Marla Beikman, regular member, Matt Shouse, regular member, Lorlee Bartos, alternate member, Nicholas Brooks, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Neva Dean, Asst. Director, Steve Long, Chief Planner/Board Administrator, Kanesia Williams, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Charles Trammell, Development Code Specialist, David Nevarez, Engineering, and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Chief Planner/Board Administrator, Kanesia Williams, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Charles Trammell, Development Code Specialist, David Nevarez, Engineering, and Trena Law, Board Secretary

11:05 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **January 17, 2018 docket.**

1:08 P.M.

The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel B November 15, 2017, public hearing minutes.

BOARD OF ADJUSTMENT ACTION: JANUARY 17, 2018

MOTION: None

The minutes were approved.

FILE NUMBER: BDA167-141(SL)

BUILDING OFFICIAL’S REPORT: Application of Miles Mitzner, represented by Randy Case, for variances to the front yard setback, side yard setback, and off-street parking regulations at 11123 W. Ricks Circle. This property is more fully described as a 0.24 acre tract in Block 5500, and is zoned R-16(A), which requires a front yard setback of 35 feet, a side yard setback of 10 feet, and requires a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley. The applicant proposes to construct and maintain a structure and provide a 22 foot front yard setback measured at the foundation (with a 2 foot 5 inch roof eave), which will require a 13 foot variance to the front yard setback regulations, to construct and maintain a structure and provide a 2 foot 6 inch side yard setback measured at the foundation (with a 2 foot 5 inch roof eave), which will require a 7 foot 6 inch variance to the side yard setback regulations, and to locate and maintain parking spaces in an enclosed structure with a setback of 5 feet 6 inches, which will require a variance of 14 feet 6 inches to the off-street parking regulations.

LOCATION: 11123 W. Ricks Circle

APPLICANT: Miles Mitzner
Represented by Randy Case

REQUESTS:

The following requests have been made to construct and maintain a single family home structure on a site that is currently undeveloped:

1. a variance to the front yard setback regulations of 13’ is requested to locate and maintain the proposed home structure 22’ from the front property line or 13’ into the required 35’ front yard setback;

2. variances to the side yard setback regulations of up to 7' 6" are requested to locate and maintain the proposed home as close as 2' 6" from the site's side property lines or as 7' 6" into this required 10' side yard setbacks; and
3. a variance to the off-street parking regulations of 14' 6" is requested as the proposed home would have parking spaces in an enclosed structure (garage) that would be located 5' 6" from, according to the Building Official, the ROW easement that will function as an alley line or as much as 14' 6" into the required 20' distance from the ROW easement that will function as an alley line.

STANDARD FOR A VARIANCE:

Section 51(A)-3.102(d)(10) of 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 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 (front and side yard setback variances):

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The lot's restrictive area, which is about 5,500 square feet less in size than most lots in the R-16(A) zoning district, and its irregular shape preclude the applicant from developing it in a manner commensurate with other developments found on similarly-zoned R-16(A) lots. The applicant's representative has submitted a document indicating that the total "air-conditioned footage" size of the proposed home on the subject site is approximately 3,600 square feet, and the average total living space of 14 other properties in the same zoning is approximately 6,000 square feet.

STAFF RECOMMENDATION (off-street parking variance):

Approval, subject to the following conditions:

1. Compliance with the submitted site plan is required.
2. Automatic garage doors must be installed and maintained in working order at all times.

3. At no time may the areas in front of the garage be used for parking of vehicles.
4. No parking is allowed in the alley right-of-way/utility corridor.

Rationale:

- The lot’s restrictive area, which is about 5,500 square feet less in size than most lots in the R-16(A) zoning district, and its irregular shape preclude the applicant from developing it in a manner commensurate with other developments found on similarly-zoned R-16(A) lots. The applicant’s representative has submitted a document indicating that the total “air-conditioned footage” size of the proposed home on the subject site is approximately 3,600 square feet, and the average total living space of 14 other properties in the same zoning is approximately 6,000 square feet.
- Granting this request is not contrary to the public interest in that the Sustainable Development and Construction Senior Engineer has no objections to the request.

BACKGROUND INFORMATION:

Zoning:

Site: R-16 (A) (Single family district 16,000 square feet)
North: R-1ac(A) (Single family district 1 acre)
South: R-16 (A) (Single family district 16,000 square feet)
East: R-16 (A) (Single family district 16,000 square feet)
West: R-16 (A) (Single family district 16,000 square feet)

Land Use:

The subject site is undeveloped. The areas to the north and east are developed with single family uses; and the areas to the south and west are developed with a park use (Northaven Trail).

Zoning/BDA History:

1. BDA123-070, Property located at 11123 W. Ricks Circle (the subject site)

On August 21, 2013, the Board of Adjustment Panel B granted a variance to the front yard setback regulations of 13’, variances to the side yard setback regulations of up to 7’ 6”, and a variance to the off-street parking regulations of 14’ 6” and imposed the following conditions: compliance with the submitted site plan is required; automatic garage doors must be installed and maintained in working order at all times, and at no time may the area in front of the garage be used for parking of vehicles; and parking is not allowed in the alley, rights-of-ways, or utility corridor.

The case report stated that the requests were

made to locate and maintain the proposed home structure 22' from the front property line or 13' into the required 35' front yard setback; to locate and maintain the proposed home as close as 2' 6" from the site's side property lines or as 7' 6" into this required 10' side yard setbacks; and for proposed home to have parking spaces enclosed in the proposed garage that would be located 5' 6" from, according to the Building Official, the ROW easement that will function as an alley line the right-of-way line or as much as 14' 6" into the required 20' distance from the ROW easement that will function as an alley line.

GENERAL FACTS/STAFF ANALYSIS (front yard variance):

- According to the applicant's representative, this application is identical in every way to the originally submitted application made on this property and granted by the Board of Adjustment Panel B on August 21, 2013 (BDA123-070) and re-filed because no permit was applied for within 180 days from August 21, 2013.
- The Dallas Development Code states that applicant shall file an application for a building permit or certificate of occupancy with 180 days of the favorable action of the board; if the applicant fails to file for an application within the time period, the request is automatically denied without prejudice, and the applicant must begin the process to have his request heard again.
- This request focuses once again on constructing and maintaining a two-story single family home on an undeveloped site, part of which is proposed to be located in the site's 35' front yard setback.
- Structures on lots zoned R-16(A) are required to provide a minimum front yard setback of 35'.
- A site plan has been submitted denoting a portion of the proposed single family home to be located 22' from the site's front property line (or 13' into the 35' front yard setback).
- The site plan shows that approximately 8 percent (or approximately 300 square feet) of the proposed approximately 3,500 square foot building footprint is to be located in the site's 35' front yard setback.
- DCAD records indicate "no main improvements" for the property at 1123 W. Rick's Circle.
- The applicant's representative has submitted a document indicating that that the total "air-conditioned footage" size of the proposed home on the subject site is approximately 3,600 square feet, and the average total living space of 14 other properties in the same zoning is approximately 6,000 square feet.
- The subject site is triangular in shape and according to the application, is 0.24 acres (or approximately 10,500 square feet) in area. The site is zoned R-16(A) where lots are typically 16,000 square feet in area).

- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-16(A) zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-16(A) zoning classification.
- If the Board were to grant these side yard variance requests and impose the submitted site plan as a condition, the structure in the side yard setbacks would be limited to what is shown on this document– which is a structure to be located as close as 2’ 6” from the site’s side property lines or as much as 7’ 6” into the required 10’ side yard setbacks.

GENERAL FACTS/STAFF ANALYSIS (side yard variance):

- According to the applicant’s representative, this application is identical in every way to the originally submitted application made on this property and granted by the Board of Adjustment Panel B on August 21, 2013 (BDA123-070) and re-filed because no permit was applied for within 180 days from August 21, 2013.
- Section 51(A)-4.703(d)(6) of the Dallas Development Code states that applicant shall file an application for a building permit or certificate of occupancy with 180 days of the favorable action of the board; if the applicant fails to file for an application within the time period, the request is automatically denied without prejudice, and the applicant must begin the process to have his request heard again
- These requests once again focus on constructing and maintaining a two-story single family home on an undeveloped site, part of which is proposed to be located in the site’s two 10’ side yard setbacks.
- Structures on lots zoned R-16(A) are required to provide a minimum side yard setback of 10’.
- A site plan has been submitted denoting a portion of the proposed single family home located approximately 2’ 6” from the site’s southwestern side property line or 7’ 6” into this 10’ side yard setback, and approximately 5’ from the site’s northern side property line or 5’ into this 10’ side yard setback.
- It appears from the submitted site plan that approximately 2 percent (or approximately 60 square feet) of the proposed approximately 3,500 square foot building footprint is located in the site’s southwestern 10’ side yard setback.

- It appears from the submitted site plan that approximately 13 percent (or approximately 450 square feet) of the proposed approximately 3,500 square foot building footprint is located in the site's northern 10' side yard setback.
- DCAD records indicate "no main improvements" for the property at 1123 W. Rick's Circle.
- The applicant's representative has submitted a document indicating that the total "air-conditioned footage" size of the proposed home on the subject site is approximately 3,600 square feet, and the average total living space of 14 other properties in the same zoning is approximately 6,000 square feet.
- The subject site is triangular in shape and according to the application, is 0.24 acres (or approximately 10,500 square feet) in area. The site is zoned R-16(A) where lots are typically 16,000 square feet in area).
- The applicant has the burden of proof in establishing the following:
 - That granting the variances 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 variances are necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-16(A) zoning classification.
 - The variances would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-16(A) zoning classification.
 - If the Board were to grant these variance requests and impose the submitted site plan as a condition, the structure in the side yard setbacks would be limited to what is shown on this document– which is a structure to be located as close as 2' 6" from the site's side property lines or as much as 7' 6" into the required 10' side yard setbacks.

GENERAL FACTS/STAFF ANALYSIS (parking variance):

- According to the applicant's representative, this application is identical in every way to the originally submitted application made on this property and granted by the Board of Adjustment Panel B on August 21, 2013 (BDA123-070) and re-filed because no permit was applied for within 180 days from August 21, 2013.
- Section 51(A)-4.703(d)(6) of the Dallas Development Code states that applicant shall file an application for a building permit or certificate of occupancy with 180 days of the favorable action of the board; if the applicant fails to file for an application within the time period, the request is automatically denied without prejudice, and the applicant must begin the process to have his request heard again
- This request focuses on locating parking spaces in an enclosed structure attached to the proposed single family home, where the parking spaces entered from the

right-of-way easement that will function as an alley line would be located less than the required 20' distance from this right-of-way line.

- Section 51(A)-4.301(a)(9) of the Dallas Development Code states that a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in enclosed structure and if the space faces upon or can be entered directly from a street or alley.
- The submitted site plan denotes the location of parking spaces in the enclosed structure 5' 6" from the ROW easement that will function as an alley line or 14' 6" into the 20' setback line that an enclosed parking space must be from this easement/alley line.
- DCAD records indicate "no main improvements" for the property at 1123 W. Rick's Circle.
- The applicant's representative has submitted a document indicating that the total "air-conditioned footage" size of the proposed home on the subject site is approximately 3,600 square feet, and the average total living space of 14 other properties in the same zoning is approximately 6,000 square feet.
- The subject site is triangular in shape and according to the application, is 0.24 acres (or approximately 10,500 square feet) in area. The site is zoned R-16(A) where lots are typically 16,000 square feet in area) where most lots are 16,000 square feet in area.
- The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet marked "Has no objections".
- The applicant has the burden of proof in establishing the following:

That granting the variance to 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 R-16(A) zoning classification.

The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-16(A) zoning classification.

- If the Board were to grant the variance request of 14' 6", staff recommends imposing the following conditions:
 1. Compliance with the submitted site plan is required.
 2. Automatic garage doors must be installed and maintained in working order at all times.
 3. At no time may the areas in front of the garage be used for parking of vehicles.
 4. No parking is allowed in the alley right-of-way/utility corridor.(These conditions are imposed to help assure that the variance will not be contrary to the public interest).

Timeline:

October 19, 2017: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

November 3, 2017: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, “If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case”.

December 4, 2017: 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 December 27th deadline to submit additional evidence for staff to factor into their analysis; and the January 5th 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.

December 13 & 27, 2017:

The applicant’s representative submitted additional information to staff beyond what was submitted with the original application (see Attachments A and B).

January 2, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialists, the Sustainable Development and Construction Project Engineer, and the Assistant City Attorney to the Board.

January 3, 2018: The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked “Has no objections”.

BOARD OF ADJUSTMENT ACTION JANUARY 17, 2018

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Hounsel

I move to grant that the Board of Adjustment grant application **BDA 167-141(SL)** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas

Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.
- Automatic garage doors must be installed and in working order at all times.
- At no time may the area in front of the garage be used for parking of vehicles.
- No parking is allowed in the alley right-of-way/utility corridor.

SECONDED: Bartos

AYES: 5 – Hounsel, Beikman, Shouse, Bartos, Brooks

NAYS: 0

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA178-011(SL)

BUILDING OFFICIAL’S REPORT: Application of Eric Messer for special exceptions to the fence standards regulations at 7303 Casa Loma Avenue. This property is more fully described as Lot 1, Block E/2738, and is zoned R-7.5(A), which limits the height of a fence in the front yard to 4 feet and requires a fence panel with a surface area that is less than 50 percent open may not be located less than 5 feet from the front lot line. The applicant proposes to construct and maintain a 9 foot high fence in a required front yard, which will require a 5 foot special exception to the fence standards, and to construct and maintain a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than 5 feet from the front lot line, which will require a special exception to the fence standards.

LOCATION: 7303 Casa Loma Avenue

APPLICANT: Eric Messer

REQUESTS:

The following requests have been made on a site that is currently developed with a single family home structure:

1. A special exception to the fence standards related to fence height of 5’ is made to construct and maintain a 9’ high solid cedar board-on-board wood fence in one of the site’s two front yard setbacks (Tucker Street); and
2. A special exception to the fence standards related to fence materials/location from the front lot line is made to construct and maintain a fence with panels with surface areas that are less than 50 percent open (the aforementioned 9’ high solid cedar board-on-board wood fence) in the site’s Tucker Street front yard setback and as close as on this front lot line (or less than 5’ from this front lot line).

(No request has been made in this application to construct/maintain any fence in the site’s Casa Loma front yard setback).

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:

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

STAFF RECOMMENDATION:

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

Zoning:

Site: R-7.5(A) (Single family residential 7,500 square feet)
North: MF-2(A) (Multifamily)
South: R-7.5(A) (Single family residential 7,500 square feet)
East: R-7.5(A) (Single family residential 7,500 square feet)
West: R-7.5(A) (Single family residential 7,500 square feet)

Land Use:

The subject site is developed with a two-story single family home structure. The area to the north is developed with a multifamily use, and the areas to the east, south, and west are developed with single family uses.

Zoning/BDA History:

1. BDA167-104(SL), Property located at 7303 Casa Loma Avenue (the subject site)
On September 18, 2017, the Board of Adjustment Panel C granted a request for a variance to the front yard setback regulations of 6' 6" and imposed the following condition: Compliance with the submitted site plan is required.
The case report stated that the variance request was made to maintain a two-story single family home structure with an approximately 3,400 square foot building footprint, part of which is located 6' 6" from one of the site's two front property lines (Tucker Street) or 8' 6" into this 15' front yard setback.
2. BDA145-047, Property located at 7303 Casa Loma Avenue (the subject site)
On March 31, 2015, the applicant withdrew a request for a variance to the front yard setback regulations of 3' that had been tentatively scheduled to be heard by Board of Adjustment Panel C on April 20, 2015.

GENERAL FACTS/STAFF ANALYSIS:

- The requests for special exceptions to the fence standards related to height and materials/location from a front lot line focus on constructing and maintaining a 9' high solid cedar board-on-board wood fence - a solid fence higher than 4' high in one of the site's two front yard setbacks (Tucker Street) and as close as on this front lot line or less than 5' from this front lot line.
- The property is located in an R-7.5(A) zoning district which requires a minimum front yard setback of 25 feet.
- The subject site is located at the east corner of Casa Loma Avenue and Tucker Street. Regardless of how the structure is oriented to front Casa Loma Avenue, the subject site has front yard setbacks along both street frontages. The site has a 25' front yard setback along Casa Loma Avenue, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in this zoning district. The site also has a 15' front yard setback along Tucker Street*, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where a 5' side yard setback is required. But the site's Tucker Street frontage that functions as a side yard on the property is treated as a front yard setback nonetheless to maintain the continuity of the established front yard setback established by the lot (currently developed as a multifamily use and zoned MF-2(A)) to the northeast that fronts/is oriented northwestward towards Tucker Street. (*The Dallas Development Code states that if street frontage within a block is divided by two or more zoning districts, the front yard for the entire block must comply with the requirements of the district with the greater front yard requirement).
- Regardless of how the home is oriented to front onto Casa Loma Avenue (and "side" to Tucker Street), the site has front yard setbacks where the focus of the applicant's request in this application is only to construct and maintain a solid fence higher than 4' in height in the site's front yard setback on Tucker Street. (No part of the application is made to construct/maintain a fence in the site's Casa Loma Drive front yard setback).
- Section 51A-4.602(a)(2) of 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 Dallas Development Code states that in single family districts, a fence panel with a surface area that is less than 50 percent open may not be located less than 5' from the front lot line.
- The submitted site plan/elevation denotes the only fence proposed to exceed 4' in height on the subject site is a 9' high board-on-board cedar wood fence in the Tucker Street front yard setback. This fence is proposed to be 9' in height, approximately 25' in length parallel to the street. The fence is denoted on this document to be angled at the drive approach and the alley as to comply with visual obstruction regulations.
- The site plan/elevation denotes that the proposed fence is located approximately 11' from the Tucker Street pavement line.

- The proposal is located across from a single family lot with an approximately 7' high solid wood fence in its Tucker Street front yard setback. There is no recorded BDA history of this fence.
- The Board Administrator conducted a field visit of the site and surrounding area along Tucker Street and noted no other fences along this street other than the one previously mentioned that appeared to be above 4' in height and in a front yard setback.
- As of January 6, 2018, no letters have been submitted in support of or in opposition to these requests.
- The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to height over 4' in the Tucker Street front yard setback and materials/height of the proposed fence from the front lot line will not adversely affect neighboring property.
- Granting one and/or both of these special exceptions 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 and with fence panels with surface areas less than 50 percent open located less than 5' from the front lot line to be constructed and maintained in the location and of the heights and materials as shown on this document –a solid 9' high wood fence in the site's Tucker Street front yard setback and part of which is to be located on this front lot line.

Timeline:

October 17, 2017: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

December 1, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B. Even though Board of Adjustment Panel C granted a variance to the front yard setback regulations on this property in September of 2017, the assignment of this application for fence standard special exceptions did not conflict with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case" – a fence standard special exception request is not the same request as a front yard variance request.

December 4, 2017: 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 December 27th deadline to submit additional evidence for staff to factor into their analysis; and the January 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and

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

January 2, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialists, the Sustainable Development and Construction Project Engineer, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION JANUARY 17, 2018

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Hounsel**

I move to grant that the Board of Adjustment grant application **BDA 178-011(SL)** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: **Bartos**

AYES: 5 – Hounsel, Beikman, Shouse, Bartos, Brooks

NAYS: 0

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA178-013(SL)

BUILDING OFFICIAL’S REPORT: Application of Karl A. Crawley for a special exception to the landscape regulations at 5750 E. Lovers Lane. This property is more fully described as Lot 1A, Block G/5402, and is zoned PD 610, which requires mandatory landscaping. The applicant proposes to construct and maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 5750 E. Lovers Lane

APPLICANT: Karl A. Crawley

REQUEST:

A request for a special exception to the landscape regulations is made, according to the application, to allow the extension of the City's Trail Network (hike-and-bike) on a site developed with an approximately 96,000 square foot general merchandise or food store use (Central Market), and not fully meet the landscape regulations, more specifically to not provide the perimeter buffer landscape requirements for residential adjacency in the southeastern quadrant of the property.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE AND TREE PRESERVATION REGULATIONS:

Section 51A-10.110 of the Dallas Development Code states that the Board may grant a special exception to the landscape and tree preservation regulations of this article upon making a special finding from the evidence presented that:

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

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

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

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan is required.

Rationale:

- The City of Dallas Chief Arborist recommends approval of the request concluding that strict compliance with the requirements will unreasonably burden the use of the property, and that the special exception will not adversely affect/negatively impact neighboring property.

BACKGROUND INFORMATION:

Zoning:

Site: PD 610 (Planned Development)
North: MU-3 (Mixed Use)
South: MU-3 & PD 333 (Mixed Use and Planned Development)
East: PD 799 (Planned Development)
West: MU-3 (Mixed Use)

Land Use:

The subject site is developed with a general merchandise or food store use (Central Market). The areas to the north and west are developed with retail uses; the area to the east is developed with multifamily use; and the area to the south is developed retail and storage uses.

Zoning/BDA History:

1. BDA167-111, Property at 5750 E. Lovers Lane (the subject site)

On October 18, 2017, the Board of Adjustment Panel B granted a request for a special exception to the landscape regulations (subject to compliance with the submitted alternate landscape plan). The case report stated that the request was made to construct and maintain an approximately 7,000 square foot addition to an existing approximately 96,000 square foot general merchandise or food store use (Central Market), and not fully meet the landscape regulations, more specifically to not provide the mandatory perimeter landscape buffer strip with buffer plant materials on southeast corner of the on the subject site (Central Market). (On November 15, 2017, the Board of

Adjustment Panel B granted the applicant's request to waive the two year limitation on a final decision reached on this application which allowed him to re-file a new application for a special exception to the landscape regulations on this site.

2. BDA067-046, Property at 5750 E. Lovers Lane (the subject site)

On March 21, 2007, the Board of Adjustment Panel A granted a request for a variance to the front yard setback regulations (subject to compliance with the submitted site/development plan), and on April 18, 2007, the Board of Adjustment Panel B granted a request for a special exception to the landscape regulations and imposed the following conditions: 1) All landscaping identified on the landscape plan more than 50 feet beyond the shown construction areas (including courtyard) must be installed and maintained, and the landscaping must be inspected by the city arborist by June 2, 2007; and 2) All remaining landscaping shown on the landscape plan must be installed and inspected by the city arborist prior to final inspection of the new building addition.

The case report stated that the requests were made to construct and maintain additions to the existing retail structure (Central Market).

3. BDA023-008, Property at 5750 E. Lovers Lane (the subject site)

On November 12, 2002, the Board of Adjustment Panel A granted a request for a special exception to the landscape regulations and imposed the submitted revised landscape plan as a condition.

The case report states that the request was made to "remove all trees from ONCOR utility easement" needed to obtain a final Certificate of Occupancy for the retail use on the site (Central Market).

GENERAL FACTS/STAFF ANALYSIS:

- This request for a special exception to the landscape regulations focuses on, according to the application, allowing the extension of the City's Trail Network (hike-and-bike) on a site developed with an approximately 96,000 square foot general merchandise or food store use (Central Market), and not fully meeting the landscape regulations, more specifically not providing the required perimeter buffer landscape requirements for residential adjacency in the southeastern quadrant of the property.
- Section 51A-10.121(c) of the Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period.
- The City of Dallas Chief Arborist submitted a memo regarding the applicant's request (see Attachment B).
- The Chief Arborist's memo states the following with regard to "request":
 - The applicant is requesting a special exception to the landscape regulations of Article X. The proposed landscape plan is a revision of a landscape plan approved by the Board in October, 2017.
- The Chief Arborist's memo states the following with regard to "provision":
 - The property is developed with landscaping by a plan initially approved by the Board of Adjustment for the review of the building permit for construction in 2002. A revised plan was approved by the Board in 2017 to account for modifications to the landscaping due to an addition to the main structure. The site fully complies with Article X regulations with the exception of perimeter buffer landscape requirements for residential adjacency in the southeastern quadrant of the property.
- The Chief Arborist's memo states the following with regard to "deficiencies":
 - The revised landscape plan accounts for the removal of 7 clusters of large shrubs and a reduction of landscape area, and the removal of a 4'-wide sidewalk, to be replaced with a 12'-wide public trail alongside the retained single row of screening shrubs. As previously approved, large trees are not planted within the buffer area.
- The City of Dallas Chief Arborist recommends approval of the revised alternate landscape plan because strict compliance with the Article X regulations will unreasonably burden the use of the property, and that the special exception will not adversely affect neighboring properties.
- 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 alternate landscape plan as a condition to the request, the site would be provided exception from full compliance with the perimeter buffer landscape requirements for residential adjacency in the southeastern quadrant of the property.

Timeline:

November 16, 2017: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

December 1, 2017: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, “If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case”.

December 4, 2017: 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 December 27th deadline to submit additional evidence for staff to factor into their analysis; and the January 5th 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.

December 28, 2017: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

January 2, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialists, the Sustainable Development and Construction Project Engineer, and the Assistant City Attorney to the Board.

January 4, 2018: The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment B).

BOARD OF ADJUSTMENT ACTION JANUARY 17, 2018

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Hounsel

I move to grant that the Board of Adjustment grant application **BDA 178-013(SL)** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted alternate landscape plan is required.

SECONDED: Bartos

AYES: 5 – Hounsel, Beikman, Shouse, Bartos, Brooks

NAYS: 0

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA167-122(SL)

BUILDING OFFICIAL’S REPORT: Application of Maxwell Fisher for a variance to the height regulations at 4635 Park Lane. This property is more fully described as Lot 3C, Block B/5546, and is zoned R-1ac(A), which limits the maximum building height to 36 feet. The applicant proposes to construct and maintain a structure with a building height of 39 feet 10 inches, which will require a 3 foot 10 inch variance to the maximum building height regulations.

LOCATION: 4635 Park Lane

APPLICANT: Maxwell Fisher

REQUEST:

A request for a variance to the height regulations of 3’ 10” is made to construct and maintain a “2-story residence with walk-out basement” structure which is proposed to exceed the 36’ maximum structure height at 39’ 10” in height on the subject site that is, according to the applicant, currently developed with only accessory structures.

STANDARD FOR A VARIANCE:

Section 51(A)-3.102(d)(10) of 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 the variance is:

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

STAFF RECOMMENDATION:

Approval, subject to the following condition:

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

Rationale:

- The subject site is unique and different from most lots in the R-1ac(A) zoning district in that it is sloped. The slope of the subject site is the factor that makes (according to the applicant) the proposed 34’ 6” high single family home (as measured around most of the east, west, and north elevations) on the site measured from existing grade, 39’ 10” in height (or 3’ 10” above the 36’ maximum permitted height) measured from *average* grade, and that if the property was flat, the structure would comply with the height regulations and the variance request would not be necessary.
- Furthermore, the proposed home with a floor area square footage of approximately 9,000 square feet appears to be commensurate with other developments in the same R-1ac(A) zoning district. The applicant has provided information where the average of 12 other properties in the same R-1ac(A) zoning district is approximately 12,000 square feet.

BACKGROUND INFORMATION:

Zoning:

- Site: R-1ac(A) (Single family residential 1 acre)
- North: R-1ac(A) (Single family residential 1 acre)
- South: R-1ac(A) (Single family residential 1 acre)
- East: R-1ac(A) (Single family residential 1 acre)
- West: R-1ac(A) (Single family residential 1 acre)

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- The request for a variance to the maximum structure height of 3’ 10” focuses on constructing and maintaining a 39’ 10” high “2-story residence with walk-out basement” structure on a site that is developed only with accessory structures.
- The maximum structure height on properties zoned R-1ac(A) is 36’.
- Section 51A-2.102(47) of the Dallas Development Code provides the following definition for “height”: “Height means the vertical distance measured from grade to:

(A) for a structure with a gable, hip, or gambrel roof, the midpoint of the vertical dimension between the lowest eaves and the highest ridge of the structure; (B) for a structure with a dome, the midpoint of the vertical dimension of the dome; and (C) for any other structure, the highest point of the structure”.

- Section 51A-2.102(45) of the Dallas Development Code provides the following definition for “grade”: “Grade means the average of the finished ground surface elevations measured at the highest and lowest exterior corners of a structure. For purposes of this definition, finished ground surface elevation means the ground surface elevation of a building site before any construction or ground surface elevation as altered in accordance with grading plans approved by the building official. Finished ground surface elevation does not include: (A) fill material not necessary to make the site developable; (B) berms; or (C) landscape features”.
- Section 51A-2.102(135) of the Dallas Development Code The Dallas Development Code provides the following definition for “structure”: “Structure means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner”.
- The submitted site plan denotes four points of elevations on the subject site, two points at 520’-8”, and two points at 509’- 8”.
- A submitted section/elevation documents that represents a structure where the “top of low grade” is 515’-2” and the “top of roof” is 557’ – 0”.
- The applicant has submitted a document stating among other things the actual building height is 34’ 6” at the primary grade around the northern 2/3 of the proposed foundation at approximately 520 feet but that the proposed building is technically 39’ 4” high based on the definition of grade and building height – the average of the lowest and highest grade is 515’ 2” and the roof midpoint is 554’ 6’; and that if the property was flat, the structure would comply with the 36 foot height limitation.
- The applicant has provided a table of 12 other properties in the vicinity of the site zoned R-1ac(A) representing that the average floor area of homes on these properties is approximately 12,000 square feet, and that the floor area of the home proposed on the subject site is 9,000 square feet.
- According to DCAD records, the “main improvement” is a structure with 7,992 square feet of total area/living area, and the following “additional improvements”: a 1,012 square foot detached garage; two pools; a 1,868 square foot cabana; a 3,600 square foot cabana; a tennis court; a 2,460 square foot detached quarters; and a 462 square foot garage.
- While the Board Administrator had been unable to access into the subject site given adjoining lots and security fences at the time of the November public hearing, he arranged a site visit with the owner and the applicant in December. The subject site is sloped, is irregular in shape, and according to the submitted application is 1.991 acres in area. The site is zoned R-1ac(A) where lots are typically 1 acre in area.

- 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 R-1ac(A) zoning classification.
 - The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-1ac (A) zoning classification.
- If the Board were to grant the height variance request of 3' 10", and impose the submitted site plan and elevations as a condition, the building footprint and height of the structure on the site would be limited to what is shown on these documents.

Timeline:

- August 24, 2017: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- October 6, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- October 9, 2017: The Board Administrator emailed the applicant the following information:
 - a copy of the application materials including the Building Official's report on the application;
 - an attachment that provided the public hearing date and panel that will consider the application; the October 25th deadline to submit additional evidence for staff to factor into their analysis; and the November 3rd 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."
- October 18 - 25, 2017: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachments A, B, C, and D).

October 31, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November public hearings. Review team members in attendance included: the Building Official, the Assistant Building Official, the Sustainable Development and Construction Assistant Director of Engineering, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

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

November 15, 2017: The Board of Adjustment Panel B conducted a public hearing on this application, and delayed action on this application until their next public hearing to be held on January 17, 2018.

November 20, 2017: The Board Administrator wrote the applicant a letter of the board's action; the December 27th deadline to submit additional evidence for staff to factor into their analysis; and the January 5th deadline to submit additional evidence to be incorporated into the Board's docket materials.

January 2, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialists, the Sustainable Development and Construction Project Engineer, and the Assistant City Attorney to the Board.

January 3, 2018: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment E).

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

BOARD OF ADJUSTMENT ACTION NOVEMBER 15, 2017

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

APPEARING IN OPPOSITION: Mike Northrup, 901 Main Street, Ste 3900, Dallas, TX

MOTION: Beikman

I move that the Board of Adjustment in Appeal No. **BDA 167-122(SL)** hold this matter under advisement until **January 17, 2018**.

SECONDED: Shouse

AYES: 4 – Hounsel, Beikman, Shouse, Sahuc

NAYS: 0

MOTION PASSED 4 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION JANUARY 17, 2018

APPEARING IN FAVOR: Maxwell Fisher, 900 Jackson St., Ste 640, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Beikman**

I move that the Board of Adjustment, in Appeal No. **BDA 167-122**, on application of Maxwell Fisher, **grant** the request of this applicant for a three-foot 10-inch variance to the building height requirements contained in the Dallas Development Code, 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 conditions be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Bartos

AYES: 5 – Hounsel, Beikman, Shouse, Bartos, Brooks

NAYS: 0

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA178-005(SL)

BUILDING OFFICIAL’S REPORT: Application of Jeff Plauche, represented by Katherine Moltz, for a special exception to the sign regulations at 8061 Walnut Hill Lane. This property is more fully described as an unplatted 13.23 acre tract in Block A/5459 and is zoned MU-1, RR, & PD 804, which limits the number of detached signs on a premise to one per street frontage other than expressways. The applicant proposes to construct and maintain one additional detached premises sign, which will require a special exception to the sign regulations.

LOCATION: 8061 Walnut Hill Lane

APPLICANT: Jeff Plauche
 Represented by Katherine Moltz

REQUEST:

A special exception to the sign regulations is made to locate and maintain an additional detached premise sign along the site's approximately 900' long Walnut Hill Lane street frontage on a site being developed with a mixed use center (The Hill).

STANDARD FOR A SPECIAL EXCEPTION TO THE SIGN REGULATIONS FOR AN ADDITIONAL DETACHED SIGN:

Section 51A-7.703(d) of the Dallas Development Code states that the Board of Adjustment may, in specific cases and subject to appropriate conditions, authorize one additional detached sign on a premise in excess of the number permitted by the sign regulations as a special exception to these regulations when the board has made a special finding from the evidence presented that strict compliance with the requirement of the sign regulations will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.

STAFF RECOMMENDATION:

Denial

Rationale:

- Staff has concluded that that the applicant had not substantiated that strict compliance with the requirement of the sign regulations (in this case, the site's Walnut Hill Lane frontage being limited to one sign) will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.

BACKGROUND INFORMATION:

Zoning:

Site: RR, MU-1, PD 804 (Regional Retail, Mixed Use, and Planned Development)
North: NO(A) (Neighborhood Office)
South: PD 898 (Planned Development)
East: PD 519 (Planned Development)
West: MU-2 (Mixed Use)

Land Use:

The site is currently being developed as a mixed use center. The area to the north, south, east, and west are developed with a mix of office and 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.

GENERAL FACTS/STAFF ANALYSIS:

- The request for a special exception to the sign regulations focuses on locating and maintaining an additional sign on the subject site's approximately 900' long Walnut Hill Lane street frontage on a site being developed with a mixed use center.
- Section 51A-7.304(b)(4) of the Dallas Development Code states that only one detached sign is allowed per street frontage other than expressways, and that one expressway sign is allowed for every 450 feet of frontage or fraction thereof on an expressway. (The subject site's frontage is not an expressway).
- The submitted site plan indicates the location of two detached signs (denoted as "B1" and "B2" on the site's Walnut Hill Lane street frontage).
- A sign elevation denoting the "B2" monument sign has been submitted.
- The applicant's representative has stated that only one special exception request is made to the Board: an additional sign along the site's Walnut Hill Lane frontage. The applicant's representative has stated that all other aspects of the sign regulations will be met on the site.
- The applicant has the burden of proof in establishing the following:
 - That strict compliance with the requirement of the sign regulations (where in this case, the site would be limited to having only one sign along the street frontage) will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.
- If the Board were to approve the request for a special exception to the sign regulations, the Board may consider imposing a condition that the applicant complies with the submitted site plan and sign elevation.
- Granting this special exception would not provide any relief to the sign regulations of the Dallas Development Code other than allowing an additional sign on the subject site.

Timeline:

November 2, 2017: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

December 1, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

December 4, 2017: 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 December 27th deadline to submit additional evidence for staff to factor into their analysis; and the January 5th 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.

FILE NUMBER: BDA178-009(SL)

BUILDING OFFICIAL'S REPORT: Application of Robert Baldwin of Baldwin and Associates for a special exception to the Modified Delta Overlay District No. 1 regulations at 1917 Greenville Avenue. This property is more fully described as part of Lots 19 & 20, Block C/1983, and is zoned PD 842 (MD 1), which states that the right to nonconforming delta parking credits are lost if the use is vacant for twelve months or more. The applicant proposes to carry forward nonconforming parking spaces under the delta theory lost because of a use that was discontinued or vacant for 12 months or more, which will require a special exception to the Modified Delta Overlay District No. 1 regulations.

LOCATION: 1917 Greenville Avenue

APPLICANT: Robert Baldwin of Baldwin and Associates

REQUEST:

A request for a special exception to the Modified Delta Overlay District No. 1 regulations to carry forward nonconforming parking spaces under the delta theory that were terminated since the use on part of the site was discontinued or remained vacant for 12 months or more is made in order for the applicant to obtain a Certificate of Occupancy for an office use in the vacant structure/storefront on the subject site.

STANDARD FOR SPECIAL EXCEPTION TO THE MODIFIED DELTA OVERLAY DISTRICT No. 1 REGULATIONS TO CARRY FORWARD NONCONFORMING PARKING AND LOADING SPACES UNDER THE DELTA THEORY WHEN A USE IS DISCONTINUED OR REMAINS VACANT FOR 12 MONTHS OR MORE:

The Modified Delta Overlay District No. 1 states that the right to carry forward nonconforming parking and loading spaces under the delta theory terminates when a use is discontinued or remains vacant for 12 months or more. The board of adjustment may grant a special exception to this provision only if the owner can demonstrate that there was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more by proving the occurrence of an extreme circumstance, which shall include but not be limited to the following:

1. A decline in the rental rates for the area which has affected the rental market.
2. An unusual increase in the vacancy rates for the area which has affected the rental market.
3. Obsolescence of the subject property, including environmental hazards, extensive renovation or remodeling, and extreme deterioration of adjacent properties affecting the marketability of property.

STAFF RECOMMENDATION:

Denial

Rationale:

- Staff concluded that the applicant had not demonstrated that there was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more by proving the occurrence of an extreme circumstance which shall include but not be limited to the following:
 1. A decline in the rental rates for the area which has affected the rental market.
 2. An unusual increase in the vacancy rates for the area which has affected the rental market.
 3. Obsolescence of the subject property, including environmental hazards, extensive renovation or remodeling, and extreme deterioration of adjacent properties affecting the marketability of property.

BACKGROUND INFORMATION:

Zoning:

- Site: PD 842, MD-1 (Planned Development, Modified Delta Overlay)
- North: PD 842, MD-1 (Planned Development, Modified Delta Overlay)
- South: PD 842, MD-1 (Planned Development, Modified Delta Overlay)
- East: PD 842, MD-1 (Planned Development, Modified Delta Overlay)
- West: PD 842, MD-1 (Planned Development, Modified Delta Overlay)

Land Use:

The subject site is developed with a vacant one-story commercial structure. The areas to the north, south, and east are developed with commercial/retail uses; and the area to the west is developed with a surface parking lot.

Zoning/BDA History:

- | | |
|--|--|
| <p>1. BDA145-011, Property at 1909 Greenville Avenue (approximately two storefronts south of the subject site)</p> | <p>On January 20, 2015, the Board of Adjustment Panel A granted a request for a special exception to the Modified Delta Overlay District No. 1 regulations. The case report stated the request was made to carry forward nonconforming parking spaces under the delta theory that were terminated since the use on part of the site was discontinued or remained vacant for 12 months or more.</p> |
|--|--|

2. BDA156-010, Property at 1904 Greenville Avenue (property southeast of the subject site)

On March 22, 2016, the Board of Adjustment Panel A granted a request for a special exception to the Modified Delta Overlay District No. 1 regulations to carry forward nonconforming parking spaces under the delta theory that were terminated since the use on part of the site was discontinued or remained vacant for 12 months or more is made in order for the applicant to obtain a Certificate of Occupancy for a retail use on a site that was developed with a vacant structure.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on carrying forward nonconforming parking spaces under the delta theory terminated because a part of the structure/use on the site was discontinued or remained vacant for 12 months or more made in order for the applicant to obtain a Certificate of Occupancy for an office use in the vacane structure/storefront on the site.
- The subject site is zoned PD 842, Modified Delta Overlay District 1.
- Section 51A-4.704(b)(4) of the Dallas Development Code provides the following with regard to “nonconformity as to parking or loading”:
 - Increased requirements. A person shall not change a use that is nonconforming as to parking or loading to another use requiring more off-street parking or loading unless the additional off-street parking and loading spaces are provided.
 - Delta theory. In calculating required off-street parking or loading, the number of nonconforming parking or loading spaces may be carried forward when the use is converted or expanded. Nonconforming rights as to parking or loading are defined in the following manner: required parking or loading spaces for existing use minus the number of existing parking or loading spaces for existing use equals nonconforming rights as to parking or loading.
 - Decreased requirements. When a use is converted to a new use having less parking or loading requirement, the rights to any portion of the nonconforming parking or loading that are not needed to meet the new requirements are lost.
- In 1987, the City Council created “Modified Delta Overlay Districts” in those areas where it has determined that a continued operation of the delta theory is not justified because there is no longer a need to encourage redevelopment and adaptive reuse of existing structures, or a continued application of the delta theory will create traffic congestion and public safety problems and would not be in the public interest.

- In a modified delta overlay district, the city council may limit the number of percentage of nonconforming parking or loading spaces that may be carried forward by a use under the delta theory. An ordinance establishing a modified delta overlay district may not increase the number of nonconforming parking or loading spaces that may be carried forward under the delta theory when a use is converted or expanded.
- An ordinance establishing a modified delta overlay district must provide that when a use located in the district is converted to a new use having less parking or loading requirements, the rights to any portion of the nonconforming parking or loading not needed to meet the new requirements are lost.
- An ordinance establishing a modified delta overlay district may provide that rights under the delta theory terminate when a use for which the delta theory has been applied is discontinued.
- In 1987, the City Council established Modified Overlay District No. 1 (the Greenville Avenue Modified Delta Overlay District) which stated among other things:
 - That no nonconforming parking spaces may be carried forward by a use under the delta theory when a use in this district is expanded.
- In 1995, the City Council amended Modified Overlay District No. 1 (the Greenville Avenue Modified Delta Overlay District) which stated among other things:
 - The right to carry forward nonconforming parking and loading spaces under the delta theory terminates when a use is discontinued or remains vacant for 12 months or more. The board of adjustment may grant a special exception to this provision only if the owner can demonstrate that there was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more by proving the occurrence of an extreme circumstance, which shall include but not be limited to the following:
 1. A decline in the rental rates for the area which has affected the rental market.
 2. An unusual increase in the vacancy rates for the area which has affected the rental market.
 3. Obsolescence of the subject property, including environmental hazards, extensive renovation or remodeling, and extreme deterioration of adjacent properties affecting the marketability of property.
- According to DCAD, the property at 1917 Greenville Avenue is developed with a “free standing retail store” with 3,540 square feet built in 1929.

Timeline:

November 14, 2017: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

December 1, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

December 4, 2017: 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 December 27th deadline to submit additional evidence for staff to factor into their analysis; and the January 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

January 2, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialists, the Sustainable Development and Construction Project Engineer, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION JANUARY 17, 2018

APPEARING IN FAVOR: Rob Baldwin, 3904 Elm Street, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Shouse**

I move that the Board of Adjustment in Appeal No. **BDA 178-009** hold this matter under advisement until **February 22, 2018**.

SECONDED: **Bartos**

AYES: 5 – Hounsel, Beikman, Shouse, Bartos, Brooks

NAYS: 0

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA178-010(SL)

BUILDING OFFICIAL'S REPORT: Application of David Morr of Boardacre Homes for variances to the front yard setback and off-street parking regulations at 6333 Bryan Parkway. This property is more fully described as Lot 13A, Block 1/1881, and is zoned PD 63, H/1 (Area B), which requires a front yard setback of 15 feet and requires a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley. The applicant proposes to construct and

maintain a structure and provide a 5 foot front yard setback, which will require a 10 foot variance to the front yard setback regulations, and to locate and maintain a parking space in an enclosed structure with a setback with a setback of 7 feet 6 inches, which will require a variance of 12 feet 6 inches to the off-street parking regulations.

LOCATION: 6333 Bryan Parkway

APPLICANT: David Morr of Boardacre Homes

REQUESTS:

The following requests have been made in conjunction with replacing a one-story detached garage accessory structure with a two-story garage/game room accessory structure on a site that is developed with a single family home structure:

1. A request for a variance to the front yard setback regulations of 10' is made to construct and maintain the aforementioned two-story garage/game room accessory structure with an approximately 675 square foot building footprint, part of which is located 5' from one of the site's two front property lines (Lavista Drive) or 10' into this 15' front yard setback.
2. A request for a variance to the off-street parking regulations of up to 12' 6" is made to locate and maintain a parking space in an enclosed structure (the aforementioned two-story garage/game room accessory structure) as close as 7' 6" from the alley right-of-way line or as much as 12' 6" into the required 20' distance that a parking space in enclosed structures must be from an alley right-of-way.

STANDARD FOR A VARIANCE:

Section 51(A)-3.102(d)(10) of 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 the variance is:

- (D) 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;
- (E) 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
- (F) 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 (front yard variance):

Denial

Rationale:

- While staff recognized the subject site is unique and different from most lots in the PD 63, H/1(Area B) zoning district in that it is irregular in shape, and restrictive in area due to having two front yard setbacks, staff concluded based on what had been submitted at the time of the January 2nd staff review team meeting that the applicant had not substantiated how these features preclude it from being developed in a manner commensurate with the development upon other parcels of land in the same PD 63, H/1(Area B) zoning district. The approximately 10,000 square foot site is slightly larger in area than the typical 7,500 square feet in the previous R-7.5 zoning where the size, shape, or slope of this site has allowed it to be developed with a single family use that does/can comply with setbacks.

STAFF RECOMMENDATION (parking variance):

Denial

Rationale:

- While staff recognized the subject site is unique and different from most lots in the PD 63, H/1(Area B) zoning district in that it is irregular in shape, and restrictive in area due to having two front yard setbacks, staff concluded based on what had been submitted at the time of the January 2nd staff review team meeting that the applicant had not substantiated how these features preclude it from being developed in a manner commensurate with the development upon other parcels of land in the same PD 63, H/1(Area B) zoning district. The approximately 10,000 square foot site is slightly larger in area than the typical 7,500 square feet in the previous R-7.5 zoning where the size, shape, or slope of this site has allowed it to be developed with a single family use that does/can comply with setbacks.

- In addition, granting this variance is contrary to public interest because the Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet marked “Recommends that this be denied” commenting “Proposed garage creates a substandard access to/from Lavista with unacceptable (unduly prohibitive) left-turn movements. The residential property already has an adequate driveway with adequate access”.

BACKGROUND INFORMATION:

Zoning:

Site: PD 63, H/1(Area B) (Planned Development, Historic)
North: PD 63, H/1(Area B) (Planned Development, Historic)
South: PD 63, H/1(Area B) (Planned Development, Historic)
East: PD 63, H/1(Area B) (Planned Development, Historic)
West: CR (Community retail)

Land Use:

The subject site is developed with a two-story, single family home structure and a one-story detached accessory structure/garage. The areas to the north, east, and south are developed with single family uses; and the area to the west is developed with a commercial/retail use.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS (front yard variance):

- This request for variance to the front yard setback regulations of 10’ focuses on replacing an existing one-story detached garage accessory structure with a two-story garage/game room accessory structure on a site that is developed with a single family home structure with approximately 2,500 square feet of air-conditioned space. The proposed approximately 1,200 square foot two-story accessory structure with an approximately 675 building footprint is proposed to be located 5’ from one of the site’s two front property lines (Lavista Drive) or 10’ into this 15’ front yard setback. (Note that it appears that the existing accessory structure that the applicant intends to replace does not appear to provide a 15’ front yard setback on Lavista Drive. Building Inspection states that this structure does not appear to be a nonconforming structure).
- The property is zoned PD 63, H/1 (Area B) which requires a minimum front yard setback of 30 feet.

- The subject site is located at the southwest corner of Lavista Drive and Bryan Parkway. The subject site has front yard setbacks along both street frontages. The site has a 30' front yard setback along Bryan Parkway, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in this zoning district. The site also has a 15' front yard setback along Lavista Drive*, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where a 10' side yard setback is required. But the site's Lavista Drive frontage that functions as a side yard on the property is treated as a front yard setback nonetheless to maintain the continuity of the established front yard setback established by the lot (currently developed as a commercial/retail use and zoned CR) to the west that fronts/is oriented northward towards Lavista Drive. (*The Dallas Development Code states that if street frontage within a block is divided by two or more zoning districts, the front yard for the entire block must comply with the requirements of the district with the greater front yard requirement).
- The submitted scaled site plan indicates that a portion of the proposed two-story garage/game room accessory structure is located 5' from the Lavista Drive front property line or 10' into this 15' front yard setback.
- According to DCAD records, the "main improvement" for property addressed at 6333 Bryan Parkway is a structure built in 1925 with 2,480 square feet of living/total area, and the "additional improvements" is a 266 square foot porte cochere and a 308 square foot detached garage.
- The subject site is flat, irregular in shape, and according to the submitted application is 0.246 acres (or approximately 10,700 square feet) in area.
- The site is zoned PD 63 created in 1977. It appears from the Board Administrator's review of archive zoning maps that the property had been previously zoned R-7.5 lots are typically 7,500 square feet in area.
- Most corner lots in the PD 63 (Area B) zoning district have one 30' front yard setback, a 10' side yard setback on the site that has street frontage, a 5' side yard setback on the interior side of the site, and one 5' rear yard setback; this site has two front yard setbacks (one 30' front yard setback on Bryan Parkway; one 15' front yard setback on Lavista Drive) and two 5' side yard setbacks.
- On January 4, 2018, the applicant submitted information that listed five properties he represented were within two blocks of the site and in the same zoning district and had similar or greater-sized rear accessory structures as the proposed project on the site (see Attachment B). (Note that this information was not factored into the staff recommendation since it was submitted after the January 2nd staff review team meeting).
- The width of the subject site ranges from approximately 103' on the east to approximately 33' on the west. As a result, the site has a range of developable width of approximately 83' – 13' available once a 15' front yard setback is accounted for on the north and a 5' side yard setback is accounted for on the south. If the lot were rectangular in shape with a width of approximately 103', it would have approximately 88' of width to developed once 10' and a 5' side yard setbacks were accounted for on the site.

- If the subject site were more typical to other parcels of land in the same zoning district (one front yard, one rear yard, and two side yards), a variance would still be required since the applicant is proposing to provide a 5' setback from Lavista Drive and the side yard setback for properties in this zoning on corner lots is 10'.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD 63 (Area B) zoning classification.
 - The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD 63 (Area B) zoning classification.
- If the Board were to grant the variance request, and impose the submitted site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document – which in this case is an accessory structure located 5" from the site's Lavista Drive front property line (or 10' into this 15' front yard setback).
- Note that the applicant is aware that granting the request for variance to the front yard setback regulations will not provide any relief to any existing noncompliance on the property with regard to fence standard regulations.

GENERAL FACTS/STAFF ANALYSIS (parking variance):

- This request for a variance to the off-street parking regulations of up to 12' 6" focuses on locating and maintaining a parking space in an enclosed structure (an approximately 1,200 square foot two-story garage/game room accessory structure) as close as 7' 6" from the alley right-of-way line or as much as 12' 6" into the required 20' distance that a parking space in enclosed structures must be from an alley right-of-way.
- The property is zoned PD 63, H/1 (Area B) which requires a minimum front yard setback of 30 feet.

- The subject site is located at the southwest corner of Lavista Drive and Bryan Parkway. The subject site has front yard setbacks along both street frontages. The site has a 30' front yard setback along Bryan Parkway, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in this zoning district. The site also has a 15' front yard setback along Lavista Drive*, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where a 10' side yard setback is required. But the site's Lavista Drive frontage that functions as a side yard on the property is treated as a front yard setback nonetheless to maintain the continuity of the established front yard setback established by the lot (currently developed as a commercial/retail use and zoned CR) to the west that fronts/is oriented northward towards Lavista Drive. (*The Dallas Development Code states that if street frontage within a block is divided by two or more zoning districts, the front yard for the entire block must comply with the requirements of the district with the greater front yard requirement).
- Section 51(A)-4.301(a)(9) of the Dallas Development Code states that a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in enclosed structure and if the space faces upon or can be entered directly from a street or alley.
- The submitted site plan denotes a "new garage" structure where a parking space in it (garage) is located as close as 7' 6" from the alley right-of-way line.
- According to DCAD records, the "main improvement" for property addressed at 6333 Bryan Parkway is a structure built in 1925 with 2,480 square feet of living/total area, and the "additional improvements" is a 266 square foot porte cochere and a 308 square foot detached garage.
- The subject site is flat, irregular in shape, and according to the submitted application is 0.246 acres (or approximately 10,700 square feet) in area.
- The site is zoned PD 63 created in 1977. It appears from the Board Administrator's review of archive zoning maps that the property had been previously zoned R-7.5 lots are typically 7,500 square feet in area.
- Most corner lots in the PD 63 (Area B) zoning district have one 30' front yard setback, a 10' side yard setback on the site that has street frontage, a 5' side yard setback on the interior side of the site, and one 5' rear yard setback; this site has two front yard setbacks (one 30' front yard setback on Bryan Parkway; one 15' front yard setback on Lavista Drive) and two 5' side yard setbacks.
- On January 4, 2018, the applicant submitted information that listed five properties he represented were within two blocks of the site and in the same zoning district and had similar or greater-sized rear accessory structures as the proposed project on the site (see Attachment B). (Note that this information was not factored into the staff recommendation since it was submitted after the January 2nd staff review team meeting).
- The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet marked "Recommends that this be denied" commenting "Proposed garage creates a substandard access to/from Lavista with unacceptable (unduly prohibitive) left-turn movements. The residential property already has an adequate driveway with adequate access".

- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the off-street parking regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD 63 (Area B) zoning classification.
 - The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD 63 (Area B) zoning classification.
- If the Board were to grant the variance request, staff recommends imposing the following conditions:
 1. Compliance with the submitted site plan is required.
 2. At no time may the area in front of the garage be used for parking of vehicles
 3. An automatic garage door must be installed and maintained in working order at all times.

(These conditions are imposed to help assure that the variance will not be contrary to the public interest).
- Note that the applicant is aware that granting the request for variance to the front yard setback regulations will not provide any relief to any existing noncompliance on the property with regard to fence standard regulations.

Timeline:

November 16, 2017: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

December 1, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

December 4, 2017: 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 December 27th deadline to submit additional evidence for staff to factor into their analysis; and the January 5th 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.

December 22, 2017: The Sustainable Development and Construction Chief Planner of Historic Preservation emailed the Board Administrator/Chief

Planner the following comment: 6333 Bryan Pkwy (Swiss Avenue Historic District) has already received an approved Certificate of Appropriateness application for proposed improvements with the condition that BOA allow applicable variances.

December 26, 2017: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

January 2, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialists, the Sustainable Development and Construction Project Engineer, and the Assistant City Attorney to the Board.

January 3, 2018: The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet marked "Recommends that this be denied" commenting "Proposed garage creates a substandard access to/from Lavista with unacceptable (unduly prohibitive) left-turn movements. The residential property already has an adequate driveway with adequate access".

- January 4, 2018: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment B). (Note that this information was not factored into the staff recommendation since it was submitted after the January 2nd staff review team meeting)

BOARD OF ADJUSTMENT ACTION JANUARY 17, 2018

APPEARING IN FAVOR: David Morr, 2919 Commerce, #556, Dallas, TX
Kim Adams, 6333 Bryan Pkwy, Dallas, TX
Jon Adams, 6333 Bryan Pkwy, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Beikman

I move that the Board of Adjustment, in Appeal No. **BDA 178-010**, on application of David Morr, **grant** the ten-foot variance to the front yard setback regulations requested by this applicant 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: Hounsel

AYES: 5 – Hounsel, Beikman, Shouse, Bartos, Brooks

NAYS: 0 –

MOTION PASSED 5 – 0(unanimously)

MOTION #2: Beikman

I move that the Board of Adjustment, in Appeal No. **BDA 178-010**, on application of David Morr, **deny** the off-street parking variance requested by this applicant **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: Hounsel

AYES: 2 – Hounsel, Beikman

NAYS: 3 – Bartos, Brooks, Shouse

MOTION FAILED 2 – 3

MOTION #3: Bartos

I move that the Board of Adjustment, in Appeal No. **BDA 178-010**, on application of David Morr, **grant** the 12-foot six-inch variance to the off-street parking regulations requested by this applicant 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 conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.
- An automatic garage door must be installed and maintained in working order at all times.
- At no time may the area in front of the garage be utilized for parking of vehicles.

SECONDED: Brooks

AYES: 3 – Shouse, Bartos, Brooks

NAYS: 2 – Hounsel, Beikman

MOTION FAILED 3 – 2

*Since the motion to grant did not get four concurring votes the motion is therefore deemed denied with prejudice.

MOTION #4: Brooks

I move that we reconsider the previous motion made to deny without prejudice.

SECONDED: Shouse

AYES: 4 – Hounsel, Shouse, Bartos, Brooks

NAYS: 1 – Beikman

MOTION PASSED 4 – 1

MOTION #5: Hounsel

I move that the Board of Adjustment, in Appeal No. **BDA 178-010**, on application of David Morr, **deny** the off-street parking variance requested by this applicant **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: Shouse

AYES: 4 – Hounsel, Beikman Brooks, Shouse

NAYS: 1 – Bartos

MOTION PASSED 4 – 1

MOTION: Beikman

I move to adjourn this meeting.

SECONDED: Bartos

AYES: 5 – Hounsel, Beikman, Shouse, Bartos, Brooks

NAYS: 0

MOTION PASSED 5 – 0 (unanimously)

2:56 P.M. Board Meeting adjourned for **January 17, 2018**

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.