

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL COUNCIL CHAMBERS
WEDNESDAY, MARCH 21, 2018**

MEMBERS PRESENT AT BRIEFING: Scott Hounsel, Vice-Chair, Marla Beikman, regular member, Matt Shouse, regular member, Ruth Torres, regular member, Philip Sahuc, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Scott Hounsel, Vice-Chair, Marla Beikman, regular member, Matt Shouse, regular member, Ruth Torres, regular member, Philip Sahuc, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Chief Planner/Administrator, Kanesia Williams, Asst. City Attorney, Charles Trammell, Development Code Specialist, Oscar Aguilera, Senior Planner, David Nevarez, Engineering, Trena Law, Board Secretary, and Shombray Irby, Acting Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Chief Planner/Administrator, Kanesia Williams, Asst. City Attorney, Charles Trammell, Development Code Specialist, Oscar Aguilera, Senior Planner, David Nevarez, Engineering, Trena Law, Board Secretary, and Shombray Irby, Acting Board Secretary

11:40 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **March 21, 2018 docket.**

1:02 P.M.
The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand

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

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel B February 21, 2018 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: MARCH 21, 2018

MOTION: None

The minutes were approved.

FILE NUMBER: BDA178-033(SL)

BUILDING OFFICIAL'S REPORT: Application of James Poulin, represented by Curtis Burlbaw, for variances to the front yard setback and off-street parking regulations at 2016 Kessler Parkway. This property is more fully described as Lot D-1, Block 13/3800 and is zoned CD 13, which requires a front yard setback of 35 feet and requires a parking space to 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 structure and provide a 16 foot front yard setback, which will require a 19 foot variance to the front yard setback regulations, and to locate and maintain parking spaces in an enclosed structure with a setback of 16 feet, which will require a variance of 4 feet to the off-street parking regulations.

LOCATION: 2016 Kessler Parkway

APPLICANT: James Poulin
Represented by Curtis Burlbaw

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 19' is requested to construct and maintain the aforementioned structure 16' from the front property line or 19' into the required 35' front yard setback;
2. a variance to the off-street parking regulations of 4' is requested as the proposed home would have parking spaces in an enclosed structure (an attached garage) that would be located 16' from the right-of-way line adjacent to the street or as much as 4' into the required 20' distance from the right-of-way line adjacent to Kessler Parkway.

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 setback variance):

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that the lot's restrictive area caused by the slope of the site precludes it from being developed in a manner commensurate with the development upon other parcels of land that are flat/without slope on similarly-zoned CD 13 lots. The applicant's representative has submitted a document indicating that that the total "maximum AC space" of the proposed home on the subject site is approximately 3,000 square feet which is smaller than that of 16 other homes he listed of properties in the same CD 13 zoning. (The 16 other properties listed in the applicant's document range from approximately 3,300 – 4,000 square feet in area).

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.

Rationale:

- Staff concluded that the lot's restrictive area caused by the slope of the site precludes it from being developed in a manner commensurate with the development upon other parcels of land that are flat/without slope on similarly-zoned CD 13 lots. The applicant's representative has submitted a document indicating that that the total "maximum AC space" of the proposed home on the subject site is approximately 3,000 square feet which is smaller than that of 16 other homes he listed of properties in the same CD 13 zoning. (The 16 other properties listed in the applicant's document range from approximately 3,300 – 4,000 square feet in area).
- 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: CD 13 (Conservation District)
North: CD 13 (Conservation District)
South: CD 13 (Conservation District)
East: CD 13 (Conservation District)
West: CD 13 (Conservation District)

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS (front yard variance):

- This request for a variance to the front yard setback regulations focuses on constructing and maintaining a two-story, single family home with approximately 3,000 square feet of AC space on an undeveloped site that is proposed to be located 16' from the front property line or 19' into the site's 35' front yard setback.
- The subject site is zoned CD 13.
- CD 13 states that the minimum front yard must equal the average of the front yards of the houses on contiguous lots.
- The submitted plan represents that the single family home structure is located 16' from the site's front property line (or 19' into the 35' front yard setback).
- The site plan shows that over half of the proposed building footprint is to be located in the site's 35' front yard setback.

- DCAD records indicate “no main improvements” for the property at 2016 Kessler Parkway.
- The applicant’s representative has submitted a document indicating that the total “maximum AC space” of the proposed home on the subject site is approximately 3,000 square feet which is smaller than that of 16 other homes he listed of properties in the same CD 13 zoning. (The 16 other properties listed in the applicant’s document range from approximately 3,300 – 4,000 square feet in area).
- The applicant has submitted a topographic representation of the site indicating a slope in approximately the southern half of the subject site – a slope beginning at 460’ up to 490’ over a length of approximately 60’.
- The subject site is sloped, slightly irregular in shape, and according to the application, is 0.28 acres (or approximately 12,000 square feet) in area. Prior to the creation of CD 13 in 2005, the subject site and surrounding properties had been zoned R-7.5(A) where the typical lot size is 7,500 square feet.
- 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 CD 13 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 CD 13 zoning classification.
- If the Board were to grant this 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 is a structure to be located 16’ from the site’s front property line or 19’ into the required 35’ front yard setback.

GENERAL FACTS/STAFF ANALYSIS (parking variance):

- This request for a variance to the off-street parking regulations of 4’ focuses on locating parking spaces in an enclosed structure (a garage attached/within the proposed single family home), where these parking spaces entered from the street right-of-way line would be located 16’ from the Kessler Parkway street right-of-way line or 4’ into 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 16' from the street right-of-way line or 4' into the 20' setback line that an enclosed parking space must be from this right-of-way line. (The submitted site plan represents that the parking spaces in the enclosed structure are approximately 46' from the Kessler Parkway pavement line).
- DCAD records indicate “no main improvements” for the property at 2016 Kessler Parkway.
- The applicant’s representative has submitted a document indicating that that the total “maximum AC space” of the proposed home on the subject site is approximately 3,000 square feet which is smaller than 16 other homes he listed of properties in the same CD 13 zoning (the 16 other properties listed range from approximately 3,300 – 4,000 square feet in area).
- The subject site is sloped, slightly irregular in shape, and according to the application, is 0.28 acres (or approximately 12,000 square feet) in area. Prior to the creation of CD 13 in 2005, the subject site and surrounding properties had been zoned R-7.5(A) where the typical lot size is 7,500 square feet.
- 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 request for a variance of 4', staff recommends imposing the following conditions:
 1. Compliance with the submitted site plan is required.
 2. 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).

Timeline:

January 24, 2018: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

February 12, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

February 12, 2018: 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 February 28th deadline to submit additional evidence for staff to factor into their analysis; and the March 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

February 16 and 23, 2018

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

March 1, 2018

The Building Inspection Senior Plans Examiner/Development Code Specialist a revised Building Official's report to the Chief Planner/Board Administrator (see Attachment C).

March 2, 2018

The applicant's representative submitted additional information to staff beyond what was submitted with the original application (see Attachment D).

March 6, 2018:

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

March 8, 2018:

The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked "Has no objections".

BOARD OF ADJUSTMENT ACTION MARCH 21, 2018

APPEARING IN FAVOR: Curtis Bulow, 16 Bishop Gate, Allen ,TX

APPEARING IN OPPOSITION: Sara Reidy, 2010 Kessler Pkwy., Dallas, TX

MOTION#1: **Beikman**

I move that the Board of Adjustment, in Appeal No. **BDA 178-033**, on application of James Poulin represented by Curtis Burlbaw, **deny** the variance to the front yard setback regulations 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: **Sahuc**

AYES: 2 –Beikman, Sahuc

NAYS: 3 – Hounsel, Shouse, Torres,

MOTION FAILED: 2 – 3

MOTION#2: **Hounsel**

I move that the Board of Adjustment, in Appeal No. **BDA 178-033**, on application of James Poulin represented by Curtis Burlbaw, **grant** the 19-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: **Torres**

AYES: 3 – Hounsel, Shouse, Torres

NAYS: 2 – Beikman, Sahuc

MOTION FAILED: 3 – 2

MOTION#3: **Hounsel**

Motion was made to reconsider the previous motion made to deny without prejudice.

SECONDED: **Torres**

AYES: 5– Hounsel, Beikman, Shouse, Torres, Sahuc

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

MOTION#4: **Beikman**

I move that the Board of Adjustment, in Appeal No. **BDA 178-033**, on application of James Poulin represented by Curtis Burlbaw, **deny** the variance to the front yard setback regulations 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: 5– Hounsel, Beikman, Shouse, Torres, Sahuc

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

MOTION#5: Shouse

I move that the Board of Adjustment, in Appeal No. **BDA 178-033**, on application of James Poulin represented by Curtis Burlbaw, **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: Beikman

AYES: 5 – Hounsel, Beikman, Shouse, Torres, Sahuc

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA178-031(SL)

BUILDING OFFICIAL’S REPORT: Application of Barry Sage to appeal the decision of the administrative official at 6007 Belmont Avenue. This property is more fully described as Lot 23, Block 13/1899, and is zoned CD 12, which requires compliance with conservation district fence standards. The applicant proposes to appeal the decision of an administrative official.

LOCATION: 6007 Belmont Avenue

APPLICANT: Barry Sage

REQUEST:

A request is made to appeal the decision of the administrative official, in this particular application, the Building Official’s “Conservation District Denial” of January 24, 2018 stating “Work is denied. 1. Fence in side yard was originally 8’ in height, but was removed and replaced with a fence of the same height. Per Ord. 25530(19)(D), fences in a side yard may not exceed 6’ in height. Fence has lost its previous degree of nonconformity and all rights to its previous degree of nonconformity are lost per Ord. 25530(C)(2). Fence replacement of fence with the same height as original is denied.” on a site that is developed with a single family home.

STANDARD FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:

Dallas Development Code Sections 51A-3.102(d)(1) and 51A-4.703(a)(2) state that any aggrieved person may appeal a decision of an administrative official when that decision concerns issues within the jurisdiction of the Board of Adjustment.

The Board of Adjustment may hear and decide an appeal that alleges error in a decision made by an administrative official. Tex. Local Gov't Code Section 211.009(a)(1).

Administrative official means that person within a city department having the final decision-making authority within the department relative to the zoning enforcement issue. Dallas Development Code Section 51A-4.703(a)(2).

BACKGROUND INFORMATION:

Zoning:

Site: CD 12 (Conservation District)
North: CD 12 (Conservation District)
South: CD 12 (Conservation District)
East: CD 12 (Conservation District)
West: CD 12 (Conservation District)

Land Use:

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

Zoning/BDA History:

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 board shall have all the powers of the administrative official on the action appealed. The board may in whole or in part affirm, reverse, or amend the decision of the official.

Timeline:

January 18, 2018: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

February 12, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

February 12, 2018: The Board Administrator emailed the applicant the following information:

- an attachment that provided the appeal date and panel that will consider the appeal; the February 28th deadline to submit additional evidence for staff to factor into their analysis (with a

notation that staff does not form a recommendation on this type of appeal); and the March 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;

- the outline of procedure for appeals from decisions of the building official to the board of adjustment; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

March 6, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Conservation District Chief Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Project Engineer, 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.

March 9, 2018: The applicant submitted additional documentation on this appeal to the Board Administrator beyond what was submitted with the original application (see Attachment A).

March 9, 2018: The assistant city attorney assisting the administrative official submitted documentation on this appeal to the Board Administrator (see Attachment B).

BOARD OF ADJUSTMENT ACTION MARCH 21, 2018

APPEARING IN FAVOR: Barry Sage, 6007 Belmont Ave., Dallas, TX

APPEARING IN OPPOSITION: Linton Ward, 6003 Belmont Ave., Dallas, TX

APPEARING FOR THE CITY: Kristen Monkhouse, 1500 Marilla St. 7CN, Dallas, TX
Bill Hersch, 320 E. Jefferson Blvd., Dallas, TX

MOTION#1: Torres

Having fully reviewed the decision of the administrative official of the City of Dallas in Appeal No. **BDA 178-031**, on application of Barry Sage, and having evaluated the evidence pertaining to the property and heard all testimony and facts supporting the application, I move that the Board of Adjustment **reverse** the decision of the administrative official and **grant** the relief requested by this applicant.

SECONDED: Hounsel

AYES: 1 – Torres

NAYS: 4 – Hounsel, Beikman, Shouse, Sahuc
MOTION FAILED: 1– 4

MOTION#2: **Beikman**

Having fully reviewed the decision of the administrative official of the City of Dallas in Appeal No. **BDA 178-031**, on application of Barry Sage, and having evaluated the evidence pertaining to the property and heard all testimony and facts supporting the application, I move that the Board of Adjustment affirm the decision of the administrative official and **deny** the relief requested by the applicant.

SECONDED: **Hounsel**

AYES: 4 – Hounsel, Beikman, Shouse, Sahuc

NAYS: 1 – Torres

MOTION PASSED 4– 1

MOTION: **Hounsel**

I move to adjourn this meeting.

SECONDED: **Beikman**

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

NAYS: 0

MOTION PASSED 5 – 0 (unanimously)

3:39 P.M. Board Meeting adjourned for **March 21, 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.