

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
MONDAY, April 15, 2019**

MEMBERS PRESENT AT BRIEFING: Bruce Richardson, chair, Robert Agnich, regular member Matt Shouse, regular member, Judy Pollock, regular member, Lorlee Bartos, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Bruce Richardson, chair, Robert Agnich, regular member Matt Shouse, regular member, Judy Pollock, regular member, Lorlee Bartos, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Chief Planner/Board Administrator, Oscar Aguilera, Senior Planner, Theresa Pham, Asst. City Atty., Charles Trammell, Development Code Specialist, David Nevarez, Engineering, Phil Erwin, Chief Arborist, Elaine Hill, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Chief Planner/Board Administrator, Oscar Aguilera, Senior Planner, Theresa Pham, Asst. City Atty., Charles Trammell, Development Code Specialist, David Nevarez, Engineering, Phil Erwin, Chief Arborist, Elaine Hill, Board Secretary

11:08 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's March 18, 2019 docket.

1:07 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

Approval of the Board of Adjustment Panel C, March 18, 2019 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: April 15, 2019

MOTION: None

The minutes were approved without a formal vote.

FILE NUMBER: BDA189-045(OA)

BUILDING OFFICIAL'S REPORT: Application of Harold Bell, represented by Justin Smith, for a special exception to the fence standards regulations at 7615 Azalea Lane. This property is more fully described as Lot 4, Block 4/7285, and is zoned R-16(A), which prohibits the use of certain materials for a fence. The applicant proposes to construct and/or maintain a fence of a prohibited material, which will require a special exception to the fence standards regulations.

LOCATION: 7615 Azalea Lane

APPLICANT: Harold Bell
Represented by Justin Smith

REQUEST:

A request for a special exception to the fence standards regulations is made to construct and maintain a fence of a prohibited fence material (metal) on a site developed with a single-family home.

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.

BACKGROUND INFORMATION:

Zoning:

Site: R-16(A) (Single family residential 16,000 square feet)
North: R-16(A) (Single family residential 16,000 square feet)
South: R-16(A) (Single family residential 16,000 square feet)
East: PD 879 (Planned Development)
West: R-16(A) (Single family residential 16,000 square feet)

Land Use:

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

Zoning/BDA History:

There have 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 fence standards regulations related to fence materials focuses on constructing and maintaining a fence of a prohibited fence material (metal) on a site developed with a single-family home.
- Section 51A-4.602(a)(9) of the Dallas Development Code states that except as provided in this subsection, the following fence materials are prohibited:
 - Sheet metal;
 - Corrugated metal;
 - Fiberglass panels;
 - Plywood;
 - Plastic materials other than preformed fence pickets and fence panels with a minimum thickness of seven-eighths of an inch;
 - Barbed wire and razor ribbon (concertina wire) in residential districts other than an A(A) Agricultural District; and
 - Barbed wire razor ribbon (concertina wire) in nonresidential districts unless the barbed wire or razor ribbon (concertina wire) is six feet or more above grade and does not project beyond the property line.
- The applicant has submitted a site plan/elevation that represents the location of the existing sheet metal fence on the property.
- The submitted site plan/elevation represents an 8' high metal fence.
- The submitted site plan/elevation represents a site that is approximately 14,600 square feet in area where approximately 158 linear feet of prohibited fence material (metal fence) is located on this property.
- The Sustainable Development and Construction Department Senior Planner conducted a field visit of the site and surrounding area (approximately 400 feet north, south, east, and west of the subject site) and noted no other fences that appear to be of prohibited material.
- As of April 5, 2019, no letters in opposition have been submitted, and a petition in support with 7 signatures has been submitted as part of the application.

- The applicant has the burden of proof in establishing that the special exception to the fence standards regulations related to a prohibited fence material (metal) will not adversely affect neighboring property.
- If the Board were to grant the special exception and impose the submitted site plan/elevation as a condition, the fence of prohibited material on the property would be limited to what is shown on these documents.

Timeline:

February 22, 2019: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

March 12, 2019: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

March 13, 2019: The Sustainable Development and Construction Department Senior Planner, emailed the applicant’s representative 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 March 27th deadline to submit additional evidence for staff to factor into their analysis; and the April 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.”

April 2, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April 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 Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: April 15, 2019

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Agnich**

I move that the Board of Adjustment, in Appeal No. BDA 189-045, on application of Harold Ben, represented by Justin Smith, to construct and/or maintain a fence of prohibited material as a special exception to the materials requirements for fences contained in the Dallas Development Code, as amended, is **granted**, subject to the following condition:

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

SECOND: **Shouse**

AYES: 5 – Richardson, Shouse, Agnich, Pollock, Bartos

NAYS: 0 –

MOTION PASSED: 5 – 0 (Unanimously)

FILE NUMBER: BDA189-048(OA)

BUILDING OFFICIAL’S REPORT: Application of Miles Terry for a special exception to the landscape regulations at 2719 Reagan Street. This property is more fully described as Lot 6A, Block 3/1333, and is zoned PD 193 (PDS 137), which requires mandatory landscaping. The applicant proposes to construct and/or maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 2719 Reagan Street

APPLICANT: Miles Terry

REQUEST:

A request for a special exception to the landscape regulations is made to construct and maintain a multifamily use/structure, and not fully meet the landscape regulations, more specifically, the applicant requests to use a synthetic turf for ground cover in the front yard landscape site area and parkway landscape area for the building site.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS IN OAK LAWN:

Section 51P-193-126(a)(4) of the Dallas City Code specifies that the board may grant a special exception to the landscaping requirements of this section if, in the opinion of the Board, the special exception will not compromise the spirit and intent of this section.

When feasible, the Board shall require that the applicant submit and that the property complies with a landscape plan as a condition to granting the special exception.

STAFF RECOMMENDATION:

Approval, subject to the following conditions:

1. Compliance with the submitted revised alternate landscape plan is required.
2. If the director should determine that the synthetic turf should not be authorized or maintained on the public right-of-way, the applicant must restore the parkway landscape area to a living natural ground cover plant.

Rationale:

- The City of Dallas Chief Arborist recommends conditional approval of the request because the special exception would not compromise the spirit and intent of the PD 193 regulations. If the director should determine that the synthetic turf should not be authorized or maintained on the public right-of-way, the applicant must restore the parkway landscape area to a living natural ground cover plant.

BACKGROUND INFORMATION:

Site: PD 193 (PDS 137) (Planned Development, PDS 137)
North: PD 193 (MF-2) (Planned Development, multiple-family)
South: PD 193 (MF-2) (Planned Development, multiple-family)
East: PD 193 (MF-2) (Planned Development, multiple-family)
West: PD 193 (MF-2) (Planned Development, multiple-family)

Land Use:

The subject site is being developed with a multiple-family structure/use. The areas to the north, east, south, and west are developed with a multiple-family land uses.

Zoning/BDA History:

There have 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:

- This request for a special exception to the landscape regulations focuses on constructing and maintaining a multifamily use/structure, and not fully meeting the landscape regulations, more specifically, to use a synthetic turf for ground cover in the front yard landscape site area and parkway landscape area for the building site.
- PD 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that

increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind.

- On March 29, 2019, the applicant submitted a revised alternate landscape plan (Attachment A).
- 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 landscaping regulations of PD 193 (PDS 137). Specifically, the applicant requests to use a synthetic turf for ground cover in the front yard landscape site area and parkway landscape area for the building site.
- The Chief Arborist's memo states the following with regard to "provision":
 - The proposed alternate landscape plan demonstrates compliance with all landscape requirements for area for landscape site area, general planting area, special planting area, and for sidewalks, tree planting zone and screening. The exception is for the use of a synthetic turf in the parkway.
 - The landscape site area (LSA) differs from the general planting area, special planting area, and parkway planting area, in that there is no minimum planting requirements that are outside the general, special, and parkway planting areas. The ordinance specifies the general, special, and parkway planting areas must have 'living trees, shrubs, vines, flowers, or ground cover vegetation.' There are no minimum soil depth requirements for portions of the landscape site area outside of the general and special planting areas.
 - Synthetic turf has multiple manufacturers and methods of installation and operation. The materials and subgrade conditions should allow for permeability through the surface membrane to the soils below to be considered permeable. No pavement (with exception for pedestrians) is permitted in the landscape site area. All landscaping must have an automatic irrigation system. These factors suggest the LSA should be a permeable landscaped area, but the PD 193 ordinance does not give specific criteria for anything but the GPA, SPA, and Parkway planting area.
- The Chief Arborist's memo states the following with regard to "deficiencies":
 - The parkway planting area with synthetic turf would not conform to the standard for living plant materials, including groundcovers, in parkway locations. The landscape site area should also be living plant materials, though the PD 193 ordinance does not give clear direction.
- The City of Dallas Chief Arborist recommends conditional approval of the request because the special exception would not compromise the spirit and intent of the PD 193 regulations. If the director should determine that the synthetic turf should not be authorized or maintained on the public right-of-way, the applicant must restore the parkway landscape area to a living natural ground cover plant.
- The applicant has the burden of proof in establishing the following:
 - The special exception (where a revised alternate landscape plan has been submitted that is deficient in meeting the street trees requirements of the PD 193

landscape requirements) will not compromise the spirit and intent of Section 51P-193-126: Landscape, streetscape, screening, and fencing standards.

- If the Board were to grant this request and impose the submitted revised alternate landscape plan as a condition, the site would be granted use of a synthetic turf for ground cover in the front yard landscape site area and parkway landscape area for the building site.

Timeline:

February 20, 2019: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

March 11, 2019: The Board of Adjustment Secretary randomly assigned this case to the Board of Adjustment Panel C.

March 13, 2019: The Board Administrator/Chief Planner emailed the applicant’s representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the March 27th deadline to submit additional evidence for staff to factor into their analysis; and the April 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.

March 28, 2019: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

April 2, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April 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 Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: April 15, 2019

APPEARING IN FAVOR: Miles Terry, 4213 Dickinson Ave., #23, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Shouse

I move that the Board of Adjustment, in Appeal No. BDA 189-048, on application of Miles Terry, **grant** the request of this applicant for a special exception to the landscape requirements contained in PD 193, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that this special exception will not compromise the spirit and intent of Section 51P-193.126 of the Dallas Development Code.

I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

1. Compliance with the submitted revised landscape plan is required.
2. If the director should determine that the synthetic turf should not be authorized or maintained on the public right-of-way, the applicant must restore the parkway landscape area to a living natural ground cover plant.

SECOND: Bartos

AYES: 3 – Shouse, Agnich, Bartos

NAYS: 2 - Richardson, Pollock

MOTION PASSED: 3 – 2 (**FAILED**)

Motion #2: Pollock

I move that the Board of Adjustment, in Appeal No. BDA 189-048, on application of Miles Terry, **deny** the special exception requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would compromise the spirit and intent of Section 51P-193.126 of the Dallas Development Code.

SECOND: Bartos

AYES: 5 – Richardson, Shouse, Agnich, Pollock, Bartos

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA189-030(OA)

BUILDING OFFICIAL’S REPORT: Application of Rob Baldwin of Baldwin Associates for a special exception to the landscape regulations at 2620 Maple Avenue. This property is more fully described as Lot 1B, Block 3/950, and is zoned PD 193 (HC), which requires mandatory landscaping. The applicant proposes to construct and/or maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 2620 Maple Avenue

APPLICANT: Rob Baldwin

REQUEST:

A request for a special exception to the landscape regulations is made to construct and maintain a multifamily development with a parking structure on a site that is undeveloped, and not to fully provide the required landscape regulations, more specifically, to not meet the required garage screening and landscaping buffer.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS IN OAK LAWN:

Section 51P-193-126(a) (4) of the Dallas City Code specifies that the board may grant a special exception to the landscaping requirements of this section if, in the opinion of the Board, the special exception will not compromise the spirit and intent of this section. When feasible, the Board shall require that the applicant submit, and that the property complies with a landscape plan as a condition to granting the special exception.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted revised alternate landscape plan is required.

Rationale:

- The City of Dallas Chief Arborist recommends approval of the special exception on the basis that it does not appear the request will compromise the spirit and intent of this ordinance.

BACKGROUND INFORMATION:

Site: PD 193 (HC) (Planned Development District)
North: PD 193 (HC) (Planned Development District) & PD 9 (Planned Development District)
South: PD 193 (HC) (SUP#925) (Planned Development District, SUP for a Drive-in facility for a savings loan office)
East: PD 193 (HC) (Planned Development District)
West: PD 193 (HC) (Planned Development District) & PD 9 (Planned Development District)

Land Use:

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

Zoning/BDA History:

1. BDA156-076, Property at 100 Crescent Court (the property southwest of the subject site)

On March 21, 2017, the Board of Adjustment Panel A granted a request for special exception to the landscape regulations and imposed the following conditions: compliance with the submitted alternate landscape plan is required.

The case report stated the request was made to amend certain features shown on an alternate landscape plan (including but not limited to constructing and maintaining an approximately 450 square foot outside pavilion to a restaurant use within the mixed use development) that was imposed as a condition in conjunction with a request for a special exception to the landscape regulations granted on the subject by Board of Adjustment Panel A on August 16, 2016: BDA156-076 on the site currently developed as an approximately 1,450,000 square foot mixed use development (The Crescent).

2. BDA156-076, Property at 100 Crescent Court (the property southwest of the subject site)

On August 16, 2016, the Board of Adjustment Panel A granted a request for special exception to the landscape regulations and imposed the following conditions: 1) compliance with the submitted alternate landscape plan is required; and 2) All landscape improvements in each landscape area on the property as shown on the submitted revised landscape plan must be completed within 18 months of Board action, and landscape improvements for areas B and D as shown on the submitted landscape plan must be completed before the final building inspections of each permit in areas B and D, respectively.

The case report stated the request was made to amend certain features shown on an alternate landscape plan that was imposed as a condition in conjunction with a request for a special exception to the landscape regulations granted on the subject by Board of Adjustment Panel A on March 17, 2015: BDA145-037. The subject site is currently developed as an approximately

1,450,000 square foot mixed use development (The Crescent). Note that the Board of Adjustment Panel A granted the applicant's request to waive the two year time limitation to refile a new application on this site on November 15, 2016).

3. BDA145-037, Property at 100 Crescent Court (the property southwest of the subject site)

On March 17, 2015, the Board of Adjustment Panel A granted a request for special exception to the landscape regulations and imposed the submitted alternate landscape plan as a condition.

The case report stated the request was made to replace an existing drive-through bank facility with an approximately 3,000 square foot restaurant, and not fully providing required landscaping on a site is currently developed as an approximately 1,450,000 square foot mixed use development (The Crescent) (Note that the Board of Adjustment Panel A granted the applicant's request to waive the two year time limitation to refile a new application on this site on June 28, 2016).

4. BDA 134-042, Property at 100 Crescent Court (the property southwest of the subject site)

On June 24, 2014, the Board of Adjustment Panel A granted a request for special exception to the landscape regulations and imposed the submitted revised landscape plan as a condition.

The case report stated the request was made to construct and maintain an approximately 1,400 square foot addition to an approximately 1,450,000 square foot mixed use development (The Crescent), and not fully providing required landscaping. (Note that the Board of Adjustment Panel A granted the applicant's request to waive the two-year time limitation to refile a new application on this site on January 20, 2015).

GENERAL FACTS/ STAFF ANALYSIS:

- This request for a special exception to the landscape regulations focuses on constructing and maintaining a multifamily development with a parking structure on a site that is undeveloped and not to fully providing the required landscaping

regulations, more specifically, to not meet the required perimeter landscape buffer strip along the alley.

- PD 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind.
- On March 29, 2019, the applicant submitted a revised alternate landscape plan (Attachment B) that only added a decorative colored concrete fire lane drive addition beyond what was represented on the original submitted landscape plan.
- The City of Dallas Chief Arborist submitted a memo regarding the applicant's request (see Attachment A). Note that the Chief Arborist did not submit a revised memo because the changes made on the revised alternate landscape plan submitted on March 29, 2019 had no impact in the Arborist's recommendation.
- The Chief Arborist's memo states the following with regard to "request":
 - The applicant is requesting a special exception to the landscaping regulations of PD 193, Part 1 for HC districts. The alternative landscape plan is for new construction of a multifamily development without the required garage screening and landscaping buffer.
- The Chief Arborist's memo states the following with regard to "provision":
 - The proposed alternative landscape plan complies with PD 193(HC) regulations for street trees, sidewalks, and screening of off-street parking. Other standards for landscape site area and general or special plantings are not applicable.
- The Chief Arborist's memo states the following with regard to "deficiencies":
 - The plan does not provide for the required garage screening and landscaping as described in Section 51P-193.126 (b) (3) (D). Aboveground parking structures are required to have a 10-foot landscaping buffer on any side facing a public right-of-way, residential district, residential subdistrict, or residential use, and have a minimum of one tree for every 25 feet of frontage and evergreen shrubs planted three feet on center to create a solid appearance.
 - The building area on the lot, the requirement for a fire lane in conjunction with the alley, and the location of local utilities along the perimeter restrict the use of the space for landscaping.
- The City of Dallas Chief Arborist recommends approval of the special exception on the basis that it does not appear the request will compromise the spirit and intent of this ordinance.
- The applicant has the burden of proof in establishing the following:
 - The special exception (where an alternate landscape plan has been submitted that is deficient in meeting the required garage screening and landscaping buffer of the PD 193 landscape requirements) will not compromise the spirit and intent of Section 51P-193-126: Landscape, streetscape, screening, and fencing standards".

- If the Board were to grant this request and impose the submitted alternate landscape plan as a condition, the site would be granted an exception from full compliance to the requirements of the PD 193 landscape ordinance.

Timeline:

January 9, 2019: 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, 2019: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

February 13, 2019: The Sustainable Development and Construction Department Board of Adjustment Senior Planner emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the February 27th deadline to submit additional evidence for staff to factor into their analysis; and the March 8th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

March 5, 2019: 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 Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

March 7, 2019: The City of Dallas Chief Arborist submitted a memo regarding this application (see Attachment A).

March 18, 2019: The Board of Adjustment Panel C conducted a public hearing on this application, and delayed action on this application per applicant’s request until the next public hearing to be held on April 15, 2019.

March 20, 2019: The Board Administrator wrote the applicant a letter of the board’s action; the March 27th deadline to submit additional evidence for

staff to factor into their analysis; and the April 5th deadline to submit additional evidence to be incorporated into the Board's docket materials.

March 29, 2019: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

April 2, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April 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 Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: April 15, 2019

APPEARING IN FAVOR: Rob Baldwin, 3904 Elm #B, Dallas, TX
Ray Tse, 3090 Olive Street, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Bartos

I move that the Board of Adjustment, in Appeal No. BDA 189-030, on application of Rob Baldwin of Baldwin Associates, **grant** the request of this applicant for a special exception to the landscape requirements contained in PD 193, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that this special exception will not compromise the spirit and intent of Section 51P-193.126 of the Dallas Development Code.

I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted alternate revised landscape plan is required.

SECOND: Pollock

AYES: 5 – Richardson, Shouse, Agnich, Pollock, Bartos

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA189-033(OA)

BUILDING OFFICIAL’S REPORT: Application of David Lloyd, represented by Braden Wayne, for a variance to the front yard setback regulations at 4803 Victor Street. This property is more fully described as 1/2 PT Lot 7, Block A/795, and is zoned PD 98, which requires a front yard setback of 25 feet. The applicant proposes to construct and/or maintain a structure and provide an 18-foot 10 inch front yard setback, which will require a 6-foot 2 inch variance to the front yard setback regulations.

LOCATION: 4803 Victor Street

APPLICANT: David Lloyd
Represented by Braden Wayne

REQUEST:

A variance request to the front yard setback regulations for PD 98 is made to construct/maintain a two-story single family home structure with a total “slab area” of approximately 1,800 square feet or with a total “home size” of approximately 3,200 square feet to be located 18’ 10” from one of the site’s two required front yards (N. Prairie Avenue) or 6’ 2” into this 25’ front yard setback on a site that is undeveloped.

STANDARD FOR A FRONT YARD VARIANCE FOR PD 98:

PD 98 Section 51P-98.107(b)(3) states that the board of adjustment shall have the authority to grant variances from the terms of this article, in accordance with regulations and procedures specified in Article XXIX of Chapter 51 in the following matters:

- Permit such variances of the front yard, side yard, rear yard, lot width, lot depth, coverage, minimum sidewalk or setback standards, off-street parking or off-street loading, or visibility obstruction regulations where the literal enforcement of the provision of this article would result in an unnecessary hardship and where such variance is necessary to permit a specific parcel of land which differs from other parcels of land in the same district by being of such restricted area, shape, or slopes that it cannot be developed in a manner commensurate with the development permitted upon other parcels of land in the same district. A modification of standards established by this article may not be granted to relieve a self-created or personal hardship, not for financial reason only, nor may such modification be granted to permit any person a privilege in developing a parcel of land not permitted by this article to other parcels of land in this district.

STAFF RECOMMENDATION (APRIL 19, 2019):

Denial without prejudice

Rationale:

- The applicant is requesting that the board deny this request without prejudice.

STAFF RECOMMENDATION (MARCH 18, 2019):

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that the subject site is unique and different from most lots in the PD 98 zoning district. It is restrictive in area due to having two, 25' front yard setbacks when most lots in this zoning district have one 25' front yard setback. The 50' wide subject site has 20' of developable width available once a 25' front yard setback is accounted for on the southwest and a 5' side yard setback is accounted for on the northeast. If the lot were more typical to others in the zoning district with only one front yard setback, the 50' wide site would have 40' of developable width. In addition, the variance should be granted because of the restrictive area of the subject site at only 5,300 square feet in the PD 98 zoning district where lots are typically 7,500 square feet.
- In addition, staff concluded that the applicant has shown by submitting a document indicating among other things that the total home size of the proposed home on the subject site is approximately 2,650 square feet, and the average of 12 other properties in the same PD 98 zoning is approximately 3,050 square feet.

BACKGROUND INFORMATION:

Zoning:

Site: PD 98 (Planned Development)
North: PD 98 (Planned Development)
South: PD 98 (Planned Development)
East: PD 98 (Planned Development)
West: PD 98 (Planned Development)

Land Use:

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

Zoning/BDA History:

1. BDA145-040, Property at 4803 Victor Street (the subject site)

On November 12, 2018, the Board of Adjustment Panel C denied variance requests to the front yard setback and to the fence height regulations without prejudice.

The case report stated that the requests were made to construct/maintain a two-story single family home structure with a total “slab area” of approximately 1,800 square feet or with a total “home size” of approximately 3,100 square feet to be located 13’ 10” from one of the site’s two front property lines (N. Prairie Avenue) or 11’ 2” into this 25’ front yard setback and to construct/maintain a fence (an 8’ high solid board-on-board wood fence) higher than 4’ in height in one of the site’s two required front yards (N. Prairie Avenue) on the subject site.

1. BDA145-040, Property at 4734 Tremont Street (two lots northwest of the subject site)

On April 22, 2015, the Board of Adjustment Panel B granted a variance to the front yard setback regulations.

The case report stated that the requests were made to replace an existing one-story nonconforming single-family home structure on the subject site with a two-story single family home with (according to the submitted revised site plan) a building footprint of about 2,000 square feet and a total living area of about 2,600 square feet, part of which would be located 5’ from one of the site’s two front property lines (N. Prairie Avenue) or 20’ into this 25’ front yard setback.

GENERAL FACTS/STAFF ANALYSIS:

- The March 18 original request was for a variance to the front yard setback regulations of 6’ 2” focuses on constructing and maintaining a two-story single family home structure with a total “slab area” of approximately 1,800 square feet or with a total “home size” of approximately 3,200 square feet to be located 18’ 10” from one of site’s two required front yards (N. Prairie Avenue) or 6’ 2” into this 25’ front yard setback.
- PD 98 states that general standards for development of single-family uses with regard to setbacks must be in accordance with the provisions of the Residential - 7,500 Square Feet District of Chapter 51. Structures on lots zoned R-7.5 are required to provide a minimum front yard setback of 25.
- The subject site is located at the northwest corner of Victor Street and N. Prairie Avenue. Regardless of how the structure is proposed to be oriented to front Victor Street, the subject site has 25’ front yard setbacks along both street frontages. The site has a 25’ front yard setback along Victor Street, 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 25’ front yard setback along N. Prairie Avenue, 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. However, the site's N. Prairie Avenue frontage that would function 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 lots to the northwest that front/are oriented southwest towards N. Prairie Avenue.

- The submitted site plan indicates that the proposed home structure is located as close as 18' 10' from the N. Prairie Avenue front property line or 6' 2" into this 25' front yard setback.
- According to DCAD records, there are no "main improvement" or "no additional improvements" for property addressed at 4803 Victor Street.
- The subject site is flat, regular in shape and according to the submitted application is 0.121 acres (or approximately 5,300 square feet) in area. The site is zoned PD 98 where lots are typically 7,500 square feet in area.
- Most lots in the PD 98 zoning district have one 25' front yard setback, two 5' side yard setbacks, and one 5' rear yard setback; this site has two 25' front yard setbacks and one 5' side yard setback.
- The site plan represents that approximately 1/4 of the home structure is located in the 25' N. Prairie Avenue front yard setback.
- The 50' wide subject site has 20' of developable width available once a 25' front yard setback is accounted for on the southwest and a 5' side yard setback is accounted for on the northeast. If the lot were more typical to others in the zoning district with only one front yard setback, the 50' wide site would have 40' of developable width.
- The applicant submitted a document with this application, indicating among other things that the total living area of the proposed home on the subject site is approximately 2,650 square feet, and the average total living area of 12 other properties in the same zoning is approximately 3,050 square feet.
- The applicant has the burden of proof in establishing the following:
 - That permitting such a variance of the front yard where the literal enforcement of the provision of this article would result in an unnecessary hardship and where such variance is necessary to permit a specific parcel of land which differs from other parcels of land in the same PD 98 district by being of such restricted area, shape, or slopes that it cannot be developed in a manner commensurate with the development permitted upon other parcels of land in the same PD 98 district.
 - A modification of standards established by this article may not be granted to relieve a self-created or personal hardship, not for financial reason only, nor may such modification be granted to permit any person a privilege in developing a parcel of land not permitted by this article to other parcels of land in this district.
- 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 a home structure that would be located 18' 10" from one of the site's two front property lines (N. Prairie Avenue) or 6' 2" into this 25' front yard setback.\
- Note that on April 4, 2019 the representative sent the Board Administrator an e-mail requesting that the board deny this request without prejudice (see Attachment B).

Timeline:

- January 23, 2019: 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, 2019: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C. 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”.
- February 13, 2019: The Sustainable Development and Construction Department Senior Planner emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the February 27th deadline to submit additional evidence for staff to factor into their analysis; and the March 8th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the criteria/standards that the board will use in their decision to approve or deny the requests; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- February 27, 2019: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).
- March 5, 2019: 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 Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.
- March 18, 2019: The Board of Adjustment Panel C conducted a public hearing on this application, and delayed action on this application per applicant’s request until the next public hearing to be held on April 15, 2019.
- March 20, 2019: the Sustainable Development and Construction Department Board of Adjustment Senior Planner wrote the applicant a letter of the

board's action; the March 27th deadline to submit additional evidence for staff to factor into their analysis; and the April 5th deadline to submit additional evidence to be incorporated into the Board's docket materials.

April 2, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April 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 Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

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

April 4, 2019: The applicant sent an e-mail requesting that the board deny this request without prejudice (see Attachment B).

BOARD OF ADJUSTMENT ACTION: March 18, 2019

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: Edward Anderson, 4726 Victor St., Dallas, TX

MOTION: Agnich

I move that the Board of Adjustment in Appeal No. BDA 189-033 hold this matter under advisement until April 15, 2019.

SECOND: Sahuc

AYES: 5 – Richardson, Shouse, Agnich, Sibley, Sahuc

NAYS: 0

MOTION PASSED: 5 – 0

BOARD OF ADJUSTMENT ACTION: April 15, 2019

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: Edward Anderson, 45 N. Prairie, Dallas, TX

Jesse Moreno, 4809 Victor, Dallas, TX

MOTION: Shouse

I move that the Board of Adjustment, in Appeal No. BDA 189-033, on application of David Lloyd, represented by Braden Wayne, **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.

SECOND: Agnich

AYES: 5 – Richardson, Shouse, Agnich, Pollock, Bartos

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: April 15, 2019

FILE NUMBER: BDA189-047(OA)

BUILDING OFFICIAL’S REPORT: Application of Michael Horowitz, represented by Kevin Plath, for special exceptions to the landscape and visual obstruction regulations at 4525 Lemmon Avenue. This property is more fully described as Pt of Lot 3, 4-7, Block C/2055, and is zoned PD 193 (O-2), which requires mandatory landscaping, a 45-foot visibility triangle at street intersections, and 20-foot visibility triangles at driveways and/or alley approaches. The applicant proposes to construct and/or maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations, and to locate and maintain items in required visibility triangles which will require special exceptions to the visual obstruction regulations.

LOCATION: 4525 Lemmon Avenue

APPLICANT: Michael Horowitz
Represented by Kevin Plath

REQUESTS:

The following requests have been made on a site that is developed with a three-story office structure/use:

1. a request for a special exception to the landscape regulations is made to remodel and add a four floor and to not fully meet the landscape regulations, more specifically, to not fully meet the required sidewalk dimensions and location, tree planting zones in the parkway, screening of off-street parking, landscape site area requirements, general planting, and special planting conditions;

2. a request for a special exception to the visual obstruction regulations is made to locate vehicles in parking spaces and to maintain portions of planting beds consisting of shrubs and seasonal colors in the 45' visibility triangle at the intersection of Lemmon Avenue and Hawthorne Avenue; and
3. a request for special exceptions to the visual obstruction regulations is made to maintain portions of a 6' high solid wood fence, locate vehicles in parking spaces, and maintain portions of planting beds consisting of shrubs and seasonal colors in the in the 20' visibility triangle at where the alley meets Hawthorne Avenue

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS IN OAK LAWN:

Section 51P-193-126(a) (4) of the Dallas City Code specifies that the board may grant a special exception to the landscaping requirements of this section if, in the opinion of the Board, the special exception will not compromise the spirit and intent of this section. When feasible, the Board shall require that the applicant submit and that the property comply with a landscape plan as a condition to granting the special exception.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

Section 51A-4.602(d) (3) of the Dallas Development Code states that the Board shall grant a special exception to the requirements of the visual obstruction regulations when, in the opinion of the Board, the item will not constitute a traffic hazard.

STAFF RECOMMENDATION (special exception to the landscape regulations):

Approval, subject to the following conditions:

- Compliance with the submitted landscape plan is required.
- 3. The restoration of damaged or non-conforming sidewalks and infrastructure must be made to minimum city standards.
- 4. If any landscape element in the Hawthorne Avenue parkway is removed due to maintenance or death of a tree, the infrastructure must be restored to a safe condition.
- 5. Plant materials in approved locations that die over the course of time must be replaced with similar species as approved on this plan.

Rationale:

- The City of Dallas Chief Arborist recommends approval of the request with conditions listed above on the basis that any compliance efforts without a significant redesign of the parking conditions, and reduction of parking, would not be possible. The Chief Arborist states that the applicant has endeavored to provide the continuation of existing landscaping structure and plants along Hawthorne and to provide for new visual enhancement options to the Lemmon Avenue frontage not yet tried in the area, and that until conditions prevail for new development on this property and with an adjusted site layout, the Chief Arborist presumes the site does

not compromise the spirit and intent of the ordinance where non-conforming sites for landscaping continue with long-standing authorized ground-level uses.

STAFF RECOMMENDATION (45' visibility triangle at the intersection of Lemmon Avenue and Hawthorne Avenue):

Approval, subject to the following condition:

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

Rationale:

- The Sustainable Development Department Senior Engineer has no objections to the requests.
- Staff concluded that requests for special exceptions to the visual obstruction regulations should be granted (with the suggested conditions imposed) because the items to be located in these visibility triangles do not constitute a traffic hazard.

STAFF RECOMMENDATION (20' visibility triangle at the alley and Hawthorne Avenue):

Denial:

Rationale:

- The Sustainable Development Department Senior Engineer recommends that this request be denied.
- Staff concluded that request for special exception to the visual obstruction regulations should be denied because the applicant had not substantiated how the items to be maintained in this visibility triangle does not constitute a traffic hazard.

BACKGROUND INFORMATION:

Site: PD 193 (O-2) (Planned Development, General Retail)
North: PD 193 (MF-2 & GR) (Planned Development, Multifamily & General Retail)
South: CD 16 (Conservation District)
East: PD 193 (GR) (Planned Development, General Retail)
West: PD 193 (MF-2) (Planned Development, Multifamily)

Land Use:

The following requests have been made on a site that is developed with a three-story office structure/use. The area to the north is developed with a public park and retail uses; the area to the west is developed with a public park; and the areas to the south and east are developed with retail uses and 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 (special exception to the landscape regulations):

- This request for a special exception to the landscape regulations focuses on remodeling and adding a four floor to an existing three-story structure on a site that is developed with an office structure/use, and not fully providing the required sidewalk dimensions and location, tree planting zones in the parkway, screening of off-street parking, landscape site area requirements, general planting, and special planting conditions.
- PD 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind.
- An alternate landscape plan has been submitted that does not fully meet landscape requirements including sidewalk dimensions and location, tree planting zones in the parkway, screening of off-street parking, and landscape site area requirements for 20% of the lot, including 60% of the required front yard.
- The City of Dallas Chief Arborist submitted a memo regarding the applicant's request (see Attachment A). The memo states how this request is triggered the enforcement of compliance with requirements of PD 193 zoning regulations.
- The Chief Arborist's memo states the following with regard to "request":
 - The applicant is requesting a special exception to the landscaping regulations of PD 193(O-2). In Part 1, Section 51P-193.126, landscaping requirements include sidewalk dimensions and location, tree planting zones in the parkway, screening of off-street parking, and landscape site area requirements for 20% of the lot, including 60% of the required front yard. General planting and special planting conditions also apply. The applicant must render evidence that the proposed alternate landscape plan does not compromise the spirit and intent of the ordinance.
- The Chief Arborist's memo states the following with regard to "provision":
 - The trigger for landscaping on the property in continued service since before PD 193 regulations is new story and height addition to the existing structure without expanding the horizontal lot coverage. The surface of the property is primarily used for vehicular parking and maneuvering with parking at grade beneath the main structure. The limited renovation and addition to the property will not allow the property to conform to basic landscape standards imposed by ordinance. Only a complete redesign of the property would likely provide the landscape space and parkway conditions to meet the basic PD 193 Part 1 requirements.
 - The new landscape plan will utilize existing landscaping along Hawthorne Avenue which is within the public right-of-way within an aging retaining wall structure and or at grade in a confined space adjacent to the property. Most screening provisions will be in the public right-of-way.

- A primary visual element for the site will be a new perimeter fencing along Lemmon Avenue for security and visual enhancement. Evergreen shrubs and planting beds facing Lemmon Avenue will provide small areas of seasonal color, enhancement and screening.
- The large oak tree at the corner at Hawthorne Avenue near Lemmon is requested to remain. The tree has the appearance of being healthy, but the tree is in a restricted space and is continuing to grow along and into the retaining wall. For the owner to retain the tree, they should attain affirmation by a professional arborist for the continued safe growth of the tree and determine whether the tree conflicts with safety concerns and code regulations for visual obstruction and height clearance above the street.
- The Chief Arborist's memo states the following with regard to deficiencies:
 - Under the proposed plan, the property will not comply with any provision of PD 193 Part 1 regulations, including sidewalks, tree planting zone and street trees, screening of off-street parking, and landscape site areas, with general planting or special planting areas.
- The Chief Arborist recommends conditional approval of the special exception on the basis that any compliance efforts without a significant redesign of the parking conditions, and reduction of parking, would not be possible. The Chief Arborist states that the applicant has endeavored to provide the continuation of existing landscaping structure and plants along Hawthorne and to provide for new visual enhancement options to the Lemmon Avenue frontage not yet tried in the area. Until conditions prevail for new development on this property and with an adjusted site layout, the Chief Arborist states he must presume the site does not compromise the spirit and intent of the ordinance where non-conforming sites for landscaping continue with long-standing authorized ground-level uses. The condition for the Chief Arborist's support of this plan requires the following:
 - The restoration of damaged or non-conforming sidewalks and infrastructure must be made to minimum city standards. If any landscape element in the Hawthorne Avenue parkway is removed due to maintenance or death of a tree, the infrastructure must be restored to a safe condition. Plant materials in approved locations that die over the course of time must be replaced with similar species as approved on this plan.
- The applicant has the burden of proof in establishing the following:
 - The special exception (where the applicant seeks a special exception to the landscape requirements related to street trees, sidewalks, and irrigation) will not compromise the spirit and intent of Section 51P-193-126: Landscape, streetscape, screening, and fencing standards".
- If the Board were to grant this request and impose the submitted alternate landscape plan as a condition, the site would be granted an exception from full compliance to the requirements of sidewalk dimensions and location, tree planting zones in the parkway, screening of off-street parking, landscape site area requirements, general planting, and special planting conditions of the PD 193 landscape ordinance. Additionally, the applicant would be held to the meeting the other conditions suggested by staff if the Board were to impose these conditions as part of this request.

GENERAL FACTS/STAFF ANALYSIS (45' visibility triangle at the intersection of Lemmon Avenue and Hawthorne Avenue):

- This request for special exception to the visual obstruction regulations focuses on locating vehicles in parking spaces and maintaining portions of planting beds consisting of shrubs and seasonal colors in the 45' visibility triangle at the intersection of Lemmon Avenue and Hawthorne Avenue on a site that is developed with a three-story office structure/use.
- Section 51A-4.602(d) of the Dallas Development Code states the following: a person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections, and 20-foot visibility triangles at drive approaches and at alleys on properties zoned PD 193 (O-2)); and
 - between two and a half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- The subject site is zoned PD 193 (O-2) which requires a 45-foot visibility triangle at the intersection of two streets.
- A site plan and elevation have been submitted indicating portions of planting beds consisting of shrubs and seasonal colors, and portions of parking spaces located in the 45' visibility triangle at the intersection of Lemmon Avenue and Hawthorne Avenue.
- The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked "Has no objections to an exception to the visibility triangle at the intersection of Lemmon Avenue and Hawthorne; the request would effectively respect a 30 x 30 triangle".
- The applicant has the burden of proof in establishing how granting this request to maintain portions of parking spaces and placing and maintaining portions of planting beds consisting of shrubs and seasonal colors in the 45' visibility triangle at the intersection of Lemmon Avenue and Hawthorne Avenue does not constitute a traffic hazard.
- Granting this request with a condition imposed that the applicant complies with the submitted site plan and elevation would limit the item to be maintained and located and maintain in the 45' intersection visibility triangle to that what is shown on this document –portions of planting beds consisting of shrubs and seasonal colors, and vehicles in parking spaces.

GENERAL FACTS/STAFF ANALYSIS (visual obstruction special exception alley):

- This request for special exceptions to the visual obstruction regulations focus on maintaining portions of a 6' high solid wood fence, portions of parking spaces, and to place and maintain, portions of planting beds consisting of shrubs and seasonal colors in the in the 20' visibility triangle at where the alley meets Hawthorne Avenue on a site that is developed with a three-story office structure/use.

- The Dallas Development Code states the following: a person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections, and 20-foot visibility triangles at drive approaches and at alleys on properties zoned PD 193 (O-2)); and
 - between two and a half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- The applicant submitted site plan and elevation indicating portions of a 6' high solid wood fence portions of two parking spaces and portions of planting beds consisting of shrubs and seasonal colors located in the 20' visibility triangles at where the alley meets Hawthorne Avenue.
- The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked "recommends denial of the proposed exception to the visibility triangle at the intersection of Hawthorne with the public alley".
- The applicant has the burden of proof in establishing how granting this request for special exceptions to the visual obstruction regulations to maintain portions of a 6' high solid wood fence, portions of planting beds consisting of shrubs an seasonal colors, and portions of two parking spaces in the 20' visibility triangle at where the alley meets Hawthorne Avenue does not constitute a traffic hazard.
- Granting these requests with a condition imposed that the applicant complies with the submitted site plan and elevation would limit the items maintained and located and maintain in 20' visibility triangles at where the alley meets Hawthorne Avenue to that what is shown on this document – portions of a 6' high solid wood fence, portions of planting beds consisting of shrubs an seasonal colors, and vehicles in parking spaces.

Timeline:

February 22, 2019: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

March 11, 2019: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

March 13, 2019: The Board Administrator emailed the applicant's representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the March 27th deadline to submit additional evidence for staff to factor into their analysis; and the April 15th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

April 2, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April 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 Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

April 4, 2019: The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked "Has no objections to an exception to the visibility triangle at the intersection of Lemmon Avenue and Hawthorne; the request would effectively respect a 30 x 30 triangle and recommends denial of the proposed exception to the visibility triangle at the intersection of Hawthorne with the public alley".

April 5, 2017: The City of Dallas Chief Arborist submitted a memo regarding this application (see Attachment A).

APPEARING IN FAVOR: Kevin Plath, 2218 Bryan Street, #200, Dallas, TX
Richard Smith, 9523 Hill View Drive, Dallas, TX

APPEARING IN OPPOSITION: Valynda Ewton, 7525 Lemmon Ave., Dallas, TX
Robert Gaines, 11509 Lemmon Avenue, Dallas, TX

MOTION 1 of 3: Pollock

I move that the Board of Adjustment, in Appeal No. BDA 189-047, on application of Michael Horowitz, represented by Kevin Plath, **grant** the request of this applicant for a special exception to the landscape requirements contained in PD 193, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that this special exception will not compromise the spirit and intent of Section 51P-193.126 of the Dallas Development Code.

I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

1. Compliance with the submitted landscape plan is required.
2. The restoration of damaged or non-conforming sidewalks and infrastructure must be made to minimum city standards.

3. If any landscape element in the Hawthorne Avenue parkway is removed due to maintenance or death of a tree, the infrastructure must be restored to a safe condition.
4. Plant materials in approved locations that die over the course of time must be replaced with similar species as approved on this plan.

SECOND: Bartos

AYES: 5 – Richardson, Shouse, Agnich, Pollock, Bartos

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

MOTION 2 OF 3: Bartos

I move that the Board of Adjustment, in Appeal No. BDA 189-047, on application of Michael Horowitz, represented by Kevin Plath, **grant** the request to maintain items in the visibility triangle at the street intersection as a special exception to the visual obstruction regulation contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard.

I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code, as amended:

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

SECOND: Pollock

AYES: 4 – Richardson, Shouse, Pollock, Bartos

NAYS: 1 - Agnich

MOTION PASSED: 4 – 1

#1 MOTION 3 OF 3: Richardson

I move that the Board of Adjustment, in Appeal No. BDA 189-047, on application of Michael Horowitz, represented by Kevin Plath, **grant** the request to maintain items in the visibility triangle at the alley approach as a special exception to the visual obstruction regulations contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard.

I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECOND: Bartos

AYES: 3 – Shouse, Pollock, Bartos

NAYS: 2 - Richardson, Agnich

MOTION PASSED: 3 – 2 (**FAILED**)

#2 MOTION 3 OF 3: Agnich

I move that the Board of Adjustment, in Appeal No. BDA 189-047, on application of Michael Horowitz, represented by Kevin Plath, **deny** the special exception to maintain items in the visibility triangle at the alley approach **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would constitute a traffic hazard.

SECOND: Richardson

AYES: 5 – Richardson, Shouse, Agnich, Pollock, Bartos

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

The meeting was adjourned at 3:40 p.m. on April 15, 2019.

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.