

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
MONDAY, June 18, 2018**

MEMBERS PRESENT AT BRIEFING: Bruce Richardson, Chair, and Matt Shouse, regular member, Lorlee Bartos, alternate member and Benjamin Halliday, alternate member

MEMBERS ABSENT FROM BRIEFING: Cheri Gambow, regular member, Robert Agnich, regular member and Ryan Behring, regular member

MEMBERS PRESENT AT HEARING: Bruce Richardson, Chair, Robert Agnich, regular member, Matt Shouse, regular member, Lorlee Bartos, alternate member and Benjamin Halliday, alternate member

MEMBERS ABSENT FROM HEARING: Cheri Gambow, regular member and Ryan Behring, regular member

STAFF PRESENT AT BRIEFING: David Cossum, Director, Neva Dean, Asst. Director, Steve Long, Chief Planner/Board Administrator, Oscar Aguilera, Senior Planner, Kanesia Williams, Asst. City Atty., David Navarez, Project Engineer, Charles Trammell, Development Code Specialist and Elaine Hill, Board Secretary

STAFF PRESENT AT HEARING: David Cossum, Director, Neva Dean, Asst. Director, Steve Long, Chief Planner/Board Administrator, Oscar Aguilera, Senior Planner, Kanesia Williams, Asst. City Atty., David Navarez, Project Engineer, Charles Trammell, Development Code Specialist and Elaine Hill, Board Secretary

11:15 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's June 18, 2018 docket.

1:10 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, May 21, 2018 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: June 18, 2018

MOTION: None

The minutes were approved without a formal vote.

FILE NUMBER: BDA178-074(SL)

BUILDING OFFICIAL'S REPORT: Application of Marc Kleinmann for a variance to the front yard setback regulations, and for special exceptions to the fence standards and visual obstruction regulations at 8303 Inwood Road. This property is more fully described as TR 20 in City Block No. 5673 and is zoned R-16(A), which requires a front yard setback of 35 feet, limits the height of a fence in the front yard to 4 feet, requires a fence panel with a surface area that is less than 50 percent open may not be located less than 5 feet from the front lot line, and requires 20-foot visibility triangles at driveway approaches. The applicant proposes to construct/maintain a structure and provide a 15 foot front yard setback, which require a 20 foot variance to the front yard setback regulations, to construct/maintain a 8 foot 2 inch high fence in a required front yard, which will require a 4 foot 2 inch special exception to the fence standards regulations, to construct/maintain a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than 5 feet from the front lot line, which will require a special exception to the fence standards regulations, and to locate/maintain items in visibility triangles at driveway approaches which will require special exceptions of the visual obstruction regulations.

LOCATION: 8303 Inwood Road

APPLICANT: Marc Kleinmann

REQUESTS:

The following requests have been made on a site with two front yard setbacks being developed with a single-family home:

1. A variance to front yard setback regulations of 20' is made to construct and maintain a "10' tall screen tennis fence" "structure" (1' in height over what would make it

merely a fence that would not require variance) to be located 15' from one of the site's two front property lines (Menier Street), or 20' into this 35' front yard setback.

2. A special exception to the fence standards regulations related to fence height of 4' 2" is made to replace an existing fence over 4' in height in the one of the site's two 35' front yard setbacks (Menier Street) with an 8' 2" high "architectural steel plate" fence and gate.
3. A special exception to the fence standards related to fence panel materials/location from the front lot line is made to replace the aforementioned existing fence and gate with the aforementioned proposed fence with panels with surface areas that are less than 50 percent open located in the site's Menier Street front yard setback and as close as on the front lot line (or less than 5' from the front lot line).
4. Special exceptions to the visual obstruction regulations are made to locate and maintain portions of the aforementioned 8' 2" high "architectural steel plate" fence and gate in the 20' visibility triangles on both sides of the driveway into the site from Menier Street.

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.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS REGULATIONS:

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

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

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 (variance):

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 R-16(A) zoning district with a restrictive area caused by having two 35' front yard setbacks. The applicant has submitted a document that represents the location of a 24' pecan tree that would require removal if the structure proposed to be located in the Menier Street front yard setback (in this case, a "10' tall screen tennis fence" "structure") were to provide the required 35' setback.
- Staff concluded that granting this variance would not appear to be contrary to public interest in that it would only allow a "10' tall screen tennis fence" "structure" in the site's Menier Street front yard setback which functions not only as the site's rear yard but as the rear yard to a number of adjacent properties north and south of the subject site.

STAFF RECOMMENDATION (fence special exceptions):

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.

STAFF RECOMMENDATION (Visual obstruction special exceptions):

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 the visibility triangles at the driveway approaches into the site from Menier Street do not constitute a traffic hazard.

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: R-16(A) (Single family residential 16,000 square feet)
West: R-16(A) (Single family residential 16,000 square feet)

Land Use:

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

Zoning/BDA History:

1. BDA123-023, Property at 8408 Menier Street (the property north of the subject site)

On March 20, 2013, the Board of Adjustment Panel B granted requests for a front yard variance of 29' and rear yard variance of 6', and a request for a special exception to fence height regulations of 4'. The board imposed the submitted site plan and elevation as conditions to these requests.

The case report stated the following: a variance to the front yard setback regulations of 29' was requested in conjunction with constructing and maintaining a 1-2 story single family home structure (and pool structure), either part (or all) of which would be located in the site's 35' front yard setback;; a variance to the rear yard setback regulations of 6' was requested in conjunction with constructing and maintaining a single family home structure, part of which would be located in the site's 10' rear yard setback; a special exception to the fence height regulations of 4' was requested in conjunction with replacing an existing 6' high open chain link fence (that was a result of a previously approved fence height special exception on the subject site) with an 8' high solid stucco veneer wall in the site's front yard setback.

2. BDA989-190, Property at 8408 Menier Street (the property north of subject site)

On March 16, 1999, the Board of Adjustment Panel B granted requests for a front yard variance of 27', a rear yard variance of 1' 4", and a request for a special exception to the fence height regulations of 2'. The board denied a request for special exception to the visual obstruction regulations. The board imposed the submitted site plan as a condition to the variance requests and

imposed the submitted site plan and elevation as a condition to the special exception request.

The case report stated that the requests were made to construct/maintain an approximately 2,000 square foot single family home and an approximately 500 square foot garage, and to maintain an existing open chain link fence in the front yard setback and in drive approach visibility triangles.

2. BDA91-074, Property at 8404 Menier Street (the lot two lots north of the subject site)

On December 10, 1991, the Board of Adjustment granted requests for a front yard variance of 24.7' and side and rear yard variances of 2'. The board imposed the following condition: "subject to a landscape plan being submitted to and approved by the Board prior to final inspection. Landscaping should be used to soften the structures appearances along Menier Street.

The case report stated that the requests were made to "permit the improvement of a structure into a single-family use. The structure was built on a separately parcel of land and was used for storage. The property owner did obtain an electrical permit but not the required building permit to erect the structure. As a consequence, the required setbacks for the structure were not provided."

GENERAL FACTS /STAFF ANALYSIS (variance):

- The request for a variance to the front yard setback regulations of 20' focuses on constructing and maintaining a "10' tall screen tennis fence" "structure" (1' in height over what would make it merely a fence that would not require variance) to be located 15' from one of the site's two front property lines (Menier Street), or 20' into this 35' front yard setback.
- The subject site is zoned R-16(A) which requires a 35' front yard setback.
- The subject site has two 35' front yard setbacks (one on the east along Inwood Road, the other on the west along Menier Street) since the code states that if a lot runs from one street to another and has double frontage, a required front yard must be provided on both streets.
- Regardless of how the home is oriented to front Inwood Road (and "back" to Menier Street), the site has two 35' front yard setbacks where the focus of the applicant's request in this application is only to construct and maintain a structure in the site's front yard setback on Menier Street. (No part of the application is made to construct/maintain a structure in the site's Inwood Road front yard setback).
- The submitted site plan denotes that structure to be located in the Menier Street front yard setback is only for a "10' tall screen tennis fence" "structure" (1' in height over what would make it merely a fence that would not require variance). The "structure" is proposed to be located 20' in the 35' Menier Street required front yard setback.
- According to DCAD records, the "main improvement" for property addressed at 8303 Inwood Road is structure built in 2017 with 9,085 square feet of living/total area, and with the following "additional improvements": a 1,514-square foot attached garage, and a 1,278-square foot "outdoor living area".
- The site is flat, rectangular in shape, and according to the application is 1.65 acres (or approximately 69,000 square feet) in area. The site is R-16(A) where lots are typically 16,000 square feet.
- The site has two 35' front yard setbacks and two 10' side yard setbacks. Most lots in this zoning district have one 35' front yard setback, two 10' side yard setbacks, and one 10' rear yard setback.
- The applicant has submitted a site plan that represents the location of a 24' pecan tree that would require removal if the tennis court and fence "structure" were located behind the Menier Street front yard setback.
- 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 to front yard setback regulations 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 to front yard setback regulations 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, 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 “10’ tall screen tennis fence” “structure” located 15’ from the Menier Street front property line or 20’ into this 35’ front yard setback.

GENERAL FACTS/STAFF ANALYSIS (fence special exceptions):

- The requests for special exceptions to the fence standards regulations related to height and fence panel materials/location from a front lot line focus on:
 - 1) replacing an existing fence over 4’ in height in the one of the site’s two 35’ front yard setbacks (Menier Street) with no recorded BDA history with an 8’ 2” high “architectural steel plate” fence and gate parallel to the Menier Street front property line and perpendicular to this line on the north and south sides of the site in this front yard setback;
 - 2) replacing the aforementioned existing fence in this front yard setback with the aforementioned proposed fence with panels with surface areas that are less than 50 percent open located on this front lot line (or less than 5’ from this front lot line).
- The property is located in an R-16(A) zoning district which requires a minimum front yard setback of 35 feet.
- Section 51A-4.602(a)(2) of the Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4’ above grade when located in the required front yard.
- The Dallas Development Code states that in single family districts, a fence panel with a surface area that is less than 50 percent open may not be located less than 5’ from the front lot line.
- The submitted site plan and elevation denotes an 8’ 2” high “architectural steel plate” fence and gate in the Menier Street front yard setback and on this front lot line.
- The fence is represented as being 160’ in length parallel to Menier Street, approximately 35’ in length perpendicular to this front lot line on the north and south sides of the site in this front yard setback, and on this front lot line and approximately 5’ from this pavement line.
- The proposed fence is located across from single family lots that front northward or southward to Hanover Street.
- The Board Administrator conducted a field visit of the site and surrounding area along Menier Street approximately 500’ north and south of the subject site and noted a number of other fences that appeared to be above 4’ in height and in a front yard setback. Only one of these existing fences have recorded BDA history – that being the lot directly north where the Board granted a fence height special exception in 2013: BDA123-023.

- As of June 8, 2018, no letters have been submitted in support of or in opposition to these requests.
- The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to height over 4' in the front yard setback and materials/height of the proposed fence from the front lot line will not adversely affect neighboring property.
- Granting one and/or both of these special exceptions with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding 4' in height in the front yard setback and with fence panels with surface areas less than 50 percent open located less than 5' from the front lot line to be constructed and maintained in the location and of the heights and materials as shown on these documents – fence/gate in the site's Menier Street front yard setback over 4' in height and with fence panels less than 50 percent open located on this front lot line.

GENERAL FACTS/STAFF ANALYSIS (visual obstruction special exceptions):

- The requests for special exceptions to the visual obstruction regulations focus on locating and maintaining an 8' 2" high "architectural steel plate" fence and gate in the 20' visibility triangles on both sides of the driveway into the site from Menier Street on a site being developed with a single-family home.
- Section 51A-4.602(d)(1) 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 single family); and
 - between two and a half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- The submitted site plan and submitted elevation indicates portions a 8' 2" high "architectural steel plate" fence and gate located in the 20' visibility triangles on both sides of the driveway into the site from this street.
- The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked "Has no objections".
- The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulations to locate and maintain an 8' 2" high "architectural steel plate" fence and gate in the 20' visibility triangles on both sides of the driveway into the site from Menier Street do 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 located in the 20' drive approach visibility triangles to that what is shown on these documents 8' 2" high "architectural steel plate" fence and gate.

Timeline:

- April 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.
- May 15, 2108: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- May 15, 2018: The Board Administrator emailed the applicant the following information:
- a copy of the application materials including the Building Official’s report on the application;
 - an attachment that provided the public hearing date and panel that will consider the application; the May 30th deadline to submit additional evidence for staff to factor into their analysis; and the June 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.”
- May 29, 2018: The applicant submitted additional documentation on this appeal to the Board Administrator beyond what was submitted with the original application (see Attachment A).
- June 5, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Sustainable Development and Construction Director the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Sustainable Development and Construction Department Authorized Hearing/Code Amendment Senior Planner, and the Assistant City Attorney to the Board.
- June 7, 2018: The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet marked “Has no objections”.

BOARD OF ADJUSTMENT ACTION: JUNE 18, 2018

APPEARING IN FAVOR: Marc Kleinmann

APPEARING IN OPPOSITION: No one

MOTION #1: **Richardson**

I move that the Board of Adjustment, in Appeal No. BDA 178-074, on application of Marc Kleinmann, **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: 2 – Richardson, Agnich

NAYS: 3 – Shouse, Bartos, Halliday

MOTION FAILED: 2 -3

MOTION #2: **Halliday**

I move that the Board of Adjustment, in Appeal No. BDA 178-074, on application of Marc Kleinmann, **grant** the 20-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, as amended:

- Compliance with the submitted site plan is required.

SECOND: **Shouse**

AYES: 3 – Halliday, Bartos, Shouse

NAYS: 2 – Richardson, Agnich

MOTION FAILED: 3 -2

MOTION #3: **Shouse**

I move to reconsider the original motion to deny without prejudice.

SECOND: **Bartos**

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

Motion was read again by the Chair, Bruce Richardson: I move that the Board of Adjustment, in Appeal No. BDA 178-074, on application of Marc Kleinmann, **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, Agnich, Shouse, Bartos, Halliday

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

MOTION #4: Richardson

I move that the Board of Adjustment, in Appeal No. BDA 178-074, on application of Marc Kleinmann, **grant** the request of this applicant to construct and/or maintain an eight-foot two-inch high fence as a special exception to the height requirement for fences contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property.

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: Bartos

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

MOTION #5: Richardson

I move that the Board of Adjustment, in Appeal No. BDA 178-074, on application of Marc Kleinmann, **grant** the request of this applicant to complete and maintain fence panels with a surface area less than 50 percent open located less than 5 feet from the front lot lines as a special exception to the surface area openness requirement for fences in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property.

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: Halliday

AYES: 4 – Richardson, Agnich, Shouse, Halliday

NAYS: 1 – Bartos

MOTION PASSED: 4 – 1

MOTION #6: Richardson

I move that the Board of Adjustment, in Appeal No. BDA 178-074, on application of Marc Kleinmann, **grant** the request to maintain items in the visibility triangle at the driveway approach 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 adversely affect neighboring property.

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: Agnich

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA178-075(SL)

BUILDING OFFICIAL’S REPORT: Application of Jackson Walker, LLP, represented by Jonathan G. Vinson, to restore a nonconforming use at 4513 Gaston Avenue. This property is more fully described as Lot 2, Block 1/769, and is zoned PD 362 (Subarea 3A; H/72), which limits the legal uses in a zoning district. The applicant proposes to restore a nonconforming group residential facility use, which will require a special exception to the nonconforming use regulations.

LOCATION: 4513 Gaston Avenue

APPLICANT: Jackson Walker, LLP
Represented by Jonathan G. Vinson

REQUEST:

A request for a special exception to restore/reinstate nonconforming use rights for a “group residential facility” use on the subject site that was discontinued for a period of six months or more is made to obtain a Certificate of Occupancy (CO) for this use.

STANDARD FOR A SPECIAL EXCEPTION TO OPERATE A NONCONFORMING USE IF THAT USE IS DISCONTINUED FOR SIX MONTHS OR MORE: Section 51A-4.704(a)(2) of the Dallas Development Code states that the right to operate a nonconforming use ceases if the nonconforming use is discontinued for six months or more, and that the board of adjustment may grant a special exception to this provision only if the owner can show that there was a clear intent not to abandon the use even though the use was discontinued for six months or more.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to operate a nonconforming use if that use is discontinued for six months or more since the basis for this type of appeal is based on whether the board determines that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

Zoning:

Site: PD 362 (Subarea 3A) (H/72) (Planned Development) (Historic)
North: R-7.5(A)(H/72) (Single family residential 7,500 square feet) (Historic)
South: PD 362 (Subarea 3) (H/72) (Planned Development) (Historic)
East: PD 362 (Subarea 3) (H/72) (Planned Development) (Historic)
West: PD 362 (Subarea 3) (H/72) (Planned Development) (Historic)

Land Use:

The subject site is developed with, according to DCAD, an apartment built in 1910. The areas to the north and east are developed with single family uses, the area to the south is developed with multifamily uses, and the area to the west is developed with a vacant retail use.

Zoning/BDA History:

1. BDA178-039, Property at 4513 Gaston Avenue (the subject site) On April 16, 2018, the Board of Adjustment Panel C denied a request for a special exception to restore/reinstate nonconforming use rights for a “group residential facility” use on the subject site that was discontinued for a period of six months or more is made to obtain a Certificate of Occupancy (CO) for this use without prejudice.

2. BDA178-046, Property at 4513 Gaston Avenue (the subject site)

On April 16, 2018, the Board of Adjustment Panel C considered an appeal of an administrative official, more specifically the Building Official's revocation of a certificate of occupancy for a group residential facility on the subject site and affirmed the Building Official's decision.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on restoring/reinstating nonconforming use rights for a "group residential facility" use on the subject site that was discontinued for a period of six months or more in order for the applicant to obtain a Certificate of Occupancy (CO) for this use.
- The Dallas Development Code defines "nonconforming use" as "a use that does not conform to the use regulations of this chapter but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time".
- The nonconforming use regulations state it is the declared purpose of the nonconforming use section of the code that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.
- The nonconforming use regulations also state that the right to operate a nonconforming use ceases if the nonconforming use is discontinued for six months or more, and that the board of adjustment may grant a special exception to operate a nonconforming use that has been discontinued for six months or more if the owner can show that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.
- The site is zoned PD 362 (Subarea A) (H/72) that permits a "group residential facility" use only with a Specific Use Permit (SUP).
- According to DCAD records, the "improvements" for the property addressed at 4513 Gaston Avenue is a 7,004 square foot "apartment" constructed in 1910.
- Building Inspection has stated that these types of special exception requests originate from when an owner/officer related to the property applies for a CO and Building Inspection sees that the use is a nonconforming use. Before a CO can be issued, the City requires the owner/officer related to the property to submit affidavits stating that the use was not abandoned for any period in excess of six months since the issuance of the last valid CO. The owners/officers must submit documents and records indicating continuous uninterrupted use of the nonconforming use, which in this case, they could not.
- The applicant has the burden of proof in establishing the following related to the special exception request:
 - There was a clear intent not to abandon the nonconforming "group residential facility" use on the subject site even though the use was discontinued for six months or more.

- Granting this request would reinstate/restore the nonconforming “group residential facility” use rights that were lost when the use was abandoned for a period of six months or more.
- If restored/reinstated, the nonconforming use would be subject to compliance with use regulations of the Dallas Development Code as any other nonconforming use in the city. (The applicant has been advised by staff of Section 51A-4.704 which is the provision in the Dallas Development Code pertaining to “Nonconforming Uses and Structures”).
- The applicant could make an application for an SUP that, if approved by the City Council, would make the “group residential facility” use on the property a conforming use.

Timeline:

- April 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.
- May 15, 2018: 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”.
- May 15, 2018: The Board Administrator emailed the applicant the following information:
- a copy of the application materials including the Building Official’s report on the application;
 - an attachment that provided the public hearing date and panel that will consider the application; the May 30th deadline to submit additional evidence for staff to factor into their analysis; and the June 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;
 - the section from the Dallas Development Code pertaining to nonconforming uses and structures; and
 - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”
- May 30, 2018: The applicant submitted additional documentation on this appeal to the Board Administrator beyond what was submitted with the original application (see Attachment A).
- June 5, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public

hearings. Review team members in attendance included: the Sustainable Development and Construction Director the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Sustainable Development and Construction Department Authorized Hearing/Code Amendment Senior Planner, and the Assistant City Attorney to the Board.

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

June 7, 2018: The applicant submitted additional documentation on this appeal to the Board Administrator beyond what was submitted with the original application (see Attachment B).

BOARD OF ADJUSTMENT ACTION: JUNE 18, 2018

APPEARING IN FAVOR: Jonathon Vinson, 2323 Ross Ave., #600, Dallas, TX
Robert Rowling, 4001 Maple Ave., #300, Dallas, TX
Lisa Kroencke, 1302 Redwood Cir., Dallas, TX

APPEARING IN OPPOSITION: Frances McGee, 1003 Moreland Ave., Dallas, TX
Patricia Simon, 4519 Gaston Ave., Dallas, TX

MOTION: Bartos

I move that the Board of Adjustment, in Appeal No. BDA 178-075, on application of Jackson Walker, represented by Jonathan G. Vinson, **grant** the request to restore a nonconforming group residential facility as a special exception to the nonconforming use regulations contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that there was a clear intent NOT to abandon the use even though the use was discontinued for six months or more.

SECOND: Shouse

AYES: 5 – Richardson, Agnich, Shouse. Bartos, Halliday

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA178-040(OA)

BUILDING OFFICIAL'S REPORT: Application of Pedro Beltran for variances to the front yard setback regulations, side yard setback regulations, and floor area for structures accessory to single family uses at 6607 Meade Street. This property is more fully described as Lot 9, Block 12/6634 and is zoned R-7.5(A), which requires a front yard setback of 25 feet, a side yard setback of 5 feet, and requires that the floor area of any individual accessory structure on a lot not exceed 25 percent of the floor area of the main building. The applicant proposes to construct/maintain a single family residential structure and provide a 22 foot front yard setback, which will require a 3 foot variance to the front yard setback regulations, a 0 foot side yard setback, which will require a 5 foot variance to the side yard setback regulations, and to construct/maintain an accessory structure with 1,475 square feet of floor area (35%) of the 4,211 square foot floor area of the main structure, which will require a 423 square foot or 10 percent variance to the floor area for structures accessory to single family use regulations.

LOCATION: 6607 Meade Street

APPLICANT: Pedro Beltran

REQUESTS:

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

1. A variance to the front yard setback regulations of 3' is made to maintain a single-family home structure 22' from the front property line or 3' into the 25' front yard setback;
2. A variance to the side yard setback regulations of 5' is made to maintain a single-family home structure 0' from the side property line (the north side property line) or 5' into the 5' side yard setback; and
3. A variance to the floor area regulations for structures accessory to single family uses of 423 square feet or 10 percent is made to maintain an accessory structure with 1,475 square feet of floor area of the 4,211 square feet floor area of the main structure.

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 yard, side yard, and floor area variances):

Denial

Rationale:

- Staff concluded that the applicant had not substantiated how the variances are necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same R-7.5 (A) zoning district.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5 (A) (Single family district 7,500 square feet)
North: R-7.5 (A) (Single family district 7,500 square feet)
South: R-7.5 (A) (Single family district 7,500 square feet)
East: R-7.5 (A) (Single family district 7,500 square feet)
West: R-7.5 (A) (Single family district 7,500 square feet)

Land Use:

The subject site is developed with a single-family home. 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 (front yard variance):

- This request focuses on maintaining a single-family home structure 22' from the front property line or 3' into the 25' front yard setback.
- Structures on lots zoned R-7.5(A) are required to provide a minimum front yard setback of 25'.
- A site plan has been submitted denoting the home is located 22' from the site's front property line (or 3' into the 25' front yard setback).

- DCAD records indicate the following improvements for property located at 6607 Mead Street: “main improvement: a structure with 819 square feet of living area and 1,039 square feet of total area built in 1948” and “additional improvements: a 128-square foot storage building, a 220-square foot enclosed garage, and a 576 square foot detached garage”.
- The subject site is rectangular in shape, flat, and according to the application, is 0.236 acres (or approximately 10,100 square feet) in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed, and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(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-7.5(A) zoning classification.
- If the Board were to grant this front yard setback 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 is a structure to be located as close as 22’ from the site’s front property line or as much as 3’ into the required 25’ front yard setback.

GENERAL FACTS/STAFF ANALYSIS (side yard variance):

- This request focuses on maintaining a structure 0’ from the side property line (the north side property line) or 5’ into the 5’ side yard setback.
- Structures on lots zoned R-7.5(A) are required to provide a minimum side yard setback of 5’.
- A site plan has been submitted denoting an existing structure located on the northern side property line or 5’ into this 5’ side yard setback.
- It appears from the submitted site plan that approximately 50 percent of the existing approximately 680 square foot structure footprint is located in the site’s northern 5’ side yard setback.
- DCAD records indicate the following improvements for property located at 6607 Mead Street: “main improvement: a structure with 819 square feet of living area and 1,039 square feet of total area built in 1948” and “additional improvements: a 128-square foot storage building, a 220-square foot enclosed garage, and a 576 square foot detached garage”.
- The subject site is rectangular in shape, flat, and according to the application, is 0.236 acres (or approximately 10,100 square feet) in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.

- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the side yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed, and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(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-7.5(A) zoning classification.
- If the Board were to grant this side yard setback variance request and impose the submitted site plan as a condition, the structure in the side yard setback would be limited to what is shown on this document which is a structure 0' from the side property line (the north side property line) or 5' into the 5' side yard setback.

GENERAL FACTS/STAFF ANALYSIS (floor area variance):

- The request for a variance to the floor area regulations for structures accessory to single family uses of 423 square feet or 10 percent focuses on maintaining an accessory structure with 1475 square feet of floor area of the 4211 square feet floor area of the main structure.
- The Dallas Development Code Sec. 51A 4-209 (E) (vii) (dd) states:
 - The floor area of any individual accessory structure on a lot, excluding floor area used for parking, may not exceed 25 percent of the floor area of the main building.
- DCAD records indicate the following improvements for property located at 6607 Mead Street: “main improvement: a structure with 819 square feet of living area and 1,039 square feet of total area built in 1948” and “additional improvements: a 128-square foot storage building, a 220 square foot enclosed garage, and a 576 square foot detached garage”.
- The submitted site plan makes the following notations:
 - Existing house slab: 3,081 square feet.
 - Total living area: 4,211 square feet.
 - Proposed/Existing accessory structure: 1,475 square feet or 35 percent.
 - Maximum floor area: 25 percent.
 - Surplus floor area: 10 percent.
- The site plan represents that the accessory structure exceeds the required 25 percent maximum floor area of the main building requirements on the subject site.
- The subject site is rectangular in shape, flat, and according to the application, is 0.236 acres (or approximately 10,100 square feet) in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- The applicant has the burden of proof in establishing the following:

- That granting the variance to the lot coverage 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-7.5 (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-7.5 (A) zoning classification.
- If the Board were to grant the floor area variance request, and impose the submitted site plan as a condition, the building footprints of the structures on the site would be limited to what is shown on this document.

Timeline:

February 15, 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.

May 15, 2018: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

May 17, 2018: The Sustainable Development and Construction Department Senior Planner emailed the applicant the following information:

- a copy of the application materials including the Building Official’s report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the May 30th deadline to submit additional evidence for staff to factor into their analysis; and the June 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.

June 5, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Sustainable Development and Construction Director the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code

Specialist, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Sustainable Development and Construction Department Authorized Hearing/Code Amendment 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: JUNE 18, 2018

APPEARING IN FAVOR: Pedro Beltran, 6607 Meade St., Dallas, TX

APPEARING IN OPPOSITION: No One

MOTION #1: Richardson

I move that the Board of Adjustment, in Appeal No. BDA 178-040, on application of Pedro Beltran, **deny** the variance to the front and side yard setback, and floor area 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, Agnich, Shouse. Bartos, Halliday

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA178-064(SL)

BUILDING OFFICIAL’S REPORT: Application of Robert Baldwin, represented by Baldwin Associates, for a variance to the off-street parking regulation at 5117 W. Lovers Lane. This property is more fully described as Lot 19&20, Block A/5006, and is zoned CR, which requires that the owner of off-street parking must provide screening to separate the parking area from a contiguous residential use or vacant lot if either is in an A, A(A), R, R(A), D, D(A), TH, TH(A), CH, MF, MF(A), MH, or MH(A) district and the parking area serves a nonresidential use. The applicant proposes to construct and maintain a nonresidential structure and not provide the required screening, which will require a variance to the off-street parking regulations.

LOCATION: 5117 W. Lovers Lane

APPLICANT: Robert Baldwin, Represented by Baldwin Associates

REQUEST:

A request for a variance to the off-street parking regulations, more specifically the screening provisions for off-street parking, is made to lease and maintain a particular use that requires a greater number of off-street parking spaces than the original use on the subject site that is developed with a vacant nonresidential structure, and not provided required screening between the required off-street parking on the site for this proposed use and the property to the north across an alley zoned R-7.5(A) and single family residential in use.

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:

Denial

Rationale:

- The applicant had not substantiated how the physical features of the flat, rectangular in shape (137'x 50'), 0.157 acres (or approximately 6,900 square feet) site preclude it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same CR zoning classification.
- Staff concluded that any hardship in this case is self-created in that the required screening that the applicant seeks variance for is prompted by the applicant's proposal/choice to obtain a certificate of occupancy (CO) for a particular use that requires a greater number of off-street parking spaces than the original use, and that the City could issue a new CO to the applicant for the same use that had occupied the site with no screening required or variance to the off-street parking regulations related to required screening.

BACKGROUND INFORMATION:

Zoning:

- Site: CR (Community retail)
- North: R-7.5(A) (Single family residential 7,500-square feet)
- South: CR (Community retail)
- East: CR (Community retail)
- West: CR (Community retail)

Land Use:

The subject site is developed with a vacant nonresidential structure. The area to the north is developed with a single family residential; the areas to the east, south, and west are developed with retail uses.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS (screening of off-street parking variance):

- This request for a variance to the off-street parking regulations focuses on leasing and maintaining a particular use that requires a greater number of off-street parking spaces than the original use on the subject site that is developed with a vacant nonresidential structure, and not providing required screening between the required off-street parking on the site for this proposed use and the property to the north across an alley zoned R-7.5(A) and single family residential in use.
- The Dallas Development Code states the following related to the screening of off-street parking:
 - (1) The owner of off-street parking must provide screening to separate the parking area from:
 - (A) a contiguous residential use or vacant lot if either is in an A, A(A), R, R(A), D, D(A), TH, TH(A), CH, MF, MF(A), MH, or MH(A) district and the parking area serves a nonresidential use; or
 - (B) a contiguous single family or duplex use or a vacant lot if any of these are in an R, R(A), D, D(A), TH, TH(A), or CH district and the parking area serves a multifamily use.
 - (2) If an alley separates a parking area from another use, the use is considered contiguous to the parking area. If a street separates a parking area from another use, the use is not considered contiguous to the parking area.
- The Dallas Development Code states that the screening for off-street parking required under Subsection (f)(1) must be a brick, stone, or concrete masonry, stucco, concrete, or wood wall or fence that is not less than six feet in height. The wall or fence may not have more than ten square inches of open area for each square foot of surface area and may not contain any openings or gates for vehicular

access. The owner of off-street parking must maintain the screening in compliance with these standards.

- The applicant submitted a site plan representing the location of a 6' tall wood fence and rolling gate on the north side of the property between the off-street parking on the site and the property to the north across an alley zoned R-7.5(A) and single family residential in use.
- Building Inspection has interpreted that the screening as represented on the submitted site plan is noncompliant with required screening on this site because of the rolling gate.
- Building Inspection has stated that the required screening that the applicant seeks variance for is prompted by the applicant's proposal/choice to obtain a certificate of occupancy (CO) for a new use that requires a greater number of off-street parking spaces than the original use, and that the City could issue a new CO to the applicant for the same use that had occupied the site with no screening required or variance to the off-street parking regulations related to screening required.
- According to DCAD records, the "improvements" for property addressed at 5117 W. Lovers Lane is a 3,000 square foot "free standing retail store" constructed in 1949.
- The subject site is flat, rectangular in shape (137'x 50'), 0.157 acres (or approximately 6,900 square feet) in area.
- 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 CR zoning classification.
 - The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same CR zoning classification.
- If the Board were to grant the variance request, and impose the submitted site plan as a condition, the applicant would be able to lease the vacant nonresidential structure on the with a particular use that requires a greater number of off-street parking spaces than the original use without required screening between the required off-street parking for this proposed use on the site and the property to the north across an alley zoned R-7.5(A) and single family residential in use.

Timeline:

March 19, 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.

May 15, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

May 15, 2018: The Board Administrator emailed the applicant the following information:

- a copy of the application materials including the Building Official's report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the May 30th deadline to submit additional evidence for staff to factor into their analysis; and the June 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."

June 5, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Sustainable Development and Construction Director the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Sustainable Development and Construction Department Authorized Hearing/Code Amendment 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: JUNE 18, 2018

APPEARING IN FAVOR: Rob Baldwin, 3604 Elm, #B, Dallas, TX

APPEARING IN OPPOSITION: No One

MOTION: **Agnich**

I move that the Board of Adjustment, in Appeal No. BDA 178-064, hold this matter under advisement until August 20, 2018.

SECOND: **Bartos**

AYES: 4 – Richardson, Agnich, Shouse, Bartos,

NAYS: 0

MOTION PASSED: 4 – 0

Board Member Halliday absent when vote taken

FILE NUMBER: BDA178-072(SL)

BUILDING OFFICIAL’S REPORT: Application of Christopher Johnson, represented by Michael R, Coker Company, for a variance to the front yard setback regulations, at 3407 McKinney Avenue. This property is more fully described as part of Lot 9, Block 9/972, and is zoned PD 193 (LC), which requires a front yard setback of 10 feet. The applicant proposes to construct/maintain a structure and provide a 0-foot front yard setback, which will require a 10 foot variance to the front yard setback regulations.

LOCATION: 3407 McKinney Avenue

APPLICANT: Christopher Johnson
Represented by Michael R, Coker Company

REQUEST:

A request for a variance to the front yard setback regulations of 10’ is made to maintain a “brick deck 10” above grade” and “partially covered wood deck 31” above grade” “structures” that are located on the site’s front property line or 10’ into the site’s 10’ front yard setback on a site developed with a restaurant/bar use (Eastwood’s Bar).

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:

Denial

Rationale:

- While staff recognized that the site was slightly irregular in shape, staff concluded that the applicant had not substantiated how this feature of the flat, approximately 8,200 square foot site precludes it from being developed in a manner commensurate with the development upon other parcels of land with the same PD 193 (LC Subdistrict), nor how the size, shape or slope of the site precludes it from being developed with a structure/use that could meet the front yard setback regulations – the site is developed with a structure that in part complies with the front yard setback regulations with the variance in this case requested only to maintain added deck structures in this setback.
- Staff concluded that the applicant had not substantiated how if the Board were to grant this request, it would not be to relieve a self-created or personal hardship, nor for financial reasons only.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	PD 193 (GR) (Planned Development, General Retail)
<u>North:</u>	PD 193 (GR) (Planned Development, General Retail)
<u>South:</u>	PD 193 (GR) (Planned Development, General Retail)
<u>East:</u>	PD 193 (GR) (Planned Development, General Retail)
<u>West:</u>	PD 193 (PDS 13) (Planned Development, Planned Development)

Land Use:

The subject site is developed with a restaurant/bar use (Eastwood's Bar). The areas to the north, east, and south are developed with retail uses, and the area to the west is developed with multifamily use.

Zoning/BDA History:

1. BDA101-064, Property at 3403 McKinney Avenue (the lot south of the subject site)

On October 17, 2011, the Board of Adjustment Panel C denied requests for a variance to the front yard setback regulations and special exception to the visual obstruction regulations without prejudice.

The case report stated that the requests were made to maintain an existing structure in the front yard setback, and to maintain a structure in the 20' visibility triangle at the drive approach on the north side of the site developed with a restaurant structure/use (The Patio Grill).

GENERAL FACTS/STAFF ANALYSIS:

- The request for variance to the front yard setback regulations focuses on maintaining what is represented on the submitted site plan, a “brick deck 10” above grade” and “partially covered wood deck 31” above grade” “structures” that are located on the site’s front property line or 10’ into the site’s 10’ front yard setback on a site developed with a restaurant/bar use (Eastwood’s Bar).
- The site is zoned PD 193 (LC Subdistrict) which requires a minimum front yard setback of 10’.
- According to DCAD records, the “improvements” at 3407 McKinney Avenue is a “restaurant” with 1,966 square feet built in 1964.
- The subject site is flat, slightly irregular in shape, and according to the submitted application is 0.176 acres (or approximately 8,200 square feet) in area. The site is zoned PD 193 (LC Subdistrict).
- The applicant has the burden of proof in establishing the following:
 - That granting the variance 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 IM (Industrial/manufacturing) zoning classification.
 - If the Board were to grant the variance, it would not be to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD 193 (LC) zoning classification.

- If the Board were to grant this request, and impose the submitted site plan as a condition, the structures in the front yard setback would be limited to what is shown on this document.
- Granting this variance to the front yard setback regulations would not provide any relief to any existing or proposed noncompliance on the site related to landscape and/or visual obstruction regulations.

Timeline:

- April 17, 2108: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- May 15, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- May 15, 2018: The Board Administrator 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 May 30th deadline to submit additional evidence for staff to factor into their analysis; and the June 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.”
- May 31, 2018: The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded a revised Building Official’s report to the Board Administrator (see Attachment A).
- June 5, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Sustainable Development and Construction Director the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Sustainable Development and Construction Department Authorized Hearing/Code Amendment 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: JUNE 18, 2018

APPEARING IN FAVOR: Michael R. Coker, 3112 Canton St., Dallas, TX

APPEARING IN OPPOSITION: No One

MOTION #1: Bartos

I move that the Board of Adjustment, in Appeal No. BDA 178-072, on application of Christopher Johnson, represented by Michael R. Coker, **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: Richardson

AYES: 2 – Bartos, Richardson

NAYS: 3 – Agnich, Shouse, Halliday

MOTIN FAILED: 2 – 3

MOTION #2: Agnich

I move that the Board of Adjustment, in Appeal No. BDA 178-072, on application of Christopher Johnson, represented by Michael R. Coker, **grant** the 10-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.

SECOND: Halliday

AYES: 3 – Agnich, Shouse, Halliday

NAYS: 2 – Richardson, Bartos

MOTION FAILED: 3 -2

Motion #3: Agnich

I move that the Board of Adjustment, in Appeal No. BDA 178-072, hold this matter under advisement until August 20, 2018.

SECOND: Shouse

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA178-094(SL)

BUILDING OFFICIAL’S REPORT: Application of Phillip Thompson, represented by Rob Baldwin of Baldwin and Associates, for a variance to the height regulations at 5230 Alcott Street. This property is more fully described as Lot 15, Block C/1997, and is zoned MF-2(A), which limits the maximum building height to 26 feet due to the residential proximity slope. The applicant proposes to construct/maintain a structure with a building height of 36 feet, which will require a 10-foot variance to the height regulations.

LOCATION: 5230 Alcott Street

APPLICANT: Phillip Thompson
Represented by Rob Baldwin of Baldwin and Associates

REQUEST:

A request for a variance to the height regulations (specifically to the residential proximity slope) of up to 10’ is made to complete and maintain a 2 - 3 story duplex structure to a height of 36’ - a height that exceeds the maximum 26’ in height permitted by the residential proximity slope that begins at the single family residentially-zoned property from the south and west zoned R-5(A) by up to 10’.

STANDARD FOR A VARIANCE:

Section 51(A)-3.102(d)(10) of the Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, lot coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

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

STAFF RECOMMENDATION:

Approval, subject to the following conditions:

- Compliance with the submitted site plan and sections/elevations are required.

Rationale:

- Staff concluded that the lot's irregular shape and restrictive area caused by: 1) a relatively small property zoned MF-2(A) of approximately 6,000 square feet (the lot appears smaller than any other lot zoned MF-2(A) within 300'), and 2) a 28' required front yard setback (a setback 8' more restrictive than lots zoned R-5(A) where the typical minimum front yard setback without the NSO is 20' and 13' more restrictive than lots zoned MF-2(A) where the minimum front yard setback would be 15' if the block were not divided by two zoning districts, one of which is in an NSO) preclude it from being developed in a manner commensurate with the development upon other parcels of land on similarly-zoned MF-2(A) that are regular in shape, and more typical/larger in size, and with the typical 15' front yard setback.

BACKGROUND INFORMATION:

Zoning:

- Site: MF-2(A) (Multifamily district)
- North: PD 462 (Planned Development)
- South: MF-2(A) & R-5(A)(NSO 6)(Multifamily and single family districts)(Neighborhood Stabilization Overlay)
- East: MF-2(A) (Multifamily district)
- West: PD 325 & R-5(A)(NSO 6) (Planned Development and single family districts) Neighborhood Stabilization Overlay)

Land Use:

The subject site is being developed with a duplex structure. The area to the north is developed with retail uses; and the areas to the east, south, and west are developed with residential uses.

Zoning/BDA History:

1. BDA178-080, Property at 5230 Alcott Street (the subject site)

On May 21, 2018, the Board of Adjustment Panel C denied a request for variance to the height regulations of 10' without prejudice.

The case report stated that the request was made to complete and maintain a 2 - 3 story duplex structure to a height of 36' - a height that exceeds the maximum 26' in height permitted by the residential proximity slope that begins at the single family residentially-zoned property from the south and west zoned R-5(A) by up to 10'.

GENERAL FACTS /STAFF ANALYSIS:

- The request for a variance to the height regulations (specifically to the residential proximity slope) of up to 10' focuses on completing and maintaining a 2- 3 story duplex structure to a height of 36' - a height that exceeds the maximum 26' in height permitted by the residential proximity slope that begins at the single family residentially-zoned property south and west zoned R-5(A) by up to 10'.
- The subject site is located within a block that is divided by two or more zoning districts. The 5200 block of Alcott Street between N. Garrett Avenue and Henderson Avenue includes properties zoned MF-2(A) and properties zoned R-5(A)(NSO 6).
- The Dallas Development Code states under "General Provisions" of "Minimum front yard" that "If street frontage within a block is divided by two or more zoning districts, the front yard for the entire block must comply with the requirements of the district with the greatest front yard requirement".
- The subject site is zoned MF-2(A) where the minimum front yard setback is 15'.
- Other properties within the 5200 block of Alcott Street between Garrett Avenue and Henderson Avenue are zoned R-5(A)(NSO 6). The front yard setback for these properties in this zoning district within this block is 28', 8' more restrictive than other properties zoned R-5(A) without the NSO where the typical minimum front yard setback is 20'.
- The required front yard setback for the subject site is 28' given its location in this block divided by two or more zoning districts. This setback is 8' more restrictive than lots zoned R-5(A) where the typical minimum front yard setback without the NSO is 20'. The 28' setback is also 13' more restrictive than lots zoned MF-2(A) where the minimum front yard setback would be 15' if the block were not divided by two zoning districts, one of which is in an NSO.
- The maximum height for a structure in a MF-2(A) zoning district is 36', however, any portion of a structure over 26' in height cannot be located above a residential proximity slope.

- In this case, given that the subject site is immediately adjacent to single family residentially-zoned property to the north, south, and west, the height of a structure must comply with a 1:3-slope (or 1 foot in height for every 3 feet away from property in an R, R(A), D, D(A), TH, TH(A) residential zoning district).
- The applicant submitted two section/elevation documents that represent a 1:3-slope (or 1 foot in height for every 3 foot away from property in an R(A) residential zoning district on the structure seeking variance (see Attachment B)). These documents represent a variance need of 9' 6".
- The Building Official's Report states that a variance to the height regulations of 10' is requested since a structure is proposed to reach 36 in height or 10' higher/beyond than the 26' height allowed for the structure as it is located on this subject site.
- According to DCAD records, the "main improvement" at 5230 Alcott Street is a structure built in 2017 with 4,500 square feet of living/total area; and with "additional improvements" listed as two attached garages at 552 and 528 square feet.
- The site is flat, somewhat irregular in shape, and according to the application is 0.137 acres (or approximately 6,000 square feet) in area.
- The subject site is approximately 139' in length on the north, approximately 135' in length on the south, approximately 30' in width on the east, and approximately 60' in width on the west.
- The relatively small MF-2(A) zoned subject site at approximately 6,000 square feet in area has a lesser amount of developable space when a 28' front yard setback must be accounted for on this site as opposed to a more typical 15' front yard setback. The site has a 13' greater front yard setback than most lots in the same zoning in a block not divided by two zoning districts one of which is a single-family zoning district with an additional setback set forth in an NSO.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the height regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed, and substantial justice done.
 - The variance to height regulations is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same MF-2(A) zoning classification.
 - The variance to height setback regulations would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same MF-2(A) zoning classification.
- If the Board were to grant the request and impose the submitted site plans and elevations as a condition, the structure the exceeding the height limit or the RPS would be limited to what is shown on these documents – which, in this case, is a structure that would be exceed the height limit/RPS by up to 10'.

Timeline:

- May 27, 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.
- May 30, 2018: 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”.
- May 30, 2018: The Board Administrator 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 May 30th deadline to submit additional evidence for staff to factor into their analysis; and the June 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.”
- May 31, 2018 The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).
- June 5, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Sustainable Development and Construction Director the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Sustainable Development and Construction Department Authorized Hearing/Code Amendment Senior Planner, and the Assistant City Attorney to the Board.
- No review comment sheets were submitted in conjunction with this application.

June 8, 2018

The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment B).

BOARD OF ADJUSTMENT ACTION: JUNE 18, 2018

APPEARING IN FAVOR:

Rob Baldwin, 3904 Elm St., #B, Dallas, TX
Robert Martinez-Harrison, 5230 Alcott St., Dallas, TX
Justin Harrison, 5230 Alcott St., Dallas, TX
Phillip Thompson, 5230 Alcott St., Dallas, TX

APPEARING IN OPPOSITION:

Doug Meloth, 5226 Alcott St., Dallas, TX
Alan Rister, 5222 Homer St., Dallas, TX
Judy Sullivan, 5217 Homer St., Dallas, TX
Meg Moschetto, 5031 Homer St., Dallas, TX
Francesco Costa, 5218 Alcott St., Dallas, TX
Jean Irwin, 5107 Alcott St., Dallas, TX
Teresa Costa, 5218 Alcott St., Dallas, TX

MOTION: Bartos

I move that the Board of Adjustment, in Appeal No. BDA 178-094, on application of Phillip D. Thompson, **grant** the request of this applicant for a 10-foot variance to the building height requirements contained in the Dallas Development Code, because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

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

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

SECOND: Halliday

AYES: 3 – Shouse, Bartos, Halliday

NAYS: 2 – Richardson, Agnich

MOTION FAILED: 3 – 2

MOTION: Agnich

I move that the Board of Adjustment, in Appeal No. BDA 178-094, on application of Phillip D. Thompson, **deny** the 10-foot variance requested by this applicant with 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, and/or that it is not a restrictive 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/or is a self-created or personal hardship.

SECOND: Richardson

AYES: 2 – Richardson, Agnich

NAYS: 3 – Shouse, Bartos, Halliday

MOTION FAILED: 2 – 3

Both motions failed, therefore the request was deemed denied with prejudice.

5:43 P. M. - Board Meeting adjourned for **June 18, 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.