

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
TUESDAY, JANUARY 20, 2015**

MEMBERS PRESENT AT BRIEFING: Clint Nolen, Vice Chair, Larry French, regular member, Mark Rieves, regular member, Jim Gaspard, alternate member, and Gary Sibley, alternate member

MEMBERS ABSENT FROM BRIEFING: Hector Leija, regular member

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

MEMBERS PRESENT AT HEARING: Clint Nolen, Vice Chair, Larry French, regular member, Mark Rieves, regular member, Jim Gaspard, alternate member, and Gary Sibley, alternate member

MEMBERS ABSENT FROM HEARING: Hector Leija, regular member

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

11:04 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **January 20, 2015** docket.

1:19 P.M.

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

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel A November 18, 2014 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 18, 2014

MOTION: None

The minutes were approved without a formal vote.

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: BDA 134-042

REQUEST: To waive the two year limitation on a final decision reached by Board of Adjustment Panel A on June 24, 2014 - a request for a special exception to the landscape regulations granted subject to compliance with the applicant's submitted revised landscape plan.

LOCATION: 100 Crescent Court

APPLICANT: Robert Reeves of Robert Reeves and Associates, Inc.

STANDARD FOR WAIVING THE TWO YEAR TIME LIMITATION ON A FINAL DECISION REACHED BY THE BOARD:

The Dallas Development Code states that the board may waive the two year time limitation on a final decision reached by the board if there are changed circumstances regarding the property sufficient to warrant a new hearing.

GENERAL FACTS/TIMELINE:

June 24, 2014: The Board of Adjustment Panel A granted a request for special exception to the landscape regulations and imposed the applicant's submitted revised landscape plan as a condition to the request. The case report stated that the request was made to construct/maintain an approximately 1,400 square foot addition to an approximately 1,450,000 square foot mixed use development (The Crescent), and not fully provide required landscaping.

December 31, 2014: The applicant submitted a letter (along with related materials) to staff requesting that the Board waive the two year limitation on the request for a special exception to the landscape regulations granted by Board of Adjustment Panel A on June 24, 2014 (see Attach A). This miscellaneous item request to waive the two year limitation was made in order for the applicant to file a new application for a side yard setback variance on the property.

Note that The Dallas Development Code states the following with regard to board action:

- Except as provided below, after a final decision is reached by the board, no further request on the same or related issues may be considered for that property for two years from the date of the final decision.
- If the board renders a final decision of denial without prejudice, the two year limitation is waived.
- The applicant may apply for a waiver of the two year limitation in the following manner:
 - The applicant shall submit his request in writing to the director. The director shall inform the applicant of the date on which the board will consider the request and shall advise the applicant of his right to appear before the board.
 - The board may waive the two year time limitation if there are changed circumstances regarding the property sufficient to warrant a new hearing. A simple majority vote by the board is required to grant the waiver. If a rehearing is granted, the applicant shall follow the process outlined in the code.

January 6, 2015: The Board Administrator emailed the applicant information regarding his miscellaneous item request (see Attachment B).

BOARD OF ADJUSTMENT ACTION: JANUARY 20, 2015

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

APPEARING IN OPPOSITION: No one

MOTION: Nolen

I move grant the request to waive the two year limitation on a final decision reached by Board of Adjustment Panel A on June 24, 2014 - a request for a special exception to the landscape regulations granted subject to compliance with the applicant's submitted revised landscape plan.

SECONDED: Gaspard

AYES: 5 – Nolen, French, Rieves, Gaspard, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 134-116

BUILDING OFFICIAL'S REPORT: Application of Brian Bergersen, represented by Michael Kendall, for a special exception to the landscape regulations at 10011 N. Central Expressway. This property is more fully described as Lot 31A, Block 7294, and is zoned MU-3(SAH), which requires mandatory landscaping. The applicant proposes to construct and maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 10011 N. Central Expressway

APPLICANT: Brian Bergersen
Represented by Michael Kendall

REQUEST:

A request for a special exception to the landscape regulations is made to complete and maintain a multifamily residential structure/use (The Fountain Apartments), and not fully meet the landscape regulations.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

The board may grant a special exception to the landscape regulations of this article upon making a special finding from the evidence presented that:

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

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

- the extent to which there is residential adjacency;
- the topography of the site;
- the extent to which landscaping exists for which no credit is given under this article;
- and

- the extent to which other existing or proposed amenities will compensate for the reduction of landscaping.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan is required.

Rationale:

- The City’s Chief Arborist supports the request because he feels the applicant has demonstrated how strict compliance with the requirements of Article X would unreasonably burden the use of the property, and has favorably demonstrated the special exception would not negatively affect neighboring property. The Chief Arborist has also concluded that the applicant has given reasonable effort to comply with the intent of the standard ordinance provisions while working with the site restrictions placed on the property.

BACKGROUND INFORMATION:

Zoning:

Site: MU-3(SAH) (Mixed Use, Standard Affordable Housing)
North: GO (A) (General Office)
South: GO (A) (General Office)
East: GO (A) (General Office)
West: MU-3(SAH) (Mixed Use, Standard Affordable Housing)

Land Use:

The subject site is under development. The area to the north is developed with a communications use (Channel 11); the area immediately east is the North Central Expressway; the area to the south is developed with a hotel; and the area to the west is developed with multifamily use.

Zoning/BDA History:

1. BDA 001-193, Property located at 10011 N. Central Expressway (the subject site)

On April 26, 2001, the Board of Adjustment Panel A took the following actions: 1) denied without prejudice a request for a parking special exception of 2 spaces; 2) granted a request for a variance to the front yard (urban form) setback regulations of 9’ (subject to compliance with the submitted site plan and elevations); and 3) granted a request for a variance to the side yard (tower spacing) setback regulations (subject to compliance with the submitted site plan and elevation).

The case report stated that these requests were made in conjunction with constructing/maintaining a four-story, 60' high apartment building (Park Fountain Apartments).

2. BDA 078-071, Property located at 10011 N. Central Expressway (the subject site)

On May 20, 2008, the Board of Adjustment Panel A granted a request for a variance to the front yard (urban form) setback regulations of 17' and imposed the submitted site plan and elevation as conditions to the request. The case report stated that these requests were made in conjunction with constructing and maintaining a 60' high multifamily residential structure (Parc Fountains Apartments) on a site that is undeveloped.

3. BDA 089-075, Property located at 10011 N. Central Expressway (the subject site)

On June 16, 2009, the Board of Adjustment Panel A granted a request for a variance to the front yard (urban form) setback regulations of 17' and imposed the submitted site plan and elevation as conditions to the request. The case report stated that this request was made in conjunction with constructing and maintaining an approximately 54' high multifamily residential structure (The Fountains Apartments) on a site that is undeveloped.

4. BDA 112-095, Property located at 10011 N. Central Expressway (the subject site)

On October 16, 2012, the Board of Adjustment Panel A granted a request for a variance to the front yard (urban form) setback regulations of 17' and imposed the submitted site plan and elevation as conditions to the request. The case report stated that this request was made in conjunction with constructing and maintaining an approximately 54' high multifamily residential structure (The Fountains Apartments) on a site that is undeveloped.

5. BDA 112-122, Property located at 10011 N. Central Expressway (the subject site)

On January 15, 2013, the Board of Adjustment Panel A granted a request for a special exception to the landscape regulations and imposed the submitted revised landscape plan as a condition to this request. The case report stated that this

request was made in conjunction with constructing/maintaining a multifamily residential structure (The Fountain Apartments).

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on completing and maintaining a multifamily residential structure/use (The Fountain Apartments), and not fully meeting the landscape regulations. More specifically, according to the City of Dallas Chief Arborist, the submitted alternate landscape plan does not fully comply with requirements for site trees, street trees, and parking lot trees.
- The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period.
- The City of Dallas Chief Arborist submitted a memo regarding the applicant's request (see Attachment A). The memo states how this request is triggered by the new construction.
- The Chief Arborist's memo lists landscape deficiencies:
 1. The site requires 7 site trees and provides 6 trees on the property. The street frontage requires 3 large trees but 4 small trees are provided.
 2. All required parking must be within 120 feet of the stem of a large canopy tree where in this case, the property has two large canopy trees and two small trees.
- The Chief Arborist's memo lists the following factors for consideration:
 1. The lot limitations include restrictive underground and overhead utilities and utility easements. The extensive level of pavement for parking and maneuvering, the amount of structure with floor area, and the utility restrictions limit available ground-level planting areas within the property.
 2. The property does not have Article X residential adjacency requirements.
 3. In contrast to the previously board approved plan from 2013, this new plan provides for screening of off-street parking and enhanced pedestrian pavement. A significant amendment for the revised plan is the removal of vertical landscape elements along the front of the structure. This was not a mandatory or design standard component of Article X.
 4. The applicant has worked to find ways to adequately place appropriate trees in ground locations not in full conflict with underground or overhead utilities. In doing so, above-ground containers have been removed in favor of placing trees in the soil which is favorable for tree conditions.
- The City of Dallas Chief Arborist recommends approval of the alternate landscape plan because the applicant has demonstrated strict compliance with the requirements of Article X would unreasonably burden the use of the property, and has favorably demonstrated the special exception would not negatively affect neighboring property. He also believes the applicant has given reasonable effort to comply with the intent of the standard ordinance provisions while working with the site restrictions placed on the property.

- The applicant has the burden of proof in establishing the following:
 - Strict compliance with the requirements of the landscape regulations of the Dallas Development Code will unreasonably burden the use of the property; and the special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose the submitted alternate landscape plan as a condition to the request, the site would be provided exception from full compliance with the site tree, street tree, and parking lot tree requirements of Article X: The Landscape Regulations.

Timeline:

September 23, 2014: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

November 11, 2014: 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.”

November 11, 2014: The Board Administrator emailed the applicant’s representative that this application was tentatively scheduled to be heard by Board of Adjustment Panel A at their next available public hearing to be held on Tuesday, January 20, 2015 because this application had history with Board of Adjustment Panel A on the same request previously heard by them.

December 10, 2014: The Board Administrator emailed the applicant’s representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the December 28th deadline to submit additional evidence for staff to factor into their analysis; and the January 9th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

January 6, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction

Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

January 9, 2014: The City of Dallas Chief Arborist submitted a memo regarding the request (see Attachment A).

BOARD OF ADJUSTMENT ACTION: JANUARY 20, 2015

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Rieves

I move to grant that the Board of Adjustment grant application **BDA 134-116** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted landscape plan is required.

SECONDED: French

AYES: 5 – Nolen, French, Rieves, Gaspard, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 134-117

BUILDING OFFICIAL’S REPORT: Application of Ed Simons for special exceptions to the landscape and visual obstruction regulations at 2363 Reagan Street. This property is more fully described as Lot 9. Block 29/2281, and is zoned PD-193 (LC), which requires a 20 foot visibility triangle at driveway approaches and mandatory landscaping. The applicant proposes to increase nonpermeable coverage of a lot and provide an alternate landscape plan, which will require a special exception to the landscape regulations, and to locate and maintain items in a required visibility triangle, which will require a special exception to the visual obstruction regulations.

LOCATION: 2363 Reagan Street

APPLICANT: Ed Simons

REQUESTS:

The following requests have been made on a site that is undeveloped:

1. A special exception to the landscape regulations is made to pave/increase the nonpermeable coverage of the lot, and not fully providing required landscaping.
2. A special exception to the visual obstruction regulations is made to locate and maintain a 6' high open iron fence in the 20' visibility triangle at the driveway approach into the site from Reagan Street.

Note that this application:

- abuts a property to the southwest where the same applicant seeks similar landscape and visual obstruction special exceptions from Board of Adjustment Panel A on January 20th: BDA 134-118, and
- is the same matter regarding an application filed on this property and granted by the Board of Adjustment Panel A in February of 2014 where the applicant re-filed the current application since a building permit or certificate of occupancy was not filed within 180 days from the Board's favorable action.

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:

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 (landscape):

Approval, subject to the following condition:

- Compliance with the submitted landscape plan is required.

Rationale:

- The applicant has substantiated how granting this request would not compromise the spirit and intent of the landscaping requirements of PD 193.
- The City of Dallas Chief Arborist supports the request because the applicant has demonstrated the unified plan reasonably complies with the spirit and intent of PD 193.

STAFF RECOMMENDATION (visual obstruction):

Approval, subject to the following condition:

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

Rationale:

- The applicant has substantiated how granting this request to locate/maintain an open iron fence in in the 20' visibility triangle at the driveway approach into the site from Reagan Street would not constitute a traffic hazard.
- The Sustainable Development and Construction Department Project Engineer has no objections to this request.

BACKGROUND INFORMATION:

Zoning:

Site: PD 193 (LC) (Planned Development, Light Commercial)
North: PD 193 (TH-3) (Planned Development, Townhouse)
South: PD 193 (I-2) (Planned Development, Industrial)
East: PD 193 (LC) (Planned Development, Light Commercial)
West: PD 193 (LC) (Planned Development, Light Commercial)

Land Use:

The subject site is undeveloped. The areas to the north, south, and west appear to be mostly undeveloped land; and the area to the east is the Dallas North Tollway.

Zoning/BDA History:

- | | |
|--|---|
| 1. BDA 134-012, Property at 2363 Reagan Street (the subject site) | On February 18, 2014, the Board of Adjustment Panel A granted requests for special exceptions to the landscape and visual obstruction regulations requested in conjunction with increasing nonpermeable coverage on an undeveloped lot and not fully providing required landscaping, and locating items in the 20' visibility triangle at the driveway approach into the site from Reagan Street. |
| 2. BDA 134-118, Property at 2359 Reagan Street (the lot immediately southwest of subject site) | On January 20, 2015, the Board of Adjustment Panel A will consider requests for special exceptions to the landscape and visual obstruction regulations requested in conjunction with constructing a structure on an undeveloped lot and not fully providing required landscaping, and locating items in the 20' visibility triangle at the driveway approach into the site from Reagan Street. |

3. BDA 134-011, Property at 2359 Reagan Street (the lot immediately southwest of subject site)

On February 18, 2014, the Board of Adjustment Panel A granted requests for special exceptions to the landscape and visual obstruction regulations requested in conjunction with constructing a structure on an undeveloped lot and not fully providing required landscaping, and locating items in the 20' visibility triangle at the driveway approach into the site from Reagan Street.

4. BDA 101-001, Property at 2345 Reagan Street (two lots immediately southwest of subject site)

On March 14, 2011, the Board of Adjustment Panel C granted a special exception to the landscape regulations requested in conjunction with constructing and maintaining a "proposed building expansion" on a site developed with an institutional use/structure (Phoenix House). The board imposed the following conditions to this request: Compliance with the submitted alternate landscape plan is required; If a sidewalk is required by the City, a sidewalk waiver must be approved for Sylvester Street. If a waiver is not required, a sidewalk with a minimum width of four feet (or as required by the Director of Sustainable Development and Construction) must be provided along Sylvester Street; Any tree on the landscape plan that dies must be replaced with at least one tree with a minimum of 3.5" caliper and in close proximity to the original established tree; and no new landscaping may be located in required visibility triangles.

GENERAL FACTS/ STAFF ANALYSIS (Landscape):

- This request focuses on paving/increasing the nonpermeable coverage of an undeveloped lot, and not fully providing required landscaping.
- PD 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind.

- The City of Dallas Chief Arborist states in a memo (see Attachment A) that the request in this case, and the related adjacent case (BDA 134-118) is triggered by new construction on both vacant properties.
- The Chief Arborist notes that the submitted landscape plan is deficient in that the combined properties (BDA 134-117 and BDA 134-118), do not fully provide the Landscape Site Area (LSA) in the front yard, that street trees along Reagan Street are not in the required tree planting zoned of 2.5' – 5' from back of curb, and specific to BDA 134-117, there are no street trees or a sidewalk provided along the Dallas Tollway street frontage.
- The Chief Arborists listed several factors for consideration on this request and to the related adjacent case (BDA 134-118):
 1. the plan is presented as a single, unified development but the project is to be built on two separate properties with their own landscape requirements;
 2. the plan provides for the required number of trees along Sylvester Street and Reagan Street and screens all off-street parking; all other standards apply;
 3. trees along Reagan Street are set back to lessen the conflict with overhead utility lines;
 4. the plan calls for screening vines to grow along the Tollway frontage; and
 5. there is no pedestrian access to the Tollway.
- The Chief Arborist recommends approval of the landscape special exceptions for this application and the adjacent application (BDA 134-118) because the applicant has demonstrated the unified plan reasonably complies with the spirit and intent of PD 193, Part 1.
- The applicant has the burden of proof in establishing the following:
 - The special exception (where a site plan has been submitted that is deficient in meeting the sidewalk, tree, and landscape site area requirements of the PD 193 landscape regulations) 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, the site would be granted exception from full compliance to sidewalk, tree, and landscape site area requirements of the landscape requirements of the Oak Lawn PD 193 landscape ordinance.

GENERAL FACTS/STAFF ANALYSIS (Visual obstruction):

- This request focuses on locating and maintaining a 6' high open iron fence in the 20' visibility triangle at the driveway approach into the site from Reagan Street.
- The Dallas Development Code states the following: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections, and 20 foot visibility triangles at drive approaches and at alleys on properties zoned single family); and
 - between two and a half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- PD 193 defines "visibility triangle" as
 1. where a street designated on the city's thoroughfare plan intersects another street, the portion of a corner lot within a triangular area formed by

- connecting together the point of intersection of adjacent curb lines (or, if there are no street curbs, what would be the normal street curb lines) and points on each of the street curb lines 45 feet from the intersection;
2. where two streets not designated on the city's thoroughfare plan intersect, the portion of a corner lot within a triangular area formed by connecting together the point of intersection of adjacent curb lines (or, if there are no street curbs, what would be the normal street curb lines) and points on each of the street curb lines 30 feet from the intersection;
 3. where an alley or driveway intersects with a street, the portion of a lot within a triangular area formed by connecting together the point of intersection of the edge of a driveway or alley and adjacent street curb line (or, if there are no street curbs, what would be the normal street curb line) and points on the driveway or alley edge and the street curb line 20 feet from the intersection.
- A site/landscape plan has been submitted indicating locating and maintaining a 6' high open iron fence in the 20' visibility triangle at the driveway approach into the site from Reagan Street.
 - An elevation has been submitted indicating that the fence is 6' high and comprised of open metal rails.
 - The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet regarding the applicant's request for a special exception to the visual obstruction regulations marked "Has no objections."
 - The applicant has the burden of proof in establishing how granting the request for special exception to the visual obstruction regulations to locate/maintain a 6' high open iron fence in the 20' visibility triangle at the driveway approach into the site from Reagan Street does not constitute a traffic hazard.
 - Granting this request with a condition imposed that the applicant complies with the submitted site/landscape plan and elevation would limit the item located in the 20' visibility triangle at the driveway into the site from Reagan Street to that what is shown on these documents - a 6' high open iron fence.

Timeline:

- October 1, 2014: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- November 11, 2014: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. 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."
- November 11, 2014: The Board Administrator emailed the applicant that this application was tentatively scheduled to be heard by Board of Adjustment Panel A at their next available public hearing to be held on Tuesday, January 20, 2015 because this application had history

with Board of Adjustment Panel A on the same request previously heard by them.

December 10, 2014: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the December 28th deadline to submit additional evidence for staff to factor into their analysis; and the January 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

January 6, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

January 7, 2015: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet regarding the applicant's request for a special exception to the visual obstruction regulations marked "Has no objections."

January 8, 2015: The City of Dallas Chief Arborist submitted a memo regarding the landscape special exception request within this application (see Attachment A).

BOARD OF ADJUSTMENT ACTION: JANUARY 20, 2015

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Rieves

I move to grant that the Board of Adjustment grant application **BDA 134-117** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: French

AYES: 5 – Nolen, French, Rieves, Gaspard, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 134-118

BUILDING OFFICIAL’S REPORT: Application of Ed Simons for special exceptions to the landscape and visual obstruction regulations at 2359 Reagan Street. This property is more fully described as Lot 7 and part of Lot 8 to be re-platted as Lot 7A, Block 29/2281, and is zoned PD-193 (LC), which requires a 20 foot visibility triangle at driveway approaches and requires mandatory landscaping. The applicant proposes to construct and maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations, and to locate and maintain items in a required visibility triangle, which will require a special exception to the visual obstruction regulations.

LOCATION: 2359 Reagan Street

APPLICANT: Ed Simons

REQUESTS:

The following requests have been made on a site that is undeveloped:

1. A special exception to the landscape regulations is made to construct and maintain a “building”/structure, and not fully providing required landscaping.
2. A special exception to the visual obstruction regulations is made to locate and maintain a 6’ high open iron fence in the 20’ visibility triangle at the driveway approach into the site from Reagan Street.

Note that this application:

- abuts a property to the northeast where the same applicant seeks similar landscape and visual obstruction special exceptions from Board of Adjustment Panel A on January 20th: BDA 134-117, and
- is the same matter regarding an application filed on this property and granted by the Board of Adjustment Panel A in February of 2014 where the applicant re-filed the current application since a building permit or certificate of occupancy was not filed within 180 days from the Board’s favorable action.

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:

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 (landscape):

Approval, subject to the following condition:

- Compliance with the submitted landscape plan is required.

Rationale:

- The applicant has substantiated how granting this request would not compromise the spirit and intent of the landscaping requirements of PD 193.
- The City of Dallas Chief Arborist supports the request because the applicant has demonstrated the unified plan reasonably complies with the spirit and intent of PD 193.

STAFF RECOMMENDATION (visual obstruction):

Approval, subject to the following condition:

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

Rationale:

- The applicant has substantiated how granting this request to locate/maintain an open iron fence in in the 20' visibility triangle at the driveway approach into the site from Reagan Street would not constitute a traffic hazard.
- The Sustainable Development and Construction Department Project Engineer has no objections to this request.

BACKGROUND INFORMATION:

Zoning:

Site: PD 193 (LC) (Planned Development, Light Commercial)
North: PD 193 (TH-3) (Planned Development, Townhouse)
South: PD 193 (I-2) (Planned Development, Industrial)
East: PD 193 (LC) (Planned Development, Light Commercial)
West: PD 193 (LC) (Planned Development, Light Commercial)

Land Use:

The subject site is undeveloped. The areas to the north, south, and west appear to be mostly undeveloped land; and the area to the east is the Dallas North Tollway.

Zoning/BDA History:

1. BDA 134-011, Property at 2359 Reagan Street (the subject site)
On February 18, 2014, the Board of Adjustment Panel A granted requests for special exceptions to the landscape and visual obstruction regulations requested in conjunction with constructing a structure on an undeveloped lot and not fully providing required landscaping, and locating items in the 20' visibility triangle at the driveway approach into the site from Reagan Street.

2. BDA 134-117, Property at 2363 Reagan Street (the lot immediately northeast of subject site)
On January 20, 2015, the Board of Adjustment Panel A will consider requests for special exceptions to the landscape and visual obstruction regulations requested in conjunction with paving/increasing the nonpermeable coverage and not fully providing required landscaping, and locating items in the 20' visibility triangle at the driveway approach into the site from Reagan Street.

3. BDA 134-012, Property at 2363 Reagan Street (the lot immediately northeast of subject site)
On February 18, 2014, the Board of Adjustment Panel A granted requests for special exceptions to the landscape and visual obstruction regulations requested in conjunction with paving/increasing the nonpermeable coverage on an undeveloped lot and not fully providing required landscaping, and locating items in the 20' visibility triangle at the driveway approach into the site from Reagan Street.

4. BDA 101-001, Property at 2345 Reagan Street (the lot immediately southwest of subject site)
On March 14, 2011, the Board of Adjustment Panel C granted a special exception to the landscape regulations requested in conjunction with constructing and maintaining a "proposed building expansion" on a site developed with an institutional use/structure (Phoenix House). The board imposed the following conditions to this request: Compliance with the submitted alternate landscape plan is required; If a sidewalk is required by the City, a sidewalk waiver must be approved for Sylvester Street. If a waiver is not required, a sidewalk with a minimum width of four feet (or as

required by the Director of Sustainable Development and Construction) must be provided along Sylvester Street; Any tree on the landscape plan that dies must be replaced with at least one tree with a minimum of 3.5" caliper and in close proximity to the original established tree; and no new landscaping may be located in required visibility triangles.

GENERAL FACTS/ STAFF ANALYSIS (Landscape):

- This request focuses on constructing and maintaining a “building”/structure” on an undeveloped lot, and not fully providing required landscaping.
- PD 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind.
- The City of Dallas Chief Arborist states in a memo (see Attachment A) that the request in this case, and the related adjacent case (BDA 134-117), is triggered by new construction on both vacant properties.
- The Chief Arborist notes that the submitted landscape plan is deficient in that the combined properties (BDA 134-117 and BDA 134-118) do not fully provide the Landscape Site Area (LSA) in the front yard, that street trees along Reagan Street are not in the required tree planting zoned of 2.5’ – 5’ from back of curb, and specific to BDA 134-117, there are no street trees or a sidewalk provided along the Dallas Tollway street frontage.
- The Chief Arborists listed several factors for consideration on this request and to the related adjacent case (BDA 134-117):
 6. the plan is presented as a single, unified development but the project is to be built on two separate properties with their own landscape requirements;
 7. the plan provides for the required number of trees along Sylvester Street and Reagan Street and screens all off-street parking; all other standards apply;
 8. trees along Reagan Street are set back to lessen the conflict with overhead utility lines;
 9. the plan calls for screening vines to grow along the Tollway frontage; and
 10. there is no pedestrian access to the Tollway.
- The Chief Arborist recommends approval of the landscape special exceptions for this application and the adjacent application (BDA 134-117) because the applicant has demonstrated the unified plan reasonably complies with the spirit and intent of PD 193, Part 1.
- The applicant has the burden of proof in establishing the following:
 - The special exception (where a site plan has been submitted that is deficient in meeting the sidewalk, tree, and landscape site area requirements of the PD 193

landscape regulations) 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, the site would be granted exception from full compliance to sidewalk, tree, and landscape site area requirements of the landscape requirements of the Oak Lawn PD 193 landscape ordinance.

GENERAL FACTS/STAFF ANALYSIS (Visual obstruction):

- This request focuses on locating and maintaining a 6' high open iron fence in the 20' visibility triangle at the driveway approach into the site from Reagan Street.
- The Dallas Development Code states the following: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections, and 20 foot visibility triangles at drive approaches and at alleys on properties zoned single family); and
 - between two and a half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- PD 193 defines "visibility triangle" as
 1. where a street designated on the city's thoroughfare plan intersects another street, the portion of a corner lot within a triangular area formed by connecting together the point of intersection of adjacent curb lines (or, if there are no street curbs, what would be the normal street curb lines) and points on each of the street curb lines 45 feet from the intersection;
 2. where two streets not designated on the city's thoroughfare plan intersect, the portion of a corner lot within a triangular area formed by connecting together the point of intersection of adjacent curb lines (or, if there are no street curbs, what would be the normal street curb lines) and points on each of the street curb lines 30 feet from the intersection;
 3. where an alley or driveway intersects with a street, the portion of a lot within a triangular area formed by connecting together the point of intersection of the edge of a driveway or alley and adjacent street curb line (or, if there are no street curbs, what would be the normal street curb line) and points on the driveway or alley edge and the street curb line 20 feet from the intersection.
- A site/landscape plan has been submitted indicating locating and maintaining a 6' high open iron fence in the 20' visibility triangle at the driveway approach into the site from Reagan Street.
- An elevation has been submitted indicating that the fence is 6' high and comprised of open metal rails.
- The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet regarding the applicant's request for a special exception to the visual obstruction regulations marked "Has no objections."
- The applicant has the burden of proof in establishing how granting the request for special exception to the visual obstruction regulations to locate/maintain a 6' high open iron fence in the 20' visibility triangle at the driveway approach into the site from Reagan Street does not constitute a traffic hazard.

- Granting this request with a condition imposed that the applicant complies with the submitted site/landscape plan and elevation would limit the item located in the 20' visibility triangle at the driveway into the site from Reagan Street to that what is shown on these documents - a 6' high open iron fence.

Timeline:

- October 1, 2014: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- November 11, 2014: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. 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."
- November 11, 2014: The Board Administrator emailed the applicant that this application was tentatively scheduled to be heard by Board of Adjustment Panel A at their next available public hearing to be held on Tuesday, January 20, 2015 because this application had history with Board of Adjustment Panel A on the same request previously heard by them.
- December 10, 2014: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the December 28th deadline to submit additional evidence for staff to factor into their analysis; and the January 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the requests; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- January 6, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

January 7, 2015: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet regarding the applicant's request for a special exception to the visual obstruction regulations marked "Has no objections."

January 8, 2015: The City of Dallas Chief Arborist submitted a memo regarding the landscape special exception request within this application (see Attachment A).

BOARD OF ADJUSTMENT ACTION: JANUARY 20, 2015

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Rieves

I move to grant that the Board of Adjustment grant application **BDA 134-118** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: French

AYES: 5 – Nolen, French, Rieves, Gaspard, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 134-122

BUILDING OFFICIAL'S REPORT: Application of Ed Simons for special exceptions to the fence height regulations at 5100 Park Lane. This property is more fully described as Lot 1G, Block 5/5595, and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and/or maintain a 12 foot 6 inch high fence, which will require an 8 foot 6 inch special exceptions to the fence height regulations.

LOCATION: 5100 Park Lane

APPLICANT: Ed Simons

REQUESTS:

Requests for special exceptions to the fence height regulations of up to 8' 6" are made to maintain the following on a site developed with a single family home:

- In the Park Lane front yard setback: an 8' high solid stucco fence with 9' high stone columns parallel to this street, and entry feature that includes a 12' 6" high open iron gate with approximately 12' high stone columns.
- In the Inwood Road front yard setback: an 8' high stucco wall with 9' high stone columns parallel to this street and perpendicular to this street on the south side of the subject site in this front yard setback.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STAFF RECOMMENDATION:

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

BACKGROUND INFORMATION:

Zoning:

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

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: 1. BDA 101-020, Property at 5100 Park Lane (the subject site)

On February 15, 2011, the Board of Adjustment Panel A granted requests for special exceptions to the fence height regulations of 8' 8" and imposed the submitted site plan and elevation to the requests. The case report stated that the requests were made to construct and maintain in the Park Lane front yard setback an 8' high open wrought iron fence with 9' high stone columns and an approximately 11.5' high open wrought iron gate with 12' 8" high entry gate columns parallel to Park Lane, and an 8' high stucco wall with 9' high stone columns perpendicular to Park Lane on the east side of the subject site ; and in the Inwood Road front yard setback an 8' high stucco wall with 9' high stone columns parallel and perpendicular to Inwood Road on the west and south sides of the subject site.

2. BDA 001-118, Property at 5100 Park Lane (the subject site)

On December 12, 2000, the Board of Adjustment Panel A granted a request for a special exception to the fence regulations of 4', subject to conditions including: compliance with a modified elevation indicating a maximum 6' fence and 7.5' high pilasters/columns and gate, and site/landscape plan. This request was needed in conjunction with constructing and maintaining a maximum 8' high solid masonry wall with 8' high wrought iron gates along Park Lane and Inwood Road.
3. BDA 001-129, Property at 5205 Park Lane (two lots northeast of the site)

On December 12, 2000, the Board of Adjustment Panel A denied a request for a special exception to the fence regulations of 6' 3" without prejudice, needed in conjunction with constructing and maintaining a maximum 7' 8" high open wrought iron fence, 10' high masonry columns and a 10' 3" high entry gate. Staff had recommended that the request should be approved, subject to compliance with the submitted site/landscape plan and elevation.
4. BDA 001-230, Property at 5110 Park Lane (the lot immediately east of the subject site)

On August 20, 2001, the Board of Adjustment Panel C granted a request for a special exception to the fence regulations of 4', subject to the submitted site/landscape plan. The case report stated that this request was made in conjunction constructing and maintaining an approximately 6' high black vinyl chain link and ornamental open metal fence approximately 25' long parallel to Park Lane; and an approximately 6' high black vinyl chain link fence approximately 250' long parallel to Ravine Drive.

5. BDA 967-258, Property at 5121 Park Lane (the lot immediately northeast of the subject site)

On June 24, 1997, the Board of Adjustment Panel A granted requests for special exceptions to the fence regulations of 5' 10" and to the visual obstruction regulations, subject to the submitted site/elevation plan. The case report stated that the requests were made in conjunction constructing and maintaining an approximately 7' 10" high open metal fence with 9' 10" high entry gates in the Park Lane and Ravine Drive front yard setbacks and in drive approach visibility triangles into the site from Ravine Drive.

GENERAL FACTS/STAFF ANALYSIS:

- These requests focus on maintaining the following in the two front yard setbacks on a site developed with a single family home located at the southeast corner of Park Lane and Inwood Road:
 - In the Park Lane front yard setback: an 8' high solid stucco fence with 9' high stone columns parallel to this street, and entry feature that includes a 12' 6" high open iron gate with approximately 12' high stone columns.
 - In the Inwood Road front yard setback: an 8' high stucco wall with 9' high stone columns parallel to this street and perpendicular to this street on the south side of the subject site in this front yard setback.
- 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 subject site is located at the southeast corner of Park Lane and Inwood Road. Even though the Park Lane frontage of the site appears to function as the site's front yard and the Inwood Road frontage appears to function as one of the site's two side yards, the site has front yard setbacks along both street frontages. The site has a front yard setback along Park Lane given that this frontage is the shorter of the two street frontages which is always deemed a front yard on a corner lot, and a front yard setback along Inwood Road the longer of the two frontages usually deemed a side yard on a corner lot but a front yard in this case nonetheless in order to maintain the continuity of the established front yard setback of lots immediately south that front westward onto Inwood Road.
- The applicant submitted a revised site plan and revised elevation of the proposal in the front yard setbacks dated 12/11/2014 that reaches a maximum height of 12' 6".
- The applicant also submitted a partial site/landscape plan/full elevations document dated 6 Jan. 2015 that (according to the applicant) is the same representation of the proposal made on revised plans dated 12/11/2014 but with adding certain landscape materials.
- The following additional information was gleaned from the revised site plan for the proposal *along Park Lane*:
 - The proposal is shown to be approximately 170' in length parallel to the street.

- The fence is shown to be located approximately on the property line and approximately 16' from the pavement line. (The gate is shown to be located approximately 8' from the property line and approximately 24' from the pavement line).
- The following additional information was gleaned from the revised site plan for the proposal *along Inwood Road*:
 - The proposal is shown to be approximately 330' in length parallel to the street, and approximately 37' perpendicular on the south side of the site in the front yard setback.
 - The fence is shown to be located approximately 3' from the property line and approximately 14' from the pavement line. (The gate is shown to be located approximately 12' from the property line and approximately 30' from the pavement line).
- The existing fence *along Park Lane* is located on the site where one single family home has direct frontage – a property with an approximately 9' high open metal fence with 11' high masonry columns with no recorded BDA history.
- The existing fence *along Inwood Road* is located on the site where one single family home has direct frontage – a home/lot with an approximately 5' high open chain link fence in its front yard setback with no recorded BDA history.
- The Board Administrator conducted a field visit of the site and surrounding area along Park Lane (generally from Inwood Road approximately 500 feet to the east) and along Inwood Road (approximately 500 feet north and south of the site) and noted the following additional visible fences beyond what has been described above four feet high which appeared to be located in the front yard setback beyond the two fences mentioned above. (Note that these locations and dimensions are approximations):
 - An approximately 6' high ornamental open metal fence immediately east of the site on Park Lane that appears to be the result of an approved fence height special exception in 2001: BDA001-230.
 - An approximately 8' high open metal fence with 8.5' high columns northeast of the site on Park Lane that appears to be the result of an approved fence height special exception in 1997: BDA 967-258.
 - On the lot immediately north, an approximately 10' high solid concrete wall on Inwood Road and an approximately 6' high open iron picket fence on Park Lane with no recorded BDA history.
- As of January 12, 2015, 6 emails/letters had been submitted in support of the request, and no letters had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exceptions to the fence height regulations of 8' 6" will not adversely affect neighboring property.
- Granting these special exceptions of up to 8' 6" with a condition imposed that the applicant complies with the submitted revised site plan and revised elevation would require the proposal exceeding 4' in height in the front yard setbacks to be maintained in the location and of the heights and materials as shown on these documents. Note that the City cannot enforce any landscape materials shown on the applicant's partial site/landscape plan/full elevations document dated 6 Jan. 2015 that are located in the public right-of-way if the Board were to impose this document as a condition to these requests.

Timeline:

October 13, 2014: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

November 11, 2014: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. 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.”

November 11, 2014: The Board Administrator emailed the applicant that this application was tentatively scheduled to be heard by Board of Adjustment Panel A at their next available public hearing to be held on Tuesday, January 20, 2015 because this application had history with Board of Adjustment Panel A on the same request previously heard by them.

December 10, 2014: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the December 28th deadline to submit additional evidence for staff to factor into their analysis; and the January 9th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

December 29, 2014: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

January 6, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

January 7, 2015: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment B).

January 9, 2014: The newly designated representative submitted additional information to staff beyond what was submitted with the original application (see Attachment C).

BOARD OF ADJUSTMENT ACTION: JANUARY 20, 2015

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Rieves

I move to grant that the Board of Adjustment grant application **BDA 134-122** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: French

AYES: 5 – Nolen, French, Rieves, Gaspard, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 145-001

BUILDING OFFICIAL'S REPORT: Application of Jose R. Villatoro, Jr. for a special exception to the landscape regulations at 1215 Hartsdale Drive. This property is more fully described as Lot 1, Block 1/6171, and is zoned MF-2(A), which requires mandatory landscaping. The applicant proposes to construct and/or maintain a nonresidential structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 1215 Hartsdale Drive

APPLICANT: Jose R. Villatoro, Jr.

REQUEST:

A request for a special exception to the landscape regulations is made for the following two reasons:

1. To not maintain a portion of the 10' wide required landscape buffer strip or the required buffer trees along the northern portion of the site where there is residential adjacency with a multifamily use.
2. To maintain a number of parking spaces not in compliance with parking lot tree requirements.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

The board may grant a special exception to the landscape regulations of this article upon making a special finding from the evidence presented that:

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

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

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

STAFF RECOMMENDATION:

Approval, subject to the following conditions:

- Compliance with the submitted alternate landscape plan is required with the following additional provisions.
 - (1) One additional large canopy tree must be planted within a minimum of 50 square feet landscape area, and being located west of, and no more than 200 feet from, the new building addition, and within 60 feet distance from the southern property line.
 - (2) Any required perimeter buffer strip tree, or parking lot tree, to be removed must be replaced with a minimum of one large canopy tree.

Rationale:

- The City's Chief Arborist conditionally recommends approval of the applicant's request. Concerning the 10' wide landscape buffer strip and buffer trees required along the 502.30 linear feet defining the northern perimeter of the property, of which approximately 241 linear feet is a non-permeable surface, the applicant has demonstrated that strict compliance with the requirements of Article X would unreasonably burden the use of the property, and he has favorably demonstrated the special exception would not negatively affect neighboring property. However, the alternate landscape plan does not fully meet the requirements for parking lot trees, and the City's Chief Arborist recommends the addition of one tree, in proximity to the deficient parking lot area, would appropriately help mitigate this deficiency.

BACKGROUND INFORMATION:

Zoning:

- Site: MF-2(A) (Multifamily Residential District)
North: MF-2(A) (Multifamily Residential District) and TH-3(A) (Townhouse Residential District)
South: PD714 (Subdistrict 5) (Mixed Use District Balanced With Residential, Commercial, and Retail Uses)
East: PD 714 (Subdistrict 5) (Mixed Use District Balanced With Residential, Commercial, and Retail Uses) and R-7.5(A) (Single Family Residential District)
West: MF-2(A) (Multifamily Residential District)

Land Use:

The subject site is developed with a church. The area to the north is developed with multifamily residential units and single family housing; the area to the east is developed with a church and a car wash; the area to the south is developed with a retail use; and the area to the west is developed with multifamily 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:

- This request focuses on constructing and maintaining an addition to the existing floor area of the church (Iglesia Evangelica Apostoles y Profetas), and not fully meeting the landscape regulations. More specifically, according to the City of Dallas Chief Arborist, the submitted alternate landscape plan does not fully comply with requirements for a 10' wide landscape buffer strip or required buffer trees needed when adjacent to residential zoning. In addition, the plan does not comply with requirements for parking lot trees.
- The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period.
- The City of Dallas Chief Arborist submitted a memo regarding the applicant's request (see Attachment A). The memo states how this request is triggered by the new construction.
- The Chief Arborist's memo lists landscape deficiencies:

1. Because of residential adjacencies with multifamily uses, the site requires a 10' wide landscape buffer strip and required buffer trees along the northern and western perimeters of the property. The proposed landscape plan shows the 10' wide landscape buffer strip and required buffer trees along the western edge of the site, but it does not fully provide the strip and trees along the northern perimeter of the site.
 2. A parking lot tree for approximately 20 parking spaces, located at the southern portion of the property, adjacent to the commercial district, is not provided for.
- The Chief Arborist's memo lists the following factors for consideration:
 1. In June of 2001, a landscape inspection was not completed on the property in conjunction with new construction.
 2. A new permit has been applied for, which has triggered a review of the landscaping.
 3. The property does not meet Article X residential adjacency requirements along the northern and western perimeters of the site.
 4. The submitted alternate landscape plan reduces the paved surface along the western perimeter to create a 10' landscape buffer with the minimum required trees. This is not the case with the northern perimeter of the site, where the existing fire lane creates a non-permeable portion within the area for the required 10' wide landscape buffer strip and required buffer trees.
 5. The applicant has established landscaping along the front yard of the property, including screening shrubs, a street buffer, foundation plantings, additional hardship amenities, and a row of live oak street trees which exceed the minimum number required.
 - The City of Dallas Chief Arborist recommends conditional approval of the alternate landscape plan because the applicant has identified one area where strict compliance with the requirements of Article X would unreasonably burden the use of the property, and has favorably demonstrated the special exception would not negatively affect neighboring property. The City's Chief Arborist also believes the applicant has given reasonable effort to comply with the intent of the standard ordinance provisions while working with the site restrictions placed on the property. However, the City's Chief Arborist recommends the addition of one tree to help mitigate the deficiency of a parking lot tree required in the southern portion of the property, a portion where at least 20 required parking spaces are not located within 120' from the stem of a large canopy tree.
 - The applicant has the burden of proof in establishing the following:
 - Strict compliance with the requirements of the landscape regulations of the Dallas Development Code will unreasonably burden the use of the property; and the special exception will not adversely affect neighboring property.
 - If the Board were to grant this request and impose the submitted alternate landscape plan as a condition to the request, the site would be provided exception from full compliance with the required landscape buffer strip and the required buffer trees as required per Article X: The Landscape Regulations.

Timeline:

September 23, 2014: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

December 10, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

December 10, 2014: The Current Planner emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the December 29th deadline to submit additional evidence for staff to factor into their analysis; and the January 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the section from the Dallas Development Code pertaining to landscape variances and special exceptions; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

January 6, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

January 6, 2015: The Current Planner e-mailed the applicant to ask whether or not he would like to amend his application from a landscape variance request, which staff could not support, to a special exception request, which staff could support. The applicant informed the Current Planner that he wanted to amend his application.

January 8, 2015: The City of Dallas Chief Arborist submitted a memo regarding the request (see Attachment A).

BOARD OF ADJUSTMENT ACTION: JANUARY 20, 2015

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Rieves

I move to grant that the Board of Adjustment grant application **BDA 145-001** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted alternate landscape plan is required with the following additional provisions:
- One additional large canopy tree must be planted within a minimum of 50 square feet landscape area, and being located west of, and no more than 200 feet from, the new building addition, and within 60 feet distance from the southern property line.
- Any required perimeter buffer strip tree, or parking lot tree, to be removed must be replaced with a minimum of one large canopy tree.

SECONDED: French

AYES: 5 – Nolen, French, Rieves, Gaspard, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 145-008

BUILDING OFFICIAL’S REPORT: Application of Robert Baldwin of Baldwin Associates for a special exception to the fence height regulations at 9246 Sunnybrook Lane. This property is more fully described as Lot 15A and part of Lot 16, Block 12/5585, and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain an 8 foot high fence, which will require a 4 foot special exception to the fence height regulations.

LOCATION: 9246 Sunnybrook Lane

APPLICANT: Robert Baldwin of Baldwin Associates

REQUEST:

The following request has been made on a site that is developed with a single family home/use:

1. A request for a special exception to the fence height regulations of 4’ is made to construct and maintain an 8’ high limestone masonry fence towards the northwest of the property, a 6’-2” high painted steel fence between 2 evergreen hedges towards the west and south sides of the property, one 6’-2” high painted steel service gate towards the south of the property, and one 8’ high painted steel vehicular gate towards the northwest of the property, parallel and perpendicular to Sunny Brook Lane.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STAFF RECOMMENDATION (FENCE HEIGHT):

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

BACKGROUND INFORMATION:

Zoning:

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

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:

1. BDA 001-203, Property at 9239 Sunny Brook Lane (west of the subject site) On May 21, 2001, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 4'. The case report stated that the request was made in conjunction with constructing and maintaining two sections of an 8' high stucco screen wall in the required 40' front yard.

GENERAL FACTS/STAFF ANALYSIS (FENCE HEIGHT):

- This request focuses on constructing and maintaining an 8' high limestone veneer masonry fence towards the northwest of the property, a 6'-2" high painted steel fence between 2 evergreen hedges towards the west and south sides of the property, one 6'-2" high painted steel service gate towards the south of the property, and one 8' high painted steel vehicular gate towards the northwest of the property, parallel and perpendicular to Sunny Brook Lane, in the 40' required front yard on a site developed with a single family home/use.
- 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.
- R-1ac(A) Single Family District requires the minimum front yard setback to be 40'.

- The following additional information was gleaned from the submitted revised site plan:
 - The proposal is represented as being approximately 832' in length parallel to Sunny Brook Lane, and extending as close as 38' to the street on the south side of the property in the front yard setback.
 - The proposal is represented as being at a distance ranging from 0' to 40' from the property line.
- The Current Planner conducted a field visit of the site and surrounding area and noted two other visible fences above 4 feet in height which appeared to be located in front yard setbacks. One fence has recorded BDA history.
- Four homes and one undeveloped site front the proposal.
- As of January 9th, no letters have been submitted in support of or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' will not adversely affect neighboring property.
- Granting this special exception of 4' with a condition imposed that the applicant complies with the submitted landscape plan would require the proposal exceeding 4' in height in the front yard setback to be maintained in the location and of the heights and materials as shown on these documents.

Timeline:

December 1, 2014: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

December 10, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

December 10, 2014: The Current Planner emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the December 29th deadline to submit additional evidence for staff to factor into their analysis; and the January 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the section from the Dallas Development Code pertaining to fence height regulations; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

January 6, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Assistant Building Official, the Board

Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: JANUARY 20, 2015

APPEARING IN FAVOR: Rob Baldwin, 3904 Elm St, #B, Dallas, TX

APPEARING IN OPPOSITION: Douglas Orr, 4818 Brookview , Dallas, TX

MOTION #1: Nolen

I move that the Board of Adjustment, in request No. **BDA 145-008**, on application of Robert Baldwin, **deny** the special exception requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: NO ONE

*Motion failed for lack of a second.

MOTION #2: Nolen

I move that the Board of Adjustment, in request No. **BDA 145-008**, on application of Robert Baldwin, **grant** the request to construct and maintain an 8 foot high fence in the property's front yard as a special exception to the fence height requirements in the Dallas Development Code, 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:

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

SECONDED: French

AYES: 4 – French, Rieves, Gaspard, Sibley

NAYS: 1 - Nolen

MOTION PASSED: 4 – 1

FILE NUMBER: BDA 145-006

BUILDING OFFICIAL'S REPORT: Application of Danny Sipes for a variance to the front yard setback regulations at 6310 Mercedes Avenue. This property is more fully described as Lot 1, Block E/2849, and is zoned R-7.5(A), which requires a front yard setback of 25 feet. The applicant proposes to construct and maintain a single family residential accessory structure and provide a 13 foot front yard setback, which will require a 12 foot variance to the front yard setback regulations.

LOCATION: 6310 Mercedes Avenue

APPLICANT: Danny Sipes

REQUEST:

The following appeal has been made on a site currently developed with a single family home:

1. a variance to the front yard setback regulations of 12 feet is requested to allow the construction of a single family residential accessory structure, part of which is to be located in one of the site's two 25' front yard setbacks on Mercedes Avenue and Alderson Street.

STANDARD FOR A VARIANCE:

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

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

STAFF RECOMMENDATION:

Denial

Rationale:

- The applicant had not substantiated at the time of the January 6th staff review team meeting how the features of the flat, virtually rectangular in shape, (approximately 372.77' x 447.75'), or 3.8 acre (or approximately 165,528 square foot) site precluded

him from developing it in a manner commensurate with other developments found on similarly-zoned R-7.5(A) lots.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5(A)—Single Family Residential District (7,500 square feet)
North: R-7.5(A)—Single Family Residential District (7,500 square feet)
South: R-7.5(A)—Single Family Residential District (7,500 square feet)
East: R-7.5(A)—Single Family Residential District (7,500 square feet)
West: R-7.5(A)—Single Family Residential District (7,500 square feet)

Land Use:

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

Zoning/BDA History:

1. BDA 990-203, 6310 Mercedes Avenue (the subject site) On January 18, 2000, the Board of Adjustment Panel B granted a request for a variance to the height regulations of 8.5', needed in conjunction with remodeling and constructing an addition to an existing single family home. The staff recommendation was denial without prejudice.
2. BDA 012-115, 6310 Mercedes Avenue (the subject site) On December 11, 2001, the Board of Adjustment Panel A denied a request for a special exception to the fence height regulations of 2 feet with prejudice. This request was needed in conjunction with adding and maintaining a 2' high open cast iron picket fence to be located atop an existing 4' high approximately 290' long stone wall on both ends of the site, and to replace an existing approximately 5' high approximately 150' long open iron fence with a combination 4' high stone wall/2' high open cast iron fence to be located between the existing 4' high stone wall at either ends of the site. The staff recommendation was denial without prejudice.
3. BDA 012-115, 6310 Mercedes Avenue (the subject site) On February 26, 2002, the Board of Adjustment Panel A approved a request to waive the 2-year time limitation on a final "denial with prejudice" decision made for a special exception to the fence height regulations of 2 feet.

4. BDA 012-161, 6310 Mercedes Avenue (the subject site) On May 28, 2002, the Board of Adjustment Panel A approved a request for a special exception to the fence height regulations of 4 feet. This request was needed in conjunction with constructing and maintaining a 6' fence with 8' columns. The staff recommendation was approval subject to a revised "Planting Plan" and a revised "Partial Site Plan/Elevation from Street (Mercedes)."

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining a single family residential accessory structure, part of which is to be located in one of the site's two 25' front yard setbacks on Mercedes Avenue and Alderson Street.
- Structures on lots zoned R-7.5(A) are required to provide a minimum front yard setback of 25'.
- The subject site is located at the southeast corner of Mercedes Avenue and Alderson Street and has two 25' front yard setbacks, one along each street. The site has a 25' front yard setback along Alderson 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 Mercedes Avenue, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where 10' setback is required for permitted uses other than single family or duplex. But the site's Mercedes Avenue frontage is side yard treated as a front yard setback nonetheless to maintain the continuity of the established front yard setback established by the lots to the north zoned R-7.5(A) that front/are oriented southward towards Mercedes Avenue.
- A scaled site plan has been submitted indicating that a portion of the proposed two-story, approximately 1,986 square foot structure is located 13' from the Alderson Street front property line, or 12' into this 25' front yard setback. The structure will not encroach into the front yard setback along Mercedes Avenue.
- According to the applicant, 418 square feet, or 21.05%, of the first floor of the single family residential accessory structure encroaches into the front yard setback along Alderson Street.
- According to DCAD records, the main improvement at property addressed 6310 Mercedes Avenue was built in 1922 and has 12,222 square feet of living area.
- The subject site is flat, virtually rectangular in shape, (approximately 372.77' x 447.75'), and according to the submitted application is 3.8 acres (or approximately 165,528 square feet) in area. The site is zoned R-7.5(A) where this lot has two 25' front yard setbacks and two 10' side yard setbacks when most lots in this zoning district have one front yard setback, two side yard setbacks, and one rear yard setback.
- The approximately 448' wide site has approximately a 413' width for development once a 25' front yard and a 10' side yard setback are accounted for.
- While the site plan shows that the existing swimming pool encroaches into the required front yard along Alderson Street, the application for a variance to the front yard setback regulations was applied for a single family residential accessory

structure only. According to person-to-person conversation with the applicant, the swimming pool was not included given its existence since the 1930s.

- The applicant has the burden of proof in establishing the following:
 - That granting the variances 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 variances are necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same CD 1 zoning classification.
 - The variances would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same CD 1 zoning classification.
- If the Board were to grant the variance request, and impose the submitted site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document, which in this case, is a portion of a structure located 13' from the site's Alderson Street front property line (or 12' into this 25' front yard setback).

Timeline:

November 18, 2014: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

December 10, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

December 10, 2014: The Current Planner emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the December 29th deadline to submit additional evidence for staff to factor into their analysis; and the January 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the section from the Dallas Development Code pertaining to variances to the front yard setbacks; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

January 6, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant

Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: JANUARY 20, 2015

APPEARING IN FAVOR: Danny Sipes, P.O. Box 3293, Forney, TX

APPEARING IN OPPOSITION: No one

MOTION: Gaspard

I move that the Board of Adjustment, in request No. **BDA 145-006**, on application of Danny Sipes, **grant** a 12-foot variance to the front yard setback regulations because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: Nolen

AYES: 5 – Nolen, French, Rieves, Gaspard, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0

FILE NUMBER: BDA 145-011

BUILDING OFFICIAL’S REPORT: Application of Ed Simons of Masterplan for a special exception to the Modified Delta Overlay District No. 1 regulations at 1909 Greenville Avenue. This property is more fully described as Lot 21 and part of Lot 20, Block C/1983, and is zoned PD-842 (MD-1), which states that the right to carry forward nonconforming parking spaces under the delta theory is lost when a use is discontinued or remains vacant for 12 months or more. The applicant proposes to carry forward nonconforming parking spaces under the delta theory lost because of a use that was discontinued or vacant for 12 months or more, which will require a special exception to the Modified Delta Overlay District No. 1 regulations.

LOCATION: 1909 Greenville Avenue

APPLICANT: Ed Simons of Masterplan

January 20, 2015 Public Hearing Notes:

The applicant designated a representative at the public hearing who submitted additional written documentation to the Board at the public hearing.

REQUEST:

A request for a special exception to the Modified Delta Overlay District No. 1 regulations is made to carry forward an unspecified number of nonconforming parking spaces under the delta theory that were terminated because the City of Dallas has determined that a use on the site was discontinued or remained vacant for 12 months or more.

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

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

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

STAFF RECOMMENDATION:

Denial

Rationale:

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

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is developed with an vacant one-story commercial/retail use. The areas to the north, east, south, and west are developed with commercial/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:

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

- In a modified delta overlay district, the city council may limit the number of percentage of nonconforming parking or loading spaces that may be carried forward by a use under the delta theory. An ordinance establishing a modified delta overlay district may not increase the number of nonconforming parking or loading spaces that may be carried forward under the delta theory when a use is converted or expanded.
- An ordinance establishing a modified delta overlay district must provide that when a use located in the district is converted to a new use having less parking or loading requirements, the rights to any portion of the nonconforming parking or loading not needed to meet the new requirements are lost.
- An ordinance establishing a modified delta overlay district may provide that rights under the delta theory terminate when a use for which the delta theory has been applied is discontinued.
- In 1987, the City Council established Modified Overlay District No. 1 (the Greenville Avenue Modified Delta Overlay District) which stated among other things:
 - That no nonconforming parking spaces may be carried forward by a use under the delta theory when a use in this district is expanded.
 - That when a use located in this district is converted to a new use having greater parking or loading requirements, the rights to any nonconforming parking or loading under the delta theory may not be used to meet the new parking requirement.
 - That when a use located in this district is converted to a new use having less parking or loading requirements, the rights to any portion of the nonconforming parking or loading not needed to meet the new requirements are lost.
- In 1995, the City Council amended Modified Overlay District No. 1 (the Greenville Avenue Modified Delta Overlay District) which stated among other things:
 - The right to carry forward nonconforming parking and loading spaces under the delta theory terminates when a use is discontinued or remains vacant for 12 months or more. The board of adjustment may grant a special exception to this provision only if the owner can demonstrate that there was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more by proving the occurrence of an extreme circumstance, which shall include but not be limited to the following:
 1. A decline in the rental rates for the area which has affected the rental market.
 2. An unusual increase in the vacancy rates for the area which has affected the rental market.
 3. Obsolescence of the subject property, including environmental hazards, extensive renovation or remodeling, and extreme deterioration of adjacent properties affecting the marketability of property.
- According to DCAD, the property at 1909 Greenville Avenue is developed with a “free standing retail store” with 4,000 square feet built in 1925.
- The applicant states that an “application has been submitted for a general merchandise store less than 3,500 square feet. The owner was unable to lease the space for a long time because of contrition of street improvements. The use is compatible with other neighborhood serving uses along the newly improved street.”

- While the Board Administrator had requested that the applicant provide (among other things to the code standard) how many parking spaces he wanted the Board to consider carrying forward, the applicant has not provided this information.
- The applicant has stated that the property owner has not been able to find a tenant since the PD was created in 2011, and that the property had been a bar use for years prior to that.

Timeline:

November 21, 2014: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

December 10, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

December 10, 2014: The Board Administrator contacted the applicant’s representative and emailed him the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the December 29th deadline to submit additional evidence for staff to factor into their analysis; and the January 9th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

January 6, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

January 6, 2015: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

BOARD OF ADJUSTMENT ACTION: JANUARY 20, 2015

APPEARING IN FAVOR: Ed Simons, 900 Jackson #640, Dallas, TX
Susan Mead, 901 Main Street, Dallas, TX
Jack Gosnell, 3445 Haynie Ave, Dallas, TX
Jessica Burnham, 5740Prospect Ave #2001, Dallas, TX
Jason Horne, 5604 Lewis St., Bldg K, Dallas, TX
Matt Tobin, 9919 Galway Dr., Dallas, TX
Elias Pope, 2008 Greenville Ave., Dallas, TX
Fan Bradley, 2500 North Houston #1401, Dallas, TX

APPEARING IN OPPOSITION: Patricia Carr, 5843 Vanderbilt, Dallas, TX
Stevelyn Pickens, 5602 Richmond, Dallas, TX
Cheryl Kellis, 2007 Summit Ave., Dallas, TX

MOTION #1: Nolen

I move to suspend the rules and accept the evidence that is being presented to us today.

SECONDED: Gaspard

AYES: 5 – Nolen, French, Rieves, Gaspard, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0

MOTION #2: Nolen

I move that the Board of Adjustment, in request No. **BDA 145-011**, on application of Ed Simons, **grant** a special exception to the Modified Delta Overlay District No. 1 regulations and allow the applicant to carry forward nonconforming parking and loading spaces under the delta theory because our evaluation of the property and testimony shows that the owner did not intend to abandon the use even though the use was discontinued or remained vacant for 12 months or more, and the owner showed that there was a decline in the rental rates for the area which has affected the rental market, an unusual increase in the vacancy rates for the area which has affected the rental market, and obsolescence of the subject property, including environmental hazards extensive renovation or remodeling and extreme deterioration of adjacent properties affecting the marketability of property.

SECONDED: French

AYES: 4 – Nolen, French, Gaspard, Sibley

NAYS: 1 - Rieves

MOTION PASSED: 4 – 1

MOTION: Nolen

I move to adjourn this meeting.

SECONDED: French

AYES: 5 – Nolen, French, Rieves, Gaspard, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

2:53 P. M.: - Board Meeting adjourned for **January 20, 2015**

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.