

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
TUESDAY, FEBRUARY 16, 2016**

MEMBERS PRESENT AT BRIEFING: Clint Nolen, Vice Chair, Mark Rieves, regular member, Michael Gibson, regular member, and Robert Agnich, alternate member

MEMBERS ABSENT FROM BRIEFING: Charles Johnson, regular member

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Laura Morrison, Asst. City Attorney, Todd Duerksen, Development Code Specialist, David Lam, Engineering, Clayton Buehrle, Engineering and Trena Law, Board Secretary

MEMBERS PRESENT AT HEARING: Clint Nolen, Vice Chair, Mark Rieves, regular member, Michael Gibson, regular member, and Robert Agnich, alternate member

MEMBERS ABSENT FROM HEARING: Charles Johnson, regular member

STAFF PRESENT AT HEARING: Steve Long, Board Administrator Laura Morrison, Asst. City Attorney, Todd Duerksen, Development Code Specialist, and Trena Law, Board Secretary

11:10 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **February 16, 2016** docket.

1:08 P.M.

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

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel January 19, 2016 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 16, 2016

MOTION: None

The minutes were approved without a formal vote.

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: BDA156-016

REQUEST: To reimburse the filing fee submitted in conjunction with a request to appeal the decision of the administrative official

LOCATION: 4802 Reiger Avenue

APPLICANT: Peaks Addition Homeowners Association
Represented by Elizabeth Nelson

February 16, 2016 Public Hearing Notes:

- The applicant's representative submitted additional written documentation to the Board at the public hearing.

STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:

The Dallas Development Code states that the board may waive the filing fee for a board of adjustment application if the board finds that payment of the fee would result in substantial financial hardship to the applicant.

The Dallas Development Code further states:

- The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board's miscellaneous docket for predetermination.
- In making this determination, the board may require the production of financial documents.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 16, 2016

APPEARING IN FAVOR: Elizabeth Nelson, 4403 Worth St., Dallas, TX
Jim Anderson, 4706 Swiss Ave., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Nolen

I move that the Board of Adjustment **grant** the request to reimburse the filing fee submitted in conjunction with a request to appeal the decision of the administrative official.

SECONDED: Rieves

AYES: 3 – Nolen, Rieves Gibson,,

NAYS: 1 –Agnich

MOTION FAILED: 3 – 1

FILE NUMBER: BDA156-010(SL)

BUILDING OFFICIAL’S REPORT: Application of Maxwell Fisher for a special exception to the Modified Delta Overlay District No. 1 regulations at 1904 Greenville Avenue. This property is more fully described as Lot 3 & 4, Block 1907, and is zoned PD-842 (MD-1), which states that the right to nonconforming delta parking credits are lost if the use is vacant for twelve months or more. The applicant proposes to carry forward nonconforming parking spaces under the delta theory that were 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: 1904 Greenville Avenue

APPLICANT: Maxwell Fisher

REQUEST:

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

STANDARD FOR SPECIAL EXCEPTION TO THE MODIFIED DELTA OVERLAY DISTRICT No. 1 REGULATIONS TO CARRY FORWARD NONCONFORMING PARKNG 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:

Approval

Rationale:

- Staff concluded that the applicant had 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 the following extreme circumstances:
 1. An unusual increase in the vacancy rates for the area which has affected the rental market. (The applicant had documented how the adjacent business is also vacant and in poor condition; and that there are several vacant stores in the block to the north).
 2. Obsolescence of the subject property, including environmental hazards, extensive renovation or remodeling, and extreme deterioration of adjacent properties affecting the marketability of property. (The applicant had documented how an experienced brokerage group cannot lease the space because of the outmoded nature of the streetscape, more specifically, the unimproved streetscape in front of the subject site rendering this area obsolete until the construction and streetscape improvements have been completed).
 3. Prolonged construction adjacent to the subject site. (The applicant had documented how construction in the area has had a profound negative impact on the area with business revenues declining; that business had declined since the street improvements began in what appears to be 2011; and that while the future improvements are welcome, the subject site has suffered from an extreme hardship compared to others until the construction in front of the subject site is completed).

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is developed with a vacant one-story commercial structure. The areas to the north, south, and west are developed with commercial/retail uses; and the area to the east is developed with multifamily 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 nonconforming parking spaces under the delta theory terminated because the use on the site was discontinued or remained vacant for 12 months or more made in order for the applicant to obtain a Certificate of Occupancy for a retail use on the subject site which is developed with a vacant structure.
- 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.
- 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 1904 Greenville Avenue is developed with a “retail strip” with 3,450 square feet built in 1922.
- The application states that “re-establishing parking delta credits would allow the building to be re-occupied with a non-residential use. The property owner and broker have continually sought to lease the property with no intent of abandonment.”

Timeline:

- December 16, 2015: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- January 6, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- January 6, 2016: The Board Administrator contacted the applicant and emailed him the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the January 27th deadline to submit additional evidence for staff to factor into their analysis; and the February 5th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”
- January 22 & February 1, 2016: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachments A and B).

February 2, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Sustainable Development and Construction Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Project Engineers, and the Assistant City Attorneys to the Board.

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

BOARD OF ADJUSTMENT ACTION: FEBRUARY 16, 2016

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

APPEARING IN OPPOSITION: No one

MOTION: Nolen

I move that the Board of Adjustment in Appeal No. **BDA156-010**, hold this matter under advisement until **March 22, 2016**.

SECONDED: Agnich

AYES: 4 – Nolen, Rieves, Gibson, Agnich

NAYS: 0 -

MOTION PASSED: 4 – 0

FILE NUMBER: BDA156-011(SL)

BUILDING OFFICIAL’S REPORT: Application of Thomas Walker for a variance to the front yard setback regulations at 8722 Eustis Avenue. This property is more fully described as Lot 28A, Block A/5248, and is zoned R-7.5(A), which requires a front yard setback of 25 feet. The applicant proposes to construct and maintain a structure and provide a 15 foot front yard setback, which will require a 10 foot variance to the front yard setback regulations.

LOCATION: 8722 Eustis Avenue

APPLICANT: Thomas Walker

REQUEST:

A request for a variance to the front yard setback regulations of 10’ is made to construct and maintain a single family structure in the site’s 25’ front yard setback on a site that is currently undeveloped.

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, lot coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

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

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that the subject site is unique and different from most lots zoned R-7.5(A) given its slope and the creek bed on its east side. The atypical lot with this physical site constraint precludes the applicant from developing it in a manner commensurate with development (in this case with a one-story single family home with an approximately 2,200 square foot building footprint) found on other similarly zoned R-7.5(A) properties that are flat and without creek beds.
- Staff concluded that the applicant has substantiated how the proposed home at 2,200 square feet is development that is commensurate with the development found on other R-7.5(A) zoned lots. The applicant submitted a table listing 15 other properties in the R-7.5(A) zoning district where the average house size was 2,668 square feet or approximately 500 square feet larger than the house that is proposed on the subject site.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is undeveloped. The areas to the north, south, east, and west are either undeveloped parcels of land or developed with single family uses.

Zoning/BDA History:

1. BDA123-041, Property at 8610 Eustis Avenue (approximately four lots southwest of the subject site)

On May 20, 2013, the Board of Adjustment Panel C granted a request for a variance to the front yard setback regulations of 15' and imposed the submitted site plan as a condition. The case report stated that the request was made in conjunction with constructing and maintaining a two-story single family home structure, part of which would be located in one of the site's two 25' front yard setbacks (Eustis Avenue) on a site that is currently undeveloped. (It was noted that no request had been made in this application to construct/maintain any structure in the site's Lakeland Avenue front yard setback).

2. BDA112-067, Property at 8610 Eustis Avenue (approximately four lots southwest of the subject site)

On June 18, 2012, the Board of Adjustment Panel C granted a request for a variance to the front yard setback regulations of 15' and imposed the submitted site plan as a condition. The case report stated that the request was made in conjunction with constructing and maintaining a two-story single family home structure, part of which would be located in one of the site's two 25' front yard setbacks (Eustis Avenue) on a site that is currently undeveloped. (It was noted that no request had been made in this application to construct/maintain any structure in the site's Lakeland Avenue front yard setback).

3. BDA101-124, Property at 8610 Eustis Avenue (approximately four lots south of the subject site)

On December 12, 2011, the Board of Adjustment Panel C granted a request for a variance to the front yard setback regulations of 15' and imposed the submitted site plan as a condition. The case report stated that the request was made in conjunction with constructing and maintaining a two-story single family home structure, part of which would be located in

one of the site's two 25' front yard setbacks (Eustis Avenue) on a site that is currently undeveloped. (It was noted that no request was made in this application to construct/maintain any structure in the site's Lakeland Avenue front yard setback).

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining a one-story, approximately 2,200 square foot single family structure in the site's 25' front yard setback.
- Structures on lots zoned R-7.5(A) are required to provide a minimum front yard setback of 25'.
- The submitted site plan indicates that the proposed single family home is located 15' from the front property line or 10' into this 25' front yard setback.
- The subject site is sloped, somewhat irregular in shape (113' on the northeast, 106' on the southwest; and approximately 68' on the northwest and southeast), and approximately 7,400 square feet in area. The site appears to be completely in the the floodplain.
- According to DCAD records, there is "no main improvement" or "additional improvements" at 8722 Eustis Avenue.
- According to calculations taken by the Board Administrator from the submitted site plan, the area of the proposed home to be located in the site's 25' front yard setback is approximately 200 square feet in area or approximately 9 percent of the approximately 2,200 square foot building footprint.
- The applicant's representative submitted a document listing 15 other properties in the same R-7.5(A) zoning district as the subject site with development that is greater than the 2,200 square feet of home proposed on the subject site. (The average of these 15 homes is 2,668 square feet).
- The applicant submitted a document showing that 8 other properties along Eustis within the immediate blocks from Lakeland Drive to Old Gate Lane appear to encroach into the 25 foot front yard setback for the reason (as with the subject site) being shallow that back up to a creek.
- The applicant submitted a document showing that the average property size for 66 properties on Eustis between Lakeland Drive and Old Gate Lane is approximately 10,000 square feet or approximately 2,500 square feet larger than the subject site.
- The applicant has the burden of proof in establishing the following:
 1. That granting the variance to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 2. The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.

3. The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.
- If the Board were to grant the 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 structure located 15' from the front property line (or 10' into the 25' front yard setback).
 - If the Board were to grant the variance request, it would not provide any relief to the City of Dallas floodplain regulations.

Timeline:

December 17, 2015: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

January 6, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

January 6, 2016: The Board Administrator contacted the applicant and emailed him the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the January 27th deadline to submit additional evidence for staff to factor into their analysis; and the February 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

January 20 & 27, 2016: The applicant's representative submitted additional documentation on this application beyond what was submitted with the original application (see Attachments A and B).

February 2, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Sustainable Development and Construction Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Project Engineers, and the Assistant City Attorneys to the Board.

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

BOARD OF ADJUSTMENT ACTION: FEBRUARY 16, 2016

APPEARING IN FAVOR: Thomas Walker, 8722 Eustis Ave, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Gibson

I move that the Board of Adjustment, in Appeal No. **BDA156-011**, on application of Thomas Walker, **grant** a 10-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: Agnich

AYES: 4 – Nolen, Rieves, Gibson, Agnich

NAYS: 0 -

MOTION PASSED: 4 – 0

FILE NUMBER: BDA156-015(SL)

BUILDING OFFICIAL’S REPORT: Application of Maria Castillo for a variance to the front yard setback regulations at 3621 Bernal Drive. This property is more fully described as Lot 35, Block 5/7149, and is zoned R-5(A), which requires a front yard setback of 20 feet. The applicant proposes to construct and maintain a structure and provide a 6 foot front yard setback, which will require a 14 foot variance to the front yard setback regulations.

LOCATION: 3621 Bernal Drive

APPLICANT: Maria Castillo

REQUEST:

A request for a variance to the front yard setback regulations of 14’ is made to construct and maintain a single family structure in one of the site’s two 20’ front yard setbacks (Ladale Avenue) on a site that is currently undeveloped.

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, lot coverage,

floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

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

STAFF RECOMMENDATION:

Denial

Rationale:

- Staff concluded that the applicant has not substantiated how the variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same R-5(A) zoning.
- While staff recognized the fact that the subject site was unique and different from most lots zoned R-5(A) in that it has two front yard setbacks, the applicant had not substantiated how this precluded her from developing it in a manner commensurate with other developments in the same R-5(A) zoning district. The site at approximately 7,000 square feet in area is approximately 2,000 square feet larger than other lots in the R-5(A) zoning district. There is approximately 34' of developable width left on the approximately 59' wide subject site once a 20' front yard setback is accounted for on the west and a 5' side yard setback is accounted for on the east.
- Staff concluded that the applicant has not substantiated how the proposed home at 2,300 square feet is development that is commensurate with the development found on other R-5(A) zoned lots.

BACKGROUND INFORMATION:

Zoning:

Site: R-5(A) (Single family district 5,000 square feet)
North: R-5(A) (Single family district 5,000 square feet)
South: R-5(A) (Single family district 5,000 square feet)
East: R-5(A) (Single family district 5,000 square feet)
West: R-5(A) (Single family district 5,000 square feet)

Land Use:

The subject site is undeveloped. The areas to the north, east, and west are developed with single family uses; and the area to the south is developed with a park (Tipton Park).

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 approximately 2,300 square foot, one-story single family structure in the site's Ladale Avenue 20' front yard setback.
- Structures on lots zoned R-5(A) are required to provide a minimum front yard setback of 20'.
- The subject site is located at the northeast corner of Bernal Drive and Ladale Avenue. Regardless of how the home being constructed on the site is oriented to front southward to Bernal Drive and to side westward onto Ladale Avenue, the site has two, 20' front yard setbacks. The site has a 20' front yard setback along Bernal Drive, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in a single-family zoning district. The site also has a 20' front yard setback along Ladale Avenue, the longer of the two frontages of this corner lot, which is typically regarded as a side yard. But the site's Ladale Avenue frontage is a side yard treated as a front yard setback nonetheless to maintain the continuity of the established front yard setback established by the lots developed with single family homes north of the site that front/are oriented westward towards Ladale Avenue.
- The submitted site plan indicates that the proposed single family structure is located 6' (roof eave) from the Ladale Avenue front property line or 14' into this 20' front yard setback.
- No part of this application is made for any structure to encroach into the site's Bernal Drive front yard setback.
- The subject site is flat, somewhat irregular in shape, and according to the application is 0.16 acres (or approximately 7,000 square feet) in area. The site is zoned R-5(A) where lots typically are 5,000 square feet in area.
- The site has two, 20' front yard setbacks and two 5' side yard setbacks; most residentially-zoned lots have one front yard setback, two side yard setbacks, and one rear yard setback.
- According to DCAD records, there is "no main improvement" or "additional improvements" at 3621 Bernal Drive.
- The approximately 59' wide subject site has approximately 34' of developable width left once a 20' front yard setback is accounted for on the west and a 5' side yard setback is accounted for on the east. If the same lot were more typical as those in the R-5(A) zoning districts with two 5' side yard setbacks on the east and west, it would have approximately 49' of developable width.

- According to the calculations made by the Board Administrator from the submitted site plan, it appears that approximately 600 square feet (or 26 percent) of 2,300 square foot building footprint would be located in the 20' front yard setback along Ladale Avenue.
- The applicant has the burden of proof in establishing the following:
 1. That granting the variance to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 2. The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-5(A) zoning classification.
 3. The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-5(A) 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 structure located 6' from the Ladale Avenue front property line (or 14' into this 20' front yard setback).

Timeline:

- December 18, 2015: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- January 6, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- January 6, 2016: 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 January 27th deadline to submit additional evidence for staff to factor into their analysis; and the February 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- February 2, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Sustainable Development and Construction

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

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

BOARD OF ADJUSTMENT ACTION: FEBRUARY 16, 2016

APPEARING IN FAVOR: Maria Castillo, 3615 Bernal, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Agnich

I move that the Board of Adjustment, in Appeal No. **BDA156-015**, on application of Maria Castillo, **grant** a 14-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: Gibson

AYES: 1 – Agnich

NAYS: 3 - Nolen, Rieves, Gibson

MOTION FAILED: 3 – 1

MOTION #2: Agnich

I move that the Board of Adjustment, in Appeal No. **BDA156-015**, on application of Maria Castillo, **deny** the front yard setback variance **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: Rieves

AYES: 4 – Nolen, Rieves, Gibson, Agnich

NAYS: 0 -

MOTION PASSED: 4 – 0

FILE NUMBER: BDA156-016(SL)

BUILDING OFFICIAL'S REPORT: Application of the Peaks Addition Homeowners Association, represented by Elizabeth Nelson, to appeal the decision of the administrative official at 4802 Reiger Avenue. This property is more fully described as Lot 1, Block 4/799 1/2, and is zoned PD-98. The applicant proposes to appeal the decision of an administrative official in the issuance of a certificate of occupancy.

LOCATION: 4802 Reiger Avenue

APPLICANT: Peaks Addition Homeowners Association
Represented by Elizabeth Nelson

February 16, 2016 Public Hearing Notes:

- The applicant's representative submitted additional written documentation to the Board at the public hearing.

REQUEST:

The submitted application states that the applicant is appealing "the decision made by an administrative official regarding the issuance of a certificate of occupancy – C.O. # 1506231116 at 4802 Reiger Avenue was issued in error. The C.O. does not comply with PD 98."

STANDARD FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:

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

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

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

BACKGROUND INFORMATION:

Zoning:

Site: PD 98, Planned Development
North: PD 98, Planned Development
South: PD 98, Planned Development
East: PD 98, Planned Development
West: PD 98, Planned Development

Land Use:

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

Zoning/BDA History:

- | | |
|--|---|
| 1. Miscellaneous Item #2, BDA156-016, Property at 4802 Reiger Avenue (the subject site) | On February 16, 2016, the Board of Adjustment Panel A will consider reimbursing the filing fee made in conjunction with this application. |
|--|---|

GENERAL FACTS/STAFF ANALYSIS:

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

Timeline:

- December 18, 2015: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- January 6, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- January 6, 2016: The Board Administrator contacted the applicant and emailed her the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the January 27th deadline to submit additional evidence for staff to factor into their analysis (with a notation that staff does not form a recommendation on this type of application); and the February 5th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the outline of procedure for appeals from decisions of the building official to the board of adjustment; and
 - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”
- February 2, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Sustainable Development and Construction Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable

Development and Construction Department Project Engineers, and the Assistant City Attorneys to the Board.

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

February 5, 2016: The applicant's representative submitted additional documentation to the Board Administrator beyond what was submitted with the original application (see Attachment A).

February 5, 2016: The Building Official submitted additional documentation to the Board Administrator beyond what was submitted with the original application (see Attachment B).

BOARD OF ADJUSTMENT ACTION: FEBRUARY 16, 2016

APPEARING IN FAVOR: Wendy Millsap, 4530 Rieger Ave., Dallas, TX
Eric White, 4810 Reiger Ave., Dallas, TX
Jorge Hernandez, 4806 Reiger Ave., Dallas, TX
Jim Anderson, 4706 Swiss Ave., Dallas, TX

APPEARING IN OPPOSITION: No one

APPEARING FOR THE CITY: Andrew Gilbert, Asst. City Atty, 1500 Marilla, Dallas, TX
Megan Wilmer, 320 E. Jefferson, Dallas, TX
Francis Estes, 320 E. Jefferson, Dallas, TX

MOTION #1: Agnich

I move that the Board of Adjustment, in Appeal No. **BDA156-016** on application of Peak's Addition Homeowners Association, after having fully reviewed the decision of the administrative official, and having evaluated the evidence and heard all of the testimony and facts, I move that the Board of Adjustment **modify** the decision of the administrative official and **grant** the Certificate of Occupancy as a multi-family use allowing for only three units.

SECONDED: Gibson

AYES: 1 – Agnich

NAYS: 3 - Nolen, Rieves, Gibson

MOTION FAILED: 3 – 1

MOTION #2: Rieves

I move that the Board of Adjustment, in Appeal No. **BDA156-016** on application of Peak’s Addition Homeowners Association, after having fully reviewed the decision of the administrative official, and having evaluated the evidence and heard all of the testimony and facts, **modify** the decision of the administrative official and **grant** the Certificate of Occupancy as a multi-family use allowing for a total of three units: two units for main structure and one unit for the back accessory structure.

SECONDED: Agnich

AYES: 4 – Nolen, Rieves, Gibson, Agnich

NAYS: 0 -

MOTION PASSED: 4– 0 (unanimously)

2:42: Break

2:53: Resumed

FILE NUMBER: BDA156-018(SL)

BUILDING OFFICIAL’S REPORT: Application of Bipin Hira, represented by Scott Graves and Kevin Carlson, for a variance to the off-street loading regulations at 310 S. Houston Street. This property is more fully described as Lot 5A, Block 22/24, and is zoned CA-1(A), which requires off-street loading spaces be provided. The applicant proposes to construct and maintain a structure for a hotel or motel use and not provide the required off-street loading spaces, which will require a variance to the off-street loading regulations.

LOCATION: 310 S. Houston Street

APPLICANT: Bipin Hira
Represented by Scott Graves and Kevin Carlson

REQUEST:

A request for a variance to the off-street loading regulations of 3 loading spaces is made to construct and maintain an approximately 162,000 square foot structure for a hotel or motel use on a site currently developed as a surface parking lot, and provide none of the 3 required loading spaces.

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:

- Staff concluded that the applicant has not substantiated how the variance was necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same CA-1(A) zoning. The site is flat, and while irregular in shape, approximately 16,600 square feet in area, and with two front yards, the applicant had not documented how these features created hardship to warrant the requested variance, or why the required off-street loading spaces could not be provided on the subject site currently developed as a surface parking lot due to the lot's restrictive area, shape, or slope.
- In addition, it appears that granting this variance would be contrary to public interest since the Sustainable Development and Construction Department Project Engineer recommends denial of the request. The project engineer commented that from a traffic safety and infrastructure analysis, it does not appear that Record, Wood, nor Houston has the parking capacity to accommodate the 3 required truck load space of the proposed development; and that any loading trucks operating within the public traffic lanes may have an adverse impact on traffic safety and infrastructure and would therefore be contrary to the public interest.

BACKGROUND INFORMATION:

Site: CA-1(A) (Central area)
North: CA-1(A) (Central area)
South: CA-1(A) (Central area)
East: CA-1(A) (Central area)
West: CA-1(A) (Central area)

Land Use:

The subject site is developed as a surface parking lot. The area to the north is developed with retail and office uses; the area to the east is developed with retail and surface parking uses; the area to the south is developed with a surface parking use; and the area to the west is developed with right-of-way green space.

Zoning/BDA History:

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

GENERAL FACTS/ STAFF ANALYSIS:

- The request focuses on constructing and maintaining an approximately 162,000 square foot structure for a hotel or motel use on a site currently developed as a surface parking lot, and providing none of the 3 required off-street loading spaces.
- The Dallas Development Code requires the following off-street loading requirements for a hotel and motel use:
 - 0 to 10,000 square feet: NONE
 - 10,000 to 50,000 square feet: 1
 - 50,000-100,000 square feet: 2
 - Each additional 100,000 square feet or fraction thereof: 1 additional
- The applicant has submitted plans that document a hotel or motel use with approximately 112,000 square feet of “conditioned areas” and approximately 162,000 square feet of “total areas”.
- The applicant has submitted plans that provide none of the 3 required off-street loading spaces.
- The site is flat, irregular in shape, and according to the application, 0.38 acres (or approximately 16,600 square feet) in area. The site is zoned CA-1(A). The site has two front yards as would any lot with two street frontages that is not zoned single family, duplex, or agricultural.
- DCAD records indicate that “no improvements” at 310 S. Houston Street.

- The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Recommends that this be denied.” The project engineer provided the additional comments: “From a traffic safety and infrastructure analysis, it does not appear that Record, Wood, nor Houston has the parking capacity to accommodate the 3 required truck load space of the proposed development. Any loading trucks operating within the public traffic lanes may have an adverse impact on traffic safety and infrastructure.”
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to off-street loading regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same CA-1(A) zoning classification.
 - The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same CA-1(A) zoning classification.
- If the Board were to grant this request and impose the submitted site plan as a condition, the applicant would be required to provide none of the 3 off-street loading spaces in conjunction with constructing/maintaining an approximately 162,000 square foot structure for a hotel or motel use.

Timeline:

- December 11, 2015: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- January 25, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- January 26, 2016: 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 January 27th deadline to submit additional evidence for staff to factor into their analysis; and the February 5th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

February 2, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Sustainable Development and Construction Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Project Engineers, and the Assistant City Attorneys to the Board.

February 5, 2016: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied." The project engineer provided the additional comments: "From a traffic safety and infrastructure analysis, it does not appear that Record, Wood, nor Houston has the parking capacity to accommodate the 3 required truck load space of the proposed development. Any loading trucks operating within the public traffic lanes may have an adverse impact on traffic safety and infrastructure."

February 5, 2016: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A). Note that this information was not factored into the staff recommendation since it was submitted after the February 2nd staff review team meeting.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 16, 2016

APPEARING IN FAVOR: Winford Lindsay, 344 W Pike St., Lawrenceville GA

APPEARING IN OPPOSITION: No one

MOTION: Nolen

I move that the Board of Adjustment, in Appeal No. **BDA156-018**, on application of Bipin Hira, **deny** the requested off-street loading variance **without** prejudice 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 not result in unnecessary hardship to this applicant..

SECONDED: Rieves

AYES: 4 – Nolen, Rieves, Gibson, Agnich

NAYS: 0 -

MOTION PASSED: 4 – 0(unanimously)

MOTION: Nolen

I move to adjourn this meeting.

SECONDED: Agnich

AYES: 4 – Nolen, Rieves, Gibson, Agnich

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

3:32 P. M.: - Board Meeting adjourned for **February 16, 2016**

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.