

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
TUESDAY, FEBRUARY 17, 2015**

MEMBERS PRESENT AT BRIEFING: Clint Nolen, Vice Chair, Larry French, regular member, Mark Rieves, regular member, Lorlee Bartos, alternate member and Robert Agnich, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator
Jamilah Way, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Phil Erwin, Arborist, David Lam, Engineer, 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, Lorlee Bartos, alternate member and Robert Agnich, alternate member

MEMBERS ABSENT FROM HEARING: No one

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

11:25 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **February 17, 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 January 20, 2015 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 17, 2015

MOTION: None

The minutes were approved without a formal vote.

FILE NUMBER: BDA 145-018

BUILDING OFFICIAL’S REPORT: Application of Kevin Ward for a variance to the front yard setback regulations at 3732 Frontier Lane. This property is more fully described as Lot 3, Block 2/2984, 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 3 foot front yard setback, which will require a 22 foot variance to the front yard setback regulations.

LOCATION: 3732 Frontier Lane

APPLICANT: Kevin Ward

REQUEST:

A request for a variance to the front yard setback regulations of 22’ is made to construct and maintain an approximately 420 square foot swimming pool, part of which is proposed to be located in one of the site’s two 25’ front yard setbacks (Williamson Road) on a site developed with a single family home. (No request has been made in this application to construct/maintain any structure in the site’s Frontier Lane front yard setback).

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:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required

Rationale:

- The subject site is unique and different from most lots in the R-7.5(A) zoning district given its restrictive area due to its two front yard setbacks. The atypical two front yard setbacks on the subject site preclude the applicant from developing it in a manner commensurate with development on other similarly zoned properties that have one front yard setback. Documentation submitted by the applicant shows that the living area of the home on the site at approximately 2,850 square feet is near the approximately 2,950 square foot average of 18 other properties he identified zoned R-7.5(A).
- The Building Inspection Senior Plans Examiners/Development Code Specialist has stated that no variance would be needed to locate the swimming pool in its proposed location if the City deemed the east side/Williamson Road side of the site as it functions – as a rear yard setback as opposed to a front yard setback.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining an approximately 420 square foot swimming pool, part of which is proposed to be located in one of the site's two 25' front yard setbacks (Williamson Road) on a site developed with a single family home (No request has been made in this application to construct/maintain any structure in the site's Frontier Lane front yard setback).
- Structures on lots zoned R-7.5(A) are required to provide a minimum front yard setback of 25'.
- The subject site is a lot that runs from one street to another (Williamson Road on the northeast to Frontier Lane on the southeast). Regardless of how the existing single-family structure is oriented to "front" westward towards Frontier Lane, the site has front yard setbacks on both streets since the code states that if a lot runs from one street to another and has double frontage, a required front yard must be provided on both streets.
- The submitted site plan denotes that the proposed swimming pool is located as close as 3' from the site's Williamson Road front property line or 22' into this 25' front yard setback.
- According to observations taken from the site plan, about half of the proposed approximately 420 square foot swimming pool is to be located in the site's Williamson Road 25' front yard setback.
- According to DCAD records, the "main improvements" at 3732 Frontier Lane is a structure built in 1959 with 2,842 square feet of living/total area; and the "additional improvements" is a 624 square foot attached garage.
- The subject site is somewhat sloped, virtually rectangular in shape, and according to the application is 0.23 acres (or 10,000 square feet) in area. The site is zoned R-7.5(A) where lots typically are 7,500 square feet in area. The site has two 25' front yard setbacks; most lots in this zoning district have one 25' front yard setback.
- A 75' width of developable space remains on this 125' deep lot once a 25' front yard setback is accounted for on Frontier Lane and Williamson Road. If the site were to only have one front yard setback, the site would have 95' of developable space once a 25' front yard and a 5' rear yard setback were accounted for.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.

- If the Board were to grant 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 is a swimming pool to be located 3’ from the site’s Williamson Road front property line (or 22’ into this 25’ front yard setback).
- Note that granting the applicant’s request for a variance to the front yard setback regulations will not provide any relief to any existing or proposed noncompliance on the site related to fence height, visual obstruction, or off-street parking regulations.

Timeline:

December 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.

January 14, 2015: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

January 14, 2015: The Board Administrator contacted the applicant and emailed the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the January 28th deadline to submit additional evidence for staff to factor into their analysis; and the February 6th 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, 2015: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).

February 3, 2015: 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 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 were submitted in conjunction with this application.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 17, 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 145-018** 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 site plan is required.

SECONDED: French

AYES: 5 – Nolen, French, Rieves, Bartos, Agnich

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 145-024

BUILDING OFFICIAL’S REPORT: Application of Randal C. Shaffer, represented by Peter Kavanagh of Zone Systems, for a special exception to the off-street parking regulations at 855 E. 8th Street. This property is more fully described as Lot 1A, Block 79/3060, and is zoned PD468 (Subdistrict B), which requires off-street parking to be provided. The applicant proposes to construct and maintain a structure for a public or private school use and provide 90 of the required 108 parking spaces, which will require a 18 space special exception to the off-street parking regulations.

LOCATION: 855 E. 8th Street

APPLICANT: Randal C. Shaffer
Represented by Peter Kavanagh of Zone Systems

REQUEST:

A request for a special exception to the off-street parking regulations of 18 spaces is made to complete and maintain a school use (Trinity Basin Preparatory School), and provide 90 (or 83 percent) of the 108 required off-street parking spaces.

STANDARD FOR A SPECIAL EXCEPTION TO THE OFF-STREET PARKING REGULATIONS:

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds,

after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(A). For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 75 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). For the office use, the maximum reduction authorized by this section is 35 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). Applicants may seek a special exception to the parking requirements under this section and an administrative parking reduction under Section 51A-4.313. The greater reduction will apply, but the reduction may not be combined.

- 2) In determining whether to grant a special exception, the board shall consider the following factors:
 - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
 - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
 - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
 - (E) The availability of public transit and the likelihood of its use.
 - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
 - (A) Establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
 - (B) Impose restrictions on access to or from the subject property; or
 - (C) Impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
 - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or

(B) the regulations governing that specific district expressly authorize the board to grant the special exception.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The special exception of 18 spaces shall automatically and immediately terminate if and when the public or private school use that would normally need no more than 108 required parking spaces is changed or discontinued.

Rationale:

- The Sustainable Development and Construction Department Project Engineer has indicated that he has no objections to the applicant's request.
- The applicant has substantiated how the parking demand generated by the public or private school use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- The applicant has submitted information stating that the experience of the school which has two other campuses in the same general area of the city shows that no more than approximately 70 spaces would be needed for this particular use in this particular location.

BACKGROUND INFORMATION:

Zoning:

Site: PD 468 (Subarea B) (Planned Development)
North: PD 468 (Subareas B and C) (Planned Development)
South: MU-1 (Mixed Use)
East: RR (Regional Retail)
West: PD 468 (Subarea C) (Planned Development)

Land Use:

The subject site is being developed with school use (Trinity Basin Preparatory School). The areas to the north, south, east, and west are developed with a mix of commercial and multifamily residential 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 completing and maintaining a public or private school use (Trinity Basin Preparatory School), and providing 90 (or 83 percent) of the 108 required off-street parking spaces.

- The Dallas Development Code requires the following off-street parking requirement for public or private school use:
 - One and one-half spaces for each kindergarten/elementary school classroom;
 - Three and one-half spaces for each junior high/middle school classroom; and
 - Nine and one-half spaces for each senior high school classroom.
- The applicant has submitted a document stating that the school is built assuming to have 18 classrooms for 3rd - 5th grade and 18 classrooms for 6th - 8th grade which requires a total of 90 spaces required. But this proposal to the Board is made proposing the same total number of classrooms, 36, but with a different grade mix: 9 classrooms for 5th grade and 27 classrooms for 6th – 8th grade which would require a total of 108 parking spaces required.
- The applicant proposes to provide 90 (or 83 percent) of the required 108 off-street parking spaces in conjunction with completing and maintaining the public or private school use on the site with 36 classrooms with a proposed mix of 5th, and 6th – 8th grade classrooms.
- The Sustainable Development Department Project Engineer has indicated that he has no objections to this request.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the proposed public or private school use on the site does not warrant the number of off-street parking spaces required, and
 - The special exception of 18 spaces (or a 17 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, and impose the condition that the special exception of 18 spaces shall automatically and immediately terminate if and when the public or private school use is changed or discontinued, the applicant would be allowed to lease and maintain the structure on the site with this specific use with the proposed mix of classrooms, and provide 90 of the 108 code required off-street parking spaces.

Timeline:

- December 19, 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.
- January 14, 2015: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- January 14, 2015: 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 January 28th deadline to submit additional evidence for staff to factor into their analysis; and the February 6th 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 15, 2015: The applicant’s representative submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

February 3, 2015: 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 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.

February 6, 2015: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Has no objections.”

BOARD OF ADJUSTMENT ACTION: FEBRUARY 17, 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 145-024** 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:

- The special exception of 18 spaces shall automatically and immediately terminate if and when the public or private school use that would normally need no more than 108 required parking spaces is changed or discontinued.

SECONDED: French

AYES: 5 – Nolen, French, Rieves, Bartos, Agnich

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 145-025

BUILDING OFFICIAL'S REPORT: Application of Robert Baldwin of Baldwin and Associates for a special exception to the sign regulations at 17950 Preston Road. This property is more fully described as Lot 1, Block J/8729, and is zoned CR, which limits the number of detached signs on a premises to one per street frontage other than expressways. The applicant proposes to construct and maintain one additional detached premise sign, which will require a special exception to the sign regulations.

LOCATION: 17950 Preston Road

APPLICANT: Robert Baldwin of Baldwin and Associates

REQUEST:

A special exception to the sign regulations is made to locate and maintain an additional detached premise sign along the site's approximately 575' long Preston Road street frontage on a site developed with office/retail uses. More specifically, the applicant proposes to relocate an existing non-permitted second sign on the site farther south along Preston Road.

STANDARD FOR A SPECIAL EXCEPTION TO THE SIGN REGULATIONS FOR AN ADDITIONAL DETACHED SIGN:

The Board of Adjustment may, in specific cases and subject to appropriate conditions, authorize one additional detached sign on a premise in excess of the number permitted by the sign regulations as a special exception to these regulations when the board has made a special finding from the evidence presented that strict compliance with the requirement of the sign regulations will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.

STAFF RECOMMENDATION:

Approval

Rationale:

- Staff has concluded that strict compliance with the requirement of the sign regulations in this case (one sign for the site's approximately 575 linear feet of frontage along Preston Road) will result in inequity to the applicant.
- The applicant's request for a total of two signs along Preston Road can be supported given that the subject site is developed with an office building and related ground level office and retails uses, and has almost 600 linear feet of frontage along Preston Road.

- Granting the applicant's request for an additional sign would result in the subject site being allowed two signs along Preston Road where the area immediately west is afforded six individual signs on six individually plated lots.
- Approval of this special exception would merely allow an additional sign on the property's approximately 575 linear feet of Preston Road street frontage, and not provide any other exception to the sign regulations pertaining to the additional sign's setback, height, or effective area.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail)
North: PD 425 (Planned Development)
South: CR (Community Retail)
East: MF-2(A) (Multifamily)
West: CR (Community Retail)

Land Use:

The site is currently developed with office and retail uses. The area to the north, south, and west are developed with 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:

- The request focuses on locating and maintaining an additional sign on the subject site's approximately 575' long Preston Road frontage, more specifically, according to the application, relocating an existing non-permitted detached sign and replacing it with an existing multi-tenant sign farther south along Preston Road.
- The Dallas Development Code states that only one detached sign is allowed per street frontage other than expressways, and that one expressway sign is allowed for every 450 feet of frontage or fraction thereof on an expressway. (The subject site's frontage is not an expressway).
- The applicant's submitted revised site plan indicates the following notations regarding signs on the site's Preston Road frontage:
 - "remove and discard existing single-use monument sign; replace with new single-use monument sign" on the north side of the site; and
 - "relocated existing multi-tenant monument sign" near the center of the site.
- The applicant's has also submitted a sign elevation denoting a monument sign at 5' in height and 11' in length.
- The applicant has the burden of proof in establishing the following:

- That strict compliance with the requirement of the sign regulations (where in this case, the site would be limited to having only one sign along the street frontage) will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.
- If the Board were to approve the request for a special exception to the sign regulations, the Board may consider imposing a condition that the applicant complies with the submitted revised site plan and sign elevation.
- Granting this special exception would not provide any relief to the sign regulations of the Dallas Development Code other than allowing an additional sign on the subject site.

Timeline:

November 25, 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.

January 14, 2015: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

January 14, 2015: The Board Administrator contacted the applicant and emailed the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the January 28th deadline to submit additional evidence for staff to factor into their analysis; and the February 6th 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 29 &

February 2, 2015: The applicant submitted additional information to the Board Administrator beyond what was submitted in the original application (see Attachments A and B).

February 3, 2015: 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 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: FEBRUARY 17, 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 145-025** 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.

SECONDED: French

AYES: 5 – Nolen, French, Rieves, Bartos, Agnich

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 145-022

BUILDING OFFICIAL'S REPORT: Application of Michael Doggett for a special exception to the landscape regulations at 3133 E. Lemmon Avenue. This property is more fully described as Lot 4A, Block 978, and is zoned PD193 (GR), which requires mandatory landscaping. The applicant proposes to construct and/or maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 3133 E. Lemmon Avenue

APPLICANT: Michael Doggett

Feburary 17, 2015 Public Hearing Notes:

- The applicant submitted a revised landscape plan to the Board at the public hearing.

REQUEST:

A request for a special exception to the landscape regulations is made to maintain a retail use/structure (CVS) on a site, and not fully provide required landscaping.

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.

STAFF RECOMMENDATION:

Approval, subject to the following conditions:

1. Compliance with the submitted revised alternate landscape plan is required.
2. All surface parking screening required by ordinance must be installed and maintained with the exemption of a maximum of three feet width opening between the screening shrubs for each required tree in the planting row; the screening plantings must be capable of obtaining a solid appearance within three years from the date of the favorable action of the Board.

Rationale:

- The City of Dallas Chief Arborist supports the applicant's request with the staff suggested conditions imposed because the proposal does not compromise the spirit and intent of the PD 193 landscape requirements.

BACKGROUND INFORMATION:

Site: PD 193 (GR) (Planned Development, General Retail)
North: PD 305 (Planned Development)
South: PD 193 (LC) (Planned Development, Light Commercial)
East: PD 372 (Planned Development)
West: PD 193 (GR) (Planned Development, General Retail)

Land Use:

The subject site is developed with a retail use/structure (CVS). The areas to the north, south, east, and west are developed with mostly 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 maintaining a retail use/structure, and not fully providing required landscaping. More specifically, according to the City of Dallas Chief Arborist, the applicant seeks relief from fully complying with the surface parking screening, sidewalk, and tree requirements of the PD 193 landscape regulations.

- 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 submitted a memo regarding the applicant's revised request (see Attachment B). The memo states how this request is triggered by new construction.
- The Chief Arborist's memo identifies how the features shown on the applicant's revised landscape plan is deficient from surface parking screening (surface parking screening adjacent to Lemmon Avenue is interrupted by trees planted between shrubs), sidewalks (sidewalks along Lemmon Avenue are not 6' in width located between 5' – 12' from back of curb), and trees (none of the trees along Lemmon Avenue and McKinney Avenue are located within the tree planting zone).
- The Chief Arborist's memo lists a number of factors for consideration that pertain to surface parking screening, sidewalks, trees, and "additional information."
- The Chief Arborist recommends approval of the request because of his belief that the plan does not compromise the spirit and intent of the PD 193 landscape regulations. The arborist recommends that beyond the Board imposing the revised alternate landscape plan as a condition to the request, that they also impose the following: all surface parking screening required by ordinance must be installed and maintained with the exemption of a maximum of three feet width opening between the screening shrubs for each required tree in the planting row; the screening plantings must be capable of obtaining a solid appearance within three years.
- The applicant has the burden of proof in establishing the following:
 - The special exception (where a revised alternate landscape plan has been submitted that is deficient in meeting the surface parking screening, sidewalk, and tree 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 and impose the staff suggested conditions, the site would be granted exception from full compliance to the surface parking screening, sidewalk, and tree requirements of the PD 193 landscape regulations of the Oak Lawn PD 193 landscape ordinance.

Timeline:

December 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.

January 14, 2015: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

January 14, 2015: 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 28th deadline to submit additional evidence for staff to factor into their analysis; and the February 6th 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 3, 2015: 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 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.

February 5, 2015: The applicant submitted additional information to the Board Administrator beyond what was submitted in the original application (see Attachment A).

February 6, 2015: The City of Dallas Chief Arborist submitted a memo regarding this application (see Attachment B).

BOARD OF ADJUSTMENT ACTION: FEBRUARY 17, 2015

APPEARING IN FAVOR: Robert Baldwin. 3904 Elm Street, Dallas, TX

APPEARING IN OPPOSITION: Anthony Page, 100 Crescent Ct., Dallas, TX
Micah Byrnes, 2320 N Houston #1902, Dallas, TX
Brenda Marks, 3926 Gilbert Ave., Dallas, TX

MOTION: Rieves

I move that the Board of Adjustment in appeal No. **BDA 145-022** hold this matter under advisement until **March 17, 2015**.

SECONDED: Nolen

AYES: 5 – Nolen, French, Rieves, Bartos, Agnich

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

MOTION: Nolen

I move to adjourn this meeting.

SECONDED: **Agnich**

AYES: 5 – Nolen, French, Rieves, Bartos, Agnich

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

1:44 P. M.: - Board Meeting adjourned for **February 17, 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.