

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
MONDAY, MARCH 19, 2018**

MEMBERS PRESENT AT BRIEFING:	Bruce Richardson, Chair, Cheri Gambow, regular member, Ryan Behring, regular member and Gary Sibley, alternate member
MEMBERS ABSENT FROM BRIEFING:	Robert Agnich, regular member
MEMBERS PRESENT AT HEARING:	Bruce Richardson, Chair, Cheri Gambow, regular member, Ryan Behring, regular member and Gary Sibley, alternate member
MEMBERS ABSENT FROM HEARING:	Robert Agnich, regular member
STAFF PRESENT AT BRIEFING:	Steve Long, Chief Planner/Board Administrator, Oscar Aguilera, Senior Planner, Kanesia Williams, Asst. City Atty., David Navarez, Project Engineer, Charles Trammell, Development Code Specialist, Trena Law, Board Secretary and Shombray Irby, Acting Board Secretary
STAFF PRESENT AT HEARING:	Steve Long, Chief Planner/Board Administrator, Oscar Aguilera, Senior Planner, Kanesia Williams, Asst. City Atty., David Navarez, Project Engineer, Charles Trammell, Development Code Specialist, Trena Law, Board Secretary and Shombray Irby, Acting Board Secretary

11:35 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **March 19, 2018** docket.

1:12 P.M.

The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise

indicated, each use is presumed to be a legal use. Each appeal must necessarily stand upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

MISCELLANEOUS ITEM NO. 1

Approval of the Board of Adjustment Panel C, February 22, 2018 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: MARCH 19, 2018

MOTION: None

The minutes were approved without a formal vote.

FILE NUMBER: BDA178-030(SL)

BUILDING OFFICIAL'S REPORT: Application of Winfield Moore, represented by Chris Bowers, for a variance to the front yard setback regulations at 1520 Olympia Drive. This property is more fully described as Lot 27, Block 8/3826, and is zoned CD 13, which requires a front yard setback of 31 feet 6 inches. The applicant proposes to construct and maintain a structure and provide a 20 foot 3 inch front yard setback, which will require an 11 foot 3 inch variance to the front yard setback regulations.

LOCATION: 1520 Olympia Drive

APPLICANT: Winfield Moore
Represented by Chris Bowers

REQUEST:

A request for a variance to the front yard setback regulations of 11' 3" is made to construct and maintain a "ventless firebox" and "planter/retaining wall" structures on a property developed with a single family home, which, according to the submitted revised site plan, would be located as close as 20' 3" from the front property line or as much as 11' 3" into the 31' 6" front yard setback.

STANDARD FOR A VARIANCE:

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

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

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted revised site plan is required.

Rationale:

- Staff concluded that the subject site is unique and different from most lots zoned CD 13 given its irregular shape and restrictive area with approximately 6,000 square feet in a zoning district where lots are typically 7,500 square feet. These physical site constraints preclude the applicant from developing it in a manner commensurate with development found on other similarly zoned CD 13 properties that are rectangular in shape and with the typical 7,500 square feet in area.
- Staff concluded that the applicant has shown by submitting a document indicating among other things that the total living area/additional improvements on the subject site at approximately 3,400 square feet is commensurate to that what is found on 14 other properties in the same CD 13 zoning district with approximately 4,400 square feet.
- Granting the variance would not be contrary to public interest if the Board imposes the submitted revised site plan as a condition since the features on this plan represent the only new structures to be located in the front yard setback is an approximately 20 square foot “ventless firebox” structure and “planter/retaining wall” structure – structures located farther from the front property line than the existing nonconforming single family home structure on the site.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	CD 13 (Conservation District)
<u>North:</u>	CD 13 (Conservation District)
<u>South:</u>	CD 13 (Conservation District)
<u>East:</u>	CD 13 (Conservation District)
<u>West:</u>	CD 13 (Conservation District)

Land Use:

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

Zoning/BDA History:

1. BDA167-009, Property located at 1545 W. Colorado Boulevard (two lots west of the subject site)
2. BDA056-224, Property located at 1541 W. Colorado Boulevard (the lot west of the subject site)

On January 17, 2017, the Board of Adjustment Panel A granted a request for variance to the front yard setback regulations of 74' 7", and imposed the submitted site plan as a condition to the request.

The case report stated that the request was made to construct and maintain a fountain structure and fence on a property developed with a single family home, which, according to the submitted site plan, would be located 5' from one of the site's two front property lines (Olympia Drive) or 69' 5" into the 74' 7" Olympia Drive front yard setback.

On October 17, 2006, the Board of Adjustment Panel A granted requests for variances to the front yard setback regulations of 19' and to the off-street parking regulations of 14', and imposed the submitted site plan as a condition to both requests, and additionally imposed the following conditions to the parking variance: an automatic garage door must be installed and maintained in working order at all times; and at no time may the area in front of the garage be utilized for the parking of vehicles. The case report stated that the requests were made to construct a detached accessory garage structure on a site developed with a single family use.

GENERAL FACTS /STAFF ANALYSIS:

- The request for variance to the front yard setback regulations of 11' 3" focuses on constructing and maintaining an approximately 21 square foot "ventless firebox" structure and "planter/retaining wall" structure on the site developed with a single family use/structure, which, according to the submitted revised site plan, would be located as close as 20' 3" from the front property line or as much as 11' 3" into the 31' 6" front yard setback.
- The subject site is zoned CD 13.

- CD 13 states that the minimum front yard must equal the average of the front yards of the houses on contiguous lots.
- The submitted revised site plan existing and proposed structures in the 31' 6" front yard setback – an existing structure that is as close as 17' 7" from the front property line, and a “new 36” tall planter/retaining wall” structure as close as 20' 3" from the front property line.
- According to DCAD records, the “main improvement” at 1520 Olympia Drive is a structure built in 1927 with 2,791 square feet of living/total area; and with “additional improvements” listed as a 400 square foot detached garage, a 230 square foot outbuilding, and an 8 square foot storage space.
- Prior to the creation of CD 13 in 2005, the subject site and surrounding properties had been zoned R-7.5(A) where the front yard setback is 25 feet.
- Because records show that the main improvement/structure on this site was built in the 1920’s, it is assumed that the part of the existing structures on the site (house and garage) in the 31' 6" front yard setback are nonconforming structures.
- The code defines nonconforming structure as a structure that does not conform to the regulations of the code, but which was lawfully constructed under the regulations in force at the time of construction.
- The code states that the right to rebuild a nonconforming structure ceases if the structure is destroyed by the intentional act of the owner or the owner’s agent.
- The code states that a person may renovate, remodel, repair, rebuild, or enlarge a nonconforming structure if the work does not cause the structure to become more nonconforming as to the yard, lot, and space regulations.
- The submitted revised site plan represents that the front yard setback is 31.5' or 31' 6" and that the closest new/proposed structure to be located in the front yard setback is the “new 36” tall planter/retaining wall” structure located 20' 3" from the front property line.
- The applicant’s request for variance to the front yard setback regulations is only made to locate and maintain new structures (firebox and planter/retaining wall structures) in the front yard setback, and not to remedy the existing nonconforming structures (house and garage) in the front yard setback.
- The applicant submitted a comparison table of 14 other nearby properties that appear to be in CD 13. This table represents that the living area and additional improvements on the site is approximately 3,400 square feet while the average of the other 14 living area/additional improvements is approximately 4,400 square feet. The comparison table represents that the subject site is the smallest in area of the other 14 properties.
- The site is generally flat, slightly irregular in shape, and according to the application is 0.1387 acres (or approximately 6,000 square feet) in area. Prior to the creation of CD 13 in 2005, the subject site and surrounding properties had been zoned R-7.5(A) where the typical lot size is 7,500 square feet.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.

- The variance to front yard setback regulations are necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same CD 13 zoning classification.
- The variance to front yard setback regulations would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same CD 13 zoning classification.
- If the Board were to grant the request, imposing a condition whereby the applicant must comply with the submitted revised site plan, the structures in the front yard setback would be limited to that what is shown on this plan – new structures that are located as close as 20' 3" from the front property line.
- Note that the applicant is aware that granting the request for a variance to the front yard setback regulations will not provide any relief to the existing nonconforming structures in the this (or any other) required setback since the applicant did not request that the Board consider this aspect as part of this application for a request for a variance to the front yard setback regulations.

Timeline:

January 23, 2018: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

February 12, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

February 12, 2018: 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 February 28th deadline to submit additional evidence for staff to factor into their analysis; and the March 9th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

February 15 & 28,
2018

The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachments A, B and C).

March 6, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Conservation District Chief Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: MARCH 19, 2018

APPEARING IN FAVOR: Christopher D. Bowers, 1800 Valley View Ln. Suite 360, Farmers Branch, TX

APPEARING IN OPPOSITION: No one

MOTION: **Sibley**

I move that the Board of Adjustment, in Appeal No. **BDA 178-030**, on application of Winfield Moore, **grant** the 11-foot three-inch variance to the front yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan is required.

SECONDED: **Behring**

AYES: 4 - Richardson, Gambow, Behring, Sibley

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA178-032(OA)

BUILDING OFFICIAL'S REPORT: Application of Eric Eissenberg, represented by Bob Mirabito, for special exceptions to the visual obstruction regulations at 10564 Lennox

Lane. This property is more fully described as Lot 3, Block 2/5521, and is zoned R-1ac(A), which requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to locate and maintain items in required visibility triangles, which will require special exceptions to the visual obstruction regulations.

LOCATION: 10564 Lennox Lane

APPLICANT: Eric Einsenberg
Represented by Bob Mirabito

REQUESTS:

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

1. Special exceptions to the visual obstruction regulations are made to maintain a 6' high stone column and to construct and maintain a 6' high open wrought iron fence with a sliding wrought iron gate in the two 20' visibility triangles on both sides of the driveway into the site from Harry's Lane; and
2. A special exception to the visual obstruction regulations is made to maintain a 6' high stone column in the 20 foot visibility triangle on the south side of the driveway onto the site from Lennox Lane.

Note that while the applicant requested special exceptions to the visual obstruction in the two 20 foot visibility triangles on both sides of the driveway into the site from Lennox Lane, the submitted site plan represents that only a special exception to the south side visual obstruction of the driveway is required.

STANDARD FOR A SPECIAL EXCEPTION TO VISUAL OBSTRUCTION REGULATIONS:

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

STAFF RECOMMENDATION:

Approval, subject to the following condition:

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

Rationale:

- The Sustainable Development Department Senior Engineer has no objections to the requests.
- Staff concluded that requests for special exceptions to the visual obstruction regulations should be granted (with the suggested conditions imposed) because

the items located/to be located in the visibility triangles do not/will not constitute a traffic hazard.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA167-140, Property at 10564 Lennox Lane (the subject site)

On December 11, 2017, The Board of Adjustment Panel granted a request for a special exception to the fence height regulations and a special exception to the fence materials and imposed the following condition: 1) compliance with the submitted site plan and elevation is required.

The case report stated the request was made to construct and maintain a 6' high wrought iron fence with 6' high wrought iron swinging gates and 6' high brick columns in the site's Lennox Lane 40' front yard setback along the property line; and, a 6' high wrought iron fence with 6' high wrought iron sliding gates and 6' high brick columns and a 6' high *solid wood* fence in the site's Harry's Lane 40' front yard setback along the property line.

GENERAL FACTS/STAFF ANALYSIS:

- These requests for special exceptions to the visual obstruction regulations focus on maintaining a 6' high stone column, and constructing and maintaining a 6' high open wrought iron fence with a sliding wrought iron gate in the two 20 foot visibility triangles on both sides of the driveway into the site from Harry's Lane; and

maintaining a 6 foot high stone column in the 20' visibility triangle on the south side of the driveway into the site from Lennox Lane.

- Section 51A-4.602(d) of the Dallas Development Code states the following: a person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections, and 20 foot visibility triangles at drive approaches and at alleys on properties zoned single family); and
 - between two and a half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- The property is located in an R-1ac (A) zoning district which requires, the portion of a lot with a triangular area formed by connecting together the point of intersection of the edge of a driveway or alley and the adjacent street curb line (or, if there is no street curb, what would be the normal street curb line) and points on the driveway or alley edge end the street curb line 20 feet from the intersection.
- A site plan and elevation have been submitted indicating portions of an existing 6 foot high stone column and a proposed 6' high open wrought iron fence with a sliding wrought iron gate located in the 20' visibility triangles on both sides of the driveway into the site from Harry's Lane; and an existing 6' high stone column located in the 20' visibility triangle on the south side of the driveway into the site from Lennox Lane.
- The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked "Has no objections".
- The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulation to maintain a 6' high stone column and to construct and maintain a 6' high open wrought iron fence with a sliding wrought iron gate in the two 20 foot visibility triangles on both sides of the driveway into the site from Harry's Lane; and to maintain a 6' high stone column in the 20' visibility triangle on the south side of the driveway into the site from Lennox Lane do not constitute a traffic hazard.
- Granting these requests with a condition imposed that the applicant complies with the submitted site plan and elevation would limit the items located in the 20' drive approach visibility triangles into the site from Harry's Lane, and the 20' south side of the drive approach visibility triangle into the site from Lennox Lane to that what is shown on these documents – a 6' high stone column and a 6' high open wrought iron fence with a sliding wrought iron gate in the two 20 foot visibility triangles on both sides of the driveway into the site from Harry's Lane, and a 6' high stone column in the 20' visibility triangle on the south side of the driveway into the site from Lennox Lane.

Timeline:

January 24, 2018: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

February 12, 2018: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

February 13, 2018: The Board Senior Planner emailed the applicant the following information:

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

March 6, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Conservation District Chief Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

March 8, 2018: The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked "Has no objections".

BOARD OF ADJUSTMENT ACTION: MARCH 19, 2018

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Gambow**

I move to grant that the Board of Adjustment grant application **BDA 178-032(SL)** 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 and elevation is required.

SECONDED: **Behring**

AYES: 4 - Richardson, Gambow, Behring, Sibley

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA178-034(SL)

BUILDING OFFICIAL'S REPORT: Application of Robert Baldwin of Baldwin and Associates for a variance to the front yard setback regulations at 8457 San Benito Way. This property is more fully described as Lot 1, Block 27/5278 and is zoned PD 575 (Subarea D), which requires a front yard setback of 50 feet. The applicant proposes to construct and maintain a structure and provide a 30 foot front yard setback, which will require a 20 foot variance to the front yard setback regulations.

LOCATION: 8457 San Benito Way

APPLICANT: Robert Baldwin of Baldwin and Associates

REQUEST:

A request for a variance to the front yard setback regulations of 20' is made to construct and maintain a single family home, part of which is proposed to be located in one of the site's two 50' front yard setbacks (Whittier Avenue) on a site that is undeveloped.

STANDARD FOR A VARIANCE:

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

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

STAFF RECOMMENDATION:

Denial

Rationale:

- While staff recognized that the subject site is slightly sloped, with mature trees on its western side, and unique and different from most lots in the PD 575 (Subdistrict D) zoning district in that it is the only lot in this subdistrict with two, 50' front yard setbacks, and according to the applicant, is the smallest lot in this subdistrict, staff concluded that the applicant had not substantiated how any/all of these features preclude the lot from being developed in a manner commensurate with the development upon other parcels of land with the same PD 575 (Subdistrict D) zoning district. The site is over 26,000 square feet in area in a zoning district that had been zoned R-10(A) where lots are typically 10,000 square feet in area. While the applicant submitted a document indicating that the "percent buildable area" on the subject property zoned PD 575 (Subdistrict 10) is 30 percent, and the "typical interior lot" in R-10(A) has 56 percent, the applicant's same document shows that the subject is 23,200 square feet while the typical interior lot in R-10(A) is 10,000 square feet.
- In addition, the applicant had not substantiated how the proposed two-story single family home structure with, according to notations on a revised site plan, an approximately 2,600 square foot footprint and approximately 5,100 square feet of total area was commensurate to the development upon other parcels of land with the same PD 575 (Subdistrict D).

BACKGROUND INFORMATION:

Zoning:

Site: PD 575 (Subdistrict D) (Planned Development)
North: PD 575 (Subdistrict F) (Planned Development)
South: PD 575 (Subdistrict H) (Planned Development)
East: PD 575 (Subdistrict F) (Planned Development)
West: PD 575 (Subdistrict D) (Planned Development)

Land Use:

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

Zoning/BDA History:

1. BDA145-104, Property at 8441 San Benito Way (the lot southwest of the subject site)

On October 19, 2015, the Board of Adjustment Panel C granted a request for a variance to the front yard setback regulations of 33' 7", and imposed the submitted site plan as a condition to the request. The case report stated that the request was made to construct and maintain additions (air-conditioned living space and carport with building footprints of approximately 1,500 square feet) to an existing single family home structure/use that has (according to the applicant) approximately 4,100 square feet, part of which would be located as close as 16' 5" from the site's San Pedro Parkway property line or 33' 7" into this 50' front yard setback.

GENERAL FACTS/STAFF ANALYSIS:

- This request for variance to the front yard setback regulations of 20' focuses on constructing and maintaining a two-story single family home structure with, according to notations on a revised site plan, an approximately 2,600 square foot footprint and approximately 5,100 square feet of total area), part of which would be located in one of the site's two 50' front yard setbacks (Whittier Avenue).
- The property is located in the PD 575 (Subdistrict D) zoning district which requires a minimum front yard setback of 50 feet.
- The subject site is located at the west corner of San Benito Way and Whittier Avenue. The subject site has 50' front yard setbacks along both street frontages. The site has a 50' front yard setback along Whittier Avenue, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in this zoning district even though the proposed house is to be oriented to front onto San Benito Way. The site also has a 50' front yard setback along San Benito Way, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where a 6' side yard setback is required. The site's San Benito Way frontage is a front yard setback to maintain the continuity of the established front yard setback established by the lot to the southwest that fronts/is oriented southeastward towards San Benito Way.
- The application states that a variance is requested of 20' which implies (given a 50' front yard setback) that the proposed structure would be 30' from a front property line. However, both the originally submitted site plan and revised site plan show no part of the structure 30' away from a property line. The revised site plan shows a building footprint that is at its closest point 31' from the Whittier Avenue front property line and located outside the 50' front yard setback on San Benito Way.

- The applicant has stated in a letter that the request is to match what appears to be a 30' front yard setback of the property to the north of the subject site.
- According to DCAD records, there are no “main or additional improvements” for property addressed at 8457 San Benito Way.
- The applicant has stated in a letter that not only is the site unusual in that it has two 50' front yard setbacks, it is also the smallest lot in the PD subdistrict.
- The site is relatively flat, rectangular in shape, and, according to the application, 0.61 acres (or approximately 26,000 square feet) in area. The site is zoned PD 575 (Subdistrict D). Prior to when this PD was created in 2000, the subject site had been zoned R-10(A) that required a 30' front yard setback.
- The site has two 50' front yard setbacks and two 6' side yard setbacks. Most lots in this zoning district have one 50' front yard setback, two 6' side yard setbacks, and one 6' rear yard setback.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance 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 PD 575 (Subdistrict D) 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 PD 575 (Subarea D) zoning classification.
- If the Board were to grant the variance request, and impose the submitted revised 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 single family home structure that would be located 31' from the site's Whittier Avenue front property line (or as 19' into this 50' front yard setback).

Timeline:

January 24, 2018: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

February 12, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

February 12, 2018: 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 February 28th deadline to submit additional evidence for staff to factor into their analysis; and the March 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

February 28, 2018 The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

March 6, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Conservation District Chief Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: MARCH 19, 2018

APPEARING IN FAVOR: Rob Baldwin, 3604 Elm St. #13, Dallas, TX
Chris Panatier, 763 Peavy Rd., Dallas, TX

APPEARING IN OPPOSITION: Carl Ray, 8507 San Benito Way, Dallas TX

MOTION: Gambow

I move that the Board of Adjustment, in Appeal No. **BDA 178-034**, on application of Robert Baldwin, **grant** the 20-foot variance to the front yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in

unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan is required.

SECONDED: Sibley

AYES: 4 - Richardson, Gambow, Behring, Sibley

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

MOTION: Richardson

I move to adjourn this meeting.

SECONDED: Gambow

AYES: 4 – Richardson, Gambow, Behring, Sibley

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

2:32 P. M. - Board Meeting adjourned for **March 19, 2018**

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

Note: For detailed information on testimony, refer to the tape retained on file in the Department of Planning and Development.