

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
MONDAY, APRIL 17, 2017**

MEMBERS PRESENT AT BRIEFING: Bruce Richardson, Chair, Alex Winslow, regular member, Phil Foster, regular member and Cheri Gambow, regular member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Bruce Richardson, Chair, Alex Winslow, regular member, Phil Foster, regular member and Cheri Gambow, regular member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Kanesia Williams, Asst. City Atty., Neva Dean, Asst. Director, Todd Duerksen, Dev. Code Specialist, Lloyd Denman, Asst. Director Engineering, Phil Erwin, Chief Arborist, Donna Moorman, Chief Planner, Jennifer Munoz, Senior Planner, Neva Dean, Asst. Director, and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Kanesia Williams, Asst. City Atty., Todd Duerksen, Dev. Code Specialist, Lloyd Denman, Asst. Director Engineering, Phil Erwin, Chief Arborist, Donna Moorman, Chief Planner, Jennifer Munoz, Senior Planner, and Trena Law, Board Secretary

11:10 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **April 17, 2017** docket.

1:07 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, March 20, 2017 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: APRIL 17, 2017

MOTION: None

The minutes were approved without a formal vote.

FILE NUMBER: BDA167-039(JM)

BUILDING OFFICIAL'S REPORT: Application of Rick Guerrero for a variance to the front yard setback regulations at 4943 Philip Avenue. This property is more fully described as part of Lot 1, Block 18/1242, and is zoned D(A), which requires a front yard setback of 25 feet. The applicant proposes to construct and maintain a structure and provide a 7 foot 10 inch front yard setback, measured at the foundation with a roof eave not to exceed 1 foot 6 inches, which will require a 17 foot 2 inch variance to the front yard setback regulations.

LOCATION: 4943 Philip Avenue

APPLICANT: Rick Guerrero

REQUEST:

A request for a variance to the front yard setback regulations of 17' 2" is made to construct and/or maintain a single family structure, part of which would be located 7' 10" from the site's front property line (with a maximum 18 inch roof eave) or 17' 2" into the 25' front yard setback along S. Barry Avenue.

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 of the request, subject to the following condition:

- Compliance with the submitted revised site plan is required.

Rationale:

- Staff has concluded that the variance should be granted because the subject site is unique and different from other lots in the D(A) Duplex District by being of a restrictive area. The minimum lot size in a D(A) Duplex District is 6,000 sq.ft. The subject site has 4,750 sq. ft. of area. Additionally, the lot is restrictive in developable proportion. If all required setbacks are taken into account, the developable area would measure 65' by 20', or 1,300 square feet. Lots in the area with this zoning designation typically have 110' by 38', or 4,180 square feet of developable area. Furthermore, the applicant has substantiated how these features preclude the lot from being developed in a manner commensurate with the development upon other parcels of land with the same D(A) zoning. The applicant submitted a list of 16 other properties in the zoning district where the average living area is approximately 1,364 square feet, three of which are corner lots, but all of a more traditional style and proportion.
- Additionally, staff has concluded that the variance should be granted because the subject site has two front yards, each with a 25' front yard setback, encumbering the commensurate use of the subject land area.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	D(A) Duplex District
<u>North:</u>	D(A) Duplex District
<u>East:</u>	D(A) Duplex District
<u>South:</u>	PD No. 864 for D(A) Duplex District Uses
<u>West:</u>	D(A) Duplex District

Land Use:

The subject site is currently undeveloped. Properties to the north, east, and west are developed with single-family homes. A public school exists to the south.

Zoning/BDA History:

1. BDA167-037, Property located at 4942 Gurley Avenue (WNW of the subject site)

On March 20, 2017, the Board of Adjustment Panel C granted a request for a variance to the front yard regulations of up to 18' and imposed the following condition: 1) compliance with the submitted revised site plan is required.

The case report stated that the request was made to construct and maintain a single-family structure located less than the required 25' from the front property line along S. Barry Avenue.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing/maintaining a single family structure, part of which would be located 7' 2" from the site's front property line (with a maximum 18 inch roof eave) or 17' 10" into the 25' front yard setback along S. Barry Avenue.
- The subject site is flat, rectangular in shape (95' x 50'), and according to the submitted application is 0.166 acres (or approximately 4,750 square feet) in area.
- The site is zoned D(A) Duplex District, where lots are required to be a minimum of 6,000 square feet for residential uses.
- The applicant wishes to construct and maintain a 1,233 square foot single-family structure on a site that is undeveloped..
- Lots zoned a D(A) Duplex District are required to provide a minimum front yard setback of 25'. The subject site is located at the northwest corner of Philip Avenue and S. Barry Avenue. Regardless of how the home is being constructed or oriented, the site has two front yard setbacks. A 25' front yard setback is required along Philip Avenue, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in a Duplex zoning district. The site also has a 25' front yard setback along S. Barry Avenue, the longer of the two frontages of this corner lot, which is typically regarded as a side yard, but is considered a front yard setback nonetheless to maintain the continuity of the established lot developed within the block north of the subject property with the front yard on S. Barry Avenue.
- According to measurements taken from Google Earth, combined with photos taken during a site visit conducted by staff, the home to the southeast which is triggering block continuity for established development is located approximately 5-10' from the front property line along S. Barry Avenue. Since S. Barry Avenue is the sole street frontage for this property, if they were ever to reconstruct at this site, they would be

required to comply with the existing zoning and provide the required front yard. The lot is currently zoned a D(A) Duplex District and requires a 25' front yard setback. For this reason, the subject site is required to treat S. Barry Avenue frontage as a front yard and comply with the required 25' front yard setback.

- The site plan submitted with this request identifies how the applicant would like to provide a 7' front yard along S. Barry Avenue, as measured from the foundation. The application submitted requested to provide a 7' 2" front yard along S. Barry Avenue. This should be corrected on the submitted revised site plan.
- Lots of this size in a D(A) Duplex District with one front yard generally have approximately 4,180 square feet of developable area remaining, or 110' by 38'. Between the reduced lot size of 95' by 50', and the added front yard requirement, the subject site has approximately 1,300 square feet of developable area, or 65' by 20'. In evidence submitted by the applicant on March 29th, the style of home would be severely limited by the odd proportion of developable area under existing conditions.
- Additional evidence submitted by the applicant indicates that a survey of surrounding properties in the area found the average home size to be approximately 1,364 square feet, including a few corner properties. The typical style of homes were not narrow "shotgun style", as would be required for the subject site.
- 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 D(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 D(A) zoning classification.
- If the board were to grant the variance request, and impose the submitted revised site plan as a condition, the structures in the front yard setback would be limited to what is shown on this document– which in this case is a portion of a structure located as close as 7' 2" from the site's front property line along S. Barry Avenue (or 17' 10" into the 25' front yard setback).

Timeline:

- January 31, 2017: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- March 15, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- March 16, 2017: 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 March 29th deadline to submit additional evidence for staff to factor into their analysis; and the April 7th 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.
- March 29, 2017: The applicant submitted new evidence, provided in “Attachment A.”
- April 4, 2017: 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 Sustainable Development and Construction Assistant Director Engineering, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, 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: APRIL 17, 2017

APPEARING IN FAVOR: Gerald Carlton, 24 Lakeside Park, Dallas, TX

APPEARING IN OPPOSITION: Norma Hernandez, 5019 Philip Ave., Dallas, TX

MOTION: Foster

I move that the Board of Adjustment, in Appeal No. **BDA 167-039**, on application of Richard Guerrero, **grant** the 17-foot 2-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/elevation is required.

SECONDED: Winslow

AYES: 4 – Richardson, Winslow, Foster, Gambow

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA167-036(SL)

BUILDING OFFICIAL’S REPORT: Application of Beth Greeson, represented by Wade Peterson, for a special exception to the tree preservation regulations at 6524 Alpha Road (aka: 6625 Alpha Road). This property is more fully described as an 84.991 acre parcel in Block 7432 and a 76.16 acre parcel in Block 7421, and is zoned R-1/2ac(A), which requires mandatory tree mitigation. The applicant proposes to construct and maintain a nonresidential use and provide an alternate tree mitigation plan, which will require a special exception to the tree preservation regulations.

LOCATION: 6524 Alpha Road (aka: 6625 Alpha Road)

APPLICANT: Beth Greeson
Represented by Wade Peterson

REQUEST:

A special exception to the tree preservation regulations is made to remove and/or replace protected trees on a site currently developed with a private country club use (Northwood Club), and not fully meet the tree preservation regulations.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE AND TREE PRESERVATION REGULATIONS:

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

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

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

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

ORIGINAL STAFF RECOMMENDATION (March 20, 2017):

Denial

Rationale:

- Staff concurred with the Chief Arborist and recommends denial of the request in that the applicant had not substantiated how strict compliance with the requirements of the tree preservation regulations would unreasonably burden the use of the property; and how the special exception would not adversely affect neighboring property.

REVISED STAFF RECOMMENDATION (April 17, 2017):

Approval, subject to the following conditions:

1. Tree protection as required under Sec. 51A-10.136 must be fully implemented, and an inspection of the tree protection with approval must be completed by the city arborist by May 1, 2017.
2. A city arborist final inspection, and confirmation of all tree mitigation, must be completed no later than May 31, 2018.

Rationale:

- Staff concurs with the Chief Arborist and recommends approval of the request in that strict compliance with the requirements of the tree preservation regulations would unreasonably burden the use of the property, and that the special exception would not adversely affect neighboring property. This determination was made with consideration given to the extent to which landscaping exists for which no credit is given under this article, and the extent to which other existing or proposed amenities (open space, tree conservation and the recreational use) will compensate.

BACKGROUND INFORMATION:

Zoning:

Site: R-1/2ac(A)(SUP 123) (Single family residential, ½ acre)
North: R-1/2ac (A) (Single family residential, ½ acre)
South: PD 78 (Planned Development)
East: R-1/2ac(A) (Single family residential, ½ acre)
West: R-16(A) (Single family residential, 16,000 square feet)

Land Use:

The approximately 161 acre subject site is developed with a private country club use (Northwood Club). The areas to the north, east, south, and west appear to be developed mainly 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:

- The request for a special exception to the tree preservation regulations focuses on removing and/or replacing protected trees on a site currently developed with a private country club use (Northwood Club), and not fully meeting the tree preservation regulations.
- The Dallas Development Code requires full compliance with the landscape and tree preservation regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period.
- On March 13, 2017, the City of Dallas Chief Arborist submitted a memo regarding the applicant's request (see Attachment B). The memo stated how this request was triggered by completing golf course renovations, where the Northwood Golf Club has removed, with permit, 105 protected trees for a total of 2,578 diameter inches required to be replaced.
- The Chief Arborist's memo of March 13th stated the following with regard to deficiencies:
 1. Per Article X Landscape and Tree Preservation Regulations Sec. 51A-10.134, "The total caliper of replacement trees must equal or exceed the total caliper of the protected trees removed or seriously injured." There is no reference in this application to the number of inches of protected trees for which mitigation credit is requested. The numbers are stated from permit application and data previously provided to the arborist office by the applicant.
 2. The applicant is removing 2,578 inches required to be mitigated and proposing to provide 0 replacement inches nor to comply through alternative methods of tree placement provided in Sec. 51A-10.135.
- The Chief Arborist's memo of March 13th listed the following factors for consideration:
 1. The Northwood Country Club is a well-established facility containing a mature urban forest covering much of the property, with a significant amount of it south of Alpha Road which existed since before it opened in 1946. The trees are an important part of the function of the property and are managed to sustain the

economic, aesthetic, and ecological purposes of the golf course and its other functions.

2. The property is 156.79 acres which held 2,053 trees by a recent survey. This number is also represented by a measured 3,517,035 square feet of tree canopy coverage. Tree canopy coverage means the total horizontal spread of tree canopy projected over the land below it. The tree canopy coverage calculation is an alternative method of determining the statistic of trees on a property other than measuring tree stem diameters. This is not a standard used in the City of Dallas for tree mitigation assessment. The use of tree canopy coverage is addressed in ForwardDallas as a means of potentially establishing tree canopy cover goals and as a management tool for the city.
 3. Of the 2,053 trees, a minimum of 105 trees (about 5.1% of the total) were legally removed, accounting for a removed tree canopy of 179,865 square feet. The applicant states this to be a 2.6% reduction, but my calculations measure to a 5.1% reduction. The average tree canopy cover per tree is 1,713 square feet.
- The Chief Arborist's memo of March 13th stated the following with regard to current regulations:
 - Article X requires 'if a tree removal application is approved, one or more healthy replacement trees must be planted in accordance with' Section 51A-10.134 for quantity, species, location, size, and timing. Further, 'if the building official determines that, due to inhospitable soil conditions or inadequate space, it would be impracticable or imprudent for the responsible party to plant a replacement tree on the lot ...(the 'tree removal property'), the responsible party shall comply with one or more' of the requirements of Section 51A-10.135. Beyond these measures, an applicant may request a special exception to these regulations (Sec 51A-10.110) citing that 'strict compliance with the requirements of this article will unreasonably burden the use of the property', and 'the special exception will not adversely affect neighboring property', and the requirements are not imposed by a site-specific landscape plan approved by the city plan commission, or city council.' The Chief Arborist has confirmed through the applicant that no trees or landscaping under an approved landscape plan is affected by this tree mitigation request.
 - The Chief Arborist's memo of March 13th stated the following with regard to request:
 - The applicant states "the current golf course has 51.5% canopy coverage and would likeability to reduce the canopy coverage up to 40% coverage, where necessary. The current tree removal plan calls for a reduction to 48.9%."
 - On February 20, 2017, Mr. Wade Peterson wrote to the board "the applicant is seeking relief from Sec. 51A-10.134 'Replacement of Removed or Seriously Injured Trees' related to inch for inch replacement." He further stated "since the Applicant has proposed improvements that leave the property well in excess of target canopy coverage,..., a waiver of tree mitigation is being requested."
 - In this letter, Mr. Peterson states "the Applicant is proposing that they be allowed (in lieu of inch-per-inch mitigation) to meet the proposed new Article X ordinance currently being proposed. The proposed new ordinance targets a percent canopy coverage based on the zoning of the site." As stated on the 'Alternative

Mitigation Plan’, ‘since the site will still maintain well in excess of minimum proposed requirements, no mitigation is requested.’

- The City of Dallas Chief Arborist had recommended denial of the submitted proposal, as written. The Chief Arborist had concluded that the applicant had not substantiated how strict compliance with the requirements of the landscape regulations would unreasonably burden the use of the property; and how the special exception would not adversely affect neighboring property. Among other things, the applicant had not substantiated how the tree canopy coverage percentage measurement should factor as a full waiver of tree mitigation of 2,578 inches of protected trees, and not as a reduction of tree mitigation inches by requiring a partial planting based on the number of trees removed (105), or by other equivalency. The applicant did not conclude if the coverage reduction should occur for tree removal for the current project only, or if it should be extended to future tree removal. The application made this unclear. The Chief Arborist had believed the tree canopy cover percentage control for a urban forest management tool (particularly for heavily-wooded golf courses) is reasonable, and should be considered positively when determining the requirements for tree replacement on the site and if the tree mitigation requirements should be significantly reduced. When the trees are an integral part of the use of a facility, the reduction, maintenance, and addition of trees is a fundamental part of the function and cost of sustaining the facility safely, and it may be reasonable to apply this mitigation into the cost of that process to sustaining the property’s tree cover.
- On April 6, 2017, the City of Dallas Chief Arborist submitted a memo regarding the applicant’s request (see Attachment E). The memo stated among other things how he does not object to the May 4th request of the applicant for the quantity reduction of tree replacement and the timing extension to May 31, 2018.
- The City of Dallas Chief Arborist April 6th memo also states the following:
 - In making the determination to not object to the applicant’s revised request, a consideration was made of the specific factor of the intent of the owner to conserve the existing landscaping on the property. This extensively covers the property for the golf course recreational uses and provides a compensation for alternative compliance methods otherwise required.
 - According to the applicant, the permitted renovation of the golf course caused the removal of 2,580 inches (of 105 trees) which require replacement by Article X standards. The proposal to plant 420” (105 trees at 4 inches) on the golf course would reduce the mitigation by approximately 17 percent. A payment of \$50,000 to the Reforestation Fund is equivalent to 728” (or 28 percent) of required replacement trees. Combined, this would account for 1148”, or 44.5%, of the tree replacement completed.
 - The remaining mitigation would be 1,432” (55.5%), or the equivalent replacement value of \$99,292.
- The City of Dallas Chief Arborist states that if the Board chooses to support the request, that the following conditions be imposed:
 1. Tree protection as required under Sec. 51A-10.136 must be fully implemented, and an inspection of the tree protection with approval must be completed by the city arborist, by May 1, 2017.

2. A city arborist final inspection, and confirmation of all tree mitigation, must be completed no later than May 31, 2018.
- If the board chooses to approve this request, and imposes conditions suggested by staff/the Chief Arborist, the site would be provided exception from full compliance with the tree preservation regulations.

Timeline:

January 26, 2017: 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 15, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

February 15, 2017: 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 March 1st deadline to submit additional evidence for staff to factor into their analysis; and the March 10th 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 20, 2017: The applicant's representative submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

March 7, 2017: 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 Sustainable Development and Construction Assistant Director Engineering, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, 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.

March 13, 2017: The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment B).

- March 20, 2017: The Board of Adjustment Panel C conducted a public hearing on this application. The Board delayed action on this application until their next public hearing to be held on April 17, 2017.
- March 27, 2017: The Board Administrator wrote the applicant's representative a letter of the board's action; the March 29th deadline to submit additional evidence for staff to factor into their analysis; and the April 7th deadline to submit additional evidence to be incorporated into the Board's docket materials.
- March 30, 2017: The applicant's representative submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application and at the March 17th hearing (see Attachment C).
- April 4, 2017: The applicant's representative submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application and at the March 17th hearing (see Attachment D).
- April 4, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director Engineering, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, 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.
- April 6, 2017: The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment E).

BOARD OF ADJUSTMENT ACTION: MARCH 20, 2017

APPEARING IN FAVOR: Wade Peterson, 7447 Ramber Road, Dallas, TX
 Kevin Carpenter, 1994 Dowelling Dr, Frisco, TX
 Kyle Downs, 104 Horizon View CT., Norman, OK

APPEARING IN OPPOSITION:

MOTION: **Bartos**

I move that the Board of Adjustment in Appeal No. **BDA 167-036**, hold this matter under advisement until **April 17, 2017**.

SECONDED: **Foster**

AYES: 4 – Richardson, Foster, Gambow, Bartos

NAYS: 1 - Beikman

MOTION PASSED: 4 – 1

BOARD OF ADJUSTMENT ACTION: APRIL 17, 2017

APPEARING IN FAVOR: Wade Peterson, 7557 Rambler Road, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Winslow**

I move that the Board of Adjustment, in Appeal No. **BDA 167-036**, on application of Beth Greeson, represented by Wade Peterson, RLA, **grant** the request of this applicant to provide an alternate tree mitigation plan as a special exception to tree preservation requirements in the Dallas Development Code because our evaluation of the property and the testimony shows that: **(1)** strict compliance with the requirements will unreasonably burden the use of the property; and **(2)** the special exception will not adversely affect neighboring property. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

1. Tree protection as required under Sec. 51A-10.136 must be fully implemented, and an inspection of the tree protection with approval must be completed by the city arborist, by May 1, 2017.
2. A city arborist final inspection, and confirmation of all tree mitigation, must be completed no later than May 31, 2018.

SECONDED: **Foster**

AYES: 4 – Richardson, Winslow, Foster, Gambow

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA167-038(JM)

BUILDING OFFICIAL’S REPORT: Application of Benjamin Leal, represented by Rick Guerrero, for a variance to the front yard setback regulations at 4902 Gurley Avenue. This property is more fully described as Lot 12, Block 18/1242, and is zoned D(A), which requires a front yard setback of 25 feet. The applicant proposes to construct and

maintain a structure and provide a 7 foot front yard setback, measured at the foundation with a roof eave not to exceed 1 foot 6 inches, which will require an 18 foot variance to the front yard setback regulations.

LOCATION: 4902 Gurley Avenue

APPLICANT: Benjamin Leal
Represented by Rick Guerrero

REQUEST:

A request for a variance to the front yard setback regulations of 18' is made to construct and/or maintain a single family structure, part of which would be located 7' from the site's front property line (with a maximum 18 inch roof eave) or 18' into the 25' front yard setback along South Fitzhugh Avenue.

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:

- (D) 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;
- (E) 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
- (F) 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 of the request, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff has concluded that the variance should be granted because the subject site is unique and different from other lots in the D(A) Duplex District by being of a restrictive area (in developable proportion to surrounding properties). If all required setbacks are taken into account, the developable area would measure 110' by 20', or 2,250 square feet. Lots in the area with this zoning designation typically have 110' by 38', or 4,180 square feet of developable area. Furthermore, the applicant has substantiated how these features preclude the lot from being developed in a manner

commensurate with the development upon other parcels of land with the same D(A) zoning. The applicant submitted a list of 15 other properties in the zoning district where the average living area is approximately 1,364 square feet, three of which are corner lots, but all of a more traditional style and proportion.

- Additionally, staff has concluded that the variance should be granted because the subject site has two front yards, each with a 25' front yard setback, further encumbering the commensurate use of the subject land area.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	D(A) Duplex District
<u>North:</u>	D(A) Duplex District
<u>East:</u>	D(A) Duplex District
<u>South:</u>	PD No. 864 for D(A) Duplex District Uses
<u>West:</u>	D(A) Duplex District

Land Use:

The subject site is currently undeveloped. Properties to the north and east are developed with single-family homes. A duplex is developed to the west. A surface parking lot serving a nearby public school exists to the south.

Zoning/BDA History:

1. BDA167-037, Property located at 4942 Gurley Avenue (SW of the subject site) On March 20, 2017, the Board of Adjustment Panel C granted a request for a variance to the front yard regulations of up to 18' and imposed the following condition: 1) compliance with the submitted revised site plan is required.

The case report stated that the request was made to construct and maintain a single-family structure located less than the required 25' from the front property line along S. Barry Avenue.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing/maintaining a single family structure, part of which would be located 7' from the site's front property line (with a maximum 18 inch roof eave) or 18' into the 25' front yard setback along S. Fitzhugh Avenue.
- The subject site is flat, rectangular in shape (145' x 50'), and according to the submitted application is 0.166 acres (or approximately 7,250 square feet) in area.

- The site is zoned D(A) Duplex District, where lots are required to be a minimum of 6,000 square feet for residential uses.
- The applicant wishes to construct and maintain a 1,254 square foot single-family structure on a site that is undeveloped.
- Lots zoned a D(A) Duplex District are required to provide a minimum front yard setback of 25'. The subject site is located at the southeast corner of Gurley Avenue and S. Fitzhugh Avenue. Regardless of how the home is being constructed or oriented, the site has two front yard setbacks. A 25' front yard setback is required along Gurley Avenue, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in a Duplex zoning district. The site also has a 25' front yard setback along S. Fitzhugh Avenue, the longer of the two frontages of this corner lot, which is typically regarded as a side yard, but is considered a front yard setback nonetheless to maintain the continuity of the established lot developed within the block south of the subject property with the front yard on S. Fitzhugh Avenue.
- The site plan submitted with this request identifies how the applicant would like to provide a 7' front yard along S.Fitzhugh Avenue, as measured from the foundation.
- Lots of this size in a D(A) Duplex District with one front yard generally have approximately 4,180 square feet of developable area remaining, or 110' by 38'. With the added front yard requirement, the subject site has approximately 2,250 square feet of developable area, or 110' by 20'. In evidence submitted by the applicant on March 29th, the style of home would be severely limited by the odd proportion of developable area under existing conditions.
- Additional evidence submitted by the applicant indicates that a survey of surrounding properties in the area found the average home size to be approximately 1,364 square feet, including a few corner properties. The typical style of homes were not narrow "shotgun style", as would be required for the subject site.
- 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 D(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 D(A) zoning classification.

- If the board were to grant the variance request, and impose the submitted site plan as a condition, the structures in the front yard setback would be limited to what is shown on this document– which in this case is a portion of a structure located as close as 7’ from the site’s front property line along S. Fitzhugh Avenue (or 18’ into the 25’ front yard setback).

Timeline:

January 31, 2017: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

March 15, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

March 16, 2017: 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 March 29th deadline to submit additional evidence for staff to factor into their analysis; and the April 7th 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.

March 29, 2017: The applicant submitted new evidence, provided in “Attachment A.”

April 4, 2017: 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 Sustainable Development and Construction Assistant Director Engineering, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, 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: APRIL 17, 2017

APPEARING IN FAVOR: Gerald Carlton, 24 Lakeside Park, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Foster

I move that the Board of Adjustment, in Appeal No. **BDA 167-038**, on application of Benjamin Leal, represented by Richard Guerrero, **grant** the 18-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/elevation is required.

SECONDED: Gambow

AYES: 4 – Richardson, Winslow, Foster, Gambow

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA167-040(SL)

BUILDING OFFICIAL’S REPORT: Application of Miguel Ramirez for special exceptions to the visual obstruction regulations at 1312 McKee Street. This property is more fully described as part of Lot 4, Block E/907 3/4, and is zoned PD-317, which requires a 20 foot visibility triangle at driveway approaches and a 45 foot visibility triangle at street intersections. The applicant proposes to locate and maintain items in required visibility triangles, which will require special exceptions to the visual obstruction regulations.

LOCATION: 1312 McKee Street

APPLICANT: Miguel Ramirez

REQUESTS:

The following requests are made on a site that is currently undeveloped:

1. A special exception to the visual obstruction regulations is made to locate and maintain a portion of a proposed duplex structure in the 45’ visibility triangle at the intersection of McKee Street and Gould Street; and
2. Special exceptions to the visual obstruction regulations are made to locate and maintain portions of the aforementioned duplex structure in the innermost 20’ visibility triangle at the driveways into the site on McKee Street and Gould Street.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

The Board shall grant a special exception to the requirements of the visual obstruction regulations when, in the opinion of the Board, the item will not constitute a traffic hazard.

STAFF RECOMMENDATION:

Denial

Rationale:

- Staff concurred with the Sustainable Development Department Assistant Director of Engineering who recommends that these requests be denied – that the proposed duplex in the 45’ visibility triangle at the intersection of McKee Street and Gould Street, and in the innermost 20’ visibility triangle at the driveways into the site on McKee Street and Gould Street create a traffic hazard.

BACKGROUND INFORMATION:

Zoning:

Site: PD 317 (Subdistrict 2) (Planned Development)
North: PD 317 (Subdistrict 2) (Planned Development)
South: PD 317 (Subdistrict 2) (Planned Development)
East: PD 317 (Subdistrict 2) (Planned Development)
West: PD 317 (Subdistrict 2) (Planned Development)

Land Use:

The subject site is undeveloped. The areas to the north, east, south, and west are a combination of undeveloped lots and mixed residential and nonresidential 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 requests for special exceptions to the visual obstruction regulations focus on locating and maintaining a portion of a proposed duplex structure in the 45’ visibility triangle at the intersection of McKee Street and Gould Street; and in the innermost 20’ visibility triangle at the driveways into the site on McKee Street and Gould Street.
- The Dallas Development Code states the following: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections, and 20 foot visibility triangles at drive approaches and at alleys on properties zoned single family); and

- between two and a half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- The applicant submitted a revised site plan and elevations representing a portion a proposed duplex structure to be in the 45' visibility triangle at the intersection of McKee Street and Gould Street; and in the innermost 20' visibility triangle at the driveways into the site on McKee Street and Gould Street.
- The Sustainable Development Department Assistant Director of Engineering submitted a review comment sheet marked "Recommends that this be denied" commenting "Compromised visibility violates PD 317 Subdistrict 2 Purpose in (b)(1) AND the site plan violates PD 317 (b)(8) Minimum Sidewalk Width which is "unobstructed width of six feet".
- The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulations to locate and maintain portions of a proposed duplex structure in the 45' visibility triangle at the intersection of McKee Street and Gould Street; and in 20' visibility triangles at driveways into the site on McKee Street and Gould Street do not constitute a traffic hazard.
- Granting these requests with the condition that the applicant complies with the submitted revised site plan and elevations would require the items in the visibility triangles to be limited to and maintained in the locations, height and materials as shown on these documents.

Timeline:

January 31, 2017: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

March 15, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

March 15, 2017: 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 March 29th deadline to submit additional evidence for staff to factor into their analysis; and the April 7th 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 31, 2017: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachments A and B).

April 4, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director Engineering, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

April 7, 2017: The Sustainable Development Department Assistant Director of Engineering submitted a review comment sheet marked "Recommends that this be denied" commenting "Compromised visibility violates PD 317 Subdistrict 2 Purpose in (b)(1) AND the site plan violates PD 317 (b)(8) Minimum Sidewalk Width which is "unobstructed width of six feet".

BOARD OF ADJUSTMENT ACTION: APRIL 17, 2017

APPEARING IN FAVOR: Miguel Ramirez, 1312 McKee Street, Dallas, TX
Mustafa Ali, 1312 McKee Street, Dallas, TX
Saeed Mahboubi, 1100 S. Akard, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Foster**

I move that the Board of Adjustment, in Appeal No. **BDA 167-040**, on application of Miguel Ramirez, **deny** the special exception to maintain items in the visibility triangle **without prejudice**, because our evaluation of the property and the testimony shows that granting the application would constitute a traffic hazard.

SECONDED: **Gambow**

AYES: 4 – Richardson, Winslow, Foster, Gambow

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA167-042(SL)

BUILDING OFFICIAL'S REPORT: Application of Robert Baldwin of Baldwin and Associates for variances to the side yard setback and building height regulations at 5608 Live Oak Street. This property is more fully described as Lot 25, Block 16/1872, and is zoned MF-2(A), which requires a side yard setback of 10 feet, and limits the maximum building height to 26 feet due to a residential proximity slope. The applicant proposes to construct and maintain a structure and provide a 7 foot side yard setback, which will require a 3 foot variance to the side yard setback regulations, and to construct

and maintain a structure with a building height of 34 feet, which will require a 8 foot variance to the maximum building height regulations.

LOCATION: 5608 Live Oak Street

APPLICANT: Robert Baldwin of Baldwin and Associates

April 17, 2017 Public Hearing Notes:

- The applicant submitted additional written documentation to the Board at the public hearing, and stated that his request for a variance to the side yard setback regulations was reduced from 3' to 1' 6".

REQUESTS:

The following requests are made on a site that is being developed with 3-unit, 2-3-story, multifamily structure:

- A variance to the side yard setback regulations of 3' is made to complete/modify and maintain part of the existing structure that is located 7' from the site's southwest side property line or 3' into the site's 10' side yard setback; and
- A variance to the height regulations (specifically to the residential proximity slope) of 8' is requested to complete/modify and maintain the structure to 34' - a height that exceeds the maximum 26' in height permitted by the residential proximity slope that begins at the PD 63 H/1 Area B single family residentially-zoned property immediately southeast of the subject site by 8'.

STANDARD FOR A VARIANCE:

The Dallas Development Code Section 51A-3.102(d)(10) 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 of the requests

Rationale:

- Staff concluded that the applicant had not substantiated how the variances were 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 MF-2(A) zoning district.
- Staff concluded that the characteristics/features of the subject site (flat, rectangular in shape (130' x 56'), and approximately 7,400 square feet in area) should not preclude the applicant from developing it with a multifamily development that is commensurate with others in the same zoning district and that complies with all zoning code provisions including setback and height regulations.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	MF-2(A) (Multifamily district)
<u>North:</u>	MF-2(A) (Multifamily district)
<u>South:</u>	MF-2(A) (Multifamily district)
<u>East:</u>	PD 63 H/1 Area B (Planned Development district)
<u>West:</u>	MF-2(A) (Multifamily district)

Land Use:

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

Zoning/BDA History:

1. BDA156-040, Property at 5608 Live Oak Street (the subject site)
On April 20, 2016, the Board of Adjustment Panel C denied requests for variances to the side yard setback, building height, and off-street parking regulations without prejudice. The case report stated the a variance to the side yard setback regulations of 2' was made to complete and maintain part of the structure that is located 8' from the site's southwest side property line or 2' into the site's 10' side yard setback*; a variance to the height regulations (specifically to the residential proximity slope) of 9' 2" was made to complete/modify and maintain the 35' 2" high structure that exceeded the maximum 26' in

height permitted by the residential proximity slope that begins at the PD 63 H/1 Area B single family residentially-zoned property immediately southeast of the subject site; a variance to the off-street parking regulations was made to locate and maintain required and/or excess parking for the multifamily use/structure in the required front yard.

GENERAL FACTS /STAFF ANALYSIS (side yard variance):

- The request for a variance to the side yard setback regulations of 3' focuses on completing/modifying and maintaining part of a 3-unit, 2-3 story, multifamily structure with an approximately 2,400 square foot building footprint to be modified and located 7' from the site's southwest side property line or 3' into the site's 10' side yard setback.
- The Dallas Development Code requires lots zoned MF-2(A) developed with structures other than single family or duplex structures to provide a minimum side yard setback of 10'.
- The applicant has submitted a site plan that represent that a 7' side yard setback is provided from the site's side property line on the southwest or 3' into the 10' side yard setback.
- According to DCAD records, the "main improvement" at 5608 Live Oak Street is a "townhome" built in 2015 with 5,595 square feet of living/total area; and with "additional improvements" listed as three, 2 square foot decks, and three, 322 square foot attached garages.
- The site is flat, rectangular in shape (130' x 56'), and according to the application is 0.17 acres (or approximately 7,400 square feet) in area.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the side yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance to side yard setback regulations is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same MF-2(A) zoning classification.
 - The variance to side 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 MF-2(A) zoning classification.
- If the Board were to grant the request, and impose the submitted site plan as a condition, the structure in the side yard setback would be limited to what is shown on

this document– which, in this case, is a structure that would be located 7' from the side property line on the southwest or as much as 3' into this 10' side yard setback.

GENERAL FACTS /STAFF ANALYSIS (height variance):

- The request for a variance to the height regulations (specifically to the residential proximity slope) of 8' focuses on completing/modifying and maintaining the structure to 34' – a height that exceeds the maximum 26' in height permitted by residential proximity slope that begins at the PD 63 H/1 Area B single family residentially-zoned property immediately southeast of the subject site.
- The maximum height for a structure in a MF-2(A) zoning district is 36', however, any portion of a structure over 26' in height cannot be located above a residential proximity slope.
- In this case, given that the subject site is immediately adjacent to single family residentially-zoned property PD 63 H/1 Area B (Planned Development district) to the southeast (with a land use as a single family uses), the height of a structure must comply with a 1:3-slope (or 1 foot in height for every 3 foot away from property in an R, R(A), D, D(A), TH, TH(A) residential zoning district). The RPS slope on the subject site begins at the PD 63 H/1 Area B (Planned Development district) zoned property southeast of the site. (PD 63 Area B states that uses are limited to single-family uses, and that except at otherwise provided in the ordinance, the development standards applicable to an R-7.5(A) Single-Family District apply to all property in Area B).
- The Building Official's Report states that a variance to the height regulations of 8' is requested since there is a structure proposed to reach 34' in height or 8' higher/beyond than the 26' height allowed for the structure as it is located on this subject site.
- The applicant has submitted an elevation that represents a 1:3-slope (or 1 foot in height for every 3 foot away from property in a CH, MF-1, MF-1(A), MF-2, and MF-2(A) residential zoning district) on the structure seeking variance.
- According to DCAD records, the “main improvement” at 5608 Live Oak Street is a structure built in 2015 with 5,595 square feet of living/total area; and with “additional improvements” listed as three, 2 square foot decks, and three, 322 square foot attached garages.
- The site is flat, rectangular in shape (130' x 56'), and according to the application is 0.17 acres (or approximately 7,400 square feet) in area.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the height regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance to height regulations is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same MF-2(A) zoning classification.

- The variance to height setback regulations would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same MF-2(A) zoning classification.
- If the Board were to grant the request, and impose the submitted elevation as a condition, the structure in the exceeding the height limit or the RPS would be limited to what is shown on this document– which, in this case, is a structure that would be exceed the height limit/RPS by 8’.

Timeline:

January 27, 2017: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

March 15, 2017: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, “If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case.”

March 15, 2017: The Board Administrator emailed the applicant the following information:

- a copy of the application materials including the Building Official’s report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the March 29th deadline to submit additional evidence for staff to factor into their analysis; and the April 7th 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.”

March 31, 2017: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

April 4, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director Engineering, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, 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: APRIL 17, 2017

APPEARING IN FAVOR: Rob Baldwin, 3904 Elm Street, #B, Dallas, TX
Clint Nolen, 6306 Royalton Drive, Dallas, TX
Josh Killian, 6003 Bryan Pkwy, Dallas, TX
Joanna Hampton, 5408 Swiss Ave, Dallas, TX
Larry Offett, 6038 Bryan Parkway, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Winslow

I move that the Board of Adjustment, in Appeal No. **BDA 167-042**, on application of Robert Baldwin, **grant** the 1-foot 6-inch variance to the side yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: Foster

AYES: 4 – Richardson, Winslow, Foster, Gambow

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

MOTION #2: Winslow

I move that the Board of Adjustment, in Appeal No. **BDA 167-042**, on application of Robert Baldwin, **grant** the 8-foot variance to the building height regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan and elevation is required.
- Eliminating all roof access not maintenance related is required.

SECONDED: Foster

AYES: 4 – Richardson, Winslow, Foster, Gambow

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA167-047(SL)

BUILDING OFFICIAL’S REPORT: Application of Danny Sipes for special exceptions to the fence standards and visual obstruction regulations at 10545 Lennox Lane. This property is more fully described as Lot 3, Block F/5534, and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct and maintain an 8 foot high fence in a required front yard, which will require a 4 foot special exception to the fence standards, and to locate and maintain items in required visibility triangles, which will require special exceptions to the visual obstruction regulations.

LOCATION: 10545 Lennox Lane

APPLICANT: Danny Sipes

REQUESTS:

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

1. A request for a special exception to the fence standards related to fence height of 2’ is made to construct and maintain a fence higher than 4’ in height in the site’s Lennox Lane 40’ front yard setback – a 6’ high wrought iron fence with 6’ high solid sliding wrought iron gates and 6’ high columns;
2. A request for a special exception to the fence standards related to fence height of 4’ is made to construct and maintain a fence higher than 4’ in height in the site’s Isabella Lane 40’ front yard setback – an 8’ solid wood fence and gate;
3. A request for a special exception to the fence standards related to fence materials is made to construct and maintain a fence with panels with surface areas that are less than 50 percent open (the aforementioned 8’ high solid wood fence along Isabella Lane) located on the Isabella Lane front lot line (or less than 5’ from this front lot line); and
4. Requests for special exceptions to the visual obstruction regulations are made to maintain portions of the aforementioned solid 8’ high wood fence in two 20’ visibility triangles at a driveway into the site on Lennox Lane.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:

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

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

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 (fence standards):

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

STAFF RECOMMENDATION (visual obstruction special exceptions):

Approval, subject to the following condition:

- Compliance with a revised site plan/elevation to be submitted by the applicant that represents the location of the western gate on Isabella Lane to be a minimum of 20' from the roadway edge is required.

Rationale:

- Staff concurred with the Sustainable Development Department Assistant Director Engineering who has no objections to these requests with the condition that the applicant submit a revised site plan/elevation that represents the location of the western gate on Isabella Lane to be a minimum of 20' from the roadway edge.
- Staff concluded that requests for special exceptions to the visual obstruction regulations should be granted with the staff suggested condition imposed because with this condition, the solid 8' high wood fence in two 20' visibility triangles at a driveway into the site on Lennox Lane would 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 being 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. BDA145-119, Property located at On November 16, 2015, the Board of Adjustment Panel C granted a request for

10545 Lennox Lane (the subject site)

special exception to the single family use regulations and imposed the following condition: The applicant must deed restrict the property to prevent the use of the additional dwelling unit as rental accommodations.

The case report stated that request was made to construct and maintain a 1 1/2-story guest house/additional "dwelling unit" structure on a site being developed with a 2-story main single family home/dwelling unit structure.

2. BDA956-177, Property located at 10615 Lennox Lane (the lot north of subject site)

On April 23, 1996, the Board of Adjustment Panel C reversed the decision of the Building Official, denied a request for a variance to the front yard setback regulations without prejudice, and granted a request for a special exception to the fence height regulations of 4' and imposed the following condition: subject to a revised site plan/elevation and a landscape plan. The revised site plan/elevation and landscape plan are to be submitted to the Board Administrator subject to the condition that the height of the fence at the corner of Harry's Lane and Lennox Lane transitions from 6' 6" at that portion parallel along Lennox Lane to 9' at the column located along Harry's Lane approximately 20' west of the northwest corner of Lennox Lane and Harry's Lane.

The case report stated the requests were made to: 1) appeal the Building Official's decision that the portion of the subject site along Harry's lane is a front yard rather than a side yard; 2) maintain portions of an existing fence along Harry's Lane and a proposed fence along Lennox Lane exceed the maximum permitted height for fences in front yards; and 3) maintain a portion of an existing house and an existing fence along Harry's Lane that do not comply with the maximum setbacks and heights for structures and fences in front yards.

3. BDA078-061, Property at 10564 Lennox Lane (the property northeast of the subject site)

On May 19, 2008, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 4' and imposed the submitted revised site plan

4. BDA001-176, Property at 4612 Isabella Lane (the lot south the subject site)

and elevation as a condition.

The case report stated the request was made to construct and maintain a 6' high wrought iron fence with 6' 6" high columns and a 5' 7" high entry gate with 8' high stone columns.

On March 20, 2001, the Board of Adjustment Panel B granted a request for a special exception to the fence height regulations of 2' and imposed the submitted site plan and elevation as a condition.

The case report stated the request was made to construct and maintain a 5' high open metal fence with 5' high masonry columns and 6' high decorative metal gates in the front yard setback on a site that was developed with a single family house.

5. BDA989-216, Property at 4611 Isabella Lane (a lot west of the subject site)

On May 17, 1999, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 1' 6" and imposed the submitted site/landscape plan and elevations as a condition.

The case report stated the request was made to construct and maintain a 5' high open metal fence with 5' 6" high stucco columns and 6' high decorative metal gates in the front yard setback on a site that was developed with a single family house.

6. BDA078-053, Property at 10453 Lennox Lane (two lots south of the subject site)

On April 14, 2008, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 6' and imposed the submitted revised site/elevation as a condition.

The case report stated the request was made to construct and maintain a 6' high open metal fence with 6' 6" high stucco columns and two gates (one at 10' in height, the other at 7' in height) in the front yard setback on a site that was developed with a single family house.

7. BDA989-277, Property located at 10522 Lennox Lane (a lot east of subject site)

On August 24, 1999, the Board of Adjustment Panel A granted a request for a special exception to the fence height regulations of 4' and imposed the submitted revised site and elevation plan dated June 1999 as a condition.

The case report stated the request was made to construct and maintain a 5' high open metal fence with 6' 3" high brick columns and a 7' 6" high gate with 8' high brick columns.

GENERAL FACTS/STAFF ANALYSIS (fence standards):

- The focus of the three requests for special exceptions to the fence standards (two are related to height of up to 4' and one is related to fence materials) is constructing and maintaining a 6' high wrought iron fence with 6' high wrought iron sliding gates and 6' high columns in the site's Lennox Lane 40' front yard setback, and an 8' high solid wood fence and gate in the site's Isabella Lane 40' front yard setback on the front lot line on a site being developed with a single family home.
- The subject site is zoned R-1ac(A) which requires a 40' front yard setback.
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- Additionally the Dallas Development Code states that in single family districts, a fence panel with a surface area that is less than 50 percent open may not be located less than five feet from the front lot line.
- The site is located at the northwest corner of Lennox Lane and Isabella Lane.
- Given the R-1ac(A) single family zoning and location of the corner lot subject site, it has two 40' front yard setbacks – a front yard setback along Lennox Lane (the shorter of the two frontages of the subject site which is always a front yard in this case) and a front yard setback along Isabella Lane, (the longer of the two frontages which is typically considered a side yard where on this R-1ac(A) zoned property where a 9' high fence could be erected by right). However the site has a front yard setback along Isabella Lane in order to maintain continuity of the established front yard setback along this street frontage where a home/lot to the west of the subject site "fronts" on Lennox Lane.
- The applicant has submitted two site plan/elevation documents of the proposal fences in the front yard setbacks with notations indicating that the proposal reaches a maximum height of 8'.
- The applicant has submitted a site plan/elevation of the proposal along Isabella Lane with a fence panel having a surface area that is less than 50 percent open and located less than 5' from this front lot line – an 8' high solid wood fence approximately 250' in length located on this front lot line.
- The following additional information was gleaned from the submitted site plan:
 - Along Lennox Lane: the proposal is represented as being approximately 270' in length parallel to the street and approximately 37' perpendicular to the street on

the north side of the site in this required front yard; located approximately 3' from the front property line or approximately 23' from the pavement line; two single family lots front the proposal, both with fences taller than 4' in the front yard setbacks that appear to be results of fence height special exceptions granted by the Board.

- Along Isabella Lane: the proposal is represented as being approximately 250' in length parallel to the street and approximately 40' perpendicular to the street on the west side of the site in this required front yard; located approximately on the front property line or approximately 12' from the pavement line; two single family lots front the proposal, one with a fence taller than 4' in the front yard setback that appears to be a result of fence height special exception granted by the Board.
- The Board Administrator conducted a field visit of the site and surrounding area and noted several other fences that appeared to be above 4' in height and located in a front yard setback. Each fence noted appears to be a result of special exceptions granted by the Board of Adjustment. (The "Zoning/BDA History" section of this case report provides details on these neighboring fences).
- As of April 7, 2017 no letters have been submitted in support of or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to height of 4' and to location and materials on Isabella Lane will not adversely affect neighboring property.
- Granting these special exceptions to the fence standards related to height of up to 4' and to location and materials in certain areas on the site with a condition imposed that the applicant complies with the two submitted site plan/elevation documents, would require the proposal exceeding 4' in height in the front yard setbacks and in some areas solid fence panels on the front lot line to be maintained in the location and of the heights and materials as shown on these documents.

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

- The requests for special exceptions to the visual obstruction regulations focus on locating and maintaining portions of an 8' high solid wood fence in two 20' visibility triangles at a driveway into the site on Isabella Lane.
- 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 applicant submitted a site plan/elevation representing an 8' high solid wood fence in the two, 20' visibility triangles at a driveway into the site on Lennox Lane.
- The Sustainable Development Department Assistant Director Engineering submitted a review comment sheet marked "Has no objection if certain conditions are met" with

the following additional comment: “The gates shall be located a minimum of 20’ from the roadway edge to prevent blocking traffic on these narrow streets”. (Note that the only gate that is represented on the applicant’s submitted site plans/elevations to be less than 20’ from the roadway edge is the western gate on Isabella Lane).

- The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulations, to locate and maintain portions of an 8’ high solid wood fence located in two 20’ visibility triangles at a driveway into the site on Isabella Lane, do not constitute a traffic hazard.
- Granting these requests with the condition that the applicant complies with the submitted site plan/elevation would require the items in the visibility triangles to be limited to and maintained in the locations, height and materials as shown on this document.

Timeline:

February 16, 2017: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

March 15, 2017: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

March 15, 2017: 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 March 29th deadline to submit additional evidence for staff to factor into their analysis; and the April 7th 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.

April 4, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director Engineering, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

April 5, 2017: The Building Inspection Senior Plans Examiners/Development Code Specialist forwarded a revised Building Official’s report on this application to the Board Administrator (see Attachment A).

April 7, 2017: The Sustainable Development Department Assistant Director Engineering submitted a review comment sheet marked "Has no objection if certain conditions are met" with the following additional comment: "The gates shall be located a minimum of 20' from the roadway edge to prevent blocking traffic on these narrow streets". (Note that the only gate that is represented on the applicant's submitted site plans/elevations to be less than 20' from the roadway edge is the western gate on Isabella Lane).

BOARD OF ADJUSTMENT ACTION: APRIL 17, 2017

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

APPEARING IN OPPOSITION: No one

MOTION #1: Foster

I move that the Board of Adjustment, in Appeal No. **BDA 167-047**, on application of Danny Sipes, **grant** the request of this applicant to construct and/or maintain an eight-foot high fence as a special exception to the height requirement for fences in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the two submitted site plan/elevations is required.

SECONDED: Gambow

AYES: 4 – Richardson, Winslow, Foster, Gambow

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

MOTION #2: Foster

I move that the Board of Adjustment, in Appeal No. **BDA 167-047**, on application of Danny Sipes, **grant** the request of this applicant to complete and maintain fence panels with a surface area less than 50 percent open located less than 5 feet from the front lot lines as a special exception to the surface area openness requirement for fences in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the two submitted site plan/elevations is required.

SECONDED: Winslow

AYES: 4 – Richardson, Winslow, Foster, Gambow

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

MOTION #3: Foster

I move that the Board of Adjustment, in Appeal No. **BDA 167-047**, on application of Danny Sipes, **grant** the request to maintain items in the visibility triangle at the driveway approach as a special exception to the visual obstruction regulation contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard. 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/elevation is required.

SECONDED: Winslow

AYES: 4 – Richardson, Winslow, Foster, Gambow

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

MOTION: Richardson

I move to adjourn this meeting.

SECONDED: Foster

AYES: 4 – Richardson, Winslow, Foster, Gambow

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

3:32 P. M. - Board Meeting adjourned for April 17, 2017

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.