

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1F AUDITORIUM
MONDAY, APRIL 18, 2016**

MEMBERS PRESENT AT BRIEFING: Peter Schulte, regular member, Joe Carreon, regular member, Marla Beikman, regular member and Gary Sibley, alternate member

MEMBERS ABSENT FROM BRIEFING: Bruce Richardson, Chair, Ross Coulter, regular member

MEMBERS PRESENT AT HEARING: Peter Schulte, regular member, Joe Carreon, regular member, Marla Beikman, regular member and Gary Sibley, alternate member

MEMBERS ABSENT FROM HEARING: Bruce Richardson, Chair, Ross Coulter, regular member

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Donna Moorman, Chief Planner, Mary McCullough, Asst. City Attorney, Bert Vandenberg, Asst. City Attorney, Todd Duerksen, Dev. Code Specialist, Clay Buehrle, Engineering, Jennifer Muñoz, Senior Planner and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Donna Moorman, Chief Planner, Neva Dean, Interim Asst. Director, Mary McCullough, Asst. City Attorney, Laura Morrison, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Clay Buehrle, Engineering, Jennifer Muñoz, Senior Planner and Trena Law, Board Secretary

1:00P.M. The Board of Adjustment staff conducted a briefing and Public Hearing on the Board of Adjustment's **April 18, 2016** docket.

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 21, 2016 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: APRIL 18, 2016

MOTION: None

The minutes were approved without a formal vote.

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: BDA156-009(SL)

REQUEST: To extend the time period in which to file an application for a building permit or certificate of occupancy an additional 12 months beyond the 180 days from the Board of Adjustment Panel C's favorable action on a request for a variance to the off-street loading regulations granted (with a condition) on February 18, 2016.

LOCATION: 2350 Flora Street

APPLICANT: Jonathan Vinson

STANDARD FOR EXTENDING THE TIME PERIOD IN WHICH TO APPLY FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY:

- The Dallas Development Code states:
 - The applicant shall file an application for a building permit or certificate of occupancy within 180 days for the date of the favorable action of the board, unless the applicant files for and is granted (by the Board of Adjustment) an extended time period prior to the expiration of the 180 days. The filing of a request for an extended time period does not toll the 180 day time period. If the applicant fails to file an application within the time period, the request is automatically denied without prejudice and the applicant must begin the process to have his request heard again.
- The *Board of Adjustment Working Rules of Procedure* state the following with regard to extensions of the time period for making application for a building permit or certificate of occupancy:

- A panel may not extend the time period for making application for a building permit or certificate of occupancy beyond 180 days from the date of its favorable action unless it makes a *specific finding* based on evidence presented at a public hearing that there are no substantially changed conditions or circumstances regarding the property to the satisfaction of the panel. In no event, however, may the board extend the time period beyond 18 months from the date of its favorable action.

Timeline:

February 18, 2016: The Board of Adjustment Panel C granted a request for a variance to off-street loading regulations and imposed the following condition: Compliance with the submitted site plan is required. The case report stated that this request was made to construct and maintain a hotel or motel use with no large size loading space that is to be part of a mixed use office/residential/retail development on a site that is partially developed with office and parking garage, and partially undeveloped.

March 10, 2016: The applicant sent a letter to the Board Administrator requesting an extension of the time period in which to make application for a building permit or certificate of occupancy (see Attachment A).

March 11, 2016: The Board Administrator emailed the applicant acknowledging his request for the Board to extend the time period in which to file an application for a building permit or certificate of occupancy an additional 12 months beyond the 180 days that the applicant had to do so from the February 18th favorable action. The applicant was emailed the following additional information:

- an attachment that provided the public hearing date of the request; and 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;
- an attachment of materials related to BDA156-009; and
- The Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

April 7, 2016: The applicant submitted additional documents to the Board Administrator (see Attachment B).

BOARD OF ADJUSTMENT ACTION: APRIL 18, 2016

APPEARING IN FAVOR: Jonathan Vinson, 2323 Ross Ave., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Beikman

I move to grant that the Board of Adjustment extend the time period in which to file an application for a building permit or certificate of occupancy an additional 12 months beyond the 180 days from the Board of Adjustment Panel C’s favorable action on a request for a variance to the off-street loading regulations granted (with a condition) on February 18, 2016.

SECONDED: Carreon

AYES: 4 – Carreon, Schulte, Beikman, Sibley

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA156-031(SL)

BUILDING OFFICIAL’S REPORT: Application of Saundra Wilkinson for a special exception to the sign regulations at 9835 Walnut Hill Lane. This property is more fully described as Lot 1A, Block A/8081, and is zoned CR, which prohibits non-monument signs within 250 feet of either private property in a non-business zoning district or a public park of more than one acre. The applicant proposes to construct and maintain a detached premises non-monument sign on a nonresidential premise within 250 feet of either private property in a non-business zoning district or a public park of more than one acre, which will require a special exception to the sign regulations.

LOCATION: 9835 Walnut Hill Lane

APPLICANT: Saundra Wilkinson

REQUEST:

A request for a special exception to the sign regulations is made to locate and maintain a non-monument sign within the 250’ distance requirement from property to the north of the subject site in a non-business zoning district (MF-1(A) on a site developed with a retail/car wash use proposed to be developed with a retail use (O’Reilly Auto Parts).

STANDARD FOR A SPECIAL EXCEPTION TO THE SIGN REGULATIONS FOR A NON-MONUMENT SIGN WITHIN 250 FEET OF PRIVATE PROPERTY IN A NON-BUSINESS ZONING DISTRICT:

The Board of Adjustment may grant a special exception to allow a non-monument sign within 250 feet of private property in a non-business zoning district when, in the opinion of the board, the special exception will not adversely affect neighboring property.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

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

Rationale:

- Staff concluded that the applicant had substantiated how this special exception to allow a non-monument sign within 250 feet of private property in a non-business zoning district will not adversely affect neighboring property with the staff suggested condition imposed – a site plan that indicates that the proposed sign is approximately 195’ away from the MF-1(A) zoning to the north, and an elevation that indicates that the sign would be a pole sign that is 15’ in height with a sign board that is 12’ in length and 4’ in height.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community retail)
North: MF-1(A) (Multifamily)
South: CR (Community retail)
East: CR (Community retail)
West: CR (Community retail)

Land Use:

The site is currently developed with a retail/car wash use. The area to the north is developed with multifamily use; and the areas to the east, south, and west are developed with retail uses.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- The request focuses on locating and maintaining a non-monument sign within the 250’ distance requirement from property to the north and south of the subject site in a non-business zoning district (MF-1(A) on a site developed with a retail/car wash use proposed to be developed with a retail use (O’Reilly Auto Parts).
- The Dallas Development Code states non-monument signs are not allowed within 250 feet of either private property in a non-business zoning district or a public park of more than one acre.
- The applicant has submitted a site plan and sign elevation in conjunction with this request. The elevation represents a pole sign that is 15’ in height with a sign board that is 12’ in length and 4’ in height. The site plan represents the depth of the lot at approximately 225’, and that the proposed 15’ high pole sign is therefore within 250’ of private property in a non-business zoning district. The proposed sign is

represented to be located approximately 195' south of property to the north zoned MF-1(A) and multifamily in use.

- The applicant has the burden of proof in establishing the following:
 - That allowing a non-monument sign within 250 feet of private property in a non-business zoning district when, in the opinion of the board, the special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose the submitted site plan as a condition to the request, the sign would be held to the location as shown on this plan.
- If the Board were to grant this request and impose the submitted site plan and elevation as a condition, the sign on the site would be held to features as shown on these documents, which in this case is to allow a pole sign that is 15' in height with a sign board that is 12' in length and 4' in height located approximately 195' away from the MF-1(A) zoning to the north.
- Note that while the depth of the subject site at approximately 225' combined with the proximity of the non-business zoning district to the north does not allow the applicant to erect and maintain a non-monument sign on the site without the granting of this special exception, the applicant could erect and maintain a *monument* sign on the site without any special exception.

Timeline:

January 11, 2016: 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, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

March 15, 2016: The Board Administrator contacted the applicant and emailed 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 30th deadline to submit additional evidence for staff to factor into their analysis; and the April 8th 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."

April 5, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Sustainable Development and

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

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

BOARD OF ADJUSTMENT ACTION: APRIL 18, 2016

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Beikman

I move to grant that the Board of Adjustment grant application **BDA 156-031** 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: Sibley

AYES: 4 – Carreon, Schulte, Beikman, Sibley

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA156-032(SL)

BUILDING OFFICIAL’S REPORT: Application of Jane Sumner, represented by Michael R Coker, for a variance to the front yard setback regulations at 7225 N. Janmar Drive. This property is more fully described as Lot 7A, Block A/7494, and is zoned R-16(A), which requires a front yard setback of 35 feet. The applicant proposes to construct and maintain a structure and provide a 19 foot front yard setback, which will require a 16 foot variance to the front yard setback regulations.

LOCATION: 7225 N. Janmar Drive

APPLICANT: Jane Sumner
Represented by Michael R Coker

REQUESTS:

Requests for variances to the front yard setback regulations of up to 16' are made to:

1. Construct and maintain a detached garage addition to be located approximately 28' from the front property line or approximately 7' into the site's 35' front yard setback,
2. Maintain a portion of an existing original nonconforming single family structure located 19' from the front property line or 16' into the site's 35' front yard setback; and
3. Align, construct and maintain a 2nd floor addition atop the existing nonconforming single family structure located 19' from the front property line or 16' into the site's 35' front yard setback.

STANDARD FOR A VARIANCE:

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

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

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that the subject site is unique and different from most lots zoned R-16(A) given its irregular shape, slope and floodplain. The atypical lot with these physical site constraints preclude the applicant from developing it in a manner commensurate with development (in this case with a single family home with approximately 5,100 square feet of living space) found on other similarly zoned R-16(A) properties that are rectangular in shape, flat and without floodplain. The applicant's representative has submitted a letter and a graphic representing that only approximately 8,000 square feet of developable area is left once floodplain and setbacks are accounted for on the subject site.

- Staff concluded that the applicant had substantiated how the home with the proposed addition with a total of approximately 5,100 square feet is development that is commensurate with the development found on other R-16(A) zoned lots. The applicant submitted a table representing that the average lot and structure size of 10 other homes in R-16(A) zoning is 0.67 acres and 6,148 square feet when the lot and structure size of the subject site is 0.62 acres and 5,097 square feet.

BACKGROUND INFORMATION:

Zoning:

- Site: R-16(A) (Single family residential 16,000 square feet)
- North: R-1ac(A) (Single family residential 1 acre)
- South: R-16(A) (Single family residential 16,000 square feet)
- East: R-16(A) (Single family residential 16,000 square feet)
- West: R-16(A) (Single family residential 16,000 square feet)

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- These requests focus on constructing and maintaining an approximately 880 square foot detached garage addition to be located approximately 28’ from the front property line or approximately 7’ into the site’s 35’ front yard setback, maintaining a portion of the existing original nonconforming single family structure located 19’ from the front property line or 16’ into the site’s 35’ front yard setback; and aligning, constructing and maintaining a 2nd floor addition atop the existing single family structure located 19’ from the front property line or 16’ into the site’s 35’ front yard setback.
- Structures on lots zoned R-16(A) are required to provide a minimum front yard setback of 35’.
- A scaled site plan has been submitted indicating that the existing single family home is located 19’ from the front property line or 16’ into the site’s 35’ front yard setback; and the proposed detached garage addition is located approximately 28’ from the front property line or approximately 7’ into the site’s 35’ front yard setback.
- According to DCAD records, the “main improvement” for property addressed at 7225 N. Janmar Drive is a structure built in 1960 with 2,836 square feet of living/total area with “additional improvements” being a 406 square foot attached carport.

- The applicant has chosen to seek variance to the front yard setback regulations to remedy/address the nonconforming aspect of the existing nonconforming main single family home structure in addition to a proposed addition to be located in the site's front yard setback atop the nonconforming single family home structure.
- 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. Hence the applicant is seeking a variance to the front yard setback regulations to cause the structure to become more nonconforming to the front yard setback regulations by proposing to align a second floor atop the nonconforming structure on the site.
- The subject site is sloped, irregular in shape (103' x 94'), and according to the submitted application is 0.621 acres (or approximately 27,000 square feet) in area. The site is zoned R-16(A) where lots are typically 16,000 square feet in area.
- The applicant's representative has submitted a letter and a graphic representing that only approximately 8,000 square feet of developable area is left once floodplain and setbacks are accounted for on the subject site.
- The applicant's representative has provided a table representing that the average lot and structure size of 10 other homes in R-16(A) zoning is 0.67 acres and 6,148 square feet when the lot and structure size of the subject site is 0.62 acres and 5,097 square feet.
- The applicant has the burden of proof in establishing the following:
 - That granting the variances to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variances are necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-16(A) zoning classification.
 - The variances would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-16(A) zoning classification.
- If the Board were to grant the variance requests, 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 an existing single family structure and 2nd floor atop located 19' from the front property line or 16' into the site's 35' front yard setback; and a detached garage addition to be located approximately 28' from the front property line or approximately 7' into the site's 35' front yard setback.

Timeline:

February 10, 2016: 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, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

March 15, 2016: The Board Administrator emailed the applicant’s representative 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 30th deadline to submit additional evidence for staff to factor into their analysis; and the April 8th 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.”

April 4, 2016: The applicant’s representative submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).

April 5, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Sustainable Development and Construction Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Project Engineers, the City of Dallas Chief Arborist, the Sustainable Development and Construction Board of Adjustment Senior Planner, and the Assistant City Attorneys to the Board.

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

BOARD OF ADJUSTMENT ACTION: APRIL 18, 2016

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Beikman**

I move to grant that the Board of Adjustment grant application **BDA 156-032** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: **Sibley**

AYES: 4 – Carreon, Schulte, Beikman, Sibley

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA156-039(JM)

BUILDING OFFICIAL'S REPORT: Application of C. Michael Jones for special exceptions to the visual obstruction regulations at 6475 Northport Drive. This property is more fully described as Lot 9, Block B/5496, and is zoned R-16(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: 6475 Northport Drive

APPLICANT: C. Michael Jones

REQUESTS:

Requests for special exceptions to the visual obstruction regulations are made to construct and maintain a 48" high wrought iron gate and fence with 50" high stone columns in the 20' visibility triangles on both sides of the driveway into the site from Edgemere Road on a site being developed with a single family use.

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:

Approval, subject to the following conditions:

- Compliance with the revised site/elevation plan; and,
- No vegetation is allowed within the visibility triangle areas as defined by the Dallas Development Code.

Rationale:

- The Sustainable Development and Construction Department Project Engineer had no objections to these requests subject to no vegetation being allowed on the wrought iron fence into the visibility triangle areas as defined by the Dallas Development Code.
- The applicant had substantiated how the location of the gate, fence, and stone columns in the 20' visibility triangles on both sides of the driveway into the site from Edgemere Road does not constitute a traffic hazard.

BACKGROUND INFORMATION:

Zoning:

Site: R-16(A)
North: R-16(A)
South: R-16(A)
East: R-16(A)
West: R-16(A)

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- These requests focus on constructing and maintaining a 48" high wrought iron gate and fence with 50" high stone columns in the 20' visibility triangles on both sides of the driveway into the site from Edgemere Road. The site is being developed with a single family use.
- 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).
- A site plan/elevation has been submitted indicating portions of the gate, fence, and columns located in the 20' visibility triangles on both sides of the driveway into the site from Edgemere Road.
- The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met," that being no vegetation is allowed on the wrought iron fence located in the visibility triangle area as defined by the Dallas Development Code.
- The applicant has the burden of proof in establishing how granting the requests for these special exceptions to the visual obstruction regulations to construct and maintain a 48" high wrought iron gate and fence with 50" high stone columns in the 20' visibility triangles on both sides of the driveway into the site from Edgemere Road does not constitute a traffic hazard.
- Granting these requests with conditions imposed would limit the items located in the 20' visibility triangles on both sides of the driveway into the site from Edgemere Road to what is shown on this revised site/elevation plan – a 48" high wrought iron gate and fence with 50" high stone columns.

Timeline:

February 22, 2016: 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, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

March 15, 2016: The Senior Planner contacted the applicant and emailed 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 30th deadline to submit additional evidence for staff to factor into their analysis; and the April 8th 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."

April 5, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Sustainable Development and Construction Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Project Engineers, the City of Dallas Chief Arborist, the Sustainable Development and Construction Board of Adjustment Senior Planner, and the Assistant City Attorneys to the Board.

April 8, 2016: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met," that being no vegetation is allowed on the wrought iron fence located in the visibility triangle area as defined by the Dallas Development Code.

BOARD OF ADJUSTMENT ACTION: APRIL 18, 2016

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Beikman

I move to grant that the Board of Adjustment grant application **BDA 156-039** 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 revised site/elevation plan is required. Additionally, no vegetation is allowed within the visibility triangle areas as defined by the Dallas Development Code.

SECONDED: Sibley

AYES: 4 – Carreon, Schulte, Beikman, Sibley

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA156-027(SL)

ORIGINAL BUILDING OFFICIAL’S REPORT: Application of Allan R. Brown, represented by Steven Dimitt, for variances to the front yard setback and height regulations at 1015 N. Carroll Avenue. This property is more fully described as Lot 5, Block 8/768, and is zoned PD 298 (Subarea 9), which requires a front yard setback of 30 feet and limits the maximum building height to 36 feet. The applicant proposes to construct and maintain a structure and provide a 12 foot front yard setback, which will require an 18 foot variance to the front yard setback regulations, and to construct and maintain a structure with a building height of 45 feet, which will require a 9 foot variance to the maximum building height regulations.

REVISED BUILDING OFFICIAL’S REPORT: BDA156-027(SL) - Application of Allan R. Brown, represented by Steven Dimitt, for variances to the front yard setback regulations and building height regulations at 1015 N. Carroll Avenue. This property is more fully described as Lot 5, Block 8/768, and is zoned PD 298 (Subarea 9), which requires a front yard setback of 24 feet 4 inches and limits the maximum building height to 36 feet. The applicant proposes to construct and maintain a structure and provide a 0 foot front yard setback, which will require a 24 foot 4 inch variance to the front yard setback regulations, and with a building height of 45 feet, which will require a 9 foot variance to the maximum building height regulations.

LOCATION: 1015 N. Carroll Avenue

APPLICANT: Allan R. Brown
Represented by Steven Dimitt

ORIGINAL REQUESTS (March 21, 2016):

The following requests were originally made on a site that is in part undeveloped and in part developed with multifamily and office uses:

1. A variance to the front yard setback regulations of 18’ had been made to construct and maintain an 8-unit townhome development that would be located in the site’s two front yard setbacks on Swiss Avenue and North Carroll Avenue; and
2. A variance to the height regulations of 9’ had been made to construct and maintain the aforementioned townhome development that would be 45’ in height.

However on March 4, 2016, the applicant’s representative submitted a letter (see Attachment A) that stated among other things that he had met with the neighborhood association and other neighbors since the filing of the application, and that in order to address some comments and concerns, he was significantly revising the entire development.

The Board was advised at the March 21st public hearing that as a result, the applicant no longer was seeking a variance to the front yard setback on Swiss Avenue or a variance to the height regulations but would seek variance to the front yard setback on North Carroll Avenue and a special exception to the off-street parking regulations. Lastly, the applicant had requested that the Board not consider the previously submitted plans or the variance requests that he submitted in January at the March hearing but requested that the Board delay consideration of this case until April.

UPDATED REQUESTS (April 18, 2016):

An updated request for a variance to the front yard setback regulations of 24' 4" is made on a site that is in part undeveloped and in part developed with multifamily and office uses in order to construct and maintain a two, two-unit multifamily development to be located on the N. Carroll Avenue front property line or 24' 4" into this 24' 4" front yard setback.

While the applicant submitted revised plans that eliminated the need for variances to the front yard setback regulations along Swiss Avenue, to the off-street parking regulations, and to the height regulations, the request for the variance to the height regulations remains part of the application only for the fact that it was advertised and noticed for both the March and April public hearings, therefore must be acted upon by the Board at the April 18th public hearing.

STANDARD FOR A VARIANCE:

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

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

STAFF RECOMMENDATION (March 21, 2016):

Delay action until April 18, 2016

Rationale:

- Staff was not able to reach conclusions on the applicant's requests for variances to the front yard setback and height regulations given that the applicant had written that since he filed the application and plans in January of 2016, he was in the process of significantly revising the entire development, and requested that the Board not consider the originally submitted plans or variance requests.

STAFF RECOMMENDATION (April 18, 2016) front yard variance:

Denial without prejudice

Rationale:

- Staff concluded that the applicant had not substantiated how the variance was necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same PD 298 (Subarea 9, MF-2 and CR), H/72 zoning district.

STAFF RECOMMENDATION (April 18, 2016) height variance:

Denial without prejudice

Rationale:

- The applicant had revised his proposed development so that the height satisfies applicable zoning requirements therefore there is no longer a need for a variance to the height regulations.

BACKGROUND INFORMATION:

Zoning:

Site: PD 298 (Subarea 9, MF-2 and CR), H/72 (Planned Development, Historic)
North: PD 298 (Subarea 9, R-7.5 & P), H/72 (Planned Development, Historic)
South: PD 298 (Subarea 9, MF-2), H/72 (Planned Development, Historic)
East: PD 298 (Subarea 13), H/72 (Planned Development, Historic)
West: PD 298 (Subarea 9, MF-1), H/72 (Planned Development, Historic)

Land Use:

The subject site is in part undeveloped and in part developed with multifamily and office uses. The areas to the north and west are developed with multifamily uses; the area to the east is undeveloped; and the area to the south is developed with an office use.

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 (variances):

- The original request filed in January of 2016 focused on constructing and maintaining an 8-unit townhome development that would be located in the site's two front yard setbacks on Swiss Avenue and North Carroll Avenue, and that would be 45' in height.
- The Building Official had provided the following information relevant to this appeal prior to the March 21st public hearing:
 - The site is zoned PD 298 (Subarea 9, MF-2 and CR), H/72. PD 298, Subarea 9 conditions state the following: Subarea 9 is subject to regulations governing the R-7.5(A), TH-2(A), MF-2(A), MU-1, MU-1-D, and CR districts of Chapter 51(A). The zoning district category applicable to each tract in Subarea 9 is shown on Exhibit 298B. The MF-2(A) required front yard setback is 15' and the CR required front yard setback is 15'.
 - The zoning of the adjoining property on the N. Carroll Street frontage is PD 298 (Subarea 13) H/72 (Tract 1).
 - The appeal application references a required 30' front yard setback ("...set forth in the Peak's Suburban Ordinance #22352...") and requests an 18' variance to allow a 12' setback.
 - The following Historic Overlay 72 (H/72) requirement appears to be the basis for the required 30' front yard setback.
- On March 28, 2016, the Building Inspection Senior Plans Examiners/Development Code Specialist forwarded a revised Building Official's report to the Board Administrator on this application (see Attachment D). This report stated the this property is required to provide a front yard setback of 24' 4" where the applicant proposes to provide a 0 foot front yard setback which will require a 24' 4" variance to the front yard setback regulations.
- The applicant has submitted a revised site plan indicating that the proposed structure is located 40' from the Swiss Avenue front property line (represented by the applicant to be in compliance with this front yard setback), and located on the N. Carroll Avenue front property line (or represent by the applicant and in the Building Official's report as being 24' 4" into this 24' 4" front yard setback).
- According to DCAD records, the "main improvement" at 1015 N. Carroll Avenue is a "medical office building" with 24,618 square feet built in 1955.

- The subject site is flat, rectangular in shape, and according to the application is 1.79 acres in area.
- The site has two front yard setbacks given that it fronts two streets as any corner property would that is not zoned a single family, duplex, or agricultural district.
- The applicant has the burden of proof in establishing the following:
 1. That granting the variance to the front yard setback is 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.
 2. The variance would be 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 298 (Subarea 9, MF-2 and CR), H/72 zoning classification.
 3. The variance is not 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 298 (Subarea 9, MF-2 and CR), H/72 zoning classification.
- With regard to request for variance to the front yard setback regulations, if the Board were to grant this 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 a structure located on the N. Carroll Avenue the front property line or 24’ 4” into this 24’ 4” front yard setback.
- With regard to the request for variance to the height regulations, staff suggests that the Board deny this request without prejudice given that this request is no longer needed given revised plans that were submitted to staff after the March 21st public hearing.

Timeline:

- January 21, 2016: 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 9, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

- February 9, 2016: 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 2nd deadline to submit additional evidence for staff to factor into their analysis; and the March 11th 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 4, 2016: The applicant's representative submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).
- March 8, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Interim Building Official, the Sustainable Development and Construction Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, and the Assistant City Attorneys to the Board.
- No review comment sheets were submitted in conjunction with this application.
- March 21, 2016: 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 18, 2016.
- March 22, 2016: The Board Administrator wrote the applicant a letter that provided the board's action; and the March 30th deadline to submit additional evidence for staff to factor into their analysis; and the April 8th deadline to submit additional evidence to be incorporated into the Board's docket materials.
- March 28, 2016: The applicant submitted additional documentation on this application beyond what was submitted with the original application and beyond what was submitted at the March 21st public hearing (see Attachment C).
- March 29, 2016: The Building Inspection Senior Plans Examiners/Development Code Specialist forwarded a revised Building Official's report to the Board Administrator on this application (see Attachment D).

April 5, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Sustainable Development and Construction Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Project Engineers, the City of Dallas Chief Arborist, the Sustainable Development and Construction Board of Adjustment Senior Planner, and the Assistant City Attorneys to the Board.

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

April 7, 2016: The applicant submitted additional documentation on this application beyond what was submitted with the original application and beyond what was submitted at the March 21st public hearing (see Attachment E).

BOARD OF ADJUSTMENT ACTION: MARCH 21, 2016

APPEARING IN FAVOR: Steve Dimitt, 2323 Ross Ave., Dallas, TX

APPEARING IN OPPOSITION: Michael Yucon, 4511 Swiss, Dallas, TX

MOTION: **Schulte**

I move to grant that the Board of Adjustment, in Appeal No. **BDA 156-027** hold this matter under advisement until **April 18, 2016**.

SECONDED: **Carreon**

AYES: 3 – Richardson, Coulter, Carreon

NAYS: 2 - Schulte, Beikman

MOTION PASSED: 3 – 2

BOARD OF ADJUSTMENT ACTION: APRIL 18, 2016

APPEARING IN FAVOR: Steve Dimitt, 2323 Ross Ave., Dallas, TX
Wendy Millsap, 4530 Reiger Ave., Dallas, TX
Beth Anschuetz, 5953 Bryan Parkway, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Sibley

I move to grant that the Board of Adjustment, in Appeal No. **BDA 156-027** hold this matter under advisement until **May 16, 2016**.

SECONDED: Beikman

AYES: 4 – Carreon, Schulte, Beikman, Sibley

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA156-040(SL)

BUILDING OFFICIAL’S REPORT: Application of Eric Hopkins for variances to the side yard setback regulations, building height regulations, and off-street parking 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 10 foot side yard setback, limits the maximum building height to 26 feet due to a residential proximity slope, and requires that no required or excess parking be placed in the required front yard. The applicant proposes to construct and maintain a structure and provide an 8 foot side yard setback, which will require a 2 foot variance to the side yard setback regulations, with a building height of 35 feet 2 inches, which will require a 9 foot 2 inch variance to the maximum building height regulations, and to provide required or excess parking in the required front yard, which will require a variance to the off-street parking regulations.

LOCATION: 5608 Live Oak Street

APPLICANT: Eric Hopkins

April 18, 2016 Public Hearing Notes:

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

REQUESTS:

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

1. A variance to the side yard setback regulations of 2' is 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*;
2. A variance to the height regulations (specifically to the residential proximity slope) of 9' 2" is requested to complete/modify and maintain the 35' 2" high structure 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;
3. A variance to the off-street parking regulations is made to locate and maintain required and/or excess parking for the multifamily use/structure in the required front yard.

- * While the applicant has requested a 2' variance to the side yard setback regulations, it appears from the applicant's submitted elevation that balcony structures are located 6' from the side property line or 4' into the 10' side yard setback. (Note that while staff made the applicant aware of this finding, the applicant did not amend his application to increase his variance request).

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 (variances):

Denial

Rationale:

- Staff concluded that the applicant had not substantiated how any of 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, height, and parking 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:

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 (side yard variance):

- The request for a variance to the side yard setback regulations of 2' focuses on completing and maintaining part of the approximately 6,400 square foot, 3-unit, 3-story, multifamily structure with an approximately 2,100 square foot building footprint that is located 8' from the site's southwest side property line or 2' 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'.

- While the submitted site plan appears to represent that a 10' side yard setback is provided from the site's side property line on the southwest, the applicant has requested a variance to the side yard setback regulations of 2' for a structure that is 8' away from the side property line or 2' into the 10' side yard setback. The submitted elevation represents that a portion of the structure approximately 4' above grade encroaches into the 10' side yard setback. While the applicant has requested a variance of 2', it appears from the submitted elevation that balcony structures are located 6' from the side property line or 4' into the 10' side yard setback. (Note that while staff made the applicant aware of this finding, the applicant did not amend his application to increase his variance request beyond the 2' that he made with the original request).
- The Board Administrator emailed the applicant of the importance of his submitted site plan *and* elevation in this application considering the fact that if the board were to grant any or all of your requests that they would most likely impose these submitted documents as a condition, and with this in mind, he should submit any revised plan and/or elevation that would more accurately convey his proposal/development than what is included in the attached application materials to Building Inspection by noon, March 30th.
- 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 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 side yard variance request, the Board may want to require that the applicant submit a site plan and elevations that are accurate representations of what the applicant intends to construct and maintain on the property. But note that the Board can only consider a variance to the side yard setback of 2' which would require the applicant to locate and maintain any/all structures no closer than 8' from the side property line.

GENERAL FACTS /STAFF ANALYSIS (height variance):

- The request for a variance to the height regulations (specifically to the residential proximity slope) of 9' 2" focuses on completing/modifying and maintaining the 35' 2" high structure 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 as 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 9' 2" is requested since there is a structure proposed to reach 35' 2" in height or 9' 2" higher/beyond than the 26' height allowed for the structure as it is located on this subject site.
- While an elevation has been submitted that represents a 1:1-slope (or 1 foot in height for every 1 foot away from property in a CH, MF-1, MF-1(A), MF-2, and MF-2(A) residential zoning district), the applicant did not submit an elevation representing the 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) that applies to this subject site adjacent to property zoned PD 63 H/1 Area B.
- The Board Administrator emailed the applicant of the importance of his submitted site plan *and* elevation in this application considering the fact that if the board were to grant any or all of your requests that they would most likely impose these submitted documents as a condition, and with this in mind, he should submit any revised plan *and/or* elevation that would more accurately convey his proposal/development than what is included in the attached application materials to Building Inspection by noon, March 30th.
- 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 height variance request, the Board may want to require that the applicant submit a site plan and an elevation that are accurate representations of what the applicant intends to construct and maintain on the property. But note that the Board can only consider a variance to the height regulations of 9' 2" for a structure that is 35' 2" in height and exceeds the RPS line by 9' 2".

GENERAL FACTS /STAFF ANALYSIS (off-street parking variance):

- The request for a variance to the off-street parking regulations focuses on locating and maintaining required and/or excess parking for the multifamily use/structure in the required front yard.
- The subject site is zoned MF-2(A).
- The off-street parking provisions for residential districts in the Dallas Development Code state that in an MF-1(A), MF-1(SAH), MF-2(A), and MF-2(SAH) district, no required or excess parking may be placed in the required front yard.
- The minimum front yard setback for properties zoned MF-2(A) is 15 feet.
- The submitted site plan indicates that one excess parking space is located in the 15' front yard setback hence a request for variance to the off-street parking regulation to locate this space in the front yard setback.
- 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 Board Administrator emailed the applicant of the importance of his submitted site plan *and* elevation in this application considering the fact that if the board were to grant any or all of your requests that they would most likely impose these submitted documents as a condition, and with this in mind, he should submit any revised plan and/or elevation that would more accurately convey his proposal/development than what is included in the attached application materials to Building Inspection by noon, March 30th.

- 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 off-street parking 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 the off-street parking 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 the off-street parking 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 off-street parking variance request, the Board may want to require that the applicant submit a site plan that is an accurate representation of what the applicant intends to construct and maintain on the property. But note that the Board can only consider a variance to the parking regulations which would allow excess parking space to be located in the 15' front yard setback.

Timeline:

February 24, 2016: 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, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

March 15, 2016: 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 30th deadline to submit additional evidence for staff to factor into their analysis; and the April 8th 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."

April 1, 2016: The Building Inspection Senior Plans Examiners/Development Code Specialist forwarded a revised Building Official's report to the Board Administrator (see Attachment A).

April 5, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Sustainable Development and Construction Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Project Engineers, the City of Dallas Chief Arborist, the Sustainable Development and Construction Board of Adjustment Senior Planner, and the Assistant City Attorneys to the Board.
No review comment sheets were submitted in conjunction with this application.

BOARD OF ADJUSTMENT ACTION: APRIL 18, 2016

APPEARING IN FAVOR: Rob Baldwin, 3904 Elm St., Dallas, TX
Johnny Aguinaga, 100 Highland Park Village, Dallas, TX

APPEARING IN OPPOSITION: Eric Hopkins, Dallas, TX
Larry Offitt, 6038 Bryan Place, Dallas, TX
Gary Lawler, 5620 Live Oak, Dallas, TX
Joanna Hampton, 5408 Swiss Ave., Dallas, TX
Shannon Vindiola, 6015 Bryan Pkwy, Dallas, TX

MOTION: Beikman

I move that the Board of Adjustment, in Appeal No. **BDA156-040**, on application of Eric Hopkins, **deny** the variances requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: Carreon

AYES: 4 – Carreon, Schulte, Beikman, Sibley

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

MOTION: Beikman

I move to adjourn this meeting.

SECONDED: Schulte

AYES: 4 – Carreon, Schulte, Beikman, Sibley

NAYS: 0 -

MOTION PASSED: 4 – 0(unanimously)

3:54 P. M. - Board Meeting adjourned for April 18, 2016

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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