

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, 6ES AUDITORIUM
TUESDAY, JUNE 23, 2015**

MEMBERS PRESENT AT BRIEFING:	Clint Nolen, Vice Chair, Larry French, regular member, Mark Rieves, regular member, Paula Leone, regular member, and Jim Gaspard alternate member
MEMBERS ABSENT FROM BRIEFING:	No one
STAFF PRESENT AT BRIEFING:	Steve Long, Board Administrator Jamilah Way, Asst. City Attorney, Todd Duerksen, Development Code Specialist, David Lam, Engineer, Phil Erwin, Chief Arborist, Donna Moorman, Chief Planner and Trena Law, Board Secretary
MEMBERS PRESENT AT HEARING:	Clint Nolen, Vice Chair, Larry French, regular member, Mark Rieves, regular member, Paula Leone, regular member, and Jim Gaspard alternate member
MEMBERS ABSENT FROM HEARING:	No one
STAFF PRESENT AT HEARING:	Steve Long, Board Administrator Jamilah Way, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, and Trena Law, Board Secretary

11:03 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **June 23, 2015** docket.

1:00 P.M.

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

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel May 19, 2015 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: JUNE 23, 2015

MOTION: None

The minutes were approved without a formal vote.

FILE NUMBER: BDA 145-070

BUILDING OFFICIAL'S REPORT: Application of Erin Michael Lawler, represented by Billy Rousseau, for a variance to the height regulations at 10221 E. Lake Highlands Drive. This property is more fully described as Lot 10, Block D/7458, and is zoned R-7.5(A), which limits the height of an accessory structure to not exceed the height of the main building. The applicant proposes to construct and maintain an accessory structure with a building height higher than the main building, which will require a 6 foot 6 inch variance to the height regulations.

LOCATION: 10221 E. Lake Highlands Drive

APPLICANT: Erin Michael Lawler
Represented by Billy Rousseau

REQUEST:

A request for a variance to the height regulations of 6' 6" is made to construct and maintain a two-story studio/carport accessory structure which is proposed to exceed the height of the main building/single family use structure on the subject site.

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, elevation, and revised section is required

Rationale:

- The subject site is unique and different from most lots in the R-7.5(A) zoning district in that it is somewhat sloped, irregular in shape, and approximately 1,800 square feet smaller in area than most lots in the same zoning district with 7,500 square feet.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is developed with a one-story single family home structure. The area to the north is undeveloped; the area to the east is developed with a church; and the areas to the south and west are developed with single family uses.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining a two-story studio/carport accessory structure (with an approximately 900 square foot building footprint) which is proposed to exceed the height of the main building/single family use structure on the subject site.
- The Dallas Development Code states that the height of an accessory structure may not exceed the height of the main building.
- A revised section/elevation has been submitted that represents the height of the existing house/main building to be approximately 12.5' in height and the proposed accessory structure to be approximately 18.5' in height.

- According to DCAD records, the “main improvement” for property addressed at 10221 Lake Highlands Drive is a structure built in 2011 with 2,123 square feet of living area and 2,773 square feet of total area with “additional improvements” of a 650 square foot enclosed garage.
- The subject site is somewhat sloped, triangular in shape, and according to the submitted application is 0.13 acres (or approximately 5,700 square feet) in area. The site is zoned R-7.5(A) where lots are typically 7,500 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 is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.
 - The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.
- If the Board were to grant the variance request, and impose the submitted site plan, elevation, and revised section as a condition, the height of the structures on the site would be limited to what is shown on these documents.

Timeline:

- April 22, 2015: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- May 12, 2015: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- May 13, 2015: 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 June 3rd deadline to submit additional evidence for staff to factor into their analysis; and the June 12th 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.”

- June 2, 2015: The applicant submitted additional information to staff beyond what was submitted with the original application, and the Building Inspection Senior Plans Examiners/Development Code Specialist forwarded a revised Building Official's report to the Board Administrator (see Attachment A).
- June 9, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June 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 Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: JUNE 23, 2015

APPEARING IN FAVOR: Billy Rousseau, P.O. Box 601632, Dallas, TX

APPEARING IN OPPOSITION: Patty Arvin, 10215 Medlock Drive, Dallas, TX
Robert Arvin, 10215 Medlock Drive, Dallas, TX

MOTION: Nolen

I move that the Board of Adjustment, in request No. **BDA 145-070**, on application of Erin Michael Lawler, **grant** a 6-foot, 6 inch variance to the height regulations because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: French

AYES: 5 – Nolen, French, Rieves, Leone, Gaspard

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 145-077

BUILDING OFFICIAL'S REPORT: Application of Reid Dunbar, represented by Jon Napper, for special exceptions to the landscape and tree preservation regulations 4786 Mountain Creek Parkway. This property is more fully described as Lot 7, Block 211/6113, and is zoned PD-521 (Subdistrict B), which requires mandatory landscaping and tree mitigation. The applicant proposes to construct and maintain a structure and provide an alternate landscape and tree mitigation plan, which will require special exceptions to the landscape and tree preservation regulations.

LOCATION: 4786 Mountain Creek Parkway

APPLICANT: Reid Dunbar
Represented by Jon Napper

REQUESTS:

The following requests have been made to develop an undeveloped site:

1. A special exception to the tree preservations regulations is made as it relates to seeking exception from the required number of replacement trees and the time period in which to mitigate for replacement trees removed on the subject site ; and
2. A special exception to the landscape regulations is made as it relates to seeking exception from the required number of site trees on the subject site.

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.

STAFF RECOMMENDATION (landscape and tree special exceptions)

Approval of both requests, subject to the following condition:

- Compliance with the submitted May 19th 2015 “Special Exception Request” for: 1) tree mitigation, and 2) site trees (with site trees provided as tabulated to be placed on each “site area” on the property) is required.

Rationale:

- The Chief Arborist recommends approval of both requests because in his opinion, strict compliance with the requirements of the code will unreasonably burden the use of the property, and the special exception will not adversely affect neighboring property.

BACKGROUND INFORMATION:

Zoning:

Site: PD 521 (Planned Development)
North: PD 521 (Planned Development)
South: PD 521 (Planned Development)
East: PD 521 (Planned Development)
West: PD 521 (Planned Development)

Land Use:

The subject site is undeveloped. The areas to the north, east, and south are undeveloped, and the area to the west is developed as an office/warehouse use.

Zoning/BDA History:

1. BDA 145-078, Property located at 4895 Mountain Creek Parkway (two lots southwest of the subject site)

On June 23, 2015, the Board of Adjustment Panel A will consider a request for a special exception to the tree preservation regulations.

2. BDA 001-227, Property located at 4320 Mountain Creek Parkway (the subject site and a larger area surrounding the subject site)

On August 14, 2001, the Board of Adjustment Panel A granted a request for a special exception to the tree preservation regulations and imposed the following conditions: 1) protected trees can be removed from the site prior to the issuance of building permits upon the issuance of tree removal permits; 2) the mitigation time period in which to fully mitigate all protected trees removed on the site is extended to August 22, 2009 (or 8 years from the date of the Board’s favorable action); 3) compliance

with the submitted "Mountain Creek Business Park Tree Mitigation Plan" is required; and 4) sites identified as industrial sites are required to provide one tree for each 6,000 square feet of lot area. A minimum of 80 acres of the developable lots on the site must be planted at one tree per 4,000 square feet of lot area.

The case report stated that this request was made in conjunction with the site preparation for a master plan development that comprises about 450 acres.

GENERAL FACTS/STAFF ANALYSIS (tree preservation):

- This request focuses on developing the subject site and seeking exception from the tree preservation regulations related to providing the required number of replacement trees and the time period in which to mitigate for replacement trees removed on the subject site. More specifically, the applicant is requesting relief from the tree preservation regulations by providing replacement inches of about 62 percent of protected trees removed on the site, and by completing this amount of mitigation within 36 months from board action or completion of each building for construction (whichever is sooner) rather than 18 months.
- The Dallas Development Code requires full compliance with the Tree Preservation Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet.
- The Dallas Development Code states that the Tree Preservation, Removal, and Replacement division of Article X applies to all property in the city except for: 1) lots smaller than two acres in size that contain single-family or duplex uses; and 2) lots in a planned development district with landscaping and tree preservation regulations that vary appreciably from those in the article, as determined by the building official.
- The Tree Preservation Regulations of the Dallas Development Code states that if a tree removal application is approved, one or more healthy replacement trees must be planted in accordance with among other things quantity - the total caliper of replacement trees must equal or exceed the total caliper of protected trees removed or seriously injured.
- The Tree Preservation Regulations of the Dallas Development Code states that a property owner can comply with tree preservation regulations by mitigating the removed trees 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 where the protected tree was removed or seriously injured, in any of the alternative methods provided for in Article X: donating trees to the Park Department, planting replacement trees on other property within one mile of the tree removal property, making payment into the Reforestation Fund, and/or granting a conservation easement area.
- The applicant has submitted an alternate tree mitigation/landscape plan in conjunction with this application.

- The City of Dallas Chief Arborist submitted a memo regarding this request to the Board Administrator (see Attachment A). The memo stated among other things how the request is triggered by new construction.
- The City of Dallas Chief Arborist's memo that is included in this case report provides specific details regarding this request.
- The Chief Arborist recommends approval of this request. The Arborist concludes that strict compliance strict compliance with the requirements of the code will unreasonably burden the use of the property, and the special exception will not adversely affect neighboring property.
- The Chief Arborist notes that the enhanced street frontage landscape conditions applied on this property under PD 521 and the historically restricted encroachment of mesquite to a fraction of the property area supports reducing the mitigation burden on the property to the amount of site tree landscaping to be applied between the two building projects. Also, the business park continues to develop with more opportunities to plant trees on old pasture areas. The extension of 36 months, or the completion of building permits, whichever is sooner, is reasonable and supportable.
- The Chief Arborists recommends the following condition be imposed to this request: Compliance with the submitted May 19th 2015 "Special Exception Request" for 1) tree mitigation, and for 2) site trees (with site trees provided as tabulated to be placed on each "site area" on the property) is required.
- The applicant has the burden of proof in establishing the following:
 1. Strict compliance with the requirements of the Tree Preservation Regulations of the Dallas Development Code will unreasonably burden the use of the property.
 2. The special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose the staff suggested condition to the request, the site would be provided exception from the required number of replacement trees and the time period in which to mitigate for replacement trees removed on the subject site.

GENERAL FACTS/STAFF ANALYSIS (landscape):

- This request focuses on developing the subject site and seeking exception from the landscape regulations related to providing the required number of site trees on the subject site. More specifically, the applicant is requesting relief from the landscape regulations by providing 872 of the required 1,024 site trees.
- The Dallas Development Code requires full compliance with the landscape 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.
- The applicant has submitted an alternate tree mitigation/landscape plan in conjunction with this application.
- The City of Dallas Chief Arborist submitted a memo regarding this request to the Board Administrator (see Attachment A). The memo stated among other things how the request is triggered by new construction.

- The City of Dallas Chief Arborist's memo that is included in this case report provides specific details regarding this request.
- The Chief Arborist recommends approval of this request. The Arborist concludes that strict compliance with the requirements of the code will unreasonably burden the use of the property, and the special exception will not adversely affect neighboring property.
- The Chief Arborist notes that the enhanced street frontage landscape conditions applied on this property under PD 521 and the historically restricted encroachment of mesquite to a fraction of the property area supports reducing the mitigation burden on the property to the amount of site tree landscaping to be applied between the two building projects. Also, the business park continues to develop with more opportunities to plant trees on old pasture areas. The extension of 36 months, or the completion of building permits, whichever is sooner, is reasonable and supportable.
- The Chief Arborists recommends the following condition be imposed to this request: Compliance with the submitted May 19th 2015 "Special Exception Request" for 1) tree mitigation, and for 2) site trees (with site trees provided as tabulated to be placed on each "site area" on the property) is required.
- The applicant has the burden of proof in establishing the following:
 1. Strict compliance with the requirements of the Tree Preservation Regulations of the Dallas Development Code will unreasonably burden the use of the property.
 2. The special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose the staff suggested condition to the request, the site would be provided exception from the required number of site trees on the subject site.

Timeline:

- April 24, 2015: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 21, 2015: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- May 21, 2015: 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 June 3rd deadline to submit additional evidence for staff to factor into their analysis; and the June 12th 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 requests; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- June 9, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June 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 Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

June 15, 2015: The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment A).

BOARD OF ADJUSTMENT ACTION: JUNE 23, 2015

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **French**

I move to grant that the Board of Adjustment grant application **BDA 145-077** 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 alternate landscape and tree mitigation plan dated May 19, 2015, titled "Special Exception Request" for 1) tree mitigation and 2) site trees (with site trees to be provided as tabulated and to be placed on each "site area") is required.

SECONDED: **Gaspard**

AYES: 5 – Nolen, French, Rieves, Leone, Gaspard

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 145-078

BUILDING OFFICIAL'S REPORT: Application of Lisa Brinser for a special exception to the landscape regulations at 4895 Mountain Creek Parkway. This property is more fully described as Lot 9, Block 211/6113, and is zoned PD-521 (Subdistrict B), which requires mandatory landscaping. The applicant proposes to construct and maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 4895 Mountain Creek Parkway

APPLICANT: Lisa Brinser

REQUEST:

A special exception to the tree preservation regulations is made to develop the site with a “proposed building” and not fully meet the landscape 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.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted landscape plan is required.

Rationale:

- The Chief Arborist recommends approval of the alternate landscape plan because the requirements of the code will unreasonably burden the use of the property, and the special exception will not adversely affect neighboring property.

BACKGROUND INFORMATION:

Zoning:

Site: PD 521 (Planned Development)
North: PD 521 (Planned Development)
South: PD 521 (Planned Development)
East: PD 521 (Planned Development)
West: PD 521 (Planned Development)

Land Use:

The subject site is undeveloped. The area to the north is developed with an office/warehouse use; the areas to the east and west are undeveloped, and the area immediately south is I-20.

Zoning/BDA History:

1. BDA 145-077, Property located at 4786 Mountain Creek Parkway (two lots northeast of the subject site)
2. BDA 001-227, Property located at 4320 Mountain Creek Parkway (the subject site and a larger area surrounding the subject site)

On June 23, 2015, the Board of Adjustment Panel A will consider requests for a special exceptions to the landscape and tree preservation regulations.

On August 14, 2001, the Board of Adjustment Panel A granted a request for a special exception to the tree preservation regulations and imposed the following conditions: 1) protected trees can be removed from the site prior to the issuance of building permits upon the issuance of tree removal permits; 2) the mitigation time period in which to fully mitigate all protected trees removed on the site is extended to August 22, 2009 (or 8 years from the date of the Board's favorable action); 3) compliance with the submitted "Mountain Creek Business Park Tree Mitigation Plan" is required; and 4) sites identified as industrial sites are required to provide one tree for each 6,000 square feet of lot area. A minimum of 80 acres of the developable lots on the site must be planted at one tree per 4,000 square feet of lot area.

The case report stated that this request was made in conjunction with the site preparation for a master plan development that comprises about 450 acres.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on developing the site with a "proposed building" and not fully meeting the landscape regulations, more specifically providing only 95 of the required 117 site trees, and not providing the required 10 street trees within 30 feet of the street curb.

- The Dallas Development Code requires full compliance with the landscape 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.
- The City of Dallas Chief Arborist submitted a memo regarding the applicant's request (see Attachment A). The memo states how this request is triggered by a new construction.
- The Chief Arborist's memo lists the following factors for consideration:
 1. Planned Development 521, Subdistrict B, is classified as a "business zoning district."
 2. Article X requires 1 tree per 4,000 square feet of lot area for office/warehouse uses. The applicant has requested to plant a minimum of 1 tree per 6,000 square feet (78 trees) which is the equivalent standard for industrial uses in IM and IR districts. The alternate landscape plan presents 62 trees at 3" caliper, and 33 ornamental trees at 2" caliper for a total of 95 trees, or equivalent to 1 tree per 4,923 square feet of lot area.
 3. A 28' right-of-way dedication and existing utilities restrict the planting of trees in proximity to the curb along the most southern frontage of Mountain Creek Parkway. The applicant requests to provide the required 10 large trees within 50 feet of the curb instead of the mandated 30 foot distance – this would allow for more even distribution of the trees along the entire street frontage.
 4. PD 521 requires additional buffer planting requirements for business district uses beyond the minimum Article X requirements that includes a minimum 35' buffer area along the perimeter with 20 large trees and 30 ornamental trees.
- The City of Dallas Chief Arborist recommends approval of the submitted alternate landscape because in his opinion the exception will not adversely affect neighboring property, and strict compliance with the landscape requirements would unreasonably burden the use of the property.
- The applicant has the burden of proof in establishing the following:
 - Strict compliance with the requirements of the landscape regulations of the Dallas Development Code will unreasonably burden the use of the property; and the special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose the submitted alternate landscape plan as a condition to the request, the site would be provided exception from full compliance with the required number of site trees and the required location of street trees on the subject site.

Timeline:

- May 4, 2015: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 21, 2015: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

May 21, 2015: 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 June 3rd deadline to submit additional evidence for staff to factor into their analysis; and the June 12th 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 requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

June 9, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June 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 Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

June 15, 2015: The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment A).

BOARD OF ADJUSTMENT ACTION: JUNE 23, 2015

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: French

I move to grant that the Board of Adjustment grant application **BDA 145-078** 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 alternate landscape plan is required.

SECONDED: Gaspard

AYES: 5 – Nolen, French, Rieves, Leone, Gaspard

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 145-064

BUILDING OFFICIAL'S REPORT: Application of Alaric "Al" Mack, represented by Pamela Craig, for a variance to the front yard setback regulations at 2822 McKinney Avenue. This property is more fully described as Lot 4, Block 577, and is zoned PD-193 (LC), which requires a front yard setback of 10 feet. The applicant proposes to construct and/or maintain a structure and provide a 0 foot front yard setback, which will require a 10 foot variance to the front yard setback regulations.

LOCATION: 2822 McKinney Avenue

APPLICANT: Alaric "Al" Mack
Represented by Pamela Craig

REQUEST:

A request for a variance to the front yard setback regulations of 10' is made to maintain two wood deck structures (one covered, one uncovered), portions of which are located as close as on the site's McKinney Avenue front property line or as much as 10' into this required 10' front yard setback on a site developed with a restaurant/bar use (McKinney Avenue Tavern).

STANDARD FOR A VARIANCE:

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

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

STAFF RECOMMENDATION:

Denial

Rationale:

- Staff concluded that there was no property hardship to the site that warranted a front yard variance in this case made to maintain deck structures on a site already developed with a restaurant/bar use. Even though this site is somewhat irregular in shape and has two front yard setbacks, these characteristics do not create hardship or preclude the applicant from developing it in a manner commensurate with other developments found in the same PD No. 193 (LC) zoning district. The subject site is developed with a restaurant/bar use structure where the physical characteristics of the subject site do not warrant a variance for added deck structures in the front yard setback.
- The applicant had not substantiated how the physical features of the flat, somewhat irregularly-shaped, 0.3 acre site with two front yard setbacks constrain it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 193 (LC) zoning classification while simultaneously complying with code provisions including front yard setback regulations.

BACKGROUND INFORMATION:

Zoning:

Site: PD 193 (LC) (Planned Development District, Light Commercial)
North: PD 193 (LC) (Planned Development District, Light Commercial)
South: PD 193 (LC) (Planned Development District, Light Commercial)
East: PD 193 (LC) (Planned Development District, Light Commercial)
West: PD 193 (LC) (Planned Development District, Light Commercial)

Land Use:

The subject site is developed with a restaurant/bar use (McKinney Avenue Tavern). The areas to the north, south, east, and west are developed with a mix of retail, office, and residential uses.

Zoning/BDA History:

1. BDA 078-050, Property located at 2811 McKinney Avenue (the property to the west of the subject site)

On May 21, 2008, the Board of Adjustment Panel B granted requests for a variance to the front yard setback regulations of 8' and a special exception to the landscape regulations. The Board imposed the following condition to the variance: Compliance with the submitted revised site plan is required. The Board imposed the following conditions to the landscape special exception: 1) Existing planting areas and

tree selections must be maintained in their current locations as specified on the submitted landscape plan. 2) Any future plant changes must conform to the general location and plant type specifications designated on the submitted landscape plan and must be approved by the Building Official. Any large tree that is removed must be replaced with another tree at a minimum of 3.5" caliper and be of the same species, except that, due to potential overhead utility conflicts, any tree that is removed along the Howell Street and McKinney Avenue tree planting zones must be replaced with a small tree species allowed in PD 193 unless an alternate selection is specified by the Tax Increment Finance District and approved by the Building Official. 3) All existing plant materials at the date of the hearing must be maintained under the general maintenance requirements of PD 193. All outside garbage dumpsters must be screened per PD 193 specifications. 4) All conditions for tree preservation under Article X apply to this Property. 5) When any additional work on the lot is performed that increases the existing building height, floor area, or nonpermeable coverage of the lot, the landscape requirements of PD 193 must be applied to the property.

The case report stated that the requests were made in conjunction with constructing and maintaining, according to the application, an "open awning" (or according to the submitted site plan, a "covered patio") that would attach to an existing retail use (Christi's Restaurant) in the site's 10' McKinney Avenue front yard setback; and increasing the nonpermeable coverage of the lot which in this case was an approximately 700 square foot canopy that would attach to a multi-story mixed use structure that was constructed in the mid 80's.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on maintaining two wood deck structures (one covered, one uncovered), portions of which are located as close as on the site's McKinney Avenue front property line or as much as 10' into this required 10' front yard setback on a site developed with a restaurant/bar use (McKinney Avenue Tavern).
- The minimum front yard setback for "other permitted structures" (which would include deck structures) on lots zoned PD No. 193 (LC Subdistrict) is 10'.
- A site plan has been submitted denoting that the two deck structures are located as close as on the site's McKinney Avenue front property line or as much as 10' into this required 10' front yard setback.
- Note that while the site also has a front yard setback on Allen Street, no part of this application is made to maintain or construct/maintain a structure in the Allen Street front yard setback.
- An elevation/section has been submitted of the deck structures. One of the deck structures denoted as "not covered" on the site plan is represented on the elevation to be 10" high. The other deck structure denoted as "deck/cov'd canopy" on the site plan is represented to 10" high with an approximately 10' high canvas awning with awning supports.
- The site plan represents that the "not covered" deck structure is approximately 450 square feet in area of which about ½ is located in the McKinney Avenue front yard setback. The site plan represents that the "cov'd canopy" deck structure is approximately 200 square feet in area of which about ½ is located in the McKinney Avenue front yard setback.
- According to DCAD records, the "improvements" at 2822 McKinney Avenue is a "cocktail lounge" that is 4,136 square feet in area built in 1925.
- The subject site is flat, irregular in shape, and is according to the application, 0.3 acres (or approximately 13,000 square feet) in area. The site is zoned PD 193 (LC). The site has two, 10' front yard setbacks which is typical of any lot that with two street frontages that is not zoned single family, duplex, or agricultural.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD 193 (LC) zoning classification.
 - The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD 193 (LC) zoning classification.

- If the Board were to grant the variance request and impose the submitted site plan and elevation as a condition, the structures in the front yard setback would be limited to what is shown on these documents— which are two wood deck structures (one covered, one uncovered), portions of which are located as close as on the site’s McKinney Avenue from the front property line or as much as 10’ into this required 10’ front yard setback.
- Note that if the Board were to grant the applicant’s request for a variance to the front yard setback regulations, and impose the submitted site plan and elevation as a condition, no relief would be provided to any existing/proposed noncompliance on the subject site to any code provision (including but not limited to landscape and visual obstruction regulations) other than to front yard setbacks.

Timeline:

- April 1, 2015: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- May 12, 2015: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- May 13, 2015: 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 June 3rd deadline to submit additional evidence for staff to factor into their analysis; and the June 12th 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.”
- June 9, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June 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 Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.

BOARD OF ADJUSTMENT ACTION: JUNE 23, 2015

APPEARING IN FAVOR: Pamela Craig, 1202 Misty Meadow Dr., Dallas, TX
Al Mack, 2822 McKinney, Dallas, TX 75204
Corey Mack,

APPEARING IN OPPOSITION: Anthony Page, 100 Crescent Ct., Dallas, TX
Joanne Dimeff, 2850 State St., Dallas, TX
Jeanie Essl, 2201 Boll St., Dallas, TX
Jolie Caldwell, 2205 Boll St., Dallas, TX
Laura Vanlooh, 2808 McKinney Ave., Dallas, TX
Kelem Butts, 3030 McKinney Ave., Dallas, TX
Kevin Curley, 3818 Travis St., Dallas, TX
Stanhope Hopkins, 2839 Thomas Ave., Dallas, TX

MOTION: Rieves

I move that the Board of Adjustment, in request No. **BDA 145-064**, on application of Alaric "AL" Mack, **deny** the front yard setback variance **without prejudice** because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant, and that it is not a restrictive parcel 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 is a self-created or personal hardship.

SECONDED: French

AYES: 5 – Nolen, French, Rieves, Leone, Gaspard

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

MOTION: Nolen

I move to adjourn this meeting.

SECONDED: Gaspard

AYES: 5 – Nolen, French, Rieves, Leone, Gaspard

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

2:06 P. M.: - Board Meeting adjourned for June 23, 2015

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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