

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1 AUDITORIUM
TUESDAY, AUGUST 16, 2016**

MEMBERS PRESENT AT BRIEFING: Michael Gibson, regular member, Robert Agnich, alternate member, Lorlee Bartos, alternate member, and Gary Sibley, alternate member

MEMBERS ABSENT FROM BRIEFING: Clint Nolen, Vice Chair

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Mary McCullough, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Donna Moorman, Chief Planner, and Trena Law, Board Secretary

MEMBERS PRESENT AT HEARING: Clint Nolen, Vice Chair, Michael Gibson, regular member, Robert Agnich, alternate member, Lorlee Bartos, alternate member, and Gary Sibley, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Mary McCullough, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Donna Moorman, Chief Planner, and Trena Law, Board Secretary

11:07 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **August 16, 2016** docket.

1:06 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 June 28, 2016 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: AUGUST 16, 2016

MOTION: None

The minutes were approved without a formal vote.

FILE NUMBER: BDA156-072(SL)

BUILDING OFFICIAL’S REPORT: Application of Derek Lewis for a special exception to the fence height regulations at 6629 Willow Lane. This property is more fully described as Lot 4, Block A/7460, and is zoned R-16(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and/or maintain a 7 foot 6 inch high, which will require a 3 foot 6 inch special exception to the fence height regulations.

LOCATION: 6629 Willow Lane

APPLICANT: Derek Lewis

REQUEST:

A request for a special exception to the fence height regulations of 3’ 6” is made to maintain a fence higher than 4’ (an open wrought iron fence ranging in height from 5’ 11” – 6’ 3” given grade changes on the property and two 7’ 6” high open wrought iron gates) in the site’s front yard setback on a site that is developed with a single family home that the applicant intends to demolish and replace with a new single family home.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STAFF RECOMMENDATION:

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

BACKGROUND INFORMATION:

Zoning:

Site: R-16(A) (Single family district 16000 square feet)
North: R-16(A) (Single family district 16000 square feet)
South: R-16(A) (Single family district 16000 square feet)
East: R-16(A) (Single family district 16000 square feet)
West: R-16(A) (Single family district 16000 square feet)

Land Use:

The subject site is developed with a single family home that the applicant intends to demolish and replace with a new single family home. The areas to the north, south, east, and west are developed with single family uses.

Zoning/BDA History:

1. BDA023-030, Property located at 6711 Willow Lane (two lots east of the subject site)
On January 14, 2003, the Board of Adjustment Panel B granted a request for special exception to the fence height regulations of 4' 9.5" and imposed the submitted site plan and elevation as a condition to the request.
The case report stated that the request was made to construct and maintain a 6' high open wrought iron fence with 6' high metal posts, and two, 6.5' – 8' 9.5" high open wrought iron entry gates on a site developed with a single family home.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on maintaining an open wrought iron fence ranging in height from 5' 11" – 6' 3" given grade changes on the property and two 7' 6" high open wrought iron gates in the front yard setback on a site being developed with a single family home.
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The subject site is zoned R-16(A) and has a 35' front yard setback.
- The applicant has submitted a site plan and revised elevation of the proposal with notations indicating that it reaches a maximum height of 7' 6".
- The following additional information was gleaned from the submitted site plan:
 - The proposal/existing fence is represented as being approximately 135' in length parallel to the street.
 - The proposal/existing fence/gates are represented as being located approximately 6' – 18' the front property line, or approximately 20' – 30' from the pavement line.
- One single family lot has indirect frontage to the fence; another single family lot directly south of the subject site fronts westward to Longfellow Drive. Neither of these lots appears to have a fence in their front yard setbacks.

- The Board Administrator conducted a field visit of the site and surrounding area (approximately 400 feet east and west of the subject site) and noted one other visible fence over 4' in height that appeared to be in a front yard setback. This fence is two lots to the east of the subject site, is an open metal fence approximately 6' in height, and appears to be a result of a request for a special exception to the fence height regulations granted by the Board in 2003 (BDA023-030). An approximately 6.5' high fence was noted immediately west of the subject site, however, this fence appears to be located in a side or rear yard.
- As of August 5, 2016, no letters have been submitted in support of or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 3' 6" will not adversely affect neighboring property.
- Granting this special exception of 3' 6" a condition imposed that the applicant complies with the submitted site plan and revised elevation would require the proposal exceeding 4' in height in the front yard setback to be maintained in the location and of the heights and materials as shown on these documents.

Timeline:

- May 25, 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.
- July 14, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 19, 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 July 27th deadline to submit additional evidence for staff to factor into their analysis; and the August 5th 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."
- July 25, 2016: The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).
- July 25, 2016: The Building Inspection Senior Plans Examiners/Development Code Specialist created a revised Building Official's report that reflected the applicant's request to raise the special exception request from 2 to 3' 6" (see Attachment B).

August 2, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August 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 Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: AUGUST 16, 2016

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Nolen**

I move to grant that the Board of Adjustment grant application **BDA 156-072(SL)** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: **Agnich**

AYES: 5 – Nolen, Gibson, Agnich, Bartos, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA156-076(SL)

BUILDING OFFICIAL’S REPORT: Application of Robert Reeves for a special exception to the landscape regulations at 100 Crescent Court. This property is more fully described as Lot 1A, Block 2/948, and is zoned PD-193 (HC), 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: 100 Crescent Court

APPLICANT: Robert Reeves

REQUEST:

A special exception to the landscape regulations is made to amend certain features shown on an alternate landscape plan that was imposed as a condition in conjunction with a request for a special exception to the landscape regulations granted on the subject by Board of Adjustment Panel A on March 17, 2015: BDA145-037. The subject site is currently developed as an approximately 1,450,000 square foot mixed use development (The Crescent).

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS IN OAK LAWN:

Section 51P-193-126(a)(4) of the Dallas City Code specifies that the board may grant a special exception to the landscaping requirements of this section if, in the opinion of the Board, the special exception will not compromise the spirit and intent of this section. When feasible, the Board shall require that the applicant submit and that the property comply with a landscape plan as a condition to granting the special exception.

STAFF RECOMMENDATION:

Approval, subject to the following conditions:

1. Compliance with the submitted revised landscape plan is required.
2. All landscape improvements in each landscape area on the property as shown on the submitted revised landscape plan must be completed within 18 months of Board action, and landscape improvements for areas B and D as shown on the submitted landscape plan must be completed before the final building inspections of each permit in areas B and D, respectively.

Rationale:

- The City of Dallas Chief Arborist supports the applicant's request in that the features shown on the submitted revised landscape plan meet the spirit and intent of the PD 193 landscape requirements.

BACKGROUND INFORMATION:

Site: PD 193(HC) (Planned Development, Heavy Commercial)
North: PD 193(HC) (Planned Development, Heavy Commercial)
South: PD 193 (PDS 334) (Planned Development, Planned Development)
East: PD 193(PDS 64) (Planned Development, Planned Development)
West: PD 193(PDS 74) (Planned Development, Planned Development)

Land Use:

The subject site is developed with a mixed use development (The Crescent). The areas to the north, east, south, and west are developed with a mix of land uses.

Zoning/BDA History:

1. BDA145-037, Property at 100, Crescent Court (the subject site)

On March 17, 2015, the Board of Adjustment Panel A granted a request for special exception to the landscape regulations and imposed the submitted alternate landscape plan as a condition.

The case report stated the request was made to replace an existing drive-through bank facility with an approximately 3,000 square foot restaurant, and not fully providing required landscaping on a site is currently developed as an approximately 1,450,000 square foot mixed use development (The Crescent) (Note that the Board of Adjustment Panel A granted the applicant's request to waive the two year time limitation to refile a new application on this site on June 28, 2016).

2. BDA 134-042, Property at 100, Crescent Court (the subject site)

On June 24, 2014, the Board of Adjustment Panel A granted a request for special exception to the landscape regulations and imposed the submitted revised landscape plan as a condition.

The case report stated the request was made to construct and maintain an approximately 1,400 square foot addition to an approximately 1,450,000 square foot mixed use development (The Crescent), and not fully providing required landscaping. (Note that the Board of Adjustment Panel A granted the applicant's request to waive the two year time limitation to refile a new application on this site on January 20, 2015).

3. BDA 81-239A, Property at 100, 200, 300, 400, and 500 Crescent Court (the subject site)

On February 14, 1988, the Board of Adjustment granted a request for "a 599 parking space variance and eliminate the set-aside land provisions subject to a TMP program as per the memo from Ken Melston, Manager of Transportation Engineering Services.

4. BDA 81-239, 239, Property at 2304 Cedar Springs Road (the subject site)

On October 13, 1981, the Board of Adjustment granted a 599 parking space variance, subject to a parking study to be conducted approximately one year after initial completion of the project

GENERAL FACTS/ STAFF ANALYSIS:

- This request focuses on amending certain features shown on an alternate landscape plan that was imposed as a condition in conjunction with a request for a special exception to the landscape regulations granted on the subject by Board of Adjustment Panel A on March 17, 2015: BDA145-037. The subject site is currently developed as an approximately 1,450,000 square foot mixed use development (The Crescent).
- The applicant states that the amendments to the previously approved alternate landscape plan include the following:
 - Adding trees and a small deck to an existing restaurant in the mixed use development,
 - Adding two courtyard seating areas to a new restaurant to be located in the mixed use development; Adding new trees to the existing office tower;
 - Deleting four proposed trees adjacent to a new restaurant to be added to the mixed use development, Adding a new handicapped ramp and three new trees, and
 - Adding 10 new trees around a new deck-area to an existing restaurant in the mixed use development.
- The applicant states that the proposed alternate landscape plan will have the same number of street trees and interior trees as the current board-approved plan but will have 108 additional caliper inches of trees; and will have 5,000 square feet more general planting area than the current board-approved plan.
- PD 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind.
- The City of Dallas Chief Arborist states in a memo (see Attachment B) that the request in this case is triggered by new construction and renovations including changes to a previously approved landscape plan imposed as a condition as part of a request for a special exception to the landscape regulations.
- With regard to landscape deficiencies on the site, the Chief Arborist states the following:

1. The site was developed prior to the beginning of PD 193 and the Part 1 landscape regulations.
 2. Recently, the property began renovations with additions which caused it to be brought under conforming landscape regulations.
 3. The renovations to the large block-sized property are resulting in additional changes to Board approved alternate landscape plans.
 4. The multiple locations with changes are identified on the new alternate landscape plan.
- The Chief Arborist notes that the following factors for consideration:
 1. The site has gone under review by the Board of Adjustment previously for landscape special exceptions. Both were caused by small site improvements and renovations.
 2. The applicant has consulted with the property owner and designers to identify all proposed additional renovations which may further alter the landscaping of the property. They have taken steps to apply all changes to the revised alternate landscape plan.
 3. The applicant has identified 6 areas of landscape improvements across the property. Two areas (B and D) are associated with building permits within the property.
 - The Chief Arborist supports the request because the applicant has demonstrated that the features shown on the submitted revised landscape plan meet the spirit and intent of the PD 193 regulations. The Chief Arborist also suggests that the Board impose a condition related to the timing in which landscaping must be completed on the property.
 - The applicant has the burden of proof in establishing the following:
 - The special exception (where a landscape plan has been submitted that is deficient in meeting the sidewalk and tree planting zone requirements of the PD 193 landscape regulations) will not compromise the spirit and intent of Section 51P-193-126: “Landscape, streetscape, screening, and fencing standards”.
 - If the Board were to grant this request and impose staff suggested conditions, the site would be granted exception from full compliance to the landscape requirements of the Oak Lawn PD 193 landscape ordinance.

Timeline:

June 16, 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.

July 14, 2016: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, “If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case.”

- July 15, 2016: The Board Administrator emailed the following information to the applicant's representative:
- 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 July 27th deadline to submit additional evidence for staff to factor into their analysis; and the August 5th 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."
- July 25, 2016: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).
- August 2, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August 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 Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior 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.
- August 8, 2016: The City of Dallas Chief Arborist submitted a memo regarding this application (see Attachment B).

BOARD OF ADJUSTMENT ACTION: AUGUST 16, 2016

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Nolen**

I move to grant that the Board of Adjustment grant application **BDA 156-076(SL)** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

1. Compliance with the submitted revised landscape plan is required;

2. All landscape improvements shown on the submitted revised site plan must be completed within 18 months of today. Landscape improvements for areas B and D as shown on the submitted site plan must be completed before the final building inspections of each permit in areas B and D.

SECONDED: Agnich

AYES: 5 – Nolen, Gibson, Agnich, Bartos, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA156-080(SL)

BUILDING OFFICIAL’S REPORT: Application of REIG, Inc., represented by Tommy Jackson, for a variance to the front yard setback regulations and a special exception to the fence height regulations at 4203 Delmar Avenue. This property is more fully described as Lot 1, Block A/4852, and is zoned R-7.5(A), which requires a front yard setback of 35 feet and limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and/or maintain a structure and provide an 8 foot front yard setback, measured at the foundation, with a 1 foot (12 inch) roof eave, which will require a 27 foot variance, measured at the foundation, to the front yard setback regulations, and to construct and maintain an 8 foot high fence, which will require a 4 foot special exception to the fence height regulations.

LOCATION: 4203 Delmar Avenue

APPLICANT: REIG, Inc.
Represented by Tommy Jackson

REQUESTS:

The following requests have been made on a site that is developed with a 2-story single family structure:

- A request for a variance to the front yard setback regulations of 27’ is requested to maintain the 2-story single family structure, part of which is located 8’ from the one of the site’s two front property lines (Mockingbird Lane) (as measured from this required right-of-way) or 27’ into this 35’ front yard setback.
- A request for a special exception to the fence height regulations of 4’ is made to construct and maintain an 8’ high solid wood fence and gate in the site’s Mockingbird Lane front yard setback.

STANDARD FOR A VARIANCE:

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

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STAFF RECOMMENDATION (variance):

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 in the R-7.5(A) zoning district in that it is restrictive in area due to having two front yard setbacks.
- The subject site at 63’ in width has 23’ of width left for development once a 35’ front yard setback is accounted for on the south and a 5’ side yard setback is accounted for on the north. If this lot were more typical with one front yard, two side yards, and one rear yard, the lot would have 53’ of width left for development. (The applicant states a house with restrictions as what would be on the site once setbacks were accounted for would not be built).
- Furthermore, the applicant provided information stating that the home on the subject site is to have 3,908 “heated square feet” and that the average square footage of 16 other homes in the R-7.5(A) zoning is 4,183 “heated square feet”.

STAFF RECOMMENDATION (fence height):

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

BACKGROUND INFORMATION:

Zoning:

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

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

Land Use:

The subject site is developed with a single family home. The areas to the north, east, and west are developed with single family uses; and the area to the south is developed with single family uses and a school (Stonewall Jackson Elementary School).

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 (variance):

- This request focuses on maintaining a 2-story single family structure, part of which is located 8' from one of the site's two front property lines (Mockingbird Lane) (as measured from the required right-of-way) or 27' into this 35' front yard setback.
- The site is zoned R-7.5(A) which requires a minimum front yard setback of 25'.
- The subject site is located at the northwest corner of Delmar Avenue and Mockingbird Lane.
- The Dallas Development Code states that the front yard setback is measured from the front lot line of the building site or the required right-of-way as determined by the thoroughfare plan for all thoroughfares, whichever creates the greater setback."
- Given the single family zoning and location of the corner lot subject site, it has two front yard setbacks – a 25' front yard setback along Delmar Avenue (the shorter of the two frontages of the subject site) and a 35' front yard setback along Mockingbird Lane (the longer of the two frontages which is typically a side yard where on this R-7.5(A) zoned property would require a 5' side yard setback). However, the site has a 35' front yard setback along Mockingbird Lane given: 1) a required right-of-way determined by the thoroughfare plan, and 2) that while it is the longer of the two frontages that while usually is considered a side yard is a front yard notwithstanding in order to maintain continuity of the established front yard setback along this street frontage where homes/lots to the west "front" southward to Mockingbird Lane.
- A scaled site plan has been submitted indicating that a portion of the single family home structure is located as close as 8' from the Mockingbird Lane front property line or as much as 27' into this 35' front yard setback.
- The submitted site plan represents a structure to encroach only into the site's Mockingbird Lane front yard setback and not into the site's Delmar Avenue front yard setback.
- The submitted first floor plan indicates the following square footage:
 - First floor: 2,215 square feet
 - Second floor: 1,693 square feet
 - Total A/C: 655 square feet
 - Garages: 661 square feet

- Covered porches: 288 square feet
- Total square footage: 4,857 square feet
- According to DCAD records, the “main improvement” for the property addressed at 4203 Delmar Avenue is a structure constructed in 2015 with 4,390 square feet of living area/total area; the “additional improvements” for the property addressed at 4203 Delmar Drive is a 616 square foot attached garage.
- The subject site is flat and rectangular in shape (129’ x 63’), and according to the submitted application is 0.18 acres (or approximately 7,800 square feet) in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- Most lots in the R-7.5(A) zoning district have one 25’ front yard setback, two 5’ side yard setbacks, and one 5’ rear yard setback; this site has one 35’ front yard setback, one 25’ front yard setback, and two 5’ side yard setbacks.
- The subject site at 63’ in width has 23’ of width left for development once a 35’ front yard setback is accounted for on the south and a 5’ side yard setback is accounted for on the north. If this lot were more typically with one front yard, two side yards, and one rear yard, the lot would have 53’ of width left for development. (The applicant states a house with restrictions as what would be on the site once setbacks were accounted for would not be built).
- The applicant has submitted information stating that the home on the subject site is to have “3,908 heated square feet” and that “the average square footage of 16 other homes is 4,183 heated feet”.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.
 - The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.
- If the Board were to grant the variance request, and impose the submitted site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document– which in this case is a structure that is located as close as 8’ from the site’s Mockingbird Lane front property line (or as much as 27’ into this 35’ front yard setback).

GENERAL FACTS/STAFF ANALYSIS (fence height):

- This request focuses on constructing and maintaining an 8’ high solid wood fence and gate in the site’s Mockingbird Lane front yard setback.
- The subject site is zoned R-7.5(A).

- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The subject site is located at the northwest corner of Delmar Avenue and Mockingbird Lane.
- The Dallas Development Code states that the front yard setback is measured from the front lot line of the building site or the required right-of-way as determined by the thoroughfare plan for all thoroughfares, whichever creates the greater setback.”
- Given the single family zoning and location of the corner lot subject site, it has two front yard setbacks – a 25' front yard setback along Delmar Avenue (the shorter of the two frontages of the subject site) and a 35' front yard setback along Mockingbird Lane, (the longer of the two frontages which is typically a side yard where on this R-7.5(A) zoned property a 9' high fence could be erected by right). However the site has a 35' front yard setback along Mockingbird Lane given: 1) a required right-of-way determined by the thoroughfare plan, and 2) that while it is the longer of the two frontages that while usually is considered a side yard is a front yard notwithstanding in order to maintain continuity of the established front yard setback along this street frontage where homes/lots to the west “front” southward to Mockingbird Lane.
- A scaled site plan/fence elevation has been submitted indicating a fence proposal that will reach 8' 6” in height in the 35' Mockingbird Lane front yard setback.
- The submitted site plan/fence elevation represents only a fence to exceed 4' in height in the Mockingbird Lane front yard setback and not into the site's Delmar Avenue front yard setback.
- The following information was gleaned from the submitted site plan/elevation
 - The proposal is represented as being approximately 90' in length parallel to the Mockingbird Lane, and 32' – 35' in length perpendicular to this street on the east and west sides of the site in the front yard setback.
 - The proposal is represented as being located approximately 0'- 3' from the Mockingbird Lane front property line or 8' – 11” from this pavement line.
- The proposal is located across from lots developed with a single family home and a school neither with a fence in the front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area along Mockingbird Lane (approximately 200 feet east and west of the subject site) and noted a number of other fences that appeared to be above 4' in height but located in side yards.
- As of August 5, 2016, no letters has been submitted in support of the request, and no letters have been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' will not adversely affect neighboring property.
- Granting this special exception request of 4' with a condition imposed that the applicant complies with the submitted site plan/elevation would require the proposal exceeding 4' in height in the Mockingbird Lane front yard setback to be constructed and maintained in the location and of the heights and material as shown on this document.

Timeline:

- June 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.
- July 14, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 18, 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 July 27th deadline to submit additional evidence for staff to factor into their analysis; and the August 5th 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."
- July 26, 2016: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).
- August 2, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August 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 Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: AUGUST 16, 2016

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Nolen

I move to grant that the Board of Adjustment grant application **BDA 156-080(SL)** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Agnich

AYES: 5 – Nolen, Gibson, Agnich, Bartos, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA145-073(SL)

BUILDING OFFICIAL’S REPORT: Application of Jerry Stark, represented by Prabha Cinclair and Craig Melde, for variances to the front and side yard setback regulations at 3506 Cedar Springs Road. This property is more fully described as a 0.41 acre tract in Block 992, and is zoned PD 193 (O-2), which requires a front yard setback of 20 feet and requires a side yard setback of 10 feet. The applicant proposes to construct and/or maintain a structure and provide a 5 foot front yard setback measured at the foundation with a maximum 1 foot 4 inch roof eave, which will require a 15 foot variance to the front yard setback regulations, and provide a 2 foot side yard setback measured at the foundation with a maximum 1 foot 7 inch roof eave, which will require an 8 foot variance to the side yard setback regulations.

LOCATION: 3506 Cedar Springs Road

APPLICANT: Jerry Stark
Represented by Prabha Cinclair and Craig Melde

August 16, 2016 Public Hearing Notes:

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

REQUESTS:

The following appeals have been made to modify and maintain a carport structure on a site developed with an office use/structure (Swift Property Company / The Shingle Style House) – an existing carport structure part of which is located in one of the site’s two front yard setbacks (Sale Street), and in one of the site’s two side yard setbacks:

1. A variance to the front yard setback regulations of 15’ is made to modify and maintain the aforementioned approximately 1,800 square foot carport structure by

reducing its size to approximately 1,000 square feet, and maintaining its location 5' from the front property line along Sale Street or 15' into this required 20' front yard setback.

2. A variance to the side yard setback regulations of 8' is made to maintain the aforementioned carport structure that is located 2' from the northeastern side property line or 8' into this required 10' side 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:

Denial

Rationale:

- Staff concluded that the subject site is unique and different from most lots in PD 193 (O-2) zoning district in that it is developed with a city-designated historic structure on a site with mature trees that the applicant intends to preserve. However, staff concluded that the applicant had not provided information documenting that the structure to be modified and maintained in the front and side yard setbacks is commensurate with the development found upon other parcels of land with the same PD 193 (O-2) zoning district.

BACKGROUND INFORMATION:

Zoning:

Site: PD 193 (O-2)/H-12 (Planned Development District, Office, Historic)
North: PD 193 (O-2) (Planned Development District, Office)
South: PD 193 (O-2) (Planned Development District, Office)
East: PD 193 (O-2) (Planned Development District, Office)
West: PD 193 (O-2) (Planned Development District, Office)

Land Use:

The subject site is developed with an office use/structure/City historic structure – The Shingle Style House. The areas to the north, south, east and west are developed with a mix of residential and office uses.

Zoning/BDA History:

1. BDA134-082, Property at 3506 Cedar Springs Road (the subject site)

On October 21, 2014, the Board of Adjustment Panel A granted a request for a special exception to landscape regulations (and imposed the submitted alternate landscape plan as a condition with the removal of shrubs in the visibility triangle); granted requests for special exceptions to the visual obstruction regulations (and imposed the submitted site plan and revised elevation, and that no vegetation is permitted in the 20' visibility triangle at the driveway into the site from Sale Street as conditions); and denied requests for variances to the front and side yard setback regulations without prejudice. of 26 spaces.

The case report stated that the appeals were been made to maintain a carport structure on a site developed with an office use/structure (Swift Property Company / The Shingle Style House), part of which is located in one of the site's two front yard setbacks (Sale Street), and in one of the site's two side yard setbacks, and to maintain certain items in the 45' visibility triangle at the intersection of Cedar Springs and Sale Street, and in the 20' visibility triangle at the drive approach into the site from Sale Street, and to not fully provide required landscaping triggered in conjunction with the recently added carport structure on the site.

GENERAL FACTS/STAFF ANALYSIS (front yard variance):

- This request focuses on modifying and maintaining a portion of a carport structure that is located in the one of the site's two 20' front yard setbacks (Sale Street). (While the carport is currently located in the Cedar Springs Road front yard setback, the site plan represents that the carport will be reduced in size and become compliant with the Cedar Springs Road front yard setback).

- Structures other than for single family structures on lots zoned PD 193 (O-2) are required to provide a minimum front yard setback of 20’.
- A site plan has been submitted denoting that the carport structure is located 5’ from the site’s Sale Street front property line or 15’ into the 20’ front yard setback.
- Approximately 90 percent of the modified approximately 1,000 square foot, approximately 16.5’ wide carport is located in the 20’ Sale Street front yard setback.
- According to DCAD records, the “improvements” at 3506 Cedar Springs Road is a “converted residence” with 4,526 square feet in area built in 1905.
- The subject site is somewhat sloped, virtually rectangular in shape, and approximately 0.4 acres or 17,400 square feet in area. The site is zoned PD 193 (O-2).
- The corner property with two street frontages has two front yard setbacks as any corner property with two street frontages would that is not zoned agricultural, single family, or duplex.
- 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 (O-2) 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 (O-2) zoning classification.
- If the Board were to grant the variance request and impose the submitted site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document– which is a structure located 5’ from the site’s Sale Street front property line (or 15’ into this 20’ front yard setback).

GENERAL FACTS/STAFF ANALYSIS (side yard variance):

- This request focuses on maintaining on maintaining a portion of a carport structure in the one of the site’s two 10’ side yard setbacks on the northeastern side of the property.
- Structures other than single family structures on lots zoned PD 193 (O-2) are required to provide a minimum side yard setback of 10’.
- A site plan has been submitted denoting that the carport structure is located 2’ the site’s northeastern side property line or 8’ into the 10’ side yard setback.
- It appears from calculations made by the Board Administrator from the submitted site plan that approximately 130 square feet (or approximately 13 percent) of the approximately 1,000 square foot carport structure is located in the site’s 10’ northeastern side yard setback.

- According to DCAD records, the “improvements” at 3506 Cedar Springs Road is a “converted residence” with 4,526 square feet in area built in 1905.
- The subject site is somewhat sloped, virtually rectangular in shape, and approximately 0.4 acres or 17,400 square feet in area. The site is zoned PD 193 (O-2).
- The corner property with two street frontages has two front yard setbacks as any corner property with two street frontages would that is not zoned agricultural, single family, or duplex.
- 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 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 (O-2) 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 (O-2) zoning classification.
- If the Board were to grant the variance request and impose the submitted site plan as a condition, the structure in the side yard setback would be limited to what is shown on this document– which is a structure located 2’ from the site’s northeastern side property line (or 8’ into this 10’ side yard setback).

Timeline:

- April 26, 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.
- May 10, 2016: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, “If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case.”
- May 11, 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 June 8th deadline to submit additional evidence for staff to factor into their analysis; and the

June 17th 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 7, 2016: The applicant's representative submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).

June 7, 2016: The Sustainable Development and Construction Historic Preservation Chief Planner emailed the Board Administrator the following information: 3506 Cedar Springs was approved in the proposed modified state by Landmark Commission on March 7, 2016 (CA156-263(MD)).

June 13, 2016: The applicant's representative submitted additional documentation on this application beyond what was submitted with the original application (see Attachment B).

June 14, 2016: 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 Building Inspection, Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

June 28, 2016: The Board of Adjustment Panel A conducted a public hearing on this application. The Board Administrator submitted additional information from the applicant's representative to the Board at the briefing (see Attachments C and D). The Board delayed action on this application until their next public hearing to be held on August 16, 2016.

June 29, 2016: The Board Administrator wrote the applicant's representative a letter that provided the board's action; and the July 27th deadline to submit additional evidence for staff to factor into their analysis; and the August 5th deadline to submit additional evidence to be incorporated into the Board's docket materials. (Note that the applicant's representative has not submitted any additional

documents from what was presented before/at the June 28th public hearing).

August 2, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August 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 Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: JUNE 28, 2016

APPEARING IN FAVOR: Dwayne Brignac, 1800 Valley View Lane, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Gibson**

I move that the Board of Adjustment, in Appeal No. **BDA 145-073**, hold this matter under advisement until **August 16, 2016**.

SECONDED: **Nolen**

AYES: 5 – Nolen, Gibson, Agnich, Bartos, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: AUGUST 16, 2016

APPEARING IN FAVOR: Prabha Cinclair, 1800 Valley View LN, Farmers Branch, TX
Craig Melde, 1907 Marilla, Dallas, TX
Duane Brignaz, 1800 Valley View LN, Farmers Branch, TX
Jerry Stark, 4437 Emerson #5, Dallas, TX

APPEARING IN OPPOSITION: Michael Milliken, 3532 Cedar Plaza Lane, Dallas, TX

MOTION #1: **Nolen**

I move that the Board of Adjustment suspend its rules and accept the evidence that is being presented to us today.

SECONDED: Bartos

AYES: 5 – Nolen, Gibson, Agnich, Bartos, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

MOTION #2: Bartos

I move that the Board of Adjustment, in Appeal No. **BDA145-073**, on application of Jerry Stark, **grant** a 15 foot variance to the front yard setback regulations, and an 8-foot variance to the side yard setback 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 is required.

SECONDED: Nolen

AYES: 5 – Nolen, Gibson, Agnich, Bartos, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA156-074(SL)

BUILDING OFFICIAL’S REPORT: Application of Joel Castillo, represented by Peter Kavanagh of Zone Systems, for a variance to the front yard setback regulations and a special exception to the fence height regulations at 2141 Barberry Drive. This property is more fully described as Lot 5, Block 2/4806, and is zoned R-7.5(A), which requires a front yard setback of 25 feet and limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain a structure and provide a 15 foot front yard setback, which will require a 10 foot variance to the front yard setback regulations, and to maintain an 8 foot 6 inch high fence, which will require a 4 foot 6 inch special exception to the fence height regulations.

LOCATION: 2141 Barberry Drive

APPLICANT: Joel Castillo
Represented by Peter Kavanagh of Zone Systems

August 16, 2016 Public Hearing Notes:

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

REQUESTS:

The following requests have been made on a site that is developed with a 1-story single family structure:

- A request for a variance to the front yard setback regulations of 10' is requested to construct and maintain a 2-story addition to the existing single family structure, part of which would be located 15' from one of the site's two front property lines (Remond Drive) or 10' into this 25' front yard setback.
- A request for a special exception to the fence height regulations of 4' 6" is made to maintain an 8' 6" high solid wood fence and gate in the site's Remond Drive 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.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STAFF RECOMMENDATION (variance):

Denial

- Staff concluded that the applicant had not substantiated how 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 it cannot be developed in a manner commensurate with the development upon other parcels of land with the same R-7.5(A) zoning.
- While staff recognized the fact that the subject site was unique and different from most lots zoned R-7.5(A) in that it has two front yard setbacks, the applicant had not substantiated how this precluded the site from being developed in a manner commensurate with other developments in the same R-7.5(A) zoning district.
- Staff concluded that the applicant had not substantiated how the home with approximately 2,200 square feet of floor area once the addition was made would be

development that is commensurate with the development found on other R-7.5(A) zoned lots.

STAFF RECOMMENDATION (fence height):

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

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA956-136, Property located at 2123 Barberry Drive (two lots east of the subject site) On January 23, 1996, the Board of Adjustment Panel C granted a request for variance to the front yard setback regulations of 9'. The case report stated that the request was made to complete and maintain a 400 square foot, two-car garage in the 25' Remond Drive front yard setback.

GENERAL FACTS/STAFF ANALYSIS (variance):

- This request focuses on constructing and maintaining a 2-story addition to an existing 1-story single family structure, part of which would be located 15' from one of the site's two front property lines (Remond Drive) or 10' into this 25' front yard setback.
- The site is zoned R-7.5(A) which requires a minimum front yard setback of 25'.
- The subject site is located between Remond Drive on the north and Barberry Drive on the south. Regardless of how the existing single-family structure on the site is oriented to front south to Barberry Drive and to back northward to Remond Drive, the site has two 25' front yard setbacks since the code states that if a lot runs from

one street to another and has double frontage, a required front yard must be provided on both streets.

- A scaled site plan has been submitted indicating that a portion of the addition (expanded 1st floor with new 2nd floor atop) is located 15' from the Remond Drive front property line or 10' into this 25' front yard setback.
- The submitted site plan represents a structure to encroach only into the site's Remond Drive front yard setback and not into the site's Barberrry Drive front yard setback.
- The submitted site plan indicates the following square footage calculations:
 - Existing house 1st floor area: 1,455 square feet
 - House addition 1st floor area: 95 square feet
 - House addition 2nd floor area: 655 square feet
 - New garage area: 655 square feet
 - New balcony area: 18 square feet
- According to calculations made by the Board Administrator from the submitted site plan, the total existing home is 1,455 square feet in area; the combined 1st and 2nd floor addition is 750 square feet. The total square footage of the home with additions including the new second floor and the first floor expansion includes: 1) an approximately 96 square foot addition between the existing garage and the existing home and 2) an approximately 200 square foot expanded garage area by 9' towards the Remond Drive front property line) is approximately 2,800 square feet.
- According to calculations made by the Board Administrator from the submitted site plan, it appears that approximately 230 square feet of the total 2,200 square foot building footprint would be located in the Remond Drive 25' front yard setback.
- According to DCAD records, the "main improvement" for the property addressed at 2141 Barberrry Drive is a structure constructed in 1941 with 1,295 square feet of living area and 1,415 square feet of total area; the "additional improvements" for the property addressed at 2141 Barberrry Drive is a 120 square foot enclosed patio and a 378 square foot attached garage.
- The subject site is flat and rectangular in shape (125' x 60'), and according to the submitted application is 0.183 acres (or approximately 8,000 square feet) in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- Most lots in the R-7.5(A) zoning district have one 25' front yard setback, two 5' side yard setbacks, and one 5' rear yard setback; this site has two 25' front yard setbacks and two 5' side yard setbacks.
- The subject site at 125' in length has 75' of length left for development once 25' front yard setbacks are accounted for on the north and south. If this lot were more typically with one front yard, two side yards, and one rear yard, the 125' long lot would have 95' of length left for development.
- The applicant has submitted information stating that the homes in his neighborhood range in size from about 1,200 square feet to 2,404 square feet; and the home on the site will contain 2,205 square feet of floor area when complete.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.

- The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.
- The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.
- If the Board were to grant the variance request, and impose the submitted site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document– which in this case is a structure that would be located 15’ from the site’s Remond Drive front property line (or 10’ into this 25’ front yard setback).

GENERAL FACTS/STAFF ANALYSIS (fence height):

- This request focuses on maintaining an 8’ 6” high solid wood fence and gate in the site’s Remond Drive front yard setback.
- The subject site is zoned R-7.5(A).
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4’ above grade when located in the required front yard.
- The subject site is located between Remond Drive on the north and Barberry Drive on the south. Regardless of how the existing single family structure on the site is oriented to front south to Barberry Drive and to back to northward to Remond Drive, the site has two 25’ front yard setbacks since the code states that if a lot runs from one street to another and has double frontage, a required front yard must be provided on both streets.
- The submitted site plan/elevation represents the fence proposal in the site’s Remond Drive 25’ front yard setback reaches 8’ 6” in height.
- The submitted site plan represents only a fence to exceed 4’ in height in the Remond Drive front yard setback and not into the site’s Barberry Drive front yard setback.
- The following information was gleaned from the submitted site plan/elevation
 - The proposal/existing 8’ 6” high solid wood fence and gate is represented as being approximately 60’ in length parallel to the Remond Drive.
 - The proposal/existing 8’ 6” high solid wood fence and gate is represented as being approximately on the Remond Drive front property line. (No pavement line is represented on the site plan).
- The proposal/existing 8’ 6” high solid wood fence is located across from property zoned IR (Industrial/research) and warehouse use.
- The Board Administrator conducted a field visit of the site and surrounding area along Remond Drive (approximately 200 feet east and west of the subject site) and noted a number of other fences that appeared to be above 4’ in height and located in this front yard setback – none of which have recorded BDA history.

- As of August 5, 2016, no letters has been submitted in support of the request, and no letters have been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of up to 4' 6" will not adversely affect neighboring property.
- Granting this special exception request of 4' 6" with a condition imposed that the applicant complies with the submitted site plan/elevation would require the proposal/existing fence exceeding 4' in height in the Remond Drive front yard setback to be maintained in the location and of the heights and material as shown on this document.

Timeline:

- June 15, 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.
- July 14, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 18, 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 July 27th deadline to submit additional evidence for staff to factor into their analysis; and the August 5th 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."
- July 27, 2016: The applicant's representative submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).
- August 2, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August 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 Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: AUGUST 16, 2016

APPEARING IN FAVOR: Peter Kavanagh, 1620 Handley Drive, Suite A, Dallas, TX
Joel Castillo, 2141 Barberry, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Nolen

I move that the Board of Adjustment suspend its rules and accept the evidence that is being presented to us today.

SECONDED: Bartos

AYES: 5 – Nolen, Gibson, Agnich, Bartos, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

MOTION #2: Sibley

I move that the Board of Adjustment, in Appeal No. **BDA 156-074**, on application of Joel Castillo, **grant** a 10 foot variance to the front yard setback 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 is required.

SECONDED: Bartos

AYES: 5 – Nolen, Gibson, Agnich, Bartos, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

MOTION #3: Sibley

I move that the Board of Adjustment, in Appeal No. **BDA156-074**, on application of Joel Castillo, **grant** the request to construct and maintain an 8 foot 6 inch high fence in the property's front yard as a special exception to the fence height requirements in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Bartos

AYES: 5 – Nolen, Gibson, Agnich, Bartos, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

MOTION: Nolen

I move to adjourn this meeting.

SECONDED: Agnich

AYES: 5 – Nolen, Gibson, Agnich, Bartos, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

P. M.: Board Meeting adjourned for **August 16, 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.