

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
MONDAY, SEPTEMBER 18, 2017**

MEMBERS PRESENT AT BRIEFING: Bruce Richardson, Chair, Phil Foster, regular member, Cheri Gambow, regular member and Robert Agnich, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Bruce Richardson, Chair, Phil Foster, regular member, Cheri Gambow, regular member and Robert Agnich, alternate member

MEMBERS ABSENT FROM HEARING: No one

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

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

11:23 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **September 18, 2017** docket.

1:13 P.M.

The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand

upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

MISCELLANEOUS ITEM NO. 1

Approval of the Board of Adjustment Panel C, August 14, 2017 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 18, 2017

MOTION: None

The minutes were approved without a formal vote.

FILE NUMBER: BDA167-094(SL)

BUILDING OFFICIAL'S REPORT: Application of Julie Weissmueller for a variance to the front yard setback regulations and special exceptions to the fence standards at 6410 Joyce Way. This property is more fully described as Lot 1, Block 2/5478, 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 and requires a fence panel with a surface area that is less than 50 percent open may not be located less than 5 feet from the front lot line. The applicant proposes to construct and maintain a structure and provide a 13 foot front yard setback, measured at the foundation, which will require a 12 foot variance to the front yard setback regulations, and to construct and maintain an 8 foot high fence in a required front yard, which will require a 4 foot special exception to the fence standards, and to construct and maintain a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than 5 feet from the front lot line, which will require special exceptions to the fence standards.

LOCATION: 6410 Joyce Way

APPLICANT: Julie Weissmueller

REQUESTS:

The following requests have been made on a site that is currently developed with a single family home structure that the applicant intends to demolish:

1. A variance to the front yard setback regulations of 12' is made to construct and maintain single family home and pool structures, part of which are to be located in one of the site's two 25' front yard setbacks (Tibbs Road).
2. Special exceptions to the fence standards are made:
 - A) related to fence height to construct and maintain an 8' high solid wood fence in the Tibbs Road front yard setback; and
 - B) related to fence materials to construct and maintain a fence with panels with surface areas that are less than 50 percent open (the aforementioned 8' high

solid wood fence” in the Tibbs Road front yard setback on this front property line (or less than 5’ from this front lot line).

(No request has been made in this application to construct/maintain any structure or fence in the site’s Joyce Way 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, lot coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:

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

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 given that: 1) it is irregular in shape, 2) it is a corner lot with a restrictive area due to its two front yard setbacks, 3) it is a site with a restrictive area due to a 15’ wide easement located on the eastern side of the subject site. The features of this irregularly-shaped lot with two front yard setbacks and easement preclude the applicant from developing it in a manner commensurate with development found on other similarly zoned R-7.5(A) properties that are regular in shape, with one front yard setback, and no easement. Documentation submitted by the applicant shows that the proposed home with approximately 5,500 square feet is lower in square footage than 65 other properties in the same R-7.5(A) zoning district.

- Staff concluded that granting the variance does not appear to be contrary to public interest since the structures proposed to encroach into the setback are for relatively small areas of porch and pool structures.

STAFF RECOMMENDATION (fence standard special exceptions):

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

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-10(A) (Single family district 10,000 square feet)

Land Use:

The subject site is developed with a single family home. The area to the north, south, east, 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 (variance):

- The request for a variance to the front yard setback regulations of 12’ focuses on constructing and maintaining single family home and pool structures that would be located 13’ from one of the site’s two 25’ front property lines (Tibbs Street) or 12’ into this 25’ required front yard setback.
- The subject site is zoned R-7.5(A) where the minimum front yard setback is 25’.
- The site is located on the southeast corner of Joyce Way and Tibbs Road. The site has two 25’ front yard setbacks. The site has a 25’ front yard setback along Tibbs Road because it is the shorter of the two frontages (approximately 202’ in length), which is always deemed the front yard setback on a corner lot in a single-family zoning district. The site also has a 25’ front yard setback along Joyce Way, the longer of the two frontages of this corner lot (approximately 211’ in length) which is typically regarded as a side yard where only a 5’ setback is required. But the site’s Joyce Way frontage is a side yard treated as a front yard setback nonetheless to maintain the continuity of the established front yard setback established by the lots

to the east of the site that front/are oriented northward towards Joyce Way. (Tibbs Road is a front yard because it is 9' shorter in length than Joyce Way).

- Regardless of how the home is oriented to front onto Joyce Way (and “side” to Tibbs Road), the site has two 25' front yard setbacks where the focus of the applicant's request in this application is only to construct and maintain structures in the site's front yard setback on Tibbs Road. (No part of the application is made to construct/maintain a structure in the site's Joyce Way front yard setback).
- The submitted site plan denotes that only a portion of a porch and pool are proposed to be located in the 25' Tibbs Road front yard setback. The site plan denotes that these structures are proposed to be located 13' from the Tibbs Road front property line or 12' into this 25' front yard setback.
- The applicant has submitted a document that lists 65 other properties zoned R-7.5(A) where the square footage of all of these homes is greater than the approximately 5,500 square foot home proposed on the subject site.
- The subject site is flat, irregular in shape, and according to the applicant's representative, is 0.366 acres (or approximately 15,900 square feet) in area. The site is zoned R-7.5(A) where lots typically are 7,500 square feet in area. The site has a 15' wide utility easement in the eastern part of the subject site.
- The site has two front 25' front yard setbacks; and two 5' side yard setbacks; most R-7.5(A) residentially-zoned lots have one 25' front yard setback, two 5' side yard setbacks, and one 5' rear yard setback. (Note that if this were a typical R-7.5(A) zoned lot with one front yard, two side yards, and one rear yard, the applicant would not be required to seek a variance to the side yard setback since the porch and pool structures are proposed to be located 13' from the Tibbs Road property line, and a 5' side yard setback is required in this zoning district).
- According to DCAD records, there are “main improvements” at 6410 Joyce Way is a structure built in 1950 with 2,166 square feet of living/total area. The “additional improvements” at this address include a 441 square foot attached garage and a 168 square foot addition.
- If the subject site were more typical to other parcels of land in the same zoning district (one front yard, one rear yard, and two side yards), no variance would be required since the applicant is providing a 5' setback (the side yard setback for properties zoned R-7.5(A)) on the north side of the site that is a front yard.
- If the subject site were more typical to other parcels of land in the same zoning district (one front yard, one rear yard, and two side yards), no variance would be required since the applicant is providing a 5' setback (the side yard setback for properties zoned R-7.5(A)) on the north side of the site that is a front yard.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the Tibbs Road 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 structures in the front yard setback would be limited to what is shown on this document– which in this case are porch and pool structures located 13’ from the site’s Tibbs Road front property line (or 12’ into this 25’ front yard setback).

GENERAL FACTS/STAFF ANALYSIS (fence standard special exceptions):

- These requests for special exceptions to the fence standards focus on constructing and maintaining an 8’ high solid wood fence on the site’s Tibbs Road front lot line or in one of the site two 25’ front yard setbacks.
- The subject site is zoned R-7.5(A) where the minimum front yard setback is 25’.
- The site is located on the southeast corner of Joyce Way and Tibbs Road. The site has two 25’ front yard setbacks. The site has a 25’ front yard setback along Tibbs Road because it is the shorter of the two frontages (approximately 202’ in length), which is always deemed the front yard setback on a corner lot in a single-family zoning district. The site also has a 25’ front yard setback along Joyce Way, the longer of the two frontages of this corner lot (approximately 211’ in length) which is typically regarded as a side yard where only a 5’ setback is required. But the site’s Joyce Way frontage is a side yard treated as a front yard setback nonetheless to maintain the continuity of the established front yard setback established by the lots to the east of the site that front/are oriented northward towards Joyce Way. (Tibbs Road is a front yard because it is 9’ shorter in length than Joyce Way).
- Regardless of how the home is oriented to front onto Joyce Way (and “side” to Tibbs Road), the site has two 25’ front yard setbacks where the focus of the applicant’s request in this application is only to construct and maintain a fence in the site’s front yard setback on Tibbs Road. (No part of the application is made to construct/maintain a fence in the site’s Joyce Way front yard setback).
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4’ above grade when located in the required front yard.
- The Dallas Development Code states that in single family districts, a fence panel with a surface area that is less than 50 percent open may not be located less than five feet from the front lot line.
- The submitted site plan denotes the only fence proposed to exceed 4’ in height on the subject site is in the Tibbs Road front yard setback. This fence is proposed to be 8’ in height, approximately 75’ in length parallel to the street and approximately 25’ in length perpendicular to the street on the north and south sides of the site in this front yard setback.
- The submitted partial elevation denotes an 8’ high wood fence.

- Requests for special exceptions to the fence standards are made to construct and maintain a fence higher than 4' in the Tibbs Road front yard setback and to construct and maintain a solid fence (a fence panel with a surface area that is less than 50 percent open) on the Tibbs Road front property/lot line (or less than 5' from this lot line). (The site plan denotes that the proposed fence is located approximately 13' from the pavement line).
- The proposal is located across from one single family home which has a fence higher than 4' along Tibbs Road.
- The Board Administrator conducted a field visit of the site and surrounding area and noted a number of other fences along Tibbs Road that appeared to be above 4' in height. It could not be determined whether these fences are permitted by right since a determination could not be made as to whether these fences were in front or side yards. There is no recorded BDA history of any fence special exception in the immediate area of the subject site.
- As of September 8, 2017, no letters have been submitted in support of or in opposition to these requests.
- The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to height over 4' in the Tibbs Road front yard setback and materials/height of the proposed fence relative to the front lot line will not adversely affect neighboring property.
- Granting these special exceptions with a condition imposed that the applicant complies with the submitted site plan and partial elevation would require the proposal exceeding 4' in height in the front yard setback and with fence panels with surface areas less than 50 percent open located less than 5' from the front lot line to be constructed and maintained in the location and of the heights and materials as shown on these documents.

Timeline:

- June 20, 2017: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- August 8, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- August 8, 2017: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the August 30th deadline to submit additional evidence for staff to factor into their analysis; and the September 8th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

August 28, 2017: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).

September 5, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director of Engineering, the Sustainable Development and Construction Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 18, 2017

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Agnich

I move to grant that the Board of Adjustment grant application **BDA 167-094(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 partial elevation is required.

SECONDED: Foster

AYES: 4 – Richardson, Foster, Gambow, Agnich

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA167-097(SL)

BUILDING OFFICIAL'S REPORT: Application of Robert Baldwin of Baldwin and Associates for a special exception to the off-street parking regulations at 2600 (aka 2604) Main Street. This property is more fully described as Lot 2, Block A/183, and is zoned PD-269 (Tract A), which requires parking to be provided. The applicant proposes

to construct and/or maintain a structure for a commercial amusement (inside) use, and provide 48 of the required 192 off-street parking spaces, which will require a 144 space special exception to the off-street parking regulations.

LOCATION: 2600 (aka 2604) Main Street

APPLICANT: Robert Baldwin of Baldwin and Associates

REQUEST:

A request for a special exception to the off-street parking regulations of 144 spaces is made to occupy and lease an existing approximately 21,000 square foot vacant structure, and construct and maintain an approximately 3,000 square foot addition with an inside commercial amusement (bowling alley) use, and provide 48 (or 25 percent) of the 192 off-street parking spaces required by code.

STANDARD FOR A SPECIAL EXCEPTION TO THE OFF-STREET PARKING REGULATIONS:

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(A). For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 75 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). For the office use, the maximum reduction authorized by this section is 35 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). Applicants may seek a special exception to the parking requirements under this section and an administrative parking reduction under Section 51A-4.313. The greater reduction will apply, but the reduction may not be combined.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
 - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
 - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.

- (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
 - (E) The availability of public transit and the likelihood of its use.
 - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
 - 4) In granting a special exception, the board may:
 - (A) Establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
 - (B) Impose restrictions on access to or from the subject property; or
 - (C) Impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
 - 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
 - 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
 - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
 - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The special exception of 144 spaces shall automatically and immediately terminate if and when the commercial amusement (inside) is changed or discontinued.

Rationale:

- The Sustainable Development Department Assistant Director of Engineering indicated that he has no objections to the applicant's request.

BACKGROUND INFORMATION:

Zoning:

Site: PD 269 (Tract A) (Planned Development)
North: PD 269 (Tract A) (Planned Development)
South: PD 269 (Tract A) (Planned Development)
East: PD 269 (Tract A) (Planned Development)

West: PD 269 (Tract B) (Planned Development)

Land Use:

The subject site is developed with a vacant, approximately 21,000 square foot vacant structure. The area immediately north is a surface parking lot; and the areas to the east, south, and west are developed with a mix of residential and nonresidential uses.

Zoning/BDA History:

- | | |
|--|--|
| 1. BDA012-119, Property at 2600 Main Street (the subject site) | On January 22, 2002, the Board of Adjustment Panel C granted a request for a variance to the off-street parking regulations and imposed the following conditions: 1) compliance with the submitted site plan is required; and 2) that the variances be changed from 15 spaces to 8 spaces.
The case report states that the request for variance to the off-street parking regulations of 15 spaces was made to transition and expand spaces in an existing vacant restaurant/bar structure (a structure that formerly housed the Copper Tank Brewing Company was being transitioned to the American's Pub). |
| 2. BDA956-134, Property at 2600 Main Street (the subject site) | On January 23, 1996, the Board of Adjustment Panel C granted a request for a variance to the off-street parking regulations of 31 spaces needed to complete and maintain a 14,000 square foot restaurant/bar use (Copper Tank Brewing Company). The Board imposed the following conditions: That this variance terminates in two years or when the zoning regulations applying to this use are amended by the City Council to reduce the number of parking spaces whichever comes first. |

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on occupying and leasing an existing approximately 21,000 square foot vacant structure, and constructing and maintaining an approximately 3,000 square foot addition with an inside commercial amusement (bowling alley) use, and providing 48 (or 25 percent) of the 192 off-street parking spaces required by code.

- While PD 269 specifies off-street parking requirements for certain uses permitted in the zoning district, does not provide a specific off-street parking requirement for the proposed inside commercial amusement use. As a result, the PD ordinance states that the off-street parking requirement for this use is that what is provided in Chapter 51. Chapter 51 requires the following off-street parking requirement:
 - Inside commercial amusement: one space per 100 square feet of floor area.
- The applicant notes that PD 269 states that no off-street parking is required for the first 2,500 square feet of floor area in an original building; that no off-street parking spaces are required for the first 5,000 square feet of floor area in an original building for retail-related uses or professional, personal service, and custom craft uses; and that a reduction of 10 percent of the parking requirement is allowed for uses located within one-fourth of a mile from a rail station.
- The applicant has submitted a table indicating that while 213 off-street parking spaces are required for the proposed use on the site, the applicant is entitled to the 10 percent parking reduction for proximity to a DART station hence an off-street parking requirement of 192 spaces.
- The applicant has submitted a document which states among other things that: 1) while PD 269 does not provide stipulations or parking requirements specifically for bowling alleys (instead, bowling alleys are classified as “inside commercial amusement” use, the parking requirement for bowling alleys per Chapter 51A is six spaces per land, where the theoretical parking requirement for the proposed 8-lane tenant would be 39 spaces; and 2) the ITE’s projected peak demand of the use on the subject site is 30 vehicles. (The applicant proposes to provide 48 off-street parking spaces).
- The Sustainable Development Department Assistant Director of Engineering has submitted a review comment sheet marked “Has no objections.”
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the proposed inside commercial inside (bowling alley) use does not warrant the number of off-street parking spaces required, and
 - The special exception of 89 spaces (or a 22 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, and impose the condition that the special exception of 144 spaces shall automatically and immediately terminate if and when the commercial amusement inside use is changed or discontinued, the applicant could occupy and lease the existing structure and construct and maintain the addition on the subject site with commercial amusement inside use, and provide 48 (or 25 percent) of the 192 required off-street parking spaces.

Timeline:

July 12, 2017: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

August 8, 2017: 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".

August 8, 2017: The Board Administrator emailed the applicant the following information:

- a copy of the application materials including the Building Official's report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the August 30th deadline to submit additional evidence for staff to factor into their analysis; and the September 8th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

September 5, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director of Engineering, the Sustainable Development and Construction Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

September 7, 2017: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections."

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 18, 2017

APPEARING IN FAVOR: Robert Baldwin, 3904 Elm St., #B, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Foster**

I move that the Board of Adjustment, in **Appeal No. BDA 167-097**, hold this matter under advisement until **October 16, 2017**.

SECONDED: Agnich

AYES: 4 – Richardson, Foster, Gambow, Agnich

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA167-099(SL)

BUILDING OFFICIAL’S REPORT: Application of Luis Leija for a variance to the front yard setback regulations at 2401 Britton Avenue. This property is more fully described as Lot 6, Block 27/4226, and is zoned R-7.5(A), which requires a front yard setback of 25 feet. The applicant proposes to construct and maintain a structure and provide a 5 foot front yard setback, measured at the foundation, which will require a 20 foot variance to the front yard setback regulations.

LOCATION: 2401 Britton Avenue

APPLICANT: Luis Leija

REQUEST:

A request for a variance to the front yard setback regulations of 20’ is made to construct and maintain a one-story single family home structure with an approximately 1,800 square foot building footprint, part of which is to be located 5’ 5” from one of the site’s two front property lines (E. Ohio Avenue) or approximately 20’ into this 25’ front yard setback on a site that is undeveloped.

STANDARD FOR A VARIANCE:

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

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

STAFF RECOMMENDATION:

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, 25' front yard setbacks. Most lots in this zoning district have one 25' front yard setback. The 50' wide subject site has 20' of developable width available once a 25' front yard setback is accounted for on the north and a 5' side yard setback is accounted for on the south. If the lot were more typical to others in the zoning district with only one front yard setback, the 50' wide site would have 40' of developable width.
- Staff concluded that granting the variance would allow a one-story, approximately 1,800 square foot single family home – a home that is of a size the applicant states he has built on a site that did not require variance since that parcel of land was more typical with one front yard setback, and of a size similar to seven other homes that applicant provided photos of in the same R-7.5(A) zoning district.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	R-7.5(A) (Single family residential 7,500 square feet)
<u>North:</u>	MF-2(A) (Multifamily)
<u>South:</u>	R-7.5(A) (Single family residential 7,500 square feet)
<u>East:</u>	R-7.5(A) (Single family residential 7,500 square feet)
<u>West:</u>	R-7.5(A) (Single family residential 7,500 square feet)

Land Use:

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

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 for variance to the front yard setback regulations of 20' focuses on constructing and maintaining a one-story single family home structure with an approximately 1,800 square foot building footprint, part of which is to be located 5' 5" from one of the site's two front property lines (E. Ohio Avenue) or approximately 20' into this 25' front yard setback on an undeveloped site.
- The property is located in an R-7.5(A) zoning district which requires a minimum front yard setback of 25 feet.

- The subject site is located at the southwest corner of Britton Avenue and E. Ohio Avenue. Regardless of how the structure is proposed to be oriented to front Britton Avenue, the subject site has 25' front yard setbacks along both street frontages. The site has a 25' front yard setback along Britton Avenue, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in this zoning district. The site also has a 25' front yard setback along E. Ohio Avenue, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where a 5' side yard setback is required. But the site's E. Ohio Avenue frontage that would function as a side yard on the property is treated as a front yard setback nonetheless to maintain the continuity of the established front yard setback established by the lots (currently undeveloped) to the west that front/are oriented northward towards E. Ohio Avenue.
- The submitted scaled site plan indicates that a portion of the proposed structure is located 5' 5" from the E. Ohio Avenue front property line or approximately 20' into this 25' front yard setback.
- According to DCAD records, there are "no main improvement" or "no additional improvements for property addressed at 2410 Britton Avenue.
- The subject site is relatively flat, rectangular in shape (approximately 182' x 50'), and according to the submitted application is 0.2 acres (or approximately 8,700 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 site plan represents that approximately 1/2 of the approximately 1,800 square foot house footprint is located in the 25' E. Ohio Avenue front yard setback.
- The 50' wide subject site has 20' of developable width available once a 25' front yard setback is accounted for on the north and a 5' side yard setback is accounted for on the south. If the lot were more typical to others in the zoning district with only one front yard setback, the 50' wide site would have 40' of developable width.
- If the subject site were more typical to other parcels of land in the same zoning district (one front yard, one rear yard, and two side yards), no variance would be required since the applicant is providing a 5' setback (the side yard setback for properties zoned R-7.5(A) is 5') on the north side of the site that is a front yard.
- 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 5’ 5” from the site’s E. Ohio Avenue front property line (or approximately 20’ into this 25’ front yard setback).

Timeline:

July 18, 2017: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

August 8, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

August 8, 2017: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the August 30th deadline to submit additional evidence for staff to factor into their analysis; and the September 8th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

August 30, 2017: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).

September 5, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director of Engineering, the Sustainable Development and Construction Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

No review comment sheets were submitted in conjunction with this application

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 18, 2017

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Agnich

I move to grant that the Board of Adjustment grant application **BDA 167-099(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 is required.

SECONDED: Foster

AYES: 4 – Richardson, Foster, Gambow, Agnich

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA167-081(SL)

BUILDING OFFICIAL’S REPORT: Application of Fred Brown for variances to the front and side yard setback regulations at 400 Bobbie Street. This property is more fully described as Lot 1, Block 7/7679, and is zoned R-5(A), which requires a front yard setback of 20 feet and requires a side yard setback of 5 feet. The applicant proposes to construct and maintain a structure and provide a 10 foot front yard setback measured at the foundation, which will require a 10 foot variance to the front yard setback regulations, and provide a 2 foot 6 inch side yard setback measured at the foundation, which will require a 2 foot 6 inch variance to the side yard setback regulations.

LOCATION: 400 Bobbie Street

APPLICANT: Fred Brown

REQUESTS:

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

1. A variance to the front yard setback regulations of 10’ is made to construct and maintain a 1 ½ -story single family home structure to be located 10’ from the site’s front property line or 10’ into this 20’ front yard setback.
2. A variance to the side yard setback regulations of 2’ 6” is made to construct and maintain the aforementioned structure to be located 2’ 6” from the site’s northern side property line or 2’ 6” into this 5’ required 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, lot coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

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

ORIGINAL STAFF RECOMMENDATION (August 14, 2017):

Denial

- While staff recognized that subject site was somewhat sloped and slightly irregular in shape, and that the proposed single family home with approximately 2,000 of “livable area” was commensurate with others homes in the R-5(A) zoning district (the average of 10 other properties zoned R-5(A) from the applicant was approximately 2,300 square feet), staff concluded the slope and shape of the site with slightly over 5,000 square feet in area did not preclude the applicant from developing it with a single family home/use that could comply with the front and side yard setbacks.

UPDATED STAFF RECOMMENDATION (September 18, 2017):

Denial

- Once again, while staff recognized that subject site was somewhat sloped and slightly irregular in shape, and that the proposed single family home with approximately 2,000 of “livable area” was commensurate with others homes in the R-5(A) zoning district (the average of 10 other properties zoned R-5(A) from the applicant was approximately 2,300 square feet), staff concluded the slope and shape of the site with slightly over 5,000 square feet in area did not preclude the applicant from developing it with a single family home/use that could comply with the front and side yard setbacks.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	R-5(A) (Single family district 5,000 square feet)
<u>North:</u>	R-5(A) (Single family district 5,000 square feet)
<u>South:</u>	R-5(A) (Single family district 5,000 square feet)
<u>East:</u>	R-5(A) (Single family district 5,000 square feet)
<u>West:</u>	R-5(A) (Single family district 5,000 square feet)

Land Use:

The subject site is undeveloped. The areas to the north, south, east, and west are undeveloped.

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 (front yard variance):

- The request for a variance to the front yard setback regulations of 10' focuses on constructing and maintaining a 1 ½ -story single family home structure with an approximately 1,500 square foot building footprint to be located 10' from the site's front property line or 10' into the 20' required front yard setback on a site that is undeveloped.
- A 20' front yard setback is required in the R-5(A) zoning district.
- The subject site is located at the northeast corner of Canyon Street and Bobbie Street. The site has one 20' front yard setback, two 5' side yard setbacks, and one 5' rear yard setback.
- The submitted site plan represents that the proposed structure is located 10' from the front property line or 10' into the 20' required front yard setback.
- There are no DCAD records found for property addressed at 400 Bobbie Street.
- The subject site is somewhat sloped, slightly irregular in shape, and according to the submitted application is 0.12 acres (or approximately 5,200 square feet) in area. The site is zoned R-5(A) where lots are typically 5,000 square feet in area.
- The applicant submitted a document (Attachment A) that denoted that the "livable area" of the proposed home on the subject site was approximately 2,000 square feet, and that the average "livable area" of 10 other properties zoned R-5(A) was approximately 2,300 square feet.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance 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-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-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 10' from the site's front property line (or 10' into the 20' required front yard setback).

GENERAL FACTS/STAFF ANALYSIS (side yard variance):

- The request for a variance to the side yard setback regulations of 2' 6" focuses on constructing and maintaining a 1 ½ -story single family home structure with an approximately 1,500 square foot building footprint to be located 2' 6" from the site's northern side property line or 2' 6" into this 5' required side yard setback on a site that is undeveloped.
- A 5' side yard setback is required in the R-5(A) zoning district.
- The subject site is located at the northeast corner of Canyon Street and Bobbie Street. The site has one 20' front yard setback, two 5' side yard setbacks, and one 5' rear yard setback.
- The submitted site plan represents that the proposed structure is located 2' 6" from the northern side property line or 2' 6" into this 5' required side yard setback.
- There are no DCAD records found for property addressed at 400 Bobbie Street.
- The subject site is somewhat sloped, slightly irregular in shape, and according to the submitted application is 0.12 acres (or approximately 5,200 square feet) in area. The site is zoned R-5(A) where lots are typically 5,000 square feet in area.
- The applicant submitted a document (Attachment A) that denoted that the "livable area" of the proposed home on the subject site was approximately 2,000 square feet, and that the average "livable area" of 10 other properties zoned R-5(A) was approximately 2,300 square feet.
- 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 R-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-5(A) zoning classification.

- If the Board were to grant the side yard 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 in this case is a structure that would be located 2’ 6” from the site’s northern side property line or 2’ 6” into this 5’ required side yard setback.

Timeline:

April 21, 2017: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

July 11, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

July 11, 2017: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the July 26th deadline to submit additional evidence for staff to factor into their analysis; and the August 4th 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.

August 1, 2017: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

August 1, 2017: 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 Assistant Director of Engineering, the Board of Adjustment Chief Planner, the Sustainable Development and Construction Interim Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

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

August 14, 2017: The Board of Adjustment Panel C conducted a public hearing on this application. A person appeared on behalf of the applicant and submitted additional information to the Board at the public hearing (see Attachment B). The Board delayed action on this application until their next public hearing to be held on September 18, 2017.

August 21, 2017: The Board Administrator wrote the applicant a letter of the board's action; the August 30th deadline to submit additional evidence for staff to factor into their analysis; and the September 8th deadline to submit additional evidence to be incorporated into the Board's docket materials.

September 5, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director of Engineering, the Sustainable Development and Construction Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2017

APPEARING IN FAVOR: Brian Williams, 134666 Thunderbrook Dr.. DeSoto, TX

APPEARING IN OPPOSITION: No one

MOTION: **Foster**

I move that the Board of Adjustment, in Appeal **No. BDA 167-081**, hold this matter under advisement until **September 18, 2017**.

SECONDED: **Agnich**

AYES: 5 – Richardson, Foster, Gambow, Agnich, Lewis

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 18, 2017

APPEARING IN FAVOR: Bryant Williams, 134666 Thunderbrook Dr.. DeSoto, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Gambow

I move that the Board of Adjustment, in Appeal No. **BDA 167-081**, hold this matter under advisement until **October 16, 2017**.

SECONDED: Foster

AYES: 3 –Foster, Gambow, Agnich

NAYS: 1 – Richardson

MOTION PASSED: 3 – 1

MOTION #2: Agnich

I move that the Board of Adjustment, in Appeal No. **BDA 167-081** reconsider the previous motion made.

SECONDED: Gambow

AYES: 4 – Richardson, Foster, Gambow, Agnich

NAYS: 0 –

MOTION PASSED: 4 – 0(Unanimously)

MOTION #3: Agnich

I move that the Board of Adjustment, in Appeal No. **BDA 167-081**, hold this matter under advisement until **November 13, 2017**.

SECONDED: Foster

AYES: 3 –Foster, Gambow, Agnich

NAYS: 1 – Richardson

MOTION PASSED: 3 – 1

FILE NUMBER: BDA167-100(SL)

BUILDING OFFICIAL’S REPORT: Application of Steve Gottsaker, represented by John Hamilton, for a special exception to the landscape regulations at 2820 Reagan Street. This property is more fully described as Lot 9, 10, & 11, Block 2/1336, and is zoned PD-193 (MF-2), which requires mandatory landscaping. The applicant proposes to construct and/or maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 2820 Reagan Street

APPLICANT: Steve Gottsaker
Represented by John Hamilton

September 18, 2017 Public Hearing Notes:

- The applicant's representative submitted a revised landscape plan to the Board at the public hearing.

REQUEST:

A request for a special exception to the landscape regulations is made to construct and maintain an approximately 450 square foot office structure on a site developed with a 1960's multifamily use, and not fully provide required landscaping.

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:

Denial

Rationale:

- The City of Dallas Chief Arborist recommends denial of the applicant's request because it is viewed that the limited planting plan does compromise the spirit and intent of the PD 193 landscape regulations for multifamily development.

BACKGROUND INFORMATION:

Site: PD 193 (MF-2) (Planned Development, Multifamily)
North: PD 193 (MF-2) (Planned Development, Multifamily)
South: PD 193 (MF-3) (Planned Development, Multifamily)
East: PD 193 (MF-2) (Planned Development, Multifamily))
West: PD 193 (MF-2) (Planned Development, Multifamily))

Land Use:

The subject site is developed with a multifamily use that according to DCAD was constructed in 1967. The areas to the north, east, south, and west are developed with multifamily 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 for a special exception to the landscape regulations focuses on constructing and maintaining an approximately 450 square foot office structure on a site developed with a 1960's multifamily use, and not fully providing required landscaping. More specifically, according to the City of Dallas Chief Arborist, the proposed alternate landscape plan is deficient in surface parking area screening, sidewalk and street tree, and landscape site area, general planting area, and special planting area requirements of the PD 193 landscape requirements.
- 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 submitted a memo regarding the applicant's request (see Attachment A). The Chief Arborist states the applicant is requesting a special exception to the landscape regulations of PD 193 (MF-2) related to a building permit for construction with an increase of 450 square feet of new floor area, which will require compliance with PD 193.126 landscape regulations).
- The Chief Arborist states how the submitted alternate landscape plan provides for existing landscaping within the interior of the property and introduces two 'street trees' and two 'site trees' in the required front yard, and three 'new site trees' behind the main structure; that an existing 'street tree' in the parking lot is incorrectly located; and that the plan does not provide a list of tree sizes or species to be applied on the landscape.
- The Chief Arborist's memo states the following regarding deficiencies:
 1. An automatic irrigation system is not specified. (.126(b)(2)).
 2. All surface parking is required to be screened at a minimum height of 3.5 feet above the parking surface. No screening of parking is provided and paved parking surfaces are established in the required front yard adjacent to the driveway entries. (.126(b)(3)).
 3. Sidewalks in residential districts are required at a minimum of 4' wide and between 5' and 10' from back of curb. The sidewalks are at about 4 feet from back of curb. (.126(b)(4))
 4. Trees of 3.5" caliper are required within the tree planting zone of 2.5' – 5' from back of curb at 1 per 25 feet of frontage. Four trees are located in the required front yard. (.126(b)(5))
 5. The alternate landscape plan does not designate the amount of the required 20% landscape site area (50% required front yard), nor the applicable General Planting Area, or Special Planting Areas on the property. A minimum of 20% of the parkway must be designated as parkway planting area. (.126(f)). (The memo also includes a table that shows how the site is deficient with regard to landscape site area, general planting area, and special planting area.

- The Chief Arborist’s memo lists the following factors for consideration:
 1. The property has an existing multifamily use with a planned small office addition.
 2. The placement of four large trees in the required front yard would be favorable to avoid planting large trees under overhead electric utility lines in the parkway.
 3. The property was built and maintained before the PD 193 regulations were initiated. In 2015, the property was renovated, and established large trees and other landscaping, including large shrubs in front of a recessed front yard fence, were removed from the front and rear of the lot. Permits have not been identified to determine the scope of work which included a patio area shown on the landscape plan and the new fence in the required front yard.
- The City of Dallas Chief Arborist recommends denial of this request because it is viewed that the limited planting plan does compromise the spirit and intent of the PD 193 landscape regulations for multifamily development.
- The applicant has the burden of proof in establishing the following:
 - The special exception (where an alternate landscape plan has been submitted that is deficient in meeting the surface parking area screening, sidewalk and street tree, and landscape site area, general planting area, and special planting area requirements of the PD 193 landscape requirements) 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 the submitted alternate landscape plan as a condition, the site would be granted exception from full compliance to surface parking area screening, sidewalk and street tree, and landscape site area, general planting area, and special planting area requirements of the PD 193 landscape requirements of the Oak Lawn PD 193 landscape ordinance.

Timeline:

- June 21, 2017: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- August 8, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- August 8, 2017: The Board Administrator emailed the applicant’s representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the August 30th deadline to submit additional evidence for staff to factor into their analysis; and the September 8th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

September 5, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director of Engineering, the Sustainable Development and Construction Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

September 6, 2017: The City of Dallas Chief Arborist submitted a memo regarding this application (see Attachment A).

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 18, 2017

APPEARING IN FAVOR: John Hamilton, 2802 N Carroll, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Foster**

I move that the Board of Adjustment, in Appeal No. **BDA 167-100**, on application of Steve Gottsaker represented by John Hamilton, **grant** the request of this applicant for a special exception to the landscaping requirements contained in PD 193, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that this special exception will not compromise the spirit and intent of Section 51P-193.126 of the Dallas Development Code. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised alternate landscape plan is required.

SECONDED: **Agnich**

AYES: 4 – Richardson, Foster, Gambow, Agnich

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA167-104(SL)

BUILDING OFFICIAL’S REPORT: Application of Dave Bornheim, represented by Nate Farish, for a variance to the front yard setback regulations at 7303 Casa Loma Avenue. This property is more fully described as Lot 1, Block E/2738, and is zoned R-7.5(A), which requires a front yard setback of 15 feet. The applicant proposes to construct and/or maintain a structure and provide a 6 foot 6 inch front yard setback, measured at the roof eave, which will require an 8 foot 6 inch variance to the front yard setback regulations.

LOCATION: 7303 Casa Loma Avenue

APPLICANT: Dave Bornheim
Represented by Nate Farish

September 18, 2017 Public Hearing Notes:

- The owner of the subject site submitted additional written documentation to the Board at the public hearing.

REQUEST:

A request for a variance to the front yard setback regulations of 8' 6" is made to maintain a two-story single family home structure with an approximately 3,400 square foot building footprint, part of which is located 6' 6" from one of the site's two front property lines (Tucker Street) or 8' 6" into this 15' 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, lot coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

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

STAFF RECOMMENDATION:

Denial

Rationale:

- While staff recognized at the time of the September 5th staff review team meeting 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, staff concluded that the applicant had not substantiated that the development on the site

was commensurate with the development upon other parcels of land with the same R-7.5(A) zoning.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5(A) (Single family residential 7,500 square feet)
North: MF-2(A) (Multifamily)
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 two-story single family home structure. The area to the north is developed with a multifamily use, and the areas to the east, south, and west are developed with single family uses.

Zoning/BDA History:

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| 1. BDA145-047, Property located at 7303 Casa Loma Avenue (the subject site) | On March 31, 2015, the applicant withdrew a request for a variance to the front yard setback regulations of 3' that had been tentatively scheduled to be heard by Board of Adjustment Panel C on April 20, 2015. |
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GENERAL FACTS/STAFF ANALYSIS:

- This request for variance to the front yard setback regulations of 8' 6" focuses on maintaining a two-story, approximately 5,000 square foot single family home structure (with an approximately 3,400 square foot building footprint), part of which is to be located 6' 6" from one of the site's two front property lines (Tucker Street) or 8' 6" into this 15' front yard setback.
- The property is located in an R-7.5(A) zoning district which requires a minimum front yard setback of 25 feet.
- The subject site is located at the east corner of Casa Loma Avenue and Tucker Street. Regardless of how the structure is oriented to front Casa Loma Avenue, the subject site has front yard setbacks along both street frontages. The site has a 25' front yard setback along Casa Loma Avenue, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in this zoning district. The site also has a 15' front yard setback along Tucker Street*, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where a 5' side yard setback is required. But the site's Tucker Street frontage that functions as a side yard on the property is treated as a front yard setback nonetheless to maintain the continuity of the established front yard setback established by the lot (currently

developed as a multifamily use and zoned MF-2(A)) to the northeast that fronts/is oriented northwestward towards Tucker Street. (*The Dallas Development Code states that if street frontage within a block is divided by two or more zoning districts, the front yard for the entire block must comply with the requirements of the district with the greater front yard requirement).

- The submitted scaled site plan indicates that a portion of the existing structure is located 6' 6" from the Tucker Street front property line or 8' 6" into this 15' front yard setback.
- According to DCAD records, the "main improvement" for property addressed at 7303 Casa Loma Avenue is a structure built in 2016 with 4,500 square feet of living/total area, and the "additional improvements" is a 484 square foot attached garage.
- The subject site is somewhat sloped, rectangular in shape (145' x 60'), and according to the submitted application is 8,700 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 front yard setbacks (one 25' front yard setback on Casa Loma Avenue; one 15' front yard setback on Tucker Street) and two 5' side yard setbacks.
- On September 7, 2017, the owner of the subject site submitted information that represented the total square feet on the property was 5,053, and that average square footage of 21 other properties in the same R-7.5(A) zoning was 5,008. (Note that this information was not factored into the staff recommendation since it was submitted after the September 5th staff review team meeting).
- The 60' wide subject site has 40' of developable width available once a 15' front yard setback is accounted for on the northwest and a 5' side yard setback is accounted for on the southeast. If the lot were more typical to others in the zoning district with only one front yard setback, the 60' wide site would have 50' of developable width.
- If the subject site were more typical to other parcels of land in the same zoning district (one front yard, one rear yard, and two side yards), no variance would be required since the applicant is providing a 6' 6" setback (the side yard setback for properties zoned R-7.5(A) is 5') on the west side of the site that is a front yard.
- 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 6’ 6” from the site’s Tucker Street front property line (or 8’ 6” into this 15’ front yard setback).

Timeline:

July 20, 2017: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

August 8, 2017: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, “If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case”.

August 8, 2017: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the August 30th deadline to submit additional evidence for staff to factor into their analysis; and the September 8th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

September 5, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director of Engineering, the Sustainable Development and Construction Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

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

September 7, 2017: The owner of the subject site submitted additional information to staff beyond what was submitted with the original application (see Attachment A). Note that this information was not factored into the staff recommendation since it was submitted after the September 5th staff review team meeting

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 18, 2017

APPEARING IN FAVOR: Eric Messer, 6312 Windglen Dr, Plano, TX

APPEARING IN OPPOSITION: No one

MOTION: **Gambow**

I move that the Board of Adjustment, in Appeal No. **BDA 167-104**, on application of Dave Bornheim represented by Nate Farish, **grant** the eight-foot six-inch variance to the front yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: **Agnich**

AYES: 4 – Richardson, Foster, Gambow, Agnich

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

MOTION: **Richardson**

I move to adjourn this meeting.

SECONDED: Agnich

AYES: 4 – Richardson, Gambow, Foster, Agnich

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

2:50 P. M. - Board Meeting adjourned for **September 18, 2017**

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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