

**BOARD OF ADJUSTMENT, PANEL B  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL L1FN AUDITORIUM  
WEDNESDAY, SEPTEMBER 20, 2017**

MEMBERS PRESENT AT BRIEFING: Scott Hounsel, Vice-Chair, Joe Carreon, regular member, Marla Biekman, regular member, Wini Cannon, regular member and Matt Shouse, regular member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Scott Hounsel, Vice-Chair, Joe Carreon, regular member, Marla Biekman, regular member, Wini Cannon, regular member and Matt Shouse, regular member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Kanesia Williams, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, Donna Moorman, Chief Planner, and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Kanesia Williams, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, Donna Moorman, Chief Planner, and Trena Law, Board Secretary

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**11:07 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **August 16, 2017 docket.**

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**1:00 P.M.**  
The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel B August 16, 2017, public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: SEPTEMBER 20, 2017**

**MOTION:** None

The minutes were approved as amended.

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**FILE NUMBER:** BDA167-096(SL)

**BUILDING OFFICIAL'S REPORT:** Application of Andy Hammer for a special exception to the tree preservation regulations at 5300 Mountain Creek Parkway. This property is more fully described as Lot 1, Block A/8722, and is zoned PD-521 (SC-1), which requires mandatory tree mitigation. The applicant proposes to construct and maintain structures and provide an alternate plan for tree mitigation, which will require a special exception to the tree preservation regulations.

**LOCATION:** 5300 Mountain Creek Parkway

**APPLICANT:** Andy Hammer

**REQUEST:**

A request for a special exception to the tree preservation regulations is made as it relates to removing trees on the property and seeking exception to extend the tree mitigation coverage for a conservation easement to greater than the 80% maximum reduction allotted by the code on the subject site that is being developed as a light industrial use.

**STANDARD FOR A SPECIAL EXCEPTION TO THE TREE PRESERVATION REGULATIONS:**

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

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

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

- the extent to which there is residential adjacency;

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

**STAFF RECOMMENDATION**

Approval, subject to the following conditions:

1. Compliance with the submitted alternate tree replacement plan is required.
2. All conservation easements for this application must be recorded and filed within six months of the Board action date.

Rationale:

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

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

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

**Zoning/BDA History:**

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

**GENERAL FACTS/STAFF ANALYSIS:**

- This request for a special exception to the tree preservation regulations focuses on removing trees on the property and seeking exception to extend the tree mitigation coverage for a conservation easement to greater than the 80% maximum reduction allotted by the code on the subject site that is being developed as a light industrial use.

- The Dallas Development Code requires full compliance with the Tree Preservation Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet.
- The Dallas Development Code states that the Tree Preservation, Removal, and Replacement division of Article X applies to all property in the city except for: 1) lots smaller than two acres in size that contain single-family or duplex uses; and 2) lots in a planned development district with landscaping and tree preservation regulations that vary appreciably from those in the article, as determined by the building official.
- The Tree Preservation Regulations of the Dallas Development Code states that if a tree removal application is approved, one or more healthy replacement trees must be planted in accordance with among other things quantity - the total caliper of replacement trees must equal or exceed the total caliper of protected trees removed or seriously injured.
- The Tree Preservation Regulations of the Dallas Development Code states that a property owner can comply with tree preservation regulations by mitigating the removed trees if the building official determines that, due to inhospitable soil conditions or inadequate space, it would be impracticable or imprudent for the responsible party to plant a replacement tree on the lot where the protected tree was removed or seriously injured, in any of the alternative methods provided for in Article X: donating trees to the Park Department, planting replacement trees on other property within one mile of the tree removal property, making payment into the Reforestation Fund, and/or granting a conservation easement area.
- The applicant has submitted an alternate tree mitigation/replacement plan in conjunction with this application.
- The City of Dallas Chief Arborist submitted a memo regarding this request to the Board Administrator (see Attachment A). The memo stated how the applicant is requesting a special exception to the tree preservation regulations of Article X. Specifically, the request is to extend the tree mitigation coverage for a conservation easement to greater than the 80% maximum reduction allotted in Section 51A-10.135(a)(4)(D); and that the applicant asks the Board to consider the introduction of at least two conservation easements and the quality of woodland protection remaining for the community.
- The City of Dallas Chief Arborist's memo states that the applicant is developing 78.4 acres of a 104-acre site with a warehouse use, and that it has been determined the calculated protected inches to be mitigated for tree removal is 28,224 inches.
- The City of Dallas Chief Arborist's memo states the following:
  1. Section 51A-10.134 – As required, the owner will plant trees on the property for compliance with ordinances. Based on an approved landscape plan, a minimum of 1,800 inches are to be on site.
  2. Section 51A-10.135 – As provided in ordinance, the owner will form permanent conservation easements to preserve woodland area on the property, and off-site, and to reduce the overall mitigation by at least 80%. The easements are 1) on-site with 27 acres (104 acre site) with a calculated value of 9,853 protected inches in the area, and 2) off-site with a purchased 43 acre heavily-wooded site at 4700 W Ledbetter Drive, which is composed at least 28,264 protected inches of trees surrounding a portion of Five Mile Creek.

- The City of Dallas Chief Arborist's memo states the following with regard to deficiencies:
  - Under provisions of ordinance, the maximum a property can expect relief for conservation easements is an 80% reduction, or 22,579 inches for this property. The owner is required to provide an amount of tree replacement on the property which is determined to be about 1,800 inches when planting 3" caliper trees. This would leave at least 3,845 inches of tree mitigation (13%) left to complete through additional alternative methods of completion by planting individual trees or fee payment.
- The City of Dallas Chief Arborist's memo states the following factors:
  - The owner of the property is restricting use of 27 acres on the construction site which will retain woodland areas along the southern and eastern (upland) sectors of the property which buffer the use from the nearby single-family and multifamily residential areas.
  - The owner has acquired 43 acres of woodland to permanently restrict from development and that contains a quality mixed-hardwood stand which also helps protect the creek.
  - In order to attain a maximum of 80% reduction for easements, a 104 acre property would require at least 52 acres of easement property. The applicant is presenting 70 acres of woodland habitat for permanent protection with a minimum total of 38,117 inches of protected trees. Tree removal is calculated at 28,224 inches.
  - Additional inches will be planted on the property as a fulfillment to complete required landscaping.
  - The 43-acre property at Ledbetter is one segment of wooded land along Five Mile Creek which would be suitable for additional protections. A conservation easement already exists south of the property which was established in conjunction with a residential development. Other adjacent properties may be conserved, or acquired separately through the Reforestation Fund.
  - The tree removal property was primarily an unmanaged heavily-wooded property still in an early succession stage with a vast majority of mesquite, honeylocust, and various other species. Upland areas on the slopes, which contain more elm and hackberry, will be under the easement protection. New landscaping in the development area will be widely installed with permanent maintenance and provide enhanced buffering to the community.
- The Chief Arborist recommends approval of the alternate tree replacement plan because strict compliance with the requirements of this article will unreasonably burden the use of the property, and the special exception will not adversely affect neighboring property. The Chief Arborist recommends all conservation easements for this case be recorded and filed within six months of the Board action date.
- The applicant has the burden of proof in establishing the following:
  1. Strict compliance with the requirements of the Tree Preservation Regulations of the Dallas Development Code will unreasonably burden the use of the property.
  2. The special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose the staff suggested conditions to the request, the site would be provided exception from the maximum reduction

allowed for tree mitigation coverage for a conservation easement in which to mitigate for trees removed on the subject site.

**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 B.

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 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 8<sup>th</sup> 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 City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment A).

**BOARD OF ADJUSTMENT ACTION    **SEPTEMBER 20, 2017****

**APPEARING IN FAVOR:**            No one

**APPEARING IN OPPOSITION:**    No one

**MOTION:**    **Carreon**

I move to grant that the Board of Adjustment grant application **BDA 167-096(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 alternate tree replacement plan is required.
- All conservation easements for this application must be recorded and filed within 6 months of September 20, 2017.

**SECONDED: Beikman**

**AYES:** 5 – Housel, Carreon, Beikman, Cannon, Shouse

**NAYS:** 0

**MOTION PASSED** 5 – 0 (unanimously)

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**FILE NUMBER:** BDA167-103(SL)

**BUILDING OFFICIAL’S REPORT:** Application of Jessica W. Hammons, represented by Erik Thornton, for a variance to the front yard setback regulations at 1555 San Saba Drive. This property is more fully described as Lot 14, Block L/5319, and is zoned R-10(A), NSO 5, which requires a front yard setback of 50 feet. The applicant proposes to construct and maintain structures and provide a 19 foot front yard setback, measured at the foundation, which will require a 31 foot variance to the front yard setback regulations.

**LOCATION:** 1555 San Saba Drive

**APPLICANT:** Jessica W. Hammons  
Represented by Erik Thornton

**REQUEST:**

A request for a variance to front yard setback regulations of up to 19’ is made to construct and maintain accessory and pool structures to be located as close as 19’ from one of the site’s two front property lines (Old Gate Lane), or as much as 31’ into this 50’ front yard setback on a site developed with a single family home.

**STANDARD FOR A VARIANCE:**

The Dallas Development Code Section 51A-3.102(d)(10) specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, lot coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

- (A) not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;
- (B) necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be

developed in a manner commensurate with the development upon other parcels of land with the same zoning; and

- (C) not granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

**STAFF RECOMMENDATION:**

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-10(A)(NSO 5 zoning district given that it has two 50' front yard setbacks. This feature precludes the applicant from developing it in a manner commensurate with development found on other similarly zoned R-10(A)(NSO 5) zoned properties that have one front yard setback - the applicant documents that the total living area of the home on the subject site at approximately 4,000 square feet is near the average of 10 other properties in the same zoning.
- Staff concluded that granting this variance would not appear to be contrary to public interest in that it would only allow structures in the site's Old Gate Lane front yard setback which functions not only as the site's rear yard but as the rear yard to adjacent properties northwest and southeast of the subject site.

**Zoning:**

Site: R-10(A)(NSO 5) (Single family residential 10,000 sq ft)(Neighborhood Stabilization Overlay)  
North: R-10(A)(NSO 5) (Single family residential 10,000 sq ft)(Neighborhood Stabilization Overlay)  
South: R-7.5(A) (Single family residential 7,500 square feet)  
East: R-10(A)(NSO 5) (Single family residential 10,000 sq ft)(Neighborhood Stabilization Overlay)  
West: R-10(A)(NSO 5) (Single family residential 10,000 sq ft)(Neighborhood Stabilization Overlay)

**Land Use:**

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

**Zoning/BDA History:**

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

**GENERAL FACTS /STAFF ANALYSIS:**

- The request for a variance to the front yard setback regulations of up to 19' focuses on constructing and maintaining an approximately 680 square foot accessory structure and an approximately 760 square foot pool structure to be located as close

as 19' from one of the site's two front property lines (Old Gate Lane) or as much as 31' into this 50' required front yard setback.

- The subject site is zoned R-16(A)(NSO 5) which requires a minimum 50' front yard setback. (Prior to the creation of the NSO (Neighborhood Stabilization Overlay) district in 2007, the minimum front yard setback for the site that had been zoned R-10(A) was 30').
- The subject site has two 50' front yard setbacks (one on the northeast along San Saba Drive, the other on the southwest along Old Gate Lane) 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.
- Regardless of how the home is oriented to front onto San Saba Drive (and "back" to Old Gate Lane), the site has two 50' 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 Old Gate Lane. (No part of the application is made to construct/maintain a structure in the site's San Saba Drive front yard setback).
- The submitted site plan denotes that all of the approximately 680 square foot accessory structure is proposed to be located in the 50' Old Gate Lane required front yard setback, and approximately 80 square feet of the approximately 760 square foot pool structure is proposed in this front yard setback.
- According to DCAD records, the "main improvement" for property addressed at 1555 San Saba Drive is structure built in 20151 with 3,949 square feet of living/total area, and with the following "additional improvements": a 616 square foot attached garage.
- The site is somewhat sloped, rectangular in shape (approximately 198' x 100'), and according to the application is 0.458 acres (or approximately 20,000 square feet) in area. The site is R-10(A)(NSO 5) where lots are typically 10,000 square feet.
- The site has two 50' front yard setbacks and two 12' side yard setbacks. Most lots in this zoning district have one 50' front yard setback, two 12' side yard setbacks, and one 6' rear yard setback.
- The applicant has submitted a document indicating among other things that that the total living area of the home on the subject site is approximately 4,000 square feet, and the average of 10 other properties in the same zoning is approximately 4,000 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 to front yard setback regulations is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-16(A) zoning classification.
  - The variance to front yard setback regulations would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not

permitted by this chapter to other parcels of land in districts with the same R-10(A)(NSO 5) zoning classification.

- If the Board were to grant the 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 proposed structures located as close as 19’ from the Old Gate Lane front property line or as much as 31’ into this 50’ required front yard setback.

**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 B.

August 8, 2017: 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 August 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the definition of nonconforming structure and the provision from the Dallas Development Code related to nonconforming structures (51A-4.704(c);
- 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 1, 2017: The applicant’s representative submitted additional information to staff 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 20, 2017**

**APPEARING IN FAVOR:**            Erik Thornton, 12233 Hedge Apect Ct, Ft. Worth, TX

**APPEARING IN OPPOSITION:**    No one

**MOTION:**    **Beikman**

I move that the Board of Adjustment, in Appeal No. **BDA 167-103**, on application of Jessica W. Hammons represented by Erik Thornton, **grant** the 31-foot variance to the front yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

**SECONDED:**    **Carreon**

**AYES:**    5 – Housel, Carreon, Beikman, Cannon, Shouse

**NAYS:**    0

**MOTION PASSED**    5 – 0 (unanimously)

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**FILE NUMBER:**    BDA167-084(SL)

**ORIGINAL BUILDING OFFICIAL’S REPORT:** Application of Santos T. Martinez for a variance to the rear yard setback regulations at 17787 Waterview Parkway. This property is more fully described as Lot 1F, Block A/8735, and is zoned LI, which requires a rear yard setback of 30 feet. The applicant proposes to construct and maintain a structure and provide a 14 foot rear yard setback, which will require a 16 foot variance to the rear yard setback regulations.

**REVISED BUILDING OFFICIAL’S REPORT:** Application of Santos T. Martinez for a variance to the rear yard setback regulations at 17787 Waterview Parkway. This property is more fully described as Lot 1F, Block A/8735, and is zoned LI, which requires a rear yard setback of 30 feet. The applicant proposes to construct and maintain a structure and provide an 8 foot rear yard setback, which will require a 22 foot variance to the rear yard setback regulations.

**LOCATION:**            17787 Waterview Parkway

**APPLICANT:**        Santos T. Martinez

**ORIGINAL REQUEST (August 16, 2017):**

A request for a variance to the rear yard setback regulations of 16' was originally made to construct and maintain a ramp structure to the existing parking garage structure that, according to the application, was to be located 16' into the site's 30' rear yard setback on a site that is developed with office use/ structure (Convergys).

**AMENDED REQUEST (September 20, 2017):**

A request for a variance to the rear yard setback regulations of 22' is made to construct and maintain a ramp structure to the existing parking garage structure that would be located 8' from the rear property line or 22' into the site's 30' rear yard setback on a site that is developed with office use/ structure (Convergys).

**STANDARD FOR A VARIANCE:**

The Dallas Development Code Section 51A-3.102(d)(10) specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, lot coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

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

**ORIGINAL STAFF RECOMMENDATION (August 16, 2017):**

Denial

Rationale:

- Staff had concluded there was no property hardship to the site that warranted a variance to the rear yard setback regulations. The applicant had not substantiated how the features of the site (which is flat, rectangular in shape, and according to the application is 5.25 acres in area) have precluded it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same LI zoning classification (the site is currently developed an office structure and parking garage that complies with the Dallas Development Code), nor how granting this variance would not be to relieve a self-created hardship.

**UPDATE STAFF RECOMMENDATION (September 20, 2017):**

Denial

Rationale:

- Once again, staff concluded there was no property hardship to the site that warranted a variance to the rear yard setback regulations. The applicant had not substantiated how the features of the site (which is flat, rectangular in shape, and according to the application is 5.25 acres in area) have precluded it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same LI zoning classification (the site is currently developed an office structure and parking garage that complies with the Dallas Development Code), nor how granting this variance would not be to relieve a self-created hardship.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: LI (Light industrial)  
North: PD 780 (Planned Development)  
South: LI (Light industrial)  
East: City of Richardson  
West: PD 921 (Subarea 3)(SUP 764)  
(Planned Development, Specific Use Permit)

**Land Use:**

The subject site is developed with an office structure/use. The area to the north is developed with a private school (The Dallas International School); the area to the east is the City of Richardson; the area to the south is developed with office use; and the area to the west is developed with open space (Texas A & M University Research Center).

**Zoning/BDA History:**

1. BDA167-071, Property located at 17787 Waterview Parkway (the subject site)  
On May 17, 2017, the Board of Adjustment Panel B denied a request for a variance to the rear yard setback regulations of 16' without prejudice, and granted a request for a special exception to the landscape regulations and imposed the following condition: Compliance with the submitted second revised landscape plan is required. The case report stated that the variance request was made to construct and maintain a ramp structure to the existing parking garage structure that according to the application is proposed to be located 14' from the site's rear property line or 16' into the site's 30' rear yard

setback; and that the landscape special exception was made to construct and maintain the aforementioned ramp structure and increase nonpermeable coverage, and not fully meet the landscape regulations, more specifically to the required perimeter landscape buffer strip and plant group requirements.

(Note that on July 26, 2017, the applicant emailed the Board Administrator the following: "With respect to this application, the only element of this request is for relief to the rear yard setback requirement. We do not need any exceptions to the required landscape provisions. I was only hoping to point out that this proposed ramp is compatible with the previously approved plan. We do not need any amendments to the landscape plan that was previously approved for this property.")

#### **GENERAL FACTS /STAFF ANALYSIS:**

- The applicant had originally requested for a variance to the rear yard setback regulations of 16' that focused on constructing and maintaining an approximately 1,900 square foot ramp structure to the existing parking garage structure that, according to the application, would be located 16' into the required 30' rear yard setback on a site developed with an office use/structure (Convergys). However on August 30, 2017, the applicant amended his application and submitted a revised site plan to Building Inspection.
- The amended application is for a variance to the rear yard setback regulations of 22' where the focus is on constructing and maintaining an approximately 2,900 square foot ramp structure to the existing parking garage structure that, according to the revised site plan, would be located 8' from the rear property line or 22' into the required 30' rear yard setback on a site developed with an office use/structure (Convergys).
- The minimum side and rear yard for lots zoned LI is:
  - 30 feet where adjacent to or directly across and alley from an R, R(A), D, D(A), TH, TH(A), CH, MF, or MF(A) district; and
  - No minimum in all other cases.
- The subject site abuts PD 921 to the west where uses defined in the ordinance are those permitted in R-7.5(A) hence the subject site is required to provide a 30' rear yard setback.
- The originally submitted site plan represented that the "proposed ramp" structure is located approximately 16' from the rear property line or approximately 14' into the 30' required rear yard setback. However, the submitted application states a request is made of 16' to the required rear yard setback which would imply that a structure is

proposed to be 14' from the rear property line or 16' into the 30' required rear yard setback.

- The Building Inspection Senior Plans Examiner/Development Code Specialist stated that the 14' dimension denoted on the originally submitted site plan is the interior dimension of the ramp, the width of the driveway surface, not the exterior dimension; and that the easement encroachment (whereby it appears that 1' of the proposed 16' wide ramp as described in a letter from the applicant would be located into a 15' wide DP & L and SWBT easement that borders the western boundary of the subject site) will be addressed by the applicant with the easement holder, not with the Board; and that if the applicant cannot get the easement abandoned or reduced, the ramp will not be issued a building permit.
- The application states that "Property owner seeks to utilize the second level of an existing parking garage. The installation of a new ramp is limited to one side of the structure due to existing topography, easements, and structures. Previous access to second level has been converted into playground and recreational area for school by new owner." (The applicant's reference to access to the second level that has been converted into a playground by the new owner refers to the structure immediately north of the subject site that has since been converted from an office use to a school use). According to Collin CAD records, "Improvement #1" at 17787 Waterview Parkway is a "commercial" improvement built in 1993 with 150,000 square feet of area; and "Improvement #2 is a parking garage built in 1993 with 33,120 square feet.
- The site is flat, rectangular in shape, and according to the application is 5.25 acres in area. The site is zoned LI (Light Industrial).
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the rear yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance to rear yard setback regulations is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same LI zoning classification.
  - The variance to rear yard setback regulations would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same LI zoning classification.
- If the Board were to grant the request, and impose the submitted revised site plan as a condition, the structure in the rear yard setback would be limited to what is shown on this document – which, in this case, is a structure that is located 8' from the rear property line or 22' into this 30' rear yard setback.
- Note that the applicant would be required to address any structure over an easement with the easement holder, whereby if the applicant cannot get the easement abandoned or reduced, the ramp will not be issued a building permit even if the Board were to grant this request and impose the submitted site plan as a condition to this request.

## **Timeline:**

- May 17, 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 assigned this case to Board of Adjustment Panel B. 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 11, 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 July 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the August 4<sup>th</sup> 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, 2017: The applicant submitted additional information to staff 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 16, 2017: The Board of Adjustment Panel B conducted a public hearing on this application. The Board delayed action on this application until their next public hearing to be held on September 20, 2017.

August 23, 2017: The Board Administrator wrote the applicant a letter of the board's action; the August 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials.

August 30 &

September 5, 2017: The applicant submitted additional information to staff beyond what was submitted with the original application and at the August 16<sup>th</sup> public hearing (see Attachment B).

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 16, 2017**

APPEARING IN FAVOR:                    Santos Martinez, 900 Jackson Street, Dallas, TX

APPEARING IN OPPOSITION:    No one

MOTION:    **Cannon**

I move that the Board of Adjustment, in Appeal No. **BDA 167-084**, hold this matter under advisement until **September 20, 2017**.

SECONDED:    **Carreon**

AYES: 4 – Housel, Carreon, Beikman, Cannon, Shouse

NAYS: 0

MOTION PASSED 4– 0 (unanimously)

### **BOARD OF ADJUSTMENT ACTION    SEPTEMBER 20, 2017**

APPEARING IN FAVOR:                    Santos T. Martinez, 900 Jackson Street, Dallas, TX

APPEARING IN OPPOSITION:    No one

MOTION #1:    **Cannon**

I move that the Board of Adjustment, in Appeal No. **BDA 167-084**, on application of Santos Martinez, **grant** the 22-foot variance to the rear yard setback regulations

requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan is required.

**SECONDED: Shouse**

**AYES:** 3 – Carreon, Cannon, Shouse

**NAYS:** 2 – Hounsel, Beikman

**MOTION FAILED** 3 – 2

**MOTION #2: Beikman**

I move that the Board of Adjustment, in Appeal No. **BDA 167-084**, on application of Santos Martinez, **deny** the variance to the rear yard setback regulations requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

**SECONDED: Carreon**

**AYES:** 5 – Hounsel, Carreon, Beikman, Cannon, Shouse

**NAYS:** 0 –

**MOTION PASSED** 5 – 0 (unanimously)

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**FILE NUMBER:** BDA167-093(SL)

**BUILDING OFFICIAL’S REPORT:** Application of Roger Gault, represented by Stephen Hundley, for a variance to the side yard setback regulations at 6444 Lavendale Avenue. This property is more fully described as Lot 12, Block C/5500, and is zoned R-16(A), which requires a side yard setback of 10 feet. The applicant proposes to construct and maintain a structure and provide a 6 foot 6 inch side yard setback, measured at the foundation, which will require a 3 foot 6 inch variance to the side yard setback regulations.

**LOCATION:** 6444 Lavendale Avenue

**APPLICANT:** Roger Gault  
Represented by Stephen Hundley

**September 20, 2017 Public Hearing Notes:**

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

**REQUEST:**

A request for a variance to the side yard setback regulations of 3' 6" is made to construct and maintain an addition to a single family home structure, located 6' 6" from the site's western side property line or 3' 6" into this 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, 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:

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

**STAFF RECOMMENDATION:**

Denial

Rationale:

- Staff concluded that while granting this variance would not appear to be contrary to public interest in that the addition requiring variance is 80 square feet, and the applicant has submitted a letter of support from the owner of the property to the west nearest the proposed encroachment; that the request should be denied even upon recognition that the subject site is slightly less than the standard size lot in the R-16(A) zoning district (approximately 15,900 as opposed to 16,000), because the applicant had not substantiated how this feature of the flat, rectangular-shaped site precluded it from being developed in a manner commensurate with the development upon other parcels of land with the same R-16(A) zoning district.

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: R-16(A) (Single family district 16,000 square feet)
- North: R-16(A) (Single family district 16,000 square feet)
- South: R-16(A) (Single family district 16,000 square feet)
- East: R-16(A) (Single family district 16,000 square feet)
- West: R-16(A) (Single family district 16,000 square feet)

## **Land Use:**

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

## **Zoning/BDA History:**

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

## **GENERAL FACTS/STAFF ANALYSIS:**

- The request for a variance to the side yard setback regulations of 3' 6" focuses on constructing and maintaining an approximately 80 square foot addition to an existing two-story single family home structure with (according to the applicant's representative) approximately 4,900 square feet of living area to be located 6' 6" from the site's western side property line or 3' 6" into this 10' required side yard setback.
- A 10' side yard setback is required in the R-16(A) zoning district.
- The submitted site plan denotes the addition or "area of proposed expansion" is located 3' 6" from the site's western side property line.
- The proposed addition in the western side yard setback that the applicant is seeking variance is approximately 80 square feet in area (approximately 20' x approximately 4').
- The subject site is flat, rectangular in shape (approximately 159' x 100'), and according to the submitted application is 0.365 acres (or approximately 15,900 square feet) in area. The site is zoned R-16(A) where lots are typically 16,000 square feet in area.
- According to DCAD records, the "main improvement" for property addressed at 6444 Lavendale Avenue is structure built in 2005 with 4,914 square feet of living area and 5,418 square feet of total area, and that "additional improvements" are: a 78 square foot cabana; an 1,158 square foot attached garage, and pool.
- The applicant's representative submitted documentation stating that the total square footage on the subject site is approximately 5,400, and that this square footage is less than the square footages of 5 other properties in "the immediate vicinity".
- 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-16(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-16(A) zoning classification.
- If the Board were to grant the request, and impose the submitted site plan as a condition, the structure in the side yard setback would be limited to what is shown on this document– which in this case is a structure that is located 6’ 6” from the western side property line or 3’ 6” into this 10’ required side yard setback.

**Timeline:**

June 15, 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 B.

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 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 8<sup>th</sup> 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 21, 2017: The applicant’s representative submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

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 20, 2017**

**APPEARING IN FAVOR:**                      Steve Hundley, 7921 Deer Trail, Dallas, TX  
Roger Gault, 6444 Lavendale, Dallas, TX

**APPEARING IN OPPOSITION:**    No one

**MOTION:    Shouse**

I move that the Board of Adjustment, in Appeal No. **BDA 167-093**, on application of Roger Gault represented by Stephen Hundley, **grant** the three-foot six-inch variance to the side yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

**SECONDED:    Cannon**

**AYES:    4 – Housel, Carreon, Beikman, Cannon, Shouse**

**NAYS:    1 – Beikman**

**MOTION PASSED    4 – 1**

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**MOTION:    Carreon**

I move to adjourn this meeting.

**SECONDED:    Cannon**

**AYES:    5 – Housel, Carreon, Beikman, Cannon, Shouse**

**NAYS:    0**

**MOTION PASSED    5 – 0 (unanimously)**

**2:16 P.M.** Board Meeting adjourned for **September 20, 2017**

\_\_\_\_\_  
CHAIRPERSON

\_\_\_\_\_  
BOARD ADMINISTRATOR

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BOARD SECRETARY

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