

**BOARD OF ADJUSTMENT, PANEL C  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, L1 AUDITORIUM  
MONDAY, OCTOBER 17, 2016**

MEMBERS PRESENT AT BRIEFING: Bruce Richardson, Chair, Marla Beikman, regular member, Alex Winslow, regular member, Phil Foster, regular member and Peggy Hill, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Bruce Richardson, Chair, Marla Beikman, regular member, Alex Winslow, regular member, Phil Foster, regular member and Peggy Hill, alternate member

MEMBERS ABSENT FROM HEARING: No one

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

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

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**1:01 P.M.** The Board of Adjustment staff conducted a briefing and Public Hearing on the Board of Adjustment's **October 17, 2016** docket.  
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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**

Approval of the Board of Adjustment Panel C, September 19, 2016 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: OCTOBER 17, 2016**

MOTION: None

The minutes were approved without a formal vote.

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**MISCELLANEOUS ITEM NO. 2**

Approval of the Board of Adjustment Panel C's, 2017 Public Hearing Calendar

**BOARD OF ADJUSTMENT ACTION: OCTOBER 17, 2016**

MOTION: None

The minutes were approved without a formal vote.

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**FILE NUMBER:** BDA156-098(SL)

**BUILDING OFFICIAL'S REPORT:** Application of Grayson Brent Evans, represented by Robert Fiester of Greenberg Farrow, for a special exception to the landscape regulations at 2439 Walnut Hill Lane. This property is more fully described as Lot 1C, Block 3/6512, and is zoned IR, which requires mandatory landscaping. The applicant proposes to construct and maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

**LOCATION:** 2439 Walnut Hill Lane

**APPLICANT:** Grayson Brent Evans  
Represented by Robert Fiester of Greenberg Farrow

**REQUEST:**

A request for a special exception to the landscape regulations is made to replace an existing convenience store use with a new convenience store use, and not fully meet the landscape regulations, more specifically, to not provide the required number of street trees on the property.

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

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

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

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

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

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan is required.

Rationale:

- Staff concurs with the Chief Arborist and recommends approval because strict compliance with the street tree requirements for this site will unreasonably burden the use of the property given that a 15' water, sanitary sewer & storm easement runs through the southern front of the property and in the ROW to the curb along Walnut Hill; and that the special exception will not adversely affect neighboring properties given that the overall green space from interior drive to the Walnut Hill street curb will be wider than provided under the previous development.

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: IR (FP) (Industrial/research, flood plain)
- North: MC-2 (FP)(Multiple commercial, flood plain)
- South: IR (FP) (Industrial/research, flood plain)
- East: IR (FP) (Industrial/research, flood plain)
- West: IR (FP) (Industrial/research, flood plain)

**Land Use:**

The subject site is developed with a convenience store use. The areas to the north, east, south, and west are developed with retail uses.

**Zoning/BDA History:**

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

**GENERAL FACTS/STAFF ANALYSIS:**

- This request for a special exception to the landscape regulations focuses on replacing an existing convenience store use with a new convenience store use, and not fully meeting the landscape regulations, more specifically not providing the required number of street trees.
- The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period.
- The City of Dallas Chief Arborist submitted a memo regarding the applicant's request (see Attachment A). The memo states how this request is triggered by a new construction of a convenience store on the property.
- The Chief Arborist's memo stated that the proposed alternate landscape plan is deficient in that the new project requires 7 street trees which are large species to be planted at 3" caliper whereby the plan provides 2 large street trees along Composite Drive, and 4 small trees along Walnut Hill Lane.
- The Chief Arborist's memo listed the following factors for consideration:
  1. The property has a portion of a 15' water, sanitary sewer & storm easement running through the southern front of the property and in the ROW to the curb along Walnut Hill. The smaller trees are provided to address the reduced available landscape area on the north side of the easement and to also keep the trees manageable for the overhead electric utility. The overall green space from interior drive to the Walnut Hill street curb will be wider than provided under the previous development.
  2. All other minimum landscape requirements are met on the plan.
- The City of Dallas Chief Arborist recommends approval of the revised alternate landscape plan because it is his opinion that full compliance with the landscape regulations for street trees will unreasonably burden the use of the property, and the exception will not adversely affect neighboring properties.
- The applicant has the burden of proof in establishing the following:
  - Strict compliance with the requirements of the landscape regulations of the Dallas Development Code will unreasonably burden the use of the property; and the special exception will not adversely affect neighboring property.

- If the Board were to grant this request and impose the submitted alternate landscape plan as a condition to the request, the site would be provided exception from full compliance with the required number of street trees on the subject site.
- Note that if the Board were to grant the applicant's request for a special exception to the landscape regulations, this would not provide any relief to any existing or proposed noncompliance on the site with regard to flood plain and escarpment zone regulations.

**Timeline:**

July 28, 2016: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

September 13, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

September 13, 2016: The Board Administrator emailed the applicant's representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the September 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the October 7<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."

October 4, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

October 6, 2016: The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment A).

**BOARD OF ADJUSTMENT ACTION: OCTOBER 17, 2016**

**APPEARING IN FAVOR:** No one

**APPEARING IN OPPOSITION:** No one

**MOTION: Beikman**

I move to grant that the Board of Adjustment grant application **BDA 156-098(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 landscape plan is required.

**SECONDED: Foster**

**AYES: 5 – Richardson, Beikman, Winslow, Foster, Hill**

**NAYS: 0 -**

**MOTION PASSED: 5 – 0**

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**FILE NUMBER: BDA156-105(SL)**

**BUILDING OFFICIAL’S REPORT:** Application of Alejandro Murillo for a special exception to the fence height regulations at 2748 Ivandell Avenue. This property is more fully described as Lot 6, Block 4/3881, and is zoned CD 8 (Subarea 1), which limits the height of a fence in a required side yard to 4 feet. The applicant proposes to construct and/or maintain an 8 foot 6 inch high fence in a required side yard, which will require a 4 foot 6 inch special exception to the fence height regulations.

**LOCATION: 2748 Ivandell Avenue**

**APPLICANT: Alejandro Murillo**

**REQUEST:**

A request for a special exception to the fence height regulations of 4’ 6” is made to maintain an approximately 8’ 6” high solid wood fence in the side yard setbacks on a property developed with a single family home.

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:**

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

## **STAFF RECOMMENDATION:**

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

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: CD 8 (Subarea 1)(Conservation District)  
North: CD 8 (Subarea 1)(Conservation District)  
South: CD 8 (Subarea 1)(Conservation District)  
East: CD 8 (Subarea 1)(Conservation District)  
West: CD 8 (Subarea 1)(Conservation District)

### **Land Use:**

The subject site is developed with a single family home. The areas 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:**

- This request for a special exceptions to the fence height regulations of 4' 6" focuses on maintaining an 8' 6" high solid wood fence in the side yard setbacks on a property developed with a single family home.
- The subject site is zoned CD 8 (Subarea 1) which states that the minimum side and rear yard setback is 5'.
- The subject site is zoned CD 8 which states the following "additional development standards applicable to all subareas with regard to fences: "In Subarea 1, fences in the front yard may not exceed 3' in height. Fences may not exceed 4' in height in the front yard is Subareas II and III, the front 50 percent of the side yard in all subareas, and the front 50 percent of a cornerside yard in all subareas. In all subareas, the rear 50 percent of the side yard, and the rear 50 percent of the cornerside yard may not exceed 9' in height".
- The applicant has submitted a site plan and an elevation that indicates the proposal reaches a maximum height of 8' 6" and is located in the two, front 50 percent of the 5' side yards on the east and west sides of the subject site.
- The following additional information was gleaned from the submitted site plan:
  - The proposal is represented as being approximately 50' in length along both of the front 50 percent of the side yards on the site, and approximately 5' in length parallel to the street on the west side.

- The proposal is represented as being located on the side property lines.
- Two single family lots developed with single family structures are located on either side of the subject site. The property to the east of the subject site has a fence in its side yard that appears to be approximately 5' in height, and the property to the west has no fence in its side yard.
- The Board Administrator conducted a field visit of the site and surrounding area (properties along Ivandell Avenue from approximately 200 feet east and west of the site) and noted two other fences front 50 percent of side yards. An approximately 8' high solid wood fence was noted two lots to the east, and an approximately 5' high solid wood fence was noted directly northeast. There is no recorded BDA history for these fences.
- As of October 7<sup>th</sup>, 2016, one letter/email has been submitted in support of the request, and no letters have been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' 6" will not adversely affect neighboring property.
- Granting this special exception of 4' 6" with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding 4' in height in the side yard setbacks to be maintained in the location and of the heights and materials as shown on these documents.

**Timeline:**

August 26, 2016: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

September 13, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

September 13, 2016: 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 September 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the 1 p.m., October 7<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."

October 4, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the

Sustainable Development and Construction Department Senior Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

**BOARD OF ADJUSTMENT ACTION: OCTOBER 17, 2016**

APPEARING IN FAVOR: Alejandro Murillo, 2748 Ivandell Avenue, Dallas, TX  
Josephine Murillo, 2748 Ivandell Avenue, Dallas, TX

APPEARING IN OPPOSITION: No one

**MOTION: Beikman**

I move that the Board of Adjustment, in Appeal No. **BDA 156-105** on application of Alejandro Murillo, **grant** the request of this applicant to construct and/or maintain an 8-foot 6-inch-high fence in the property’s side yard as a special exception to the height requirements in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

**SECONDED: Foster**

AYES: 5 – Richardson, Beikman, Winslow, Foster, Hill

NAYS: 0 -

MOTION PASSED: 5 – 0

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**FILE NUMBER:** BDA156-090(SL)

**BUILDING OFFICIAL’S REPORT:** Application of Robert Baldwin for a special exception to the front yard setback regulations to preserve an existing tree, a variance to the off-street parking regulations, and a special exception to the fence height regulations at 9324 Vinewood Drive. This property is more fully described as Lot 8, Block D/7396, and is zoned R-7.5(A), which requires a front yard setback of 25 feet, requires a parking space to be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley, and limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain a structure and provide a 5 foot front yard setback, which will require a 20 foot special exception to the front yard setback regulations to preserve an existing tree, to locate and maintain a parking space in an enclosed structure and provide a 5 foot setback from the right-of-

way line adjacent to a street, which will require a variance of 15 feet to the off-street parking regulations, and to construct and maintain an 8 foot high fence, which will require a 4 foot special exception to the fence height regulations.

**LOCATION:** 9324 Vinewood Drive

**APPLICANT:** Robert Baldwin

**REQUESTS:**

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

1. A special exception special exception to the front yard setback requirements of up to 19' 3.5" to preserve an existing tree is made to construct and maintain garage and covered walkway addition structures to the existing one-story single family structure, which is proposed to be located as close as 5' 8.5" from the site's Pasteur Avenue front property line or as much as 19' 3.5" into this 25' front yard setback.
2. A variance to the off-street parking regulations of up to 14' 3.5" is made to locate and maintain enclosed parking spaces in the proposed garage addition to the existing single family home located as close as 5' 8.5" from the Pasteur Avenue front property/right-of-way line or as much as 14' 3.5" into the required 20' distance from this street right-of-way.
3. A request for a special exception to the fence height regulations of 4' is made to replace an existing wood fence higher than 4' in height (that according to the applicant was constructed in error) with a new 8' high solid wood fence in the site's Pasteur Avenue front yard setback.

**STANDARD FOR A SPECIAL TO THE FRONT YARD REQUIREMENTS TO PRESERVE AN EXISTING TREE:**

The Dallas Development Code specifies that the board may grant a special exception to the minimum front yard requirements to preserve an existing tree. In determining whether to grant this special exception, the board shall consider the following factors:

- A) Whether the requested special exception is compatible with the character of the neighborhood.
- B) Whether the value of the surrounding properties will be adversely affected.
- C) Whether the tree is worthy of preservation.

**STANDARD FOR A VARIANCE:**

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

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

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:**

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

**STAFF RECOMMENDATION (special exception to the front yard requirements to preserve an existing tree):**

Denial

Rationale:

- While the City of Dallas Chief Arborist has indicated that there is a tree on this site in close proximity to the proposed garage structure that is worthy of preservation, staff concluded that the applicant had not substantiated how the requested special exception is compatible with the character of the neighborhood, and how the value of the surrounding properties would not be adversely affected.

**STAFF RECOMMENDATION (off-street parking variance):**

Denial

Rationale:

- While the Sustainable Development and Construction Department Project Engineer has no objections to the request if the Board imposed the submitted revised site plan as a condition, staff concluded that there was no property hardship to the site that warranted a variance for a garage and walkway structures in the Pasteur Avenue front yard setback. While staff recognized that the site was slightly irregular in shape and sloped, and with two front yard setbacks and trees, the applicant had not demonstrated how these features precluded it from being developed in a manner commensurate with the development upon other parcels of land with the same R-7.5(A) zoning, particularly since the subject site is about 35,000 square feet in area or over four times larger in size than most lots in the R-7.5(A) zoning district.
- The applicant had not substantiated how the physical features of the flat, somewhat irregularly shaped, approximately 35,000 square foot site with two front yard

setbacks preclude it (a site currently developed with, according to DCAD, an approximately 2,000 square foot home that complies with setbacks) from being developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification while simultaneously complying with code provisions including off-street setback regulations.

**STAFF RECOMMENDATION (fence height):**

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

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

The subject site is developed with a single family home. The areas to the north and west are developed with single family uses; and the areas to the east and south are developed with church 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 (special exception to front yard requirements to preserve an existing tree):**

- This request for a special exception to the front yard setback requirements of up to 19' 3.5" to preserve an existing tree focuses on constructing and maintaining garage and covered walkway addition structures to the existing one-story single family structure, which are proposed to be located as close as 5' 8.5" from the site's Pasteur Avenue front property line or as much as 19' 3.5" into this 25' front yard setback.
- The site is zoned R-7.5(A) which requires a minimum front yard setback of 25'.
- The subject site is located at the south corner of Vinewood Drive and Pasteur Avenue.
- Given the single family zoning and location of the corner lot subject site, it has two front yard setbacks – a 35' required front yard (caused by a platted building line)

along Vinewood Drive (the shorter of the two frontages of the subject site) and a 25' front yard setback along Pasteur Avenue (the longer of the two frontages which is typically a side yard where on this R-7.5(A) zoned property would require a 5' side yard setback). However, the site has a 25' front yard setback along Pasteur Avenue given that while it is the longer of the two frontages it is a front yard notwithstanding in order to maintain continuity of the established front yard setback along this street frontage where the lot immediately south "fronts" on Pasteur Avenue.

- The applicant had originally submitted a site plan that denoted a structure as close as 4' 11.5" from the site's Pasteur Avenue front property line or approximately 20' into this 25' front yard setback. The originally submitted site plan denoted a number of existing trees on the site.
- The applicant submitted a revised site plan on October 4, 2016 (see Attachment A). This plan denoted a structure as close as 5' 8.5" from the site's Pasteur Avenue front property line or as much as 19' 3.5' into this 25' front yard setback. The submitted site plan denotes a number of existing trees on the site.
- No part of this application is made to construct or maintain any structure in the site's Vinewood Drive front yard setback.
- The Dallas Development Code allows the Board of Adjustment to consider this proposed structure encroachment in a front yard setback by an application for a special exception to the front yard requirements to preserve an existing tree with a standard largely based on compatibility, property values, and whether a tree located on a site that is worthy of preservation.
- According to calculations taken from the site plan, about 800 square feet (or approximately 85 percent) of the proposed approximately 920 square foot garage addition structure and about 175 square feet (or approximately 70 percent) of the proposed approximately 250 square foot walkway addition structure is to be located in the site's Pasteur Avenue 25' front yard setback.
- The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment B). The memo stated that while specific information was not given in the application to indicate a select tree for assessment that he had determined however after reviewing the case and visiting the property that one tree (listed as a 12" cedar on the proposed site plan) is in close proximity to the south side of the proposed garage structure. The Chief Arborist stated that this fully established and mature, single-stem eastern red cedar tree is in good condition and is worthy of preservation; and that construction activity in the large yard area further south and southwest of the proposed garage could also disrupt the extended root systems of other large mature trees identified on the site plan which he had determined to be worthy of preservation.
- The applicant has the burden of proof in establishing the following related to the front yard special exception request:
  1. Whether the requested special exception is compatible with the character of the neighborhood.
  2. Whether the value of the surrounding properties will be adversely affected.
  3. Whether the tree is worthy of preservation.
- If the Board were to grant the request for a special exception to the front yard requirements of up to 19' 3.5" to preserve an existing tree, imposing a condition

whereby the applicant must comply with the submitted revised site plan, the structures in the front yard setback would be limited to that what is shown on this plan – which in this case garage and covered walkway addition structures to the existing one-story single family structure, which are proposed to be located as close as 5' 8.5" from the site's Pasteur Avenue front property line or as much as 19' 3.5" into this 25' front yard setback.

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

- The request for a variance to the off-street parking regulations of up to 14' 3.5" focuses on locating and maintaining enclosed parking spaces in the proposed garage addition structure to the existing single family home located as close as 5' 8.5" from the Pasteur Avenue front property/right-of-way line or up to 14' 3.5" into the required 20' distance from this street right-of-way.
- The site is zoned R-7.5(A) which requires a minimum front yard setback of 25'.
- The subject site is located at the south corner of Vinewood Drive and Pasteur Avenue.
- Given the single family zoning and location of the corner lot subject site, it has two front yard setbacks – a 25' front yard setback along Vinewood Drive (the shorter of the two frontages of the subject site) and a 25' front yard setback along Pasteur Avenue (the longer of the two frontages which is typically a side yard where on this R-7.5(A) zoned property would require a 5' side yard setback). However, the site has a 25' front yard setback along Pasteur Avenue given that while it is the longer of the two frontages it is a front yard notwithstanding in order to maintain continuity of the established front yard setback along this street frontage where the lot immediately south "fronts" on Pasteur Avenue.
- The Dallas Development Code states that a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in enclosed structure and if the space faces upon or can be entered directly from a street or alley.
- The applicant had originally submitted a site plan denoted the location of what would appear to be enclosed parking spaces in the garage structure as close as 4' 11 1/2" from the Pasteur Avenue street right-of-way line or approximately 19.5' – 20' from the Pasteur Avenue pavement line.
- The applicant submitted a revised site plan on October 4, 2016 (see Attachment A). This plan denoted the location of what would appear to be enclosed parking spaces in the proposed garage structure as close as 5' 8.5" from the Pasteur Avenue street right-of-way line or as much as 14' 3.5" from the Pasteur Avenue pavement line.
- According to DCAD records, the "main improvement" for the property addressed at 9324 Vinewood Drive is a structure constructed in 1955 with 1,998 square feet of living area/total area with "no additional improvements".
- The subject site is somewhat sloped, somewhat irregular in shape (approximately 98' on the north, approximately 125' on the south, and approximately 280' on the east and west), and according to the submitted application is 0.8 acres (or approximately 35,000 square feet) in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.

- Most lots in the R-7.5(A) zoning district have one 25' front yard setback, two 5' side yard setbacks, and one 5' rear yard setback; this site has two front yard setbacks, and two 5' side yard setbacks.
- The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet regarding the applicant's request marked "Has no objections if certain conditions are met" commenting "subject to the site plan".
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the off-street parking regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance 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, staff recommends imposing the following conditions:
  1. Compliance with the submitted revised site plan is required.
  2. An automatic garage door must be installed and maintained in working order at all times.
  3. At no time may the area in front of the garage be utilized for parking of vehicles. (These conditions are imposed to help assure that the variance will not be contrary to the public interest).

**GENERAL FACTS/STAFF ANALYSIS (fence height):**

- The request for a special exception to the fence height regulations of 4' focuses on replacing an existing wood fence higher than 4' in height (that according to the applicant was constructed in error) with a new 8' high solid wood fence in the site's Pasteur Avenue front yard setback.
- The subject site is zoned R-7.5(A).
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The subject site is located at the south corner of Vinewood Drive and Pasteur Avenue.
- Given the single family zoning and location of the corner lot subject site, it has two front yard setbacks – a 25' front yard setback along Vinewood Drive (the shorter of the two frontages of the subject site) and a 25' front yard setback along Pasteur Avenue (the longer of the two frontages which is typically a side yard where on this R-7.5(A) zoned property would require a 5' side yard setback). However, the site has

a 25' front yard setback along Pasteur Avenue given that while it is the longer of the two frontages it is a front yard notwithstanding in order to maintain continuity of the established front yard setback along this street frontage where the lot immediately south "fronts" on Pasteur Avenue.

- The applicant had originally submitted a scaled site plan/fence elevation indicating a fence proposal that will reach 8' in height in the 25' Pasteur Avenue front yard setback.
- The applicant submitted a revised site plan/elevation on October 4, 2016 (see Attachment A). The applicant made no representation that the revised site plan/elevation had changed any aspect of the fence height special exception request from what was shown on the originally submitted site plan/elevation.
- The submitted original and revised site plan/fence elevation represents only a fence to exceed 4' in height in the Pasteur Avenue front yard setback and not into the site's Vinewood Drive front yard setback.
- The following information was gleaned from the originally submitted site plan/elevation
  - The proposal is represented as being a total of approximately 100' in length parallel to the Pasteur Avenue, and 25' in length perpendicular to this street on the north side of the site in the front yard setback.
  - The proposal is represented as being located approximately on the Pasteur Avenue front property line or 15' from this pavement line.
- The proposal is located across from lots developed with a single family home that fronts to Vinewood Drive and church that fronts to Ferguson Road, neither with a fence in the front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area along Pasteur Avenue (from Ferguson Road to Vinewood) and noted one other fence over 4' in a front yard – an approximately 8' high wood fence immediately south with no recorded BDA history.
- As of October 7, 2016, no letters has been submitted in support of the request, and no letters have been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' will not adversely affect neighboring property.
- Granting this special exception request of 4' with a condition imposed that the applicant complies with the submitted revised site plan/elevation would require the proposal exceeding 4' in height in the Pasteur Avenue front yard setback to be constructed and maintained in the location and of the heights and material as shown on this document.

### **Timeline:**

July 6, 2016: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

August 4, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

- August 5, 2016: The Board Administrator emailed the applicant the following information:
- a copy of the application materials including the Building Official's report on the application;
  - an attachment that provided the public hearing date and panel that will consider the application; the August 31<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 9<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 requests; and
  - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- August 31, 2016: The applicant requested that the application be delayed until October.
- September 13, 2016: The Board Administrator emailed the applicant the following information:
- a copy of the application materials including the Building Official's report on the application;
  - an attachment that provided the public hearing date and panel that will consider the application; the September 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the October 7<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 requests; and
  - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- October 4, 2016: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).
- October 4, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.
- October 6, 2016: The City of Dallas Chief Arborist submitted a memo regarding the request for a special exception to the front yard setback regulations of up to 19' 3.5" for tree preservation (see Attachment B).

October 6, 2016: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Has no objections if certain conditions are met” commenting “subject to the site plan”.

**BOARD OF ADJUSTMENT ACTION: OCTOBER 17, 2016**

APPEARING IN FAVOR: Rob Baldwin, 3904 Elm Street, Ste. B, Dallas, TX

APPEARING IN OPPOSITION: No one

**MOTION #1: Hill**

I move that the Board of Adjustment, in Appeal No. **BDA 156-090** on application of Robert Baldwin, **grant** the request of this applicant for a special exception to the minimum front yard requirements in the Dallas Development Code to preserve an existing tree, because our evaluation of the property and the testimony shows that this special exception is compatible with the character of the neighborhood, will not adversely affect neighboring property, and the tree is worthy of preservation. 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: Beikman**

AYES: 5 – Richardson, Beikman, Winslow, Foster, Hill

NAYS: 0 -

MOTION PASSED: 5 – 0

**MOTION #2: Beikman**

I move that the Board of Adjustment, in request No. **BDA 156-090**, on application of Robert Baldwin, **grant** a variance to the off-street parking regulations because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan is required.
- An automatic garage door must be installed and maintained in working order at all times; and
- At no time may the area in front of the garage be utilized for parking of vehicles.

SECONDED: Foster

AYES: 5 – Richardson, Beikman, Winslow, Foster, Hill

NAYS: 0 -

MOTION PASSED: 5 – 0

MOTION #3 : Winslow

I move that the Board of Adjustment, in Appeal No. **BDA 156-090** on application of Robert Baldwin, **grant** the request of this applicant to construct and maintain an 8-foot-high fence in the property’s front yard as a special exception to the height requirements in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Hill

AYES: 5 – Richardson, Beikman, Winslow, Foster, Hill

NAYS: 0 -

MOTION PASSED: 5 – 0

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MOTION: Hill

I move to adjourn this meeting.

SECONDED: Beikman

AYES: 5 – Richardson, Beikman, Winslow, Foster, Hill

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

**1:51 P. M. - Board Meeting adjourned for October 17, 2016**

\_\_\_\_\_  
CHAIRPERSON

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

\_\_\_\_\_  
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.