

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN AUDITORIUM
WEDNESDAY, OCTOBER 21, 2015**

MEMBERS PRESENT AT BRIEFING: Scott Hounsel, Acting Vice-Chair, Larry Brannon, regular member, Alex Winslow, regular member, Winifred Cannon, regular member and Philip Lewis, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Scott Hounsel, Acting Vice-Chair, Larry Brannon, regular member, Alex Winslow, regular member, Winifred Cannon, regular member and Philip Lewis, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Donna Moorman, Chief Planner, Jamilah Way, Asst. City Attorney, Tammy Palomino, Asst. City Atty., Neva Dean, Interim Asst. Director, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, Danielle Lerma, Planner, and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Donna Moorman, Chief Planner, David Lam, Engineering, Jamilah Way, Asst. City Attorney, Tammy Palomino, Asst. City Atty., Neva Dean, Interim Asst. Director, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, Danielle Lerma, Planner, and Trena Law, Board Secretary

11:08 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **October 21, 2015 docket.**

1:11 P.M.
The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise

indicated, each use is presumed to be a legal use. Each appeal must necessarily stand upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel B September 23, 2015 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: OCTOBER 21, 2015

MOTION: None

The minutes were approved.

MISCELLANEOUS ITEM NO. 2

Consideration and approval of Panel B's 2016 Public Hearing Calendar

BOARD OF ADJUSTMENT ACTION: OCTOBER 20, 2015

MOTION: Hounsel

Approval of Panel B's 2016 Public Hearing Calendar.

SECONDED: Brannon

AYES: 5 –Hounsel, Brannon, Winslow, Cannon, Lewis

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 145-103(SL)

BUILDING OFFICIAL'S REPORT: Application of Santos T. Martinez to restore a nonconforming use at 1806 McMillan Avenue. This property is more fully described as Lot 25 & 26, Block A/1976, and is zoned CR, which limits the legal uses in a zoning district. The applicant proposes to restore a nonconforming alcoholic beverage establishments use, which will require a special exception to the nonconforming use regulations.

LOCATION: 1806 McMillan Avenue

APPLICANT: Santos T. Martinez

REQUEST:

A request for a special exception to reinstate nonconforming use rights is made to obtain a Certificate of Occupancy (CO) for an “alcoholic beverage establishments” use on the subject site even though this nonconforming use was discontinued for a period of six months or more.

STANDARD FOR A SPECIAL EXCEPTION TO OPERATE A NONCONFORMING USE IF THAT USE IS DISCONTINUED FOR SIX MONTHS OR MORE: The Dallas Development Code states that the Board may grant a special exception to operate a nonconforming use that has been discontinued for six months or more if the owner can show that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to operate a nonconforming use if that use is discontinued for six months or more since the basis for this type of appeal is based on whether the board determines that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail)
North: CR (Deed restricted) (Community Retail)
South: CR (Community Retail)
East: MF-2(A) (Multifamily)
West: CR (Community Retail)

Land Use:

The subject site is developed with a vacant non-residential structure. The area to the north is developed with a surface parking lot; the area to the east is developed with multifamily use; and the areas to the south and east are developed with commercial 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 is made to restore nonconforming use rights for an “alcoholic beverage establishments” use that has been discontinued for six months or more, and to obtain a Certificate of Occupancy (CO) for this use.
- The Dallas Development Code defines “nonconforming use” as “a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time.
- The nonconforming use regulations state it is the declared purpose of the nonconforming use section of the code that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.
- The nonconforming use regulations also states that the right to operate a nonconforming use ceases if the nonconforming use is discontinued for six months or more, and that the board of adjustment may grant a special exception to operate a nonconforming use that has been discontinued for six months or more if the owner can show that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.
- The subject site is zoned CR (Community Retail) – a zoning district that permits an “alcoholic beverage establishments” use but with an SUP (Specific Use Permit) which this property does not have.
- A document has been included in the case file that states the “alcoholic beverage establishment” use at 1806 McMillian Avenue is a nonconforming use.
- A copy of Certificate of Occupancy has been included in the case file for an alcoholic beverage establishment use at 1806 McMillan Avenue on May 1, 2001.
- Building Inspection has stated that these types of special exception requests originate from when an owner/officer related to the property applies for a CO and Building Inspection sees that the use is a nonconforming use. Before a CO can be issued, the City requires the owner/officer related to the property to submit affidavits stating that the use was not abandoned for any period in excess of 6 months since the issuance of the last valid CO. The owners/officers must submit documents and records indicating continuous uninterrupted use of the nonconforming use, which in this case, they could not.
- The applicant has submitted documents that he represents show how the owner of the subject site never intended to vacate the nonconforming use of an alcoholic beverage establishment since the time the use became vacant in March of 2015 (see Attachment A).
- If the Board were to grant this request, the nonconforming “alcoholic beverage establishments” use on the site would be subject to the possibility of an application that may be brought to the Board of Adjustment requesting that the board establish a compliance date as is the case with any other nonconforming use in the city.
- The applicant could achieve conforming use status for the “alcoholic beverage establishments” use on the site with a change in zoning from the City Council.
- The owner could develop the site with any use that is permitted by right in the site’s existing CR zoning classification.
- The applicant has the burden of proof in establishing the following related to the special exception request:

- There was a clear intent not to abandon the nonconforming “alcoholic beverage establishments” use on the subject site even though the use was discontinued for six months or more.
- Granting this request would reinstate/restore the nonconforming “alcoholic beverage establishments” use rights that were lost when the use was abandoned for a period of six months or more.
- If restored/reinstated, the nonconforming use would be subject to compliance with use regulations of the Dallas Development Code by the Board of Adjustment as any other nonconforming use in the city. (The applicant has been advised by staff of Section 51A-4.704 which is the provision in the Dallas Development Code pertaining to “Nonconforming Uses and Structures”).

Timeline:

August 12, 2015: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

September 15, 2015: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

September 15, 2015: The Board Administrator contacted the applicant and emailed 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 30th deadline to submit additional evidence for staff to factor into their analysis; and the October 9th 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;
- the section from the Dallas Development Code pertaining to nonconforming uses and structures; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

October 6, 2015: 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 Board of Adjustment Chief Planner, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

October 8, 2015: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

BOARD OF ADJUSTMENT ACTION: October 21, 2015

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Hounsel

I move to grant that the Board of Adjustment grant application **BDA 145-103(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.

SECONDED: Cannon

AYES: 5 –Hounsel, Brannon, Winslow, Cannon, Lewis

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 145-111(SL)

BUILDING OFFICIAL’S REPORT: Application of Patricia Nell Turner, represented by Emily Fenlaw, for a variance to the front yard setback regulations at 926 Valencia Street. This property is more fully described as part of Lot 1, Block 22/2222, and is zoned CD 6 (Tract 1), which requires a minimum front yard setback of 35 feet. The applicant proposes to construct and maintain a structure and provide a 29 foot front yard setback, which will require a 6 foot variance to the front yard setback regulations.

LOCATION: 926 Valencia Street

APPLICANT: Patricia Nell Turner
Represented by Emily Fenlaw

REQUEST:

A request for a variance to the front yard setback regulations of 6’ is made to remove two step structures and replace them with steps with smaller rises, the replacement step structures to be located 29’ from the front property line or 6’ into the 35’ front yard setback on a site developed with a single family home use/structure.

STANDARD FOR A VARIANCE:

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

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

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The subject site is unique and different from most lots in the CD 6 zoning district in that it is sloped. The slope of the subject site is the factor that warrants a variance to the front yard setback regulations in this case merely to replace a nonconforming step structure – an existing nonconforming step structure where the right to rebuild ceases if/when the structure is destroyed by the intentional act of the owner or the owner’s agent.

BACKGROUND INFORMATION:

Zoning:

Site: CD 6 (Conservation District)
North: CD 6 (Conservation District)
South: CD 6 (Conservation District)
East: CD 6 (Conservation District)
West: CD 6 (Conservation District)

Land Use:

The subject site is developed with a single family home structure that is nonconforming as to the front yard setback regulations. 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:

- This request focuses on removing two step structures and replacing them with steps with smaller rises. The replacement step structures are approximately 9 square feet in area and to remain located 29' from the front property line or 6' into the 35' front yard setback on a site developed with a single family home use/structure.
- Main structures on lots zoned CD 6 are required to provide a minimum front yard setback of 35'. (Prior to the creation of CD 6 in 1993, the site had been zoned R-7.5(A) where a 25' front yard setback was required).
- A scaled site plan has been submitted indicating that the replacement step structure is located 29' from the front property line or 6' into this 35' front yard setback.
- According to DCAD records, the "main improvement" for property addressed at 926 Valencia Street is a structure built in 1940 with 1,494 square feet of living/total area; and with the following additional improvements: a 440 square foot detached servants quarters, a 440 square foot detached garage.
- The applicant has chosen only to seek variance to the front yard setback regulations for the new construction/replacement step structure to the existing structure on the site, and to not seek variance to remedy/address the nonconforming aspect of the existing nonconforming structure that is located in the site's front yard setback.
- The code defines nonconforming structure as a structure that does not conform to the regulations of the code, but which was lawfully constructed under the regulations in force at the time of construction.
- The code states that a person may renovate, remodel, repair, rebuild, or enlarge a nonconforming structure if the work does not cause the structure to become more nonconforming as to the yard, lot, and space regulations.
- The code states that the right to rebuild a nonconforming structure ceases if the structure is destroyed by the intentional act of the owner or the owner's agent.
- The applicant has stated that the modified porch steps will assist in providing better access for the resident of the property with spinal muscular atrophy.
- While the Dallas Development Code provides that the Board of Adjustment can consider applications for special exceptions for the handicapped, the applicant has intentionally chosen to seek variance being aware of the fact that most often when the board grants requests for special exceptions for the handicapped, they impose a condition that the special exception is only valid for as long as a handicapped person resides on the property in which the special exception was applied.
- The subject site is sloped, rectangular in shape, and according to the submitted application is 0.144 acres (or approximately 6,300 square feet) in area. The site is zoned CD 6 where lots prior to the creation of CD 6 in 1993 where zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.

- The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same CD 6 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 CD 6 zoning classification.
- If the Board were to grant the variance request, and impose the submitted site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document– which in this case is an approximately 9 square foot (3.5' x 2.5') step structure located as close as 29' from the site's front property line (or 6' into the 35' front yard setback).

Timeline:

September 1, 2015: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

September 15, 2015: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

September 15, 2015: The Board Administrator contacted the applicant's representative and emailed 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 30th deadline to submit additional evidence for staff to factor into their analysis; and the October 9th 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 22, 2015: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).

September 30, 2015: The applicant's representative submitted additional documentation on this application beyond what was submitted with the original application (see Attachment B).

October 6, 2015: 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 Board of Adjustment

Chief Planner, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: October 21, 2015

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Hounsel

I move to grant that the Board of Adjustment grant application **BDA 145-111** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: Cannon

AYES: 5 –Hounsel, Brannon, Winslow, Cannon, Lewis

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 134-072(DL)

BUILDING OFFICIAL’S REPORT: Application of Houshang Jahvani for a variance to the minimum and maximum front yard setback regulations and a variance to the landscaping regulations at 332 W. Commerce Street. This property is more fully described as Lot 1, Block 3/6813, and is zoned PD-714 (Subdistrict 1A), which requires a minimum front yard setback of 6 feet with at least 50 percent of the front façade at the minimum front yard setback and a maximum front yard setback of 15 feet, and which requires mandatory landscaping. The applicant proposes to construct and maintain a nonresidential structure and provide a 96 foot front yard setback, which will require a 90 foot variance to the minimum front yard setback regulation and an 81 foot variance to the maximum front yard setback regulation, and provide an alternate landscape plan, which will require a variance to the landscape regulations.

LOCATION: 332 W. Commerce Street

APPLICANT: Houshang Jahvani

REQUEST:

The following requests have been made on a site currently developed with a motor vehicle fueling station of approximately 670-square feet:

1. A variance to the minimum front yard setback regulations of 90' is requested to allow the expansion of an existing nonresidential structure, built circa 1961, and not fully meet the 6' minimum front yard setback with at least 50% of the front facade at the minimum front yard setbacks along W. Commerce Street, Sulphur Street, Harbin Street, and Haslett Street.
2. A variance to the maximum front yard setback regulations of 81' is requested to allow the expansion of an existing nonresidential structure, built circa 1961, and not fully meet the 15' maximum front yard setbacks along W. Commerce Street, Sulphur Street, Harbin Street, and Haslett Street.
3. A variance to the landscape regulations is requested to allow the expansion of a nonresidential structure, built circa 1961, and not fully meet the landscape regulations.

STANDARD FOR A VARIANCE:

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

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

STAFF RECOMMENDATION (MINIMUM/MAXIMUM FRONT YARD SETBACK ON W. COMMERCE STREET):

Approval, subject to the following condition:

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

Rationale:

- The applicant has substantiated how the site cannot be developed according to PDD No. 714, Subdistrict 1A, regulations. The site, while not sloped, is of a restrictive area and shape that precludes it from being developed in a manner

commensurate with the development of other parcels of land within the same planned development district. Furthermore, the hardship is not self-created. City Council approved Ordinance No. 25898 on February 23, 2005, which made the existing structure, built circa 1961, nonconforming. PDD No. 714, modeled after form districts, encumbers the structure with four minimum/maximum front yard setbacks and does not allow for legal nonconforming structures to expand without meeting the requirements of the planned development district.

STAFF RECOMMENDATION (MINIMUM/MAXIMUM FRONT YARD SETBACK ON SULPHUR STREET):

Approval, subject to the following condition:

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

Rationale:

- The applicant has substantiated how the site cannot be developed according to PDD No. 714, Subdistrict 1A, regulations. The site, while not sloped, is of a restrictive area and shape that precludes it from being developed in a manner commensurate with the development of other parcels of land within the same planned development district. Furthermore, the hardship is not self-created. City Council approved Ordinance No. 25898 on February 23, 2005, which made the existing structure, built circa 1961, nonconforming. PDD No. 714, modeled after form districts, encumbers the structure with four minimum/maximum front yard setbacks and does not allow for legal nonconforming structures to expand without meeting the requirements of the planned development district.

STAFF RECOMMENDATION (MINIMUM/MAXIMUM FRONT YARD SETBACK ON HARBIN STREET):

Approval, subject to the following condition:

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

Rationale:

- The applicant has substantiated how the site cannot be developed according to PDD No. 714, Subdistrict 1A, regulations. The site, while not sloped, is of a restrictive area and shape that precludes it from being developed in a manner commensurate with the development of other parcels of land within the same planned development district. Furthermore, the hardship is not self-created. City Council approved Ordinance No. 25898 on February 23, 2005, which made the existing structure, built circa 1961, nonconforming. PDD No. 714, modeled after form districts, encumbers the structure with four minimum/maximum front yard setbacks and does not allow for legal nonconforming structures to expand without meeting the requirements of the planned development district.

STAFF RECOMMENDATION (MINIMUM/MAXIMUM FRONT YARD SETBACK ON HASLETT STREET):

Approval, subject to the following condition:

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

Rationale:

- The applicant has substantiated how the site cannot be developed according to PDD No. 714, Subdistrict 1A, regulations. The site, while not sloped, is of a restrictive area and shape that precludes it from being developed in a manner commensurate with the development of other parcels of land within the same planned development district. Furthermore, the hardship is not self-created. City Council approved Ordinance No. 25898 on February 23, 2005, which made the existing structure, built circa 1961, nonconforming. PDD No. 714, modeled after form districts, encumbers the structure with four minimum/maximum front yard setbacks and does not allow for legal nonconforming structures to expand without meeting the requirements of the planned development district.

STAFF RECOMMENDATION (LANDSCAPE REGULATIONS):

Approval, subject to the following condition:

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

Rationale:

- The City of Dallas Chief Arborist, while not supporting the request for the originally submitted alternate site/landscape plan, now supports the landscape variance request with the revised alternate landscape plan submitted on October 05, 2015. The applicant has provided enough information to prove he meets the standard of a variance request, and he has provided a more comprehensive landscape design that enhances the property and keeps within the spirit of the ordinance creating PDD No. 714.

BACKGROUND INFORMATION:

Zoning:

Site: PDD No. 714 (Planned Development, Subdistrict 1A)
North: PDD No. 714 (Planned Development, Subdistrict 1A)
South: PDD No. 714 (Planned Development, Subdistrict 1A)
East: PDD No. 714 (Planned Development, Subdistrict 1A)
West: PDD No. 714 (Planned Development, Subdistrict 1A)

Land Use:

The site is currently developed with a motor vehicle fueling station that according to DCAD was built in 1961. The area to the north and west is developed with office uses; the area to the east is developed with a multifamily residential use; and the area to the south is undeveloped.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS (FRONT YARD VARIANCES):

- This request originally focused on constructing and maintaining an addition to an existing motor vehicle fueling station, and providing a 99' front yard setback. With the revised alternate landscape plan, the request now focuses on constructing and maintaining an addition to an existing motor vehicle fueling station, and providing a 96' front yard setback.
- Structures on lots zoned PDD No. 714, Subdistrict 1A, are required to provide a minimum front yard setback of 6' with at least 50% of the front façade at the minimum front yard setback and a maximum front yard setback of 15'.
- The original scaled site/landscape plan submitted showed the location of the structure in relation to the minimum/maximum front yard setbacks as follows:
 1. Along W. Commerce Street, the existing structure and/or proposed addition are located approximately 43' from the 15' maximum front yard setback, and approximately 52' from the 6' minimum front yard setback.
 2. Along Sulphur Street, the existing structure and/or proposed addition are located approximately 54' from the 15' maximum front yard setback, and approximately 63' from the 6' minimum front yard setback.
 3. Along Harbin Street, the existing structure and/or proposed addition are located approximately 1' from the 15' maximum front yard setback, and approximately 10' from the 6' minimum front yard setback.
 4. Along Haslett Street, the existing structure and/or proposed addition are located approximately 82' from the 15' maximum front yard setback, and approximately 91' from the 6' minimum front yard setback.
- The revised scaled site/landscape plan now shows the location of the structure in relation to the minimum/maximum front yard setbacks as follows:
 1. Along W. Commerce Street, the existing structure and/or proposed addition are located approximately 41' from the 15' maximum front yard setback, and approximately 50' from the 6' minimum front yard setback.
 2. Along Sulphur Street, the existing structure and/or proposed addition are located approximately 54' from the 15' maximum front yard setback, and approximately 63' from the 6' minimum front yard setback.
 3. Along Haslett Street, the existing structure and/or proposed addition are located approximately 76' from the 15' maximum front yard setback, and approximately 85' from the 6' minimum front yard setback.
 4. Along Harbin Street, the existing structure and/or proposed addition meet the 6' minimum front yard setback, and 100% of the front façade is at the 6' minimum front yard setback. However, the dumpster and proposed air pump are located on the 10.5' street easement line, thereby providing a 0' front yard setback.
- According to DCAD records, the "improvement" at 332 W. Commerce Street is a 600-square foot "bayless service station" built in 1961.
- The site is flat, irregular in shape, and is approximately 0.4524 acres (or approximately 19,706.5-square feet) in area. The site is zoned PDD No. 714, Subdistrict 1A.
- The applicant has the burden of proof in establishing the following:

- That granting the variance to the landscape 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 PDD No. 714, Subdistrict 1A, 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 PDD No. 714, Subdistrict 1A, zoning classification.
- If the Board were to grant the variance request, and impose the submitted revised site/landscape plan as a condition, the proposed addition to the existing structure would be limited to what is shown on this document, which in this case, is located as much as 81' from the 15' maximum front yard setback, and as much as 90' from the 6' minimum front yard setback. The proposed addition will also not be required to have at least 50 percent of the front façade at the minimum front yard setbacks.

GENERAL FACTS/STAFF ANALYSIS (LANDSCAPE VARIANCE):

- This request focuses on completing and maintaining an expansion to an existing circa 1961 nonresidential structure, and not fully meeting the landscape regulations. More specifically, according to the City of Dallas Chief Arborist, the proposed plan does not fully comply with the required landscape standards of PDD No. 714, Subdistrict 1A, for a project that increases the floor area of all buildings on site by 310.45%.
- 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.
- Given specific provisions of the landscape provisions of PDD No. 714, Subdistrict 1A, the applicant can only seek these leniencies from the board of adjustment by requesting a *variance* to the landscape regulations within this PDD as opposed to the more typical *special exception* to the landscape regulations.
- On September 10, 2015, the City of Dallas Chief Arborist submitted a memo regarding the applicant's request (see Attachment A). This memo states the request is triggered because the owner intends to increase the combined floor area of all buildings on site.
- The Chief Arborist's memo lists the following deficiencies, as stated in Section 714.114, Landscaping, 714.115, Street and Sidewalk Standards, and 714.116 Screening Regulations, in this case:
 - Landscaping of streets in compliance with Exhibit 714F for Subdistrict 1;

- street trees;
 - site trees;
 - parking lot trees;
 - landscape plan; and
 - screening regulations.
- The Chief Arborist’s memo lists the following factors for consideration:
 1. PDD No. 714, Subdistrict 1A, landscape requirements include the following:
 - Landscaping of streets in compliance with Exhibit 714F for Subdistrict 1: The site cannot provide the required 15’ sidewalk.
 - Street trees:
 - In Subdistricts 1A and 1B, trees must be placed in a 16’ square tree grates. The alternate site/landscape plan only provides for tree grates along the W. Commerce Street frontage.
 - One street tree per 30 feet of street frontage with a minimum of two trees must be provided. While the property requires 22 street trees, the alternate site/landscape plan provides for 12.
 - Site trees: One site tree per 3,000 square feet with a minimum of 4 trees is required, but 3 trees are being provided on the alternate site/landscape plan.
 - Parking lot trees: Each required parking space must be within 75’ of the trunk of a large canopy tree. One handicap parking space does not meet this requirement. Furthermore, street trees may not qualify for this measurement.
 - Landscape Plan: A landscape plan must earn at least 75 points (of a total possible 125 points). The submitted alternate site/landscape plan does not specify how it meets the criteria.
 - Screening regulations: The alternate site/landscape plan provides for screening regulations along W. Commerce Street, but not along Sulphur Street or Harbin Street. A surface parking lot requires a “low screen” when new construction begins on the site. A “low screen” is when shrubs form a three-foot high screen that is 95% opaque within three years of planting.
 2. PDD No. 714 additional standards for non-compliance on-site:
 - PDD No. 714 also provides for an “open space fund” for if a property owner cannot plant all of the required trees on the building site – in these situations, the property owner shall comply with this requirement for no more than 50 percent of the required trees. The owner must make a payment into the West Commerce Street/Fort Worth Avenue Open Space Fund. This measure would account for only a portion of the overall landscape deficiency for the property. As of September 15, 2015, the applicant has not stated intention to pay or plant, per this ordinance, in order to help mitigate for the lack of required site trees on the property.
 3. Additional items to consider in evaluation of this case:
 - According to Sec. 714.114(h)(5), “Except as provided in this subsection, trees and shrubs must be planted at least 10’ from the centerline of any water or sewer main.” While the submitted alternate site/landscape plan does not identify the location of the known water line along W. Commerce Street, it appears the proposed trees along W. Commerce are too close to the known water line, and the trees may not be allowed.

- The property has landscaping proposed in visibility triangles. The store sign and vacuum/air system are located in the northwest visibility triangle, but are not identified on the submitted alternate site/landscape plan.
- The proposed canopies will provide a “significant shade structure” for the site.
- The Chief Arborist originally recommended denial of the alternate site/landscape plan. The Chief Arborist had stated that, while the applicant met the conditions for approval of the variance, the proposed alternate site/landscape plan did not address the spirit of the ordinance that stated, “Development should support West Commerce Street as the gateway from downtown into the area...” The Chief Arborist recommended that, should the board choose to support the variance, to condition the approval with a provision that allowed for the removal of the trees along Commerce Street if street and sidewalk standards prohibit their installation.
- On September 23, 2015, the Board of Adjustment Panel B voted to hold the application until the regularly scheduled October 21st meeting.
- On October 05, 2015, the applicant submitted a revised alternate site/landscape plan to the Building Inspection Senior Plans Examiner/Development Code Specialist, who then revised the Building Official’s report.
- On October 08, 2015, the Chief Arborist submitted a memo regarding the applicant’s revised request (Attachment B).
- The Chief Arborist now recommends approval of the revised alternate site/landscape plan because the revised plan now provides for the following:
 - Crepe myrtles are now proposed along the Commerce, Sulphur, and Harbin street frontages.
 - Screening shrubs and 4 crepe myrtles will be planted along Commerce Street.
 - Screening shrubs and 2 crepe myrtles will be planted along Sulphur Street.
 - Four (4) additional crepe myrtle trees, for a total of 9, will be provided within the parkway along Harbin Street.
 - The parking area will have 3 Caddo maple trees.
 - Along Haslett Street, the applicant proposes a low-level planting bed, comprised of native and adapted xeriscape plant materials, between the garbage storage area and the new 5-foot wide public sidewalk.
 - Two existing trees in the two visibility triangles along Harbin Street will be removed.
- The site is flat, irregular in shape, and is approximately 0.4524 acres (or approximately 19,706.5-square feet) in area. The site is zoned PDD No. 714, Subdistrict 1A.
- According to DCAD records, the “improvement” at 332 W. Commerce Street is a 600-square foot “bayless service station” built in 1961.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the landscape 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 PDD No. 714, Subdistrict 1A, 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 PDD No. 714, Subdistrict 1A, zoning classification.
- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted revised alternate site/landscape plan, the site would be “varied” from certain landscape standards of PDD No. 714, Subdistrict 1A, as shown on this submitted revised alternate site/landscape plan.

Timeline:

July 9, 2015: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

August 19, 2015: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

August 27, 2015: The Current Planner emailed the following information to the applicant:

- 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 2nd deadline to submit additional evidence for staff to factor into their analysis; and the September 11th 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 8, 2015: 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 Board of Adjustment Chief Planner, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

September 10, 2015: The City of Dallas Chief Arborist submitted a memo regarding the request (see Attachment A).

September 23, 2015: The Board of Adjustment Panel B voted to hold this application until the regularly scheduled October Panel B Board of Adjustment meeting.

October 05, 2015: The applicant submitted a revised alternate site/landscape plan to the Building Inspection Senior Plans Examiner/Development Code Specialist.

October 06, 2015: 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 Board of Adjustment Chief Planner, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

October 08, 2015: The City of Dallas Chief Arborist submitted a memo regarding the revised request (see Attachment B).

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

BOARD OF ADJUSTMENT ACTION: October 21, 2015

APPEARING IN FAVOR: Houshang Jahvani, 2121 N. Josey Lane, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: **Lewis**

I move that the Board of Adjustment, in request No. **BDA 134-072**, on application of Houshang Jahvani, **grant** 90-foot variances to the minimum and 81-foot variances to the maximum front yard setback regulations because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: **Cannon**

AYES: 5 –Hounsel, Brannon, Winslow, Cannon, Lewis

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

MOTION #2: Lewis

I move that the Board of Adjustment, in request No. **BDA 134-072**, on application of Houshang Jahvani, **grant** an alternate landscape plan as a variance to the landscape 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 with landscape plan is required.

SECONDED: Hounsel

AYES: 5 –Hounsel, Brannon, Winslow, Cannon, Lewis

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 145-096(SL)

BUILDING OFFICIAL’S REPORT: Application of Eric W. Johnson for a variance to the front yard setback regulations and a special exception to the visual obstruction regulations at 9008 San Benito Way. This property is more fully described as Lots 16, 17, 18, & 19, Block 12/5239, and is zoned MF-2(A), which requires a front yard setback of 25 feet, and a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct and/or maintain a structure and provide a 3 foot front yard setback, which will require a 22 foot variance to the front yard setback regulations, and to locate and maintain items in a required visibility triangle, which will require a special exception to the visual obstruction regulations.

LOCATION: 9008 San Benito Way

APPLICANT: Eric W. Johnson

REQUESTS:

The following request has been made on a site that is developed with a multifamily development use (San Benito Apartments):

- A variance to the front yard setback regulations of 9’ 6” is made to relocate and maintain an existing dumpster “structure” in the 25’ front yard setback to a new location to the southwest of its current location 15’ 6” from the front property line or 9’ 6” into in the site’s 25’ front yard.

Originally, the following requests had been made:

- A variance to the front yard setback regulations of 22’ had been made to relocate and maintain an existing dumpster “structure” in the 25’ front yard setback to a new location to the southwest of its current location 3’ from the front property line or 22’ into in the site’s 25’ front yard; and

- A request for special exception to the visual obstruction regulations had been made to relocate and maintain the existing dumpster structure (and 6' high wood fence/enclosure) in a driveway to the northeast in a 20' driveway visibility triangle into the site from San Benito Way. (Note that the applicant's submittal of a revised site plan on October 1st denotes the dumpster structure outside the 20' drive approach visibility triangle).

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.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

The Board shall grant a special exception to the requirements of the visual obstruction regulations when, in the opinion of the Board, the item will not constitute a traffic hazard.

STAFF RECOMMENDATION (variance):

Denial

Rationale:

- Staff concluded that there was no property hardship to the site that warranted a front yard variance in this case made to relocate and maintain an existing dumpster "structure" in the front yard setback.
- The applicant had not substantiated how the physical features of the flat, rectangular in shape, and 32,000 square foot (200' x 160') subject site preclude it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same MF-2(A) zoning classification while simultaneously complying with code provisions including front yard setback regulations.

STAFF RECOMMENDATION (visual obstruction):

Denial without prejudice

Rationale:

- The applicant submitted a revised site plan representing there is no longer any item located in a required visibility triangle.

BACKGROUND INFORMATION:

Zoning:

Site: MF-2(A) (Multifamily)
North: CR & R-7.5(A) (Community retail and Single family district 7,500 square feet)
South: MF-2(A) & R-7.5(A) (Multifamily and Single family district 7,500 square feet)
East: R-7.5(A) (Single family district 7,500 square feet)
West: CR (Community retail)

Land Use:

The subject site is developed with a multifamily development use (San Benito Apartments). The area to the north is developed with a mix of single family and retail/commercial uses; and the areas to the 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 (variance):

- While the original request focused on relocating and maintaining an existing dumpster “structure” in the 25’ front yard setback to a new location to the southwest of its current location 3’ from the front property line or 22’ into in the site’s 25’ front yard, the applicant’s submitted revised site plan indicates the dumpster to be relocated 15’ 6” from the site’s front property line or 9’ 6” into the front yard setback (see Attachment E)
- The subject site is located on a block that is divided by two zoning districts- MF-2(A) and R-7.5(A). While the subject site is zoned MF-2(A) where structures in this zoning are required to provide a minimum front yard setback of 15’, the front yard setback on the subject site is 25’ because the remaining part of the block is zoned R-7.5(A) and the Dallas Development Code states that if street frontage within a block is divided by two or more zoning districts, the front yard for the entire block must comply with the requirements of the district with the greatest front yard requirement.
- A scaled site plan was originally submitted indicating that the “proposed trash enclosure” and trash container within it (approximately 30 square feet in area) located 3’ from the front property line or 22’ into the 25’ front yard setback.

- A revised scaled site plan submitted on October 1st indicates that the “proposed trash enclosure” and trash container within it (approximately 30 square feet in area) located 15’ 6” from the front property line or 9’ 6” into the 25’ front yard setback.
- According to DCAD records, the “main improvement” at 9008 San Benito Way is an “apartment” built in 1961 with 16,356 square feet in area.
- The subject site is flat, rectangular in shape, and 32,000 square feet (200’ x 160’) in area.
- The applicant has the burden of proof in establishing the following:
 1. 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.
 2. 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.
 3. The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.
- If the Board were to grant the variance request, and impose the submitted revised site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document– which in this case is a structure to be located 15’ 6” from the front property line (or 9’ 6” into the 25’ front yard setback).

GENERAL FACTS/STAFF ANALYSIS (visual obstruction):

- The applicant submitted a revised site plan on October 1st that denotes the dumpster structure is located outside the 20’ drive approach visibility triangle (see Attachment E).
- The original request focused on relocating and maintaining an existing dumpster structure (and 6’ high wood fence/enclosure) in a driveway to the northeast in a 20’ driveway visibility triangle into the site from San Benito Way.
- The Dallas Development Code states the following: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections, and 20 foot visibility triangles at drive approaches and at alleys on properties zoned single family); and
 - between two and a half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- The applicant had originally submitted a site plan and an elevation denoting a 6’ wood enclosure (with “trash container” in it) which is located in a 20’ visibility triangle at a driveway into the site from San Benito Way.

- The Sustainable Development and Construction Department Project Engineer had submitted a review comment sheet marked “Recommends that this be denied” with the following additional comment: “Proposed location conflicts with visibility triangle. Various alternatives for waste disposal are available that do not require placing receptacle in visibility triangle.”
- Before the submittal of the revised site plan, the applicant had the burden of proof in establishing how granting the request for a special exception to the visual obstruction regulations to relocate and maintain the existing dumpster structure (and 6’ high wood fence/enclosure) in a driveway to the northeast in a 20’ driveway visibility triangle into the site from San Benito Way did not constitute a traffic hazard.
- The Sustainable Development and Construction Department Project Engineer submitted a revised review comment sheet marked “Has no objections” with the following additional comment: “No longer in visibility triangle.”
- Staff suggests that the Board deny the request for a special exception to the visual obstruction regulations without prejudice given that this request is no longer needed given the submittal of the revised site plan on October 1st.

Timeline:

July 20, 2015: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

August 19, 2015: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

August 19, 2015: The Board Administrator emailed the following information to the applicant:

- 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 2nd deadline to submit additional evidence for staff to factor into their analysis; and the September 11th 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 & 8, 2015: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachments A and B).

September 8, 2015: 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 Board of Adjustment Chief Planner, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans

Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

- September 11, 2015: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" with the following additional comment: "Proposed location conflicts with visibility triangle. Various alternatives for waste disposal are available that do not require placing receptacle in visibility triangle."
- September 23, 2015: The Board of Adjustment Panel B conducted a public hearing on this application. The Board Administrator circulated a revised site plan submitted by the applicant and revised comments from the Sustainable Development and Construction Department Project Engineer to the Board at the briefing (see Attachments C and D). The Board delayed action on this application until their next public hearing to be held on October 21, 2015.
- September 24, 2015: The Board Administrator sent an email to the applicant that noted the decision of the panel, the September 30th deadline to submit any additional information to staff for their review, and the October 9th deadline to submit additional evidence to be incorporated into the Board's docket materials.
- October 1, 2015: The Building Inspection Senior Plans Examiners/Development Code Specialist forwarded additional information from the applicant to the Board Administrator (see Attachment E).
- October 6, 2015: 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 Board of Adjustment Chief Planner, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.
- October 9, 2015: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections" with the following additional comment: "No longer in visibility triangle."

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 23, 2015

APPEARING IN FAVOR: Eric Johnson, 9008 San Benito Way, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Bartos**

I move that the Board of Adjustment in Appeal No. **BDA 145-096** hold this matter under advisement until **October 21, 2015**.

SECONDED: **Johnson**

AYES: 5 – Reynolds, Hounsel, Johnson, Agnich, Bartos

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

***Member San Gillespie recused himself and did not hear or vote on this matter.**

BOARD OF ADJUSTMENT ACTION: October 21, 2015

APPEARING IN FAVOR: Eric Johnson, 9008 San Benito Way, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: **Cannon**

I move that the Board of Adjustment, in request No. **BDA 145-096**, on application of Eric W. Johnson, **grant** a 9-foot 6-inch variance to the front yard setback regulations because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan is required.

SECONDED: **Winslow**

AYES: 5 –Hounsel, Brannon, Winslow, Cannon, Lewis

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

MOTION #2: **Cannon**

I move that the Board of Adjustment, in request No. **BDA 145-096**, on application of Eric Johnson, **deny without prejudice** the special exception to maintain items in the visibility triangles because our evaluation of the property and the testimony shows that granting the application would constitute a traffic hazard.

SECONDED: Hounsel

AYES: 5 –Hounsel, Brannon, Winslow, Cannon, Lewis

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

1:52 P.M.: Break

1:59 P.M.: Resumed

FILE NUMBER: BDA 145-099(SL)

BUILDING OFFICIAL’S REPORT: Application of Barbara McDaniel, represented by Chris Hamilton, requesting that the board consider establishing a compliance date for the nonconforming use at 5500 Swiss Avenue. This property is more fully described as Lot 12, 11, & part of 10, Block 12/1862. The property is zoned PD 63 (H/1, Area A), which establishes the uses allowed in this zoning district and provides that the civic, social, and fraternal associations use (medical society auxiliary social club) is nonconforming.

LOCATION: 5500 Swiss Avenue

APPLICANT: Barbara McDaniel
Represented by Chris Hamilton

REQUEST:

- A request is made for the Board of Adjustment to establish a compliance date for a nonconforming civic, social, and fraternal associations (medical society auxiliary social club) use on the subject site.

BACKGROUND INFORMATION:

Zoning:

Site: PD 63 (H/1, Area A) (Planned Development, Historic)
North: PD 63 (H/1, Area A) (Planned Development, Historic)
South: PD 63 (H/1, Area A) (Planned Development, Historic)
East: PD 99 (Planned Development)
West: PD 63 (H/1, Area A) (Planned Development, Historic)

Land Use:

The site is currently developed with a nonconforming civic, social, and fraternal associations (medical society auxiliary social club) use. The areas to the north, south, and west are developed with single family uses; the area to the east is developed with a mix of multifamily and single family uses, and a vacant lot.

Zoning/BDA History:

1. Z145-337, Property at 5500 Swiss Avenue (the subject site) A request for a PD (Planned Development) has been made to create a permanent land use with parking requirements. This application has not been scheduled for a City Plan Commission public hearing.

GENERAL FACTS:

- Property address of the nonconforming use: 5500 Swiss Avenue: civic, social, and fraternal associations use (medical society auxiliary social club).
- Reason the use is classified as nonconforming: On September 10, 1973, PD 63 was created and allowed the following use: “charitable and philanthropic designation for the Women’s Auxiliary to the Dallas County Medical Society” at 5500 Swiss Avenue. On January 23, 1985, PD 63 was amended as follows: “medical society auxiliary social club use currently operated by the Dallas County Medical Society Auxiliary at 5500 Swiss Avenue is expressly recognized as a nonconforming use.”
- Date that use became nonconforming: January 23, 1985.
- City records indicate that a certificate of occupancy number 8006167595 was issued on September 16, 1980 for a “(6994) Civic, social, and fraternal associations” (medical society club) at 5500 Swiss Avenue to owner Dallas County Medical Society Auxiliary.
- The Dallas Development Code states that a nonconforming use is a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time.
- The record owner of the property with the nonconforming “civic, social, and fraternal associations” use (medical society auxiliary social club) could eliminate its nonconforming use status by obtaining a change in zoning to allowed the use.
- In a request for a compliance date for a nonconforming use, the applicant has the burden of proof in establishing that the continued operation of the nonconforming civic, social, and fraternal associations use (medical society auxiliary social club) will have an adverse effect on nearby properties.
- The October 21st the board of adjustment shall hold a public hearing to determine whether continued operation of the nonconforming civic, social, and fraternal associations use (medical society auxiliary social club) will have an adverse effect on nearby properties. The Dallas Development Code states that if, based on the evidence presented at the public hearing, the board determines that continued operation of this use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for the nonconforming use (at a subsequent public hearing); otherwise, it shall not.

DALLAS DEVELOPMENT CODE SECTION 51A-4.704 - COMPLIANCE REGULATIONS FOR NONCONFORMING USES:

(a) Compliance regulations for nonconforming uses. It is the declared purpose of this subsection that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.

(1) Amortization of nonconforming uses.

(A) Request to establish compliance date. The city council may request that the board of adjustment consider establishing a compliance date for a nonconforming use. In addition, any person who resides or owns real property in the city may request that the board consider establishing a compliance date for a nonconforming use. Upon receiving such a request, the board shall hold a public hearing to determine whether continued operation of the nonconforming use will have an adverse effect on nearby properties. If, based on the evidence presented at the public hearing, the board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for the nonconforming use; otherwise, it shall not.

(B) Factors to be considered. The board shall consider the following factors when determining whether continued operation of the nonconforming use will have an adverse effect on nearby properties:

(i) The character of the surrounding neighborhood.

(ii) The degree of incompatibility of the use with the zoning district in which it is located.

(iii) The manner in which the use is being conducted.

(iv) The hours of operation of the use.

(v) The extent to which continued operation of the use may threaten public health or safety.

(vi) The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust, and odor.

(vii) The extent to which public disturbances may be created or perpetuated by continued operation of the use.

(viii) The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use.

(ix) Any other factors relevant to the issue of whether continued operation of the use will adversely affect nearby properties.

(C) Finality of decision. A decision by the board to grant a request to establish a compliance date is not a final decision and cannot be immediately appealed. A decision by the board to deny a request to establish a compliance date is final unless appealed to state court within 10 days in accordance with Chapter 211 of the Local Government Code.

(D) Determination of amortization period.

(i) If the board determines that continued operation of the nonconforming use will have an adverse effect on nearby properties, it shall, in accordance with the law, provide a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.

(ii) The following factors must be considered by the board in determining a reasonable amortization period:

(aa) The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.

(bb) Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.

(cc) Any return on investment since inception of the use, including net income and depreciation.

(dd) The anticipated annual recovery of investment, including net income and depreciation.

(E) Compliance requirement. If the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.

(F) For purposes of this paragraph, "owner" means the owner of the nonconforming use at the time of the board's determination of a compliance date for the nonconforming use.

Timeline:

July 23, 2015: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

August 19, 2015: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

August 19, 2015: The Board Administrator contacted the applicant's representative and emailed him the following information:

1. His submitted application materials (**that did not include the submitted appendix/exhibits**).
2. A copy of the section from the Dallas Development Code that describes the Board of Adjustment (Section 51A-3.102).
3. A copy of the City of Dallas Board of Adjustment Working Rules of Procedure.
4. A copy of the section of the Dallas Development Code that provides the definition of "nonconforming use" (Section 51A-2.102 (90)).
5. A copy of the section of the Dallas Development Code that describes the Board of Adjustment hearing procedures (Section 51A-4.703).
6. The standard as to how the board is able to consider/grant a request to establish a compliance date for a nonconforming use (Section 51A-4.703(a)(1)(A)).
7. A copy of the procedure for board of adjustment amortization of a nonconforming use.
8. A document that provides the public hearing date and other deadlines for submittal of additional information to staff/the board beyond what is included in the attached application materials, noting that no staff recommendation will be made on your application to the board.

9. The board's rule pertaining to documentary evidence.

The Board Administrator requested that the applicant's representative review the attached application materials to make sure they were complete and the Building Official's Report/second page of the application (page 2 of 43 in these materials); and that he contact the Building Inspection Senior Plans Examiners/Development Code Specialist at 214/948-4475 no later than noon, Wednesday, September 2nd with regard to any amendment to the Building Official's report that he felt was necessary to address the issue at hand.

The Board Administrator requested that the applicant's representative email him a copy of the materials in the notebook that he submitted to the Building Inspection Senior Plans Examiners/Development Code Specialist in Building Inspection, and courier one additional copy of this notebook to him by August 26th.

August 21, 2015: The applicant's representative emailed the Board Administrator a copy of the materials in the notebook that he submitted to the Building Inspection Senior Plans Examiners/Development Code Specialist in Building Inspection, and couriered one additional copy of this notebook that he had submitted with the application to Building Inspection on July 23rd.

August 21, 2015: The Board Administrator wrote/sent the record owner of the property (Dallas County Medical Society Womens Auxilary) a letter (with a copy to the applicant, Barbara McDaniel, and the applicant's representative, Chris Hamilton) that informed her that a Board of Adjustment case had been filed against the nonconforming "outside sales" use on the property. The letter included following enclosures:

1. A copy of the Board of Adjustment application and related materials submitted in conjunction with the application by the applicant or by the city staff.
2. A copy of the section of the Dallas Development Code that describes the Board of Adjustment (Section 51A-3.102).
3. A copy of the section of the Dallas Development Code that provides the definition of "nonconforming use" (Section 51A-2.102 (90)).
4. A copy of the section of the Dallas Development Code that provides provisions for "nonconforming uses and structures" (Section 51A-4.704).
5. A copy of the section of the Dallas Development Code that describes the Board of Adjustment hearing procedures (Section 51A-4.703).
6. A copy of the City of Dallas Board of Adjustment Working Rules of Procedures.
7. A copy of the hearing procedures for board of adjustment

amortization of a nonconforming use.

The letter noted that the request was scheduled to be heard by Board of Adjustment Panel B at a **public hearing on Wednesday, October 21, 2015, Dallas City Hall, L1 Conference Center Auditorium, 1500 Marilla Street, 1:00 p.m.**, that staff will brief the board on this matter prior to the public hearing on the morning of the same day, in the same room of Dallas City Hall, that the briefing was an open meeting which he/she was welcome to attend; that his/her attendance at this briefing/public hearing was strongly encouraged; and that notification signs posted by the City should remain on the property in the approximate locations posted by the director; and that if there was any information that he/she would like to have incorporated into the board's docket, please submit this information to him at steve.long@dallascityhall.com, no later than 1 p.m., Friday, October 9th.

October 6, 2015: 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 Board of Adjustment Chief Planner, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

October 6 & 7, 2015: The Board Administrator emailed the applicant's representative and the attorney representing the record owner of the nonconforming use on the subject site that the deadline to submit additional information to be included in the board's docket was extended to 1 p.m., Monday, October 12th.

October 7, 2015: The Building Inspection Senior Plans Examiners/Development Code Specialist forwarded a revised document stating the date in which the use on the subject site became nonconforming to the Board Administrator (see Attachment A).

October 12, 2015: The applicant's representative submitted "Supplemental Information In Support of Barbara McDaniel's Application to the Board of Adjustment to Set a Compliance Date for the Nonconforming Use at 5500 Swiss Avenue."

October 12, 2015: The attorney representing the record owner of the nonconforming use on the subject site submitted a document entitled "Respondent Dallas County Medical Society Alliance Foundation's Request For Hearing Deferral, And, Subject To Such Request, Response to

Barbara McDaniel's Application To Set A Compliance Date For The Nonconforming Use at 5500 Swiss Avenue" with related exhibits.

BOARD OF ADJUSTMENT ACTION: October 21, 2015

APPEARING IN FAVOR: Chris Hamilton, 5521 Swiss Ave., Dallas, TX
Stephanie Stanley, 5505 Gaston Ave., Dallas, TX
Barbara McDaniel, 5439 Swiss Ave., Dallas, TX
Lee Jones, 4937 Swiss Ave., Dallas, TX
David Dean, 5420 Swiss Ave., Dallas, TX

APPEARING IN OPPOSITION: Angela Hunt, 8811 Antrim Dr., Dallas, TX
Sawnie McEntire, 1700 Pacific, Ste. 4400, Dallas, TX
Neil Emmons, P.O. Box 191474, Dallas TX
Wendy Hansen, 3813 Wentwood, Dallas, TX

MOTION #1: Cannon

Motion was made to suspend the rules and accept the evidence that was being presented.

SECONDED: Brannon

AYES: 5 –Hounsel, Brannon, Winslow, Cannon, Lewis

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

MOTION #2: Hounsel

Motion was made to give each side an additional 5 minutes to present their case.

SECONDED: Cannon

AYES: 5 –Hounsel, Brannon, Winslow, Cannon, Lewis

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

MOTION #2: Cannon

I move that the Board of Adjustment in Appeal No. **BDA 145-099**, deny the applicant's request for expedited compliance **without prejudice** because based on the evidence and testimony presented at the public hearing, we find that continued operation of this nonconforming use will not have an adverse effect on nearby properties.

SECONDED: Brannon

AYES: 4 –Hounsel, Winslow, Cannon, Lewis

NAYS: 1 - Brannon

MOTION PASSED: 4 – 1

MOTION: Cannon

I move to adjourn this meeting.

SECONDED: Lewis

AYES: 5–Hounsel, Brannon, Winslow, Cannon, Lewis

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

3:48 P.M. Board Meeting adjourned for **October 21, 2015**

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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