

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1 AUDITORIUM
MONDAY, NOVEMBER 14, 2016**

MEMBERS PRESENT AT BRIEFING: Bruce Richardson, Chair, Marla Beikman, regular member, Alex Winslow, regular member, Phil Foster, regular member and Cheri Gambow, regular 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 Cheri Gambow, regular 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

1:01 P.M. The Board of Adjustment staff conducted a briefing and Public Hearing on the Board of Adjustment's **November 14, 2016** docket.

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

MISCELLANEOUS ITEM NO. 1

Approval of the Board of Adjustment Panel C, October 17, 2016 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 14, 2016

MOTION: None

The minutes were approved without a formal vote.

FILE NUMBER: BDA156-107(SL)

BUILDING OFFICIAL’S REPORT: Application of Jeff Baron for a variance to the front yard setback regulations and for variances to the side yard setback regulations at 5126 Monticello Avenue. This property is more fully described as Lot 1, Block W/2191, and is zoned CD 9, which requires a front yard setback of 35 feet 2 inches and requires a side yard setback of 5 feet on the west side and 10 feet on the east side. The applicant proposes to construct a structure and provide a 42 foot 1 inch front yard setback, which will require a 6 foot 11 inch variance to the front yard setback regulations, to provide a 2 foot side yard setback on the west side, which will require a 3 foot variance to the 5 foot side yard setback regulations on the west side, and to provide an 8 foot side yard setback on the east side, which will require a 2 foot variance to the 10 foot side yard setback regulations on the east side.

LOCATION: 5126 Monticello Avenue

APPLICANT: Jeff Baron

REQUESTS:

The following requests are made on property developed with 1-story, single family home structure straddling a property line between the subject site and the lot to the east that the applicant proposes to replace with a 2-story single family home structure on the subject site:

- A variance to the maximum front yard setback regulations of 6’ 11” is made to construct and maintain the structure to be located 42’ 1” from the front property line or 6’ 11” further back than or behind the required 35’ 2” front yard setback.
- A variance to the side yard setback regulations of up to 3’ on the west is made to construct and maintain the structure as close as 2’ from the site’s western side property line or as much as 3’ into the site’s 5’ side yard setback on the west.
- A variance to the side yard setback regulations of 2’ on the east is made to construct and maintain the structure 8’ from the site’s eastern side property line or 2’ into the site’s 10’ side yard setback on the east.

STANDARD FOR A VARIANCE:

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

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

STAFF RECOMMENDATION:

Approval of the requests, subject to the following condition:

- Compliance with the submitted revised site plan is required.

Rationale:

- Staff concluded that the variances should be granted because the subject site is unique and different from other lots in CD 9 by being of a restrictive area (only approximately 5,800 square feet - less than the typical lot size of 7,500 square feet typical in the zoning district, and according to the applicant, 20-26 percent smaller than the typical lot in the zoning district); and of an irregular shape (a lot shape which causes only a 12' 3" width for development at the required maximum front yard setback which, according to the applicant, is not large enough to meet the architectural features required by CD 9).
- Furthermore, staff concluded that the variances should be granted because the applicant provided information documenting that the proposed structure is commensurate with development found on other properties in CD 9 that are regular in shape and of typical size, more specifically, the applicant has provided information stating that the average home square footage of 12 properties in CD 9 is approximately 2,600 square feet slightly larger than that what is proposed on the site at approximately 2,200 square feet.

BACKGROUND INFORMATION:

Zoning:

Site: CD 9 (Conservation District)
North: CD 9 (Conservation District)

South: CD 9 (Conservation District)
East: CD 9 (Conservation District)
West: PD 193 (Planned Development District)

Land Use:

The subject site is currently developed with a 1-story single family structure/use on a recognized building site that straddles a property line between the subject site and the lot to the east of the subject site. The areas to the north, south, and east are developed with single family uses; and the area to the west is US 75/North Central Expressway.

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):

- The request for a variance of 6' 11" to the maximum front yard setback regulations focuses on replacing an existing 1-story single family home on a recognized building site that straddles the property line between the subject site and the lot to the east with a 2-story home (with an approximately 1,100 square foot building footprint and approximately 2,200 square feet of HVAC space) located 42' 1" from the site's front property line or 6' 11" further back than or behind the required 35' 2" front yard setback.
- The subject site is zoned CD (Conservation District) 9.
- The subject site is located at the southeast corner of Monticello Avenue and the Central Expressway service road. The site has one front yard setback on Monticello Avenue.
- Front yard setbacks for main structures in CD 9 are as follows: The minimum front yard setback for the main structure is the average of the front yard setback of the two adjacent houses. The maximum front yard setback for main structures is the greater setback of the two adjacent houses.
- The Building Inspection Senior Plans Examiner/Development Code Specialist has stated that a determination has been made that the front yard setback on this property is 35' 2" which is the front yard setback of the only house adjacent to the subject site. (The property to the east of the subject site is developed with a single family home; the property to the west of the subject site is the US 75/Central Expressway service road).
- The applicant has submitted a revised site plan that represents that the proposed single family home structure is to be located 42' 1" from the front property line or 6' 11" further back than the 35' 2" required maximum front yard setback.

- The applicant has provided a document stating among other things that: the already restrictive shape of the lot was reduced by eminent domain when, in 1949, the State of Texas reduced the size of the lot from 7,700 square feet to 5,802 square feet; typical lot widths in the neighborhood are between 50' – 60' providing 35' – 45' of buildable width where the subject site has a property frontage of approximately 23' (54 - 61 percent smaller than the standard lot) that without variance, the buildable width would be 12' 3" – not large enough to meet the architectural features required by CD 9; the subject site at 5,802 square feet is 20- 26 percent smaller than the typical lot area found in the zoning district; the typical lot shape is rectangular whereas the site is a polygon; and the average lot size of 12 other properties in CD 9 is 7,440 square feet (the site is 5,802 square feet) and the average home square footage of 12 properties in CD 9 is 2,558 (the site is 2,190).
- According to DCAD records, the “main improvement” at 5134 Monticello Avenue (which the applicant states is the address listed for the subject site on DCAD) is a structure built in 1935 with 995 square feet of living/total area; and with “additional improvements” listed as a 240 square foot attached garage.
- The site is flat, irregular in shape (approximately 23' on the north; approximately 67' on the south; approximately 141' on the east; and approximately 140' on the west), and according to the application is 0.134 acres (or approximately 5,800 square feet) in area.
- The site is zoned CD 9 where prior to its creation in 2002 was zoned R-7.5(A) where lots are typically 7,500 square feet.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance to front yard setback regulations is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same CD 9 zoning classification.
 - The variance to front yard setback regulations would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same CD 9 zoning classification.
- If the Board were to grant the request for a variance to the front yard setback regulations and impose the applicant's submitted revised site plan as a condition, the structure in the front yard setback would be limited to that what is shown on this plan which in this case is a single family home structure to be located 42' 1' from the site's front property line or 6' 11" further back than the required 35' 2" front yard setback.

GENERAL FACTS /STAFF ANALYSIS (side yards):

- The requests for variances to the side yard setback regulations of up to 3' on the west and of 2' on the east focus on replacing an existing 1-story single family home on a recognized building site that straddles the property line between the subject site and the lot to the east of the subject site with a 2-story home (with an approximately 1,100 square foot building footprint and approximately 2,200 square feet of HVAC space) that is as close as 2' from the site's western side property line or as much as 3' into the site's 5' side yard setback on the west, and 8' from the site's eastern side property line or 2' into the site's 10' side yard setback on the east.
- The subject site is zoned CD (Conservation District) 9.
- The subject site is located at the southeast corner of Monticello Avenue and the Central Expressway service road. The site has one front yard setback on Monticello Avenue.
- Side yard setbacks for main structures in CD 9 are as follows: Except for houses located on Homer Street, the minimum front yard setback for main structure is 5' on the west side and 10' on the east side.
- The applicant has submitted a revised site plan that represents that the proposed single family home structure is to be located as close as 2' from the site's western side property line (or 3' into this 5' side yard setback) and 8' from the site's eastern side property line (or 2' into this 10' side yard setback).
- The applicant has provided a document stating among other things that:
 - the already restrictive shape of the lot was reduced by eminent domain when, in 1949, the State of Texas reduced the size of the lot from 7,700 square feet to 5,802 square feet;
 - typical lot widths in the neighborhood are between 50' – 60' providing 35' – 45' of buildable width where the subject site has a property frontage of approximately 23' (54- 61 percent smaller than the standard lot) that without variance, the buildable width would be 12' 3" – not large enough to meet the architectural features required by CD 9;
 - the subject site at 5,802 square feet is 20- 26 percent smaller than the typical lot area found in the zoning district;
 - the typical lot shape is rectangular whereas the site is a polygon; and
 - the average lot size of 12 other properties in CD 9 is 7,440 square feet (the site is 5,802 square feet) and the average home square footage of 12 properties in CD 9 is 2,558 (the site is 2,190).
- According to DCAD records, the "main improvement" at 5134 Monticello Avenue (which the applicant states is the address listed for the subject site on DCAD) is a structure built in 1935 with 995 square feet of living/total area; and with "additional improvements" listed as a 240 square foot attached garage.
- The site is flat, irregular in shape (approximately 23' on the north; approximately 67' on the south; approximately 141' on the east; and approximately 140' on the west), and according to the application is 0.134 acres (or approximately 5,800 square feet) in area.

- The site is zoned CD 9 where prior to its creation in 2002 was zoned R-7.5(A) where lots are typically 7,500 square feet.
- The applicant has the burden of proof in establishing the following:
 - That granting the variances to the side yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variances to side yard setback regulations is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same CD 9 zoning classification.
 - The variances to side yard setback regulations would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same CD 9 zoning classification.
- If the Board were to grant the requests for variances to the side yard setback regulations and impose the applicant's submitted revised site plan as a condition, the structure in the side yard setbacks would be limited to that what is shown on this plan which in this case is a single family home structure to be located as close as 2' from the site's western side property line or as much as 3' into the site's 5' side yard setback on the west, and 8' from the site's eastern side property line or 2' into the site's 10' side yard setback on the east.

Timeline:

- August 30, 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.
- October 10, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- October 10, 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 October 26th deadline to submit additional evidence for staff to factor into their analysis; and the November 4th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

October 25 & 26,
2016:

The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachments A and B).

November 1, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, 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: NOVEMBER 14, 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 156-107(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 revised site plan is required.

SECONDED: Foster

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

NAYS: 0 -

MOTION PASSED: 5 – 0

FILE NUMBER: BDA156-112(SL)

BUILDING OFFICIAL’S REPORT: Application of Zach Baugh, represented by Eric Rodriguez, for a variance to the front yard setback regulations at 2311 Glencoe Street. This property is more fully described as Lot 11, Block 4/1975, and is zoned R-7.5(A), which requires a front yard setback of 25 feet. The applicant proposes to construct a structure and provide a 20 foot front yard setback, which will require a 5 foot variance to the front yard setback regulations.

LOCATION: 2311 Glencoe Street

APPLICANT: Zach Baugh
Represented by Eric Rodriguez

REQUEST:

A request for a variance to the front yard setback regulations of 5’ is made to complete and maintain a 3-story single family home structure, part of which is to be located as close as 20’ from the front property line or as much as 5’ into the 25’ front yard setback.

STANDARD FOR A VARIANCE:

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

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

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that the variance should be granted because the subject site is unique and different from other lots in R-7.5(A) by being of a restrictive area (only approximately 5,700 square feet – approximately 1,800 square feet less than the typical lot size of 7,500 square feet typical in the zoning district; and of an irregular shape.
- Staff concluded that the variance should be granted because the applicant provided information documenting that the proposed structure is commensurate with development found on other properties in R-7.5(A) that are regular in shape and of typical size, more specifically, the applicant has provided information stating that the average living space square footage of 5 properties in R-7.5(A) is approximately 3,300 square feet, slightly larger than that what is proposed on the site at approximately 3,100 square feet.
- Lastly, staff concluded that granting the variance in this application would not be contrary to the public interest since only a very small part of the structure (an approximately 25 square foot triangular area) would be located in the front yard setback, and that the variance is only required/requested because the 2nd and 3rd floor balconies that are a part of this structure in the front yard setback projecting up to five feet into the required front yard cannot be interpreted as “cantilevered” since these balconies are enclosed/connected by support walls on either side of them.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5(A) (Single family residential 7,500 square feet)
North: R-7.5(A) (Single family residential 7,500 square feet)
South: R-7.5(A) (Single family residential 7,500 square feet)
East: CD 15 (Conservation District)
West: R-7.5(A) (Single family residential 7,500 square feet)

Land Use:

The subject site is being developed with a single family home structure. The areas to the north, east, south, and west are developed with residential 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 variance to the front yard setback regulations of 5' focuses on completing and maintaining a 3-story single family home structure with a building footprint of approximately 610 square feet and approximately 3,100 square feet of living area, part of which (two balconies with support walls on either side of them) is to be located as close as 20' from the front property line or as much as 5' into the 25' front yard setback.
- The property is located in an R-7.5(A) zoning district which requires a minimum front yard setback of 25 feet.
- The minimum front yard provisions in the Dallas Development Code states the following:
 - Required front yards must be open and unobstructed except for fences. Except as otherwise provided in this section, ordinary projections of window sills, belt courses, cornices, and other architectural features may not project more than 12 inches into the required front yard. A fireplace chimney may project up to two feet into the required front yard if its area of projection does not exceed 12 square feet. Cantilevered roof eaves and balconies may project up to five feet into the required front yard.
- A scaled site plan has been submitted indicating that the “overhang of second and third floor balconies” structure is located as close as 20' from the front property line or as much as 5' into this 25' front yard setback.
- The Building Inspection Senior Plans Examiner/Development Code Specialist has stated that the proposal in this case requires variance to the front yard setback regulations because the 2nd and 3rd floor balconies that are a part of this structure in the front yard setback projecting up to five feet into the required front yard cannot be interpreted as “cantilevered” since these balconies are enclosed/connected by support walls on either side of them.
- The applicant’s representative has submitted a document showing that the average total living area of 5 other properties zoned R-7.5(A) is 3,309 square feet and that the total living area of the structure on the site is 3,111 square feet.
- According to DCAD records, the “main improvement” for property addressed at 2311 Glencoe Street is a structure built in 2016 with 2,920 square feet of living/total area with the following “additional improvements”: an “unassigned” frame deck.
- The subject site is flat, irregular in shape, and according to the submitted application is 0.13 acres (or approximately 5,700 square feet) in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area. The subject site is about 1,800 square feet smaller than most lots in this zoning district.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope,

that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.

- The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.
- If the Board were to grant the variance request, and impose the submitted site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document– which in this case is a structure that would be located as close as 20’ from the site’s front property line (or as much as 5’ into the 25’ front yard setback).
- The applicant’s representative has written that they are amenable to any condition the board would want to impose which would prohibit future use that would preclude the balconies in the front yard setback from being converted into enclosed living space.

Timeline:

September 14, 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.

October 10, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

October 10, 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 October 26th deadline to submit additional evidence for staff to factor into their analysis; and the November 4th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

October 26, 2016: The applicant’s representative submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

November 1, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, 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: NOVEMBER 14, 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 156-112(SL)** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: Foster

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

NAYS: 0 -

MOTION PASSED: 5 – 0

FILE NUMBER: BDA156-114(SL)

BUILDING OFFICIAL’S REPORT: Application of Robert Baldwin of Baldwin and Associates for a variance to the front yard setback regulations at 4310 N. Central Expressway. This property is more fully described as a .324 acre unplatted tract in Block G/1998, and is zoned CR, which requires a front yard setback of 15 feet. The applicant proposes to construct and maintain a structure and provide a 0 foot front yard setback, which will require a 15 foot variance to the front yard setback regulations.

LOCATION: 4310 N. Central Expressway

APPLICANT: Robert Baldwin of Baldwin and Associates

REQUEST:

A request for a variance to the front yard setback regulations of 15' is made to replace an existing stair structure and to construct/maintain an ADA ramp structure as close as on one of the site's two front property lines (Elbert Street) or as much as 15' into this 15' front yard setback on a site developed with an office use that is under renovation.

STANDARD FOR A VARIANCE:

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

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

STAFF RECOMMENDATION:

Denial

Rationale:

- Staff concluded that the variance should be denied because there was no property hardship to the site that warranted a variance to the front yard setback. While staff recognized that the site was slightly irregular in shape, the applicant had not demonstrated how the physical features of the flat, somewhat irregular in shape, and approximately 14,000 square foot site preclude it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same CR zoning classification while simultaneously complying with code provisions including front yard setback regulations.
- Staff concluded that the variance should be denied because the applicant had not substantiate how the stair and ADA ramp structures proposed to be located in the Elbert Street front yard setback could not be located elsewhere on the property in compliance with setbacks.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community retail)

North: CR (Community retail)
South: CR (Community retail)
East: R-5(A) (Single family residential 5,000 square feet)
West: PD 193 (Planned Development)

Land Use:

The subject site is developed with an office structure under renovation. The areas to the north and south are developed with nonresidential uses; the area to the east is developed with single family uses; and the area to the west is US 75/North Central Expressway.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- The request for a variance to the front yard setback regulations of 15' focuses on replacing an existing stair structure and constructing/maintaining an ADA ramp structure as close as on one of the site's two front property lines (Elbert Street) or as much as 15' into this 15' front yard setback on a site developed with an office use that is under renovation.
- The site is located at the northeast corner of US 75/North Central Expressway and Elbert Street and has two front yard setbacks as would any lot with two street frontages that is not zoned single family, duplex, or agricultural.
- Structures on lots zoned CR are required to provide a minimum front yard setback of 15'.
- Two site plans have been submitted in conjunction with this application – 1) a full scale plan and 2) a reduction plan. On October 28th, the Board Administrator brought this to the applicant's attention. If the Board were to grant this request, they may want to determine from the applicant which site plan he is officially submitting for their consideration.
- Both submitted site plans indicate that stair and ADA ramp structures are located in the 15' front yard setback along Elbert Street. The application states a request for a 15' variance is requested to the 15-foot front yard setback requirements hence an assumption is made that there are structures over 6" in height that are located as close as on the Elbert Street front property line even though this is not clearly represented on the submitted site plan.
- Both submitted site plans include the following notes:
 - "Area related to variance request for BOA. All items are within property lines and only items within area are code compliant items: code compliant steps, ADA ramp";
 - "New ramp for ADA access for ADA access to main exit and ADA parking space (minimum width allowed)"; and

- “New steps to replace existing due to cracking as well as existing steps do not meet uniform riser height per code (riser heights vary outside ranges per code). Steps are also pushed out to allow for 5’ turning diameter at top of ramp per TAS/DAAG”.
- A document has been submitted with the application stating that both the ramp and steps proposed to be located in the front yard setback are the minimum allowed in terms of depth, height and width in striving to comply with current codes while working within the existing site constraints.
- The submitted full scale site plan also represents that the existing structure is located in the two 15’ front yard setbacks on Elbert Street and North Central Expressway.
- According to DCAD records, the “improvements” for property addressed at 4310 N. Central Expressway is an “office building” built in 1954 with 6,474 square feet of area. Because records show that the existing structure on this site was built in the 50’s, it is assumed that the existing structure is a nonconforming structure.
- 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 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 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 applicant has chosen to seek variance to the front yard setback regulations for only the new stair and ADA ramp structures in the Elbert Street front yard setback and not to remedy/address the nonconforming aspect of the existing nonconforming structure in the site’s front yard setbacks on Elbert Street and North Central Expressway.
- The subject site is flat, somewhat irregular in shape, and according to the submitted application is 0.324 acres (or approximately 14,000 square feet) in area. The site is zoned CR (Community retail).
- The subject site has two front yard setbacks as would any lot with two street frontages that is not zoned single family, duplex, or agricultural.
- 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 CR 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 CR zoning classification.

- If the Board were to grant the variance request, and impose a site plan as a condition, the structures in the front yard setback would be limited to what is shown on this document– which in this case appears to be a replacement stair structure and a new ADA ramp structure located as close as on the site’s Elbert Street front property line or as much as 15’ into this 15’ front yard setback.
- Because two different site plans have been submitted in conjunction with this application, the Board may want to determine from the applicant which site plan (the submitted full scale plan or reduction plan) he is officially submitting for their consideration. If the Board were to grant the request, and impose a site plan as a condition, the structures in the setback would be limited to that what is shown on any such plan, which in this case are replacement stair and ADA ramp structures to be located in the site’s Elbert Street front yard setback.
- If the Board to grant the variance request, and impose a site plan as a condition, no relief would be provided to the existing nonconforming structure in the front yard setbacks since the applicant did not request that the Board consider this aspect as part of his application. If the nonconforming structure on the subject site is destroyed by the intentional act of the owner or the owner’s agent, any new structure would be required to provide a 15’ front yard setback on US 75/North Central Expressway and Elbert Street.

Timeline:

September 15, 2016: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

October 10, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

October 10, 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 October 26th deadline to submit additional evidence for staff to factor into their analysis; and the November 4th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

November 1, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, 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: NOVEMBER 14, 2016

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

APPEARING IN OPPOSITION: No one

MOTION: Winslow

I move that the Board of Adjustment, in Appeal No. **BDA 156-114**, on application of Robert Baldwin, **grant** a 15-foot variance to the front yard setback regulations, because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: Beikman

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

NAYS: 0 -

MOTION PASSED: 5 – 0

FILE NUMBER: BDA167-002(SL)

BUILDING OFFICIAL'S REPORT: Application of Meredith Wallace for a variance to the building height regulations at 4303 W. Lovers Lane. This property is more fully described as Lot 1A, Block D/4974, and is zoned PD-326 (Area A), which limits the maximum building height to 26 feet due to a residential proximity slope. The applicant proposes to construct and/or maintain a structure with a building height of 33 feet 10 inches, which will require a 7 foot 10 inch variance to the maximum building height regulations.

LOCATION: 4303 W. Lovers Lane

APPLICANT: Meredith Wallace

REQUEST:

A variance to the height regulations (specifically to the residential proximity slope) of 7' 10" is requested to complete and maintain a 33' 10" high office structure that exceeds the maximum 26' in height permitted by the residential proximity slope that begins at the R-10(A) single family residentially-zoned property immediately north of the subject site.

STANDARD FOR A VARIANCE:

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

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

STAFF RECOMMENDATION:

Approval of the requests, subject to the following condition:

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

Rationale:

- Staff concluded that the variance should be granted because the subject site is unique and different from other lots in PD 326 by being of a restrictive area caused by having two front yard setbacks and being smaller in area than other lots in the same PD 326 zoning district.
- Furthermore, staff concluded that granting the variance would not be contrary to public interest given that the one single family property to the immediate north is oriented to face away from the development on the site and is separated by an ally easement and mature trees, and that the building on the site requiring the height variance is more than 50' from the rear property line when the required rear yard setback in PD 326 is 20'.

BACKGROUND INFORMATION:

Zoning:

Site: PD 326 (Area A) (Planned Development)
North: R-10(A) (Single family residential 10,000 square feet)
South: PD 326 (Area A) (Planned Development)
East: PD 326 (Area A) (Planned Development)
West: PD 326 (Area A) (Planned Development)

Land Use:

The subject site is being developed with an office structure/use. The area to the north is developed with single family uses; and the areas to the east, south, and west are developed with what appears to be mostly office uses.

Zoning/BDA History:

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

GENERAL FACTS /STAFF ANALYSIS:

- The request for a variance to the height regulations (specifically to the residential proximity slope) of 7' 10" focuses on completing and maintaining a two-story, 33' 10" high structure (with approximately 5,500 square feet in area) that exceeds the maximum 26' in height permitted by residential proximity slope that begins at the R-10(A) single family residentially-zoned property immediately north of the subject site.
- While the application references a request for a variance to the building height and to appeal the decision of the Building Official, the Building Inspection Senior Plans Examiners/Development Code Specialist forwarded an additional document on this matter to the Board Administrator (see Attachment B). The Building Inspection Senior Plans Examiners/Development Code Specialist stated the following:
 1. payment was accepted only for, and the Building Official's report was written only for a variance appeal to the residential proximity slope height, because an appeal of "the decision of the Building Official to issue a stop work order" is not under the jurisdiction of the zoning board of adjustment.
 2. An appeal of "the decision of the Building Official to issue a stop work order" falls under the jurisdiction of the building code Advisory, Examining and Appeals Board per Chapter 52: Administrative Procedures for the Construction Codes, Subchapter 2: Organization and Enforcement, Section 204: Advisory, Examining and Appeals Board.
- The subject site is zoned PD 326 (Area A). The ordinance states that Area A (along with Area A-1) is to provided uses similar to the LO-1 Limited Office District, as opportunities for limited neighborhood serving retail uses and single family uses in combination or singularly.

- The site is located at the northeast corner of W. Lovers Lane and N. Cresthaven Road.
- The minimum front yard setback for properties in PD 326 is 15’.
- Given the zoning and location of the corner lot subject site, it has two 15’ front yard setbacks – a front yard setback along W. Lovers Lane (the shorter of the two frontages of the subject site which is always a front yard in this case) and a front yard setback along N. Cresthaven Road, (the longer of the two frontages which is typically considered a side yard). However the site has a front yard setback along N. Cresthaven Road in order to maintain continuity of the established front yard setback along this street frontage where homes/lots to the north “front” on N. Cresthaven Road.
- The maximum height for a structure in PD 326 is 30’, however, any portion of a structure over 26’ in height cannot be located above a residential proximity slope originating from an R, R(A), D, D(A), TH, or TH(A) district.
- A building permit was issued for the structure on June 29, 2016. Since that time, it has been determined that the structure encroaches into the residential proximity slope.
- Building Inspection staff has confirmed that the structure complies with the maximum height of the district if not for the residential proximity slope.
- In this case, given that the subject site is adjacent to single family residentially-zoned property (R-10(A)) to the north (with a land use as a single family), the height of a structure must comply with a 1:3-slope (or 1 foot in height for every 3 foot away from the property line in an R, R(A), D, D(A), TH, TH(A) residential zoning district). The RPS on the subject site originates at the R-10(A) zoned property line north of the site.
- According to DCAD records, there are “no improvements” at 4303 W. Lovers Lane. However the office building is currently under construction.
- The site is flat, rectangular in shape (approximately 168’ x 68’), and according to the application is 0.27 acres (or approximately 11,700 square feet) in area. The site has two 15’ front yard setbacks, and two 5’ side yard setbacks. Most lots in this zoning district would have one 15’ front yard setback, two 5’ side yard setbacks, and one 5’ rear yard setback.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the height regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance to height regulations is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD 326 zoning classification.
 - The variance to height setback regulations would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted

by this chapter to other parcels of land in districts with the same PD 326 zoning classification.

- If the Board were to grant the request for a variance to the height regulations and impose the applicant's submitted site plan and exterior elevations documents as a condition, the structure above the RPS line would be limited to that what is shown on these documents.

Timeline:

November 2, 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.

November 2, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

November 4, 2016: The Board Administrator emailed the applicant's representative with the following information:

- a copy of the submitted application materials;
- the provision from the Dallas Development Code allowing the board to grant variance to the height regulations (51A-3.102(d)(10)); and
- The board's rule pertaining to documentary evidence.

The email also called to the representatives' attention: 1) the newspaper ad in the November 4th newspaper; 2) that this ad stated that a 7 foot 10 inch variance to the maximum building height is required; 3) the deadline to submit additional materials to be included in the board's docket was 1 p.m. November 4th, which would hopefully include among other things a representation of how much of the structure requires variance and/or is above the RPS line since from what the Board Administrator had reviewed, of the difficulty he had in making this representation since the two elevations submitted with the application did not provide a reference point of where the RPS line starts from.

November 4, 2016: The applicant's representative submitted additional information to staff (see Attachment A).

November 4, 2016: The Building Inspection Senior Plans Examiners/Development Code Specialist forwarded a document to the Board Administrator (see Attachment B).

November 7, 2016: A staff review team meeting was held regarding this request. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Board Administrator, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: NOVEMBER 14, 2016

APPEARING IN FAVOR: Jonathan Vinson, 2323 Ross Ave., Dallas, TX
Elizabeth Johnson, 7005 Greentree, Dallas, TX

APPEARING IN OPPOSITION: Noelle Wheeler, 4321 N Cresthaven Rd, Dallas, TX
Terry Kearns, 4930 West Amhearst, Dallas, TX

MOTION: Beikman

I move that the Board of Adjustment, in Appeal No. **BDA 167-002**, on application of Meredith Wallace, **grant** a 7-foot 10-inch variance to the maximum building height regulations due to a residential proximity slope, because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Foster

AYES: 4 – Beikman, Winslow, Foster, Gambow

NAYS: 1 - Richardson

MOTION PASSED: 4 – 1

MOTION: Richardson

I move to adjourn this meeting.

SECONDED: Beikman

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

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

2:51 P. M. - Board Meeting adjourned for **November 14, 2016**

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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