

**BOARD OF ADJUSTMENT, PANEL B  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM  
WEDNESDAY, OCTOBER 19, 2011**

MEMBERS PRESENT AT BRIEFING: Darlene Reynolds, Vice Chair, Sam Gillespie, Panel Vice Chair Christian Chernock, regular member Paula Leone, regular member and Jim Gaspard, alternate member

MEMBERS ABSENT FROM BRIEFING: David Wilson, regular member

MEMBERS PRESENT AT HEARING: Darlene Reynolds, Vice Chair, Sam Gillespie, Panel Vice Chair Christian Chernock, regular member Paula Leone, regular member and Jim Gaspard, alternate member

MEMBERS ABSENT FROM HEARING: David Wilson, regular member

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Tammy Palomino, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, Jerry Svec, Traffic Engineer and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Tammy Palomino, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, Jerry Svec, Traffic Engineer and Trena Law, Board Secretary

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**11:00 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **October 19, 2011 docket.**

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**1:05 P.M.**  
The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel B September 21, 2011 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION:    OCTOBER 19, 2011**

**MOTION: Chernock**

I move approval of the **Wednesday, September 21, 2011** Board of Adjustment Public Hearing minutes.

**SECONDED: Gaspard**

**AYES: 5– Reynolds, Gillespie, Chernock, Leone, Gaspard**

**NAYS: 0 –**

**MOTION PASSED 5 – 0 (unanimously)**

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**MISCELLANEOUS ITEM NO. 2**

Consideration and approval of Panel B’s 2012 Public Hearing Schedule.

**BOARD OF ADJUSTMENT ACTION:    OCTOBER 19, 2011**

**MOTION: Gaspard**

I move approval of Panel B’s 2012 Public Hearing Schedule.

**SECONDED: Leone**

**AYES: 5– Reynolds, Gillespie, Chernock, Leone, Gaspard**

**NAYS: 0 –**

**MOTION PASSED 5 – 0 (unanimously)**

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**FILE NUMBER:    BDA 101-087**

**BUILDING OFFICIAL’S REPORT:**

Application of John Batsell for a special exception to the tree preservation regulations at 1808 Sylvan Avenue. This property is more fully described as Lot 1 in City Block A/4021 and a 2.3673 acre tract in City Block 4021 and is zoned PD No. 714, Subdistrict 1B and IR, which requires mandatory tree mitigation. The applicant proposes to construct and maintain a structure and remove protected trees on the site and provide an alternate tree mitigation plan, which will require a special exception to the tree preservation regulations.

**LOCATION:            1808 Sylvan Avenue**

**APPLICANT:** John Batsell

**REQUEST:**

- A special exception to the tree preservation regulations is requested in conjunction with not fully mitigating protected trees removed on a vacant site to be developed with retail development.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- The applicant shall fully comply with Article X: Tree Preservation Regulations with one exception: the applicant is granted an extended time period in which to fully mitigate for tree removal on site to either October 19, 2013 or before the final landscape inspection for new development on the site/property, whichever comes first.

Rationale:

- The applicant has substantiated how strict compliance with the requirements of the Tree Preservation Regulations will unreasonably burden the use of the property; and that the special exception will not adversely affect neighboring property.
- The City's Chief Arborist recommends approval of this request with the imposition of the condition mentioned above, largely because the applicant proposes to fully mitigate for protected trees removed on the site but only seeks exception from the provisions by requesting an extension in time in which to do so until *after* the site has been developed.

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

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

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

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

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

## **GENERAL FACTS:**

- The Dallas Development Code states that the Tree Preservation, Removal, and Replacement Regulations apply to all property in the city except for: a) lots smaller than two acres in size that contain single family or duplex uses; and b) lots in a planned development district with landscaping and tree preservation regulations that vary appreciably from those in the provisions set forth in Chapter 51A.
- The Dallas Development Code states that if a tree removal application is approved, one or more healthy replacement trees must be planted in accordance with the following requirements:
  1. Quantity. The total caliper of replacement trees must equal or exceed the total caliper of the protected trees removed or seriously injured.
  2. Species. A replacement tree must be one of the specific “approved replacement trees” listed, and no one species of tree may constitute more than 30 percent of the replacement trees planted on a lot or tract.
  3. Location. The replacement trees must be planted on the lot from which the protected tree was removed or seriously injured, except as otherwise allowed by the code as an “alternate method of compliance with tree replacement requirements.” Replacement trees may not be planted within a visibility triangle, a water course, or an existing or proposed street or alley.
  4. Minimum size. A replacement tree must have a caliper of at least two inches.
  5. Timing. Except as otherwise provided in the code, all replacement trees must be planted within 30 days after the removal or serious injury of the protected trees.

If the property owner provides the building official with an affidavit that all replacement trees will be planted within six months, the building official shall permit the property owner to plant the replacement trees during the six-month period.

If the property owner provides the building official with a performance bond or letter of credit in the amount of the total cost of purchasing and planting replacement trees, the building official may permit the property owner up to 18 months to plant the replacement trees with the following restrictions:

    - For single family or multifamily developments, at least 50 percent of the total caliper of replacement trees must be planted before 65 percent of the development has received a final building inspection or a certificate of occupancy, and all replacement trees must be planted prior to the completion of the development; and
    - In all other cases, the replacement trees must be planted prior to the issuance of a certificate of occupancy.

A replacement tree that dies within two years of the date it was planted must be replaced by another replacement tree that complies with the tree preservation regulations.
- The Dallas Development Code provides the following “alternate methods of compliance with tree replacement requirements” if the building official determines that, due to inhospitable soil conditions or inadequate space, it would be impracticable or imprudent for the responsible party to plant a replacement tree on the lot where the protected tree was removed or seriously injured (the “tree removal property”):
  1. Donate the replacement tree to the city’s park and recreation department.

2. Plant the replacement tree on other property in the city that is within one mile of the tree removal property.
  3. Make a payment into the Reforestation Fund.
  4. Grant a conservation easement to the city.
- The applicant has stated on the application that he is “requesting an extension to the original mitigation date...an additional 24 month extension from the date of Board of Adjustment hearing.”
  - The City of Dallas Chief Arborist submitted a memo to the Board Administrator (see Attachment A). The memo states among other things how the applicant is seeking an exception to the timing provisions of the Tree Preservation Regulations triggered by tree removal on the site in conjunction with development of the property. But rather than the applicant adhering to the provisions set forth in Article X by mitigating removed trees within 6 or 18 months from the tree removal in December of 2010 (which would be mitigation by June of 2011 or June of 2012), the applicant seeks to fully mitigate once the site is developed which the applicant projects on his application to be “an additional 24 month extension from date of Board of Adjustment hearing.”

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD No. 713 (Subdistrict 1B) & IR (Planned Development and Industrial Research)  
North: PD No. 713 (Subdistrict 1B) (Planned Development)  
South: Interstate 30  
East: IR (Industrial Research)  
West: PD No. 713 (Subdistrict 2B) (Planned Development)

**Land Use:**

The site is currently undeveloped. The area to the north is developed with commercial uses; the area to the east is developed with a public use (U.S. Post Office); the area to the south is Interstate 30; and the area to the west is developed with retail/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.

**Timeline:**

- July 12, 2011: 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 21, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

September 21, 2011: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the September 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the October 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

October 4, 2011: 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 Department Current Planning Assistant Director, the Sustainable Development and Construction Department Engineering Assistant Director, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

October 6, 2011: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections."

October 11, 2011: The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment A).

### **STAFF ANALYSIS:**

- The request focuses on not fully mitigating protected trees removed on a vacant site to be developed with retail development.
- The applicant is seeking an exception to the timing provisions of the Tree Preservation Regulations triggered by tree removal on the site in conjunction with development of the vacant property. But rather than the applicant adhering to the provisions set forth in Article X by mitigating removed trees within 6 or 18 months from the tree removal in December of 2010 (which would be mitigation by June of 2011 or June of 2012), the applicant seeks to fully mitigate for the trees removed on the site once the vacant site is developed which the applicant projects to be "an additional 24 month extension from date of Board of Adjustment hearing."
- The City of Dallas Chief Arborist supports the applicant's request on the condition that the Board impose a condition in conjunction with granting the request that the applicant be required to fully mitigate for the trees removed on the site with an extended time period beyond what the code requires in this case, full mitigation after the site has been developed (which is estimated to be two years from the board of adjustment hearing date on the application - October 2013) or before final landscape inspection, whichever comes first.
- The applicant has the burden of proof in establishing the following:

- Strict compliance with the requirements of the Tree Preservation Regulations of the Dallas Development Code will unreasonably burden the use of the property; and
- The special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose the condition suggested by staff/the Chief Arborist, the site would be “excepted” from full compliance to the tree preservation regulations of the Dallas Development Code by merely having an extended time period in which to fully mitigate for protected trees removed on the site/property – an extended period in which to fully mitigate *after* development of the site/property.

**BOARD OF ADJUSTMENT ACTION:    OCTOBER 19, 2011**

APPEARING IN FAVOR:                    No one

APPEARING IN OPPOSITION:    No one

MOTION:    **Leone**

I move that the Board of Adjustment grant application **BDA 101-087** 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 Article X tree preservation regulations is required, except that all tree mitigation must be completed by October 19, 2013, or before the final landscape inspection for the new development, whichever comes first.

SECONDED:    **Gillespie**

AYES: 5– Reynolds, Gillespie, Chernock, Leone, Gaspard

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

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FILE NUMBER:    BDA 101-091

**BUILDING OFFICIAL’S REPORT:**

Application of Pablo Chavez for a variance to the front yard setback regulation at 3021 Bachman Drive. This property is more fully described as Lot 1C in City Block A/5783 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 3 foot front yard setback, which will require a variance of 12 feet.

LOCATION:                    3021 Bachman Drive

APPLICANT:                Pablo Chavez

**REQUEST:**

- A variance to the front yard setback regulations of 12' is requested in conjunction with constructing and maintaining an approximately 68 square foot (8.5' x 8') "drive-up kiosk with canopy" / "drive-up machine and canopy" structure, all of which would be located in one of the site's two 15' front yard setbacks: Bachman Drive. The site is developed with a retail strip center.

**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 zoned CR in that it is virtually triangular in shape. The atypical shape of this approximately 31,000 square foot lot precludes it from being developed in a manner commensurate with development on other similarly zoned CR properties that are rectangular in shape.

**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.

**GENERAL FACTS:**

- The minimum front yard setback on a CR zoned lot is 15 feet. The subject site has two street frontages and hence, two front yard setbacks, one along Northwest Highway, the other along Bachman Drive. The applicant has a site plan indicating a "new drive-up machine and canopy" structure that is located 3' from the Bachman Drive front property line or 12' into this required 15' front yard setback. The applicant has submitted an elevation of the "drive-up kiosk with canopy" structure denoting that it is approximately 10' in height, and approximately 8.5' long and 8' wide.

- According to calculations taken by the Board Administrator from the submitted site plan, all of the approximately 68 square foot (8.5' x 8') "drive-up kiosk with canopy" structure is located in the 15' Bachman Drive front yard setback. (No structure is shown to be located in the site's 15' Northwest Highway front yard setback).
- The site is flat, virtually triangular in shape, and according to the application, 0.7106 acres in area. The site is zoned CR (Community Retail). The site has two 15' front yard setbacks which is typical of any corner lot that has a street frontage and is not zoned single family, duplex, or agricultural.
- DCAD records indicate that the "improvements" at 3021 Bachman is a "retail strip" with 5,721 square feet built in 2005.

## **BACKGROUND INFORMATION:**

### **Zoning:**

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

### **Land Use:**

The subject site is developed with a retail strip. The areas to the north and west are developed with retail uses; and the areas to the east and south is Bachman Lake.

### **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.

### **Timeline:**

- July 20, 2011: 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 21, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- September 22, 2011: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the September 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the October 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;

- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

October 4, 2011: 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 Department Current Planning Assistant Director, the Sustainable Development and Construction Department Engineering Assistant Director, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

October 6, 2011: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections."

### **STAFF ANALYSIS:**

- This request focuses on constructing and maintaining an approximately 68 square foot (8.5' x 8') "drive-up kiosk with canopy" / "drive-up machine and canopy" structure on a site developed as a retail strip center, part of which would be located in one of the site's two 15' front yard setbacks: Bachman Drive.
- The proposed "drive-up kiosk with canopy" structure that is the issue of this request is to be located on a site that has two front yard setbacks – a site with one front yard setback on Northwest Highway (where no structure is proposed to be located in); the other on Bachman Drive (where the proposed structure that is the issue of this application is shown to be 3' from the Bachman Drive front property line or 12' into this 15' front yard setback).
- According to calculations taken by the Board Administrator from the submitted site plan, all of the approximately 68 square foot (8.5' x 8') "drive-up kiosk with canopy" structure is located in the 15' Bachman Drive front yard setback. (No structure is shown to be located in the site's 15' Northwest Highway front yard setback).
- The site is flat, virtually triangular in shape, and, according to the application, 0.7106 acres in area. The site is zoned CR (Community Retail). The site has two 15' front yard setbacks which is typical of any corner lot that has a street frontage and is not zoned single family, duplex, or agricultural.
- DCAD records indicate that the "improvements" at 3021 Bachman is a "retail strip" with 5,721 square feet built in 2005.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the Bachman Drive 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 request, subject to the submitted site plan, the structure in the front yard setback would be limited to what is shown on this document – which in this case is an approximately 68 square foot (8.5' x 8') “drive-up kiosk with canopy” / “drive-up machine and canopy” structure to be located 3' from the Bachman Drive front property line (or 12' into this 15' front yard setback).

**BOARD OF ADJUSTMENT ACTION:    OCTOBER 19, 2011**

APPEARING IN FAVOR:                    No one

APPEARING IN OPPOSITION:    No one

MOTION:    **Leone**

I move that the Board of Adjustment grant application **BDA 101-091** 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:    **Gillespie**

AYES: 5– Reynolds, Gillespie, Chernock, Leone, Gaspard

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

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FILE NUMBER:            BDA 101-093

**BUILDING OFFICIAL’S REPORT:**

Application of Bill Manning, represented by Masterplan Consultants, for a special exception to the off-street parking regulations at 2906 E. Kiest Boulevard. This property is more fully described as Tract 6 in City Block 7332 and is zoned MF-2(A), which requires parking to be provided. The applicant proposes to construct and maintain a structure for a multifamily use and an accessory community center (private) use and provide 303 of the required 401 parking spaces, which will require a special exception to the off-street parking regulations of 98 spaces.

LOCATION:                    2906 E. Kiest Boulevard

**APPLICANT:** Bill Manning  
Represented by Masterplan Consultants

**REQUEST:**

- A special exception to the off-street parking regulations of 98 parking spaces (or 24 percent reduction of the 401 off-street parking spaces that are required) is requested in conjunction with replacing an existing 150-unit multifamily development with a new 146-unit multifamily development and accessory community center. More specifically, the applicant intends to redevelop the site with an approximately 173,000 square foot multifamily use with an approximately 5,000 square foot accessory community center, and provide 303 (or 76 percent) of the 401 required off-street parking spaces.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- The special exception of 98 spaces shall automatically and immediately terminate when the multifamily and the accessory community center uses on the site are changed or discontinued.

Rationale:

- The Sustainable Development and Construction Department Engineering Assistant Director has no objections to this request.
- The applicant has substantiated how the parking demand generated by the multifamily and accessory community center uses does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:

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

**GENERAL FACTS:**

- The Dallas Development Code requires the following off-street parking requirement:
  - Multifamily use: 1 space for 500 square feet of floor area. Not less than one space or more than two and one half spaces are required for each dwelling unit in a multifamily structure 36 feet or less in height.
  - Accessory community center (private) use: 1 space for 100 square feet of floor area.
- The applicant proposes to provide 303 (or 76 percent) of the required 401 off-street parking spaces in conjunction with redevelopment of the request site with multifamily uses.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).

**BACKGROUND INFORMATION:**

## **Zoning:**

**Site:** MF-2(A) (Multifamily)  
**North:** IR (Industrial Research)  
**South:** MF-2(A) (Multifamily)  
**East:** IR (Industrial Research)  
**West:** R-7.5(A) (Single family residential 7,500 square feet)

## **Land Use:**

The subject site is currently developed with a multifamily use. The areas to the north, east, and west appear to be mostly undeveloped; and the area to the south appears to be 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.

## **Timeline:**

- July 22, 2011: 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 21, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- September 21, 2011: The Board Administrator emailed the applicant's representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the September 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the October 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- October 4, 2011: 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 Department Current Planning Assistant Director, the Sustainable Development and Construction Department Engineering Assistant Director, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable

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

September 30, 2011: The applicant's representative submitted additional information beyond what was submitted with the original application (Attachment A).

October 10, 2011: The Sustainable Development and Construction Department Engineering Assistant Director submitted a review comment sheet marked "Has no objections."

**STAFF ANALYSIS:**

- This request focuses on replacing an existing 150-unit multifamily development with a new 146-unit multifamily development and accessory community center, and providing 303 of the required 401 off-street parking spaces.
- The applicant's representative has stated that although the number of units have been reduced between the existing and proposed multifamily development on the site (currently 150 units; proposed 146 units), the total square footage of the proposal has increased from what exists, hence this request to the board to reduce the required off-street parking – a proposal with less units but with greater square footage.
- The Sustainable Development and Construction Department Engineering Assistant Director has submitted a review comment sheet marked "Has no objections."
- The applicant has the burden of proof in establishing the following:
  - The parking demand generated by the proposed multifamily and accessory community center uses does not warrant the number of off-street parking spaces required, and
  - The special exception of 98 spaces would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

If the Board were to grant this request, subject to the condition that the special exception of 98 spaces shall automatically and immediately terminate if and when the multifamily and accessory community center uses are changed or discontinued, the applicant would be allowed to redevelop the property with a new multifamily development and provide only 76 percent of the required off-street parking.

**BOARD OF ADJUSTMENT ACTION:    OCTOBER 19, 2011**

APPEARING IN FAVOR:                    No one

APPEARING IN OPPOSITION:        No one

**MOTION: Leone**

I move that the Board of Adjustment grant application **BDA 101-093** 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.

- The special exception shall automatically and immediately terminate if and when the multifamily and accessory community center uses are changed or discontinued.

**SECONDED: Gillespie**

**AYES:** 5– Reynolds, Gillespie, Chernock, Leone, Gaspard

**NAYS:** 0 –

**MOTION PASSED** 5 – 0 (unanimously)

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**FILE NUMBER:** BDA 101-098

**BUILDING OFFICIAL’S REPORT:**

Application of Eric Miller for a special exception to the parking regulations at 4109 Marshall Street. This property is more fully described as Lot 3 in City Block 2/1839 and is zoned PD-595 (R-5(A), which requires parking to be provided. The applicant proposes to construct and maintain a single family residential structure and provide 0 of the required 1 parking space, which will require a special exception to the off-street parking regulations of 1 space.

**LOCATION:** 4109 Marshall Street

**APPLICANT:** Eric Miller

**REQUEST:**

- A special exception to the off-street parking regulations of 1 parking space is requested in conjunction with maintaining a single family home structure and not providing the one city-recognized required off-street parking space in an area on the site that is located behind the 20’ required building line.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- The special exception of 1 space shall automatically and immediately terminate if and when the single family use on the site is changed or discontinued.

Rationale:

- The Sustainable Development Department Project Engineer has no objections to this request.
- The applicant has substantiated how the parking demand generated by the single family use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
  - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
  - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
  - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
  - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
  - (E) The availability of public transit and the likelihood of its use.
  - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
  - (A) establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
  - (B) impose restrictions on access to or from the subject property; or
  - (C) impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
  - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or

(B) the regulations governing that specific district expressly authorize the board to grant the special exception.

**GENERAL FACTS:**

- The Dallas Development Code requires the following off-street parking requirement:
  - Single family use: 1 space in R-7.5(A), R-5(A), and TH districts. 2 spaces in all other districts.
- The Dallas Development Code requires the following off-street parking provision for residential districts:
  - In residential districts, except an MF-3(A) or MF-4(A) district, required off-street parking for residential uses must be located behind a required front building line.
- The minimum front yard setback on lots zoned PD No. 595 (R-5(A) is 20’.
- The applicant proposes to not provide the one required parking space on the site in an area behind the required front building line. Even though an area appears on the site that would accommodate at least one parking space, this area is located in the 20’ front yard setback, hence a parking space that while on the site is not recognized by the City as an “off-street parking space” that fulfills the off-street parking requirement merely because of its location in front of (as opposed to behind) the required front building line.
- The applicant submitted information to staff beyond what was submitted with the original application (see Attachment A).

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD No. 595 (R-5) (Planned Development)  
North: PD No. 595 (R-5) (Planned Development)  
South: PD No. 595 (R-5) (Planned Development)  
East: PD No. 595 (R-5) (Planned Development)  
West: PD No. 595 (R-5) (Planned Development)

**Land Use:**

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

**Timeline:**

July 29, 2011: 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 21, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

September 23, 2011: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the September 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the October 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

September 28, 2011: The applicant submitted additional information to staff beyond what was submitted with the original application (Attachment A).

October 4, 2011: 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 Department Current Planning Assistant Director, the Sustainable Development and Construction Department Engineering Assistant Director, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

October 6, 2011: The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Has no objections."

### **STAFF ANALYSIS:**

- This request focuses on maintaining a single family home structure and not providing the one city-recognized required off-street parking space in an area on the site that is located behind the 20' required building line.
- It appeared from a field visit of the site conducted by the Board Administrator on September 15<sup>th</sup> that there is a concrete slab and drive approach on the property/subject site that accommodates space for one if not two parked vehicles. But the applicant is seeking this special exception to the off-street parking regulations because the City does not officially recognize this or any area on this or any single family-zoned property that could accommodate a parking space as a space to fulfill required off-street parking if that area is not located behind the required front building line.
- The applicant has written that the subject property had been constructed to the point of final inspections before it was realized that the property did not contain a designated parking space behind the front building setback requirement.

- The Sustainable Development and Construction Department Project Engineer has submitted a review comment sheet marked “Has no objections.”
- The applicant has the burden of proof in establishing the following:
  - The parking demand generated by the single family use does not warrant the number of off-street parking spaces required, and
  - The special exception of 1 space would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, subject to the condition that the special exception of 1 space shall automatically and immediately terminate if and when the single family use is changed or discontinued, the applicant would be allowed to maintain the site without the required one parking space in an area behind the front building line.

**BOARD OF ADJUSTMENT ACTION:    OCTOBER 19, 2011**

**APPEARING IN FAVOR:**                    No one

**APPEARING IN OPPOSITION:**    No one

**MOTION: Leone**

I move that the Board of Adjustment grant application **BDA 101-098** 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.

- The special exception shall automatically and immediately terminate if and when the single family use is changed or discontinued.

**SECONDED: Gillespie**

**AYES: 5– Reynolds, Gillespie, Chernock, Leone, Gaspard**

**NAYS: 0 –**

**MOTION PASSED 5 – 0 (unanimously)**

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**FILE NUMBER:    BDA 101-085**

**BUILDING OFFICIAL’S REPORT:**

Application of Ric Nesbit for a special exception to the landscape regulations at 6414 Abrams Road. This property is more fully described as Tract 9.1 and a part of Lot 9 in City Block 1/5437 and is zoned D(A), which requires mandatory landscaping. The applicant proposes to construct and maintain a structure and provide an alternate landscape plan, which will require a special exception.

**LOCATION:**                    6414 Abrams Road

**APPLICANT:**                Ric Nesbit

**REQUEST:**

- A special exception to the landscape regulations is requested in conjunction with constructing and maintaining an approximately 1,700 square foot “new one story brick” structure on a site developed with an approximately 4,400 square foot “existing one story brick” structure/church use, and not fully meeting the landscape regulations.

**STAFF RECOMMENDATION:**

Approval, subject to the following conditions:

- Compliance with the submitted revised “site and landscape plan” is required.
- All screening plant materials must be planted and maintained in compliance with City visibility/visual obstruction regulations.

Rationale:

- The City’s Chief Arborist supports the request with the conditions mentioned above imposed in conjunction with the request.
- The applicant has substantiated how strict compliance with the requirements of the Landscape Regulations of the Dallas Development Code will unreasonably burden the use of the property, and that the special exception will not adversely affect neighboring property.

**STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:**

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

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

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

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

**GENERAL FACTS:**

- 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.

In this particular application, three plans had been submitted to staff at the time of the September 21<sup>st</sup> hearing since its submittal to the City in July 2011. One plan was submitted with the application – a plan that appeared to be merely a tree survey of the entire site. A second plan had been submitted to the Building Inspection Development Code Specialist/Senior Plans Examiner near/on September 1<sup>st</sup> - a plan that appeared to be a landscape plan for a part of the subject site (see Attachment A). A third plan had been submitted to the Chief Arborist (and forwarded to the Board Administrator on September 13<sup>th</sup>) – a revised plan of the entire subject site – a plan in which the Chief Arborist had written his memo on the merits of this landscape special exception request (see Attachment B) prior to the September 21<sup>st</sup> hearing.

- On September 21, 2011, the board conducted a public hearing and heard testimony some of which was from the City of Dallas Chief Arborist who stated that he no longer supported the applicant's request upon further review of the issue at hand. The Board delayed action on this application until October 19<sup>th</sup> to allow the applicant to prepare a revised alternate landscape plan that addressed all of the concerns that had been expressed to date by city staff.
- On October 4, 2011, the Chief Arborist forwarded a revised "site and landscape plan" to the Board Administrator (see Attachment C).
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator regarding the applicant's revised request/ "site and landscape plan" (see Attachment D). The memo states among other things how the applicant's revised "site and landscape plan" shows only additional landscaping for the area near the new construction on the property near the corner of Larmanda and Abrams, and that the new permit will require landscaping for the entire platted 1.77 acre property since the newly platted property will be under 2 acres in size where (given the size of the site) conditions for artificial lot do not apply. The arborist's memo additionally states that the site is deficient from meeting Article X: Landscape Regulations by not fully providing the perimeter landscape buffer; not providing the required number of street trees, not providing the required number of parking lot trees, and not providing the two required design standards. The arborist's memo explains several "factors" related to the application, and recommends approval of the request, subject to the approval being conditioned to: 1) the submitted revised "site and landscape plan" is required; and 2) all screening plant material must be planted and maintained in compliance with the City visibility/visual obstruction regulations.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: D (A) (Duplex)  
North: D (A) (Duplex)  
South: D (A) (Duplex)  
East: R-7.5(A) (Single family district 7,500 square feet)  
West: PD No. 302 (Planned Development)

## **Land Use:**

The site is developed as a church use (Seventh Church of Christ Scientist). The area to the north is developed with office use; the areas to the east and south are developed with single family uses; and the area to the west is developed with retail uses.

## **Zoning/BDA History:**

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

## **Timeline:**

- July 8, 2011: 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 12, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- August 18, 2011: The Board Administrator emailed the applicant's representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the September 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 9<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- September 2, 2011: In response to the Board Administrator's discovery that an alternate landscape plan had not been submitted with the application for a special exception to the landscape regulations in July, the Chief Arborist emailed the Board Administrator that he had spoken to the applicant on September 1<sup>st</sup> who had indicated that he would be attempting to have an alternate landscape plan submitted in conjunction with his request by the September 6<sup>th</sup> staff review team meeting. (As of September 2<sup>nd</sup>, the only plan that had been submitted to staff in conjunction with the applicant's request for a special exception to the landscape regulations had been what appeared to be a tree survey).
- September 6, 2011: The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded a "site/floor plan" to the Board Administrator (see Attachment A). This plan that was only a representation of the

part of the subject site on which the proposed reading room was to be located.

September 6, 2011: 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 Department Current Planning Assistant Director, Sustainable Development and Construction Department Engineering Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

September 8, 2011: The Board Administrator contacted the applicant with regard to whether location of the proposed structure that triggered the applicant's request for a special exception to the landscape regulations was in compliance with side yard setback regulations. The Board Administrator informed the applicant that the Chief Arborist had pointed out that the plan (tree survey) submitted in conjunction with the application showed a 10' setback denoted from one of two dashed lines. But depending on which of the two dashed lines was the actual side property line would be whether the structure is in compliance with the side yard setback. The applicant stated that he would touch base with his architect and confirm that this proposed structure was located out of the side yard setback since he had not intended to request variance to the side yard setback regulations for the proposed structure. (As of September 13<sup>th</sup>, the applicant had not confirmed with the Board Administrator that the proposed structure would be providing the required 10' setback from the side property line).

September 8, 2011: The Building Inspection Senior Plans Examiner/Development Code Specialist emailed the Board Administrator stating that he was unable to make a full determination with regard to whether the proposed structure was providing the required side yard setback. The applicant had submitted a plan to him and the Chief Arborist that was still showing two property lot lines side by side adjacent to the proposed structure's side yard setback area. The Code Specialist stated, however, that this did not affect the proposed alternate landscape plan since even if the applicant had to move the building over to meet the setback, the landscaping will still be provided as shown. The Code Specialist stated that the Chief Arborist had asked that the applicant's architect to confirm the correct property lot line.

September 7, 2011: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following

comments: "Need to comply with all C.O.D visibility requirements." (The Board Administrator was unable to make a determination as to compliance with these regulations in that no full scale alternate landscape/site plan had been submitted to him as of September 13<sup>th</sup>).

- September 13, 2011: The Chief Arborist submitted a reduced copy of a revised plan and a memo pertaining to the landscape special exception request to the Board Administrator (see Attachment B).
- September 21, 2011: The Board heard testimony at the public hearing some of which was from the City of Dallas Chief Arborist who stated that he no longer supported the applicant's request upon further review of the issue at hand. The Board delayed action on this application until October 19<sup>th</sup> to allow the applicant to prepare a revised alternate landscape plan that addressed all of the concerns that had been expressed to date by city staff.
- September 26, 2011: The Board Administrator wrote the applicant a letter that conveyed the board's action of September 21<sup>st</sup>, and provided the new public hearing date, the October 3<sup>rd</sup> deadline to submit additional evidence for staff to factor into their analysis; and the October 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials.
- September 28, 2011: The applicant's representative submitted a revised site plan/partial elevation to staff (see Attachment A).
- October 4, 2011: The Chief Arborist forwarded a revised "site and landscape plan" to the Board Administrator (see Attachment C).
- October 4, 2011: 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 Department Current Planning Assistant Director, the Sustainable Development and Construction Department Engineering Assistant Director, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.
- October 6, 2011: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections."

October 11, 2011: The Chief Arborist submitted a memo pertaining to the landscape and tree preservation special exception requests to the Board Administrator (see Attachment D).

**STAFF ANALYSIS:**

- This request focuses on constructing and maintaining an approximately 1,700 square foot “new one story brick” structure on a site developed with an approximately 4,400 square foot “existing one story brick” structure/church use, and being “excepted” from fully meeting the City’s landscape regulations.
- A revised “site and landscape plan” has been submitted since the September 21<sup>st</sup> hearing on this application, a plan in which the City of Dallas Chief Arborist has stated is deficient from meeting Article X: Landscape Regulations by not fully providing the perimeter landscape buffer; not providing the required number of street trees, not providing the required number of parking lot trees, and not providing the two required design standards.
- The City of Dallas Chief Arborist recommends approval of the request, subject to the approval being conditioned to: 1) the submitted revised “site and landscape plan” is required; and 2) all screening plant material must be planted and maintained in compliance with the City visibility/visual obstruction regulations.
- The applicant has the burden of proof in establishing the following:
  - Strict compliance with the requirements of the Landscape Regulations of the Dallas Development Code will unreasonably burden the use of the property; and
  - The special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose the staff suggested conditions, the site would be “excepted” from full compliance with the mandatory requirements and design standard requirements of Article X: The Landscape Regulations.
- Note that the applicant has only made an application for a special exception to the landscape regulations. Although the applicant’s revised “site and landscape plan” has addressed staff’s pervious concern with regard to the location of the proposed structure outside of the required side yard setback (the submitted revised plan denotes a 10’ distance from what appears to be the side property line), the submitted revised “site and landscape plan” does not allow city staff to fully determine the applicant’s ability to comply with the visual obstruction regulations. But approval of the applicant’s singular request to the Board – that being a request for a special exception to the landscape regulations will not provide any relief with regard to visual obstruction regulations.

**BOARD OF ADJUSTMENT ACTION: SEPTEMBER 21, 2011**

APPEARING IN FAVOR: Ric Nesbit, 1701 Druid Ct., Ft. Worth, Texas

APPEARING IN OPPOSITION: No one

MOTION: **Wilson**

I move that the Board of Adjustment in Appeal No. **BDA 101-085**, hold this matter under advisement until **October 19, 2011**.

SECONDED: **Chernock**

AYES: 5– Reynolds, Chernock, Wilson, Leone, Murrah

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

**BOARD OF ADJUSTMENT ACTION:    OCTOBER 19, 2011**

APPEARING IN FAVOR:            No one

APPEARING IN OPPOSITION:    No one

MOTION: **Chernock**

I move that the Board of Adjustment, in Appeal No. **BDA 101-085**, on application of Ric Nesbit, **grant** the request of this applicant to provide an alternate landscape plan as a special exception to the landscape requirements in the Dallas Development Code because our evaluation of the property and the testimony shows that: strict compliance with the requirements will unreasonably burden the use of the property; the special exception will NOT adversely affect neighboring property; and the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site/landscape plan is required.
- All screening plant materials must be planted and maintained in compliance with the visual obstruction regulations in the Dallas Development Code.

SECONDED: **Gaspard**

AYES: 5– Reynolds, Gillespie, Chernock, Leone, Gaspard

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

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**FILE NUMBER:**        BDA 101-089

**BUILDING OFFICIAL’S REPORT:**

Application of Frank Waterhouse, represented by Michael R. Coker Company, for variances to the front yard setback regulations and a special exception to the landscape regulations at 2817 Maple Avenue. This property is more fully described as Lot 7A in City Block 6/943 and is zoned PD-193 (LC), which requires a front yard setback of 10 feet and requires mandatory landscaping. The applicant proposes to construct and maintain a structure and provide 0 foot front yard setbacks, which will require 10 foot variances to the front yard setback regulation, and to construct and maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

**LOCATION:**            2817 Maple Avenue

**APPLICANT:** Frank Waterhouse  
Represented by Michael R. Coker Company

**October 19, 2011 Public Hearing Notes:**

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

**REQUESTS:**

- The following appeals have been made in this application on a site that is currently developed with a vacant office structure and related surface parking lot:
  1. A variance to the front yard setback regulations of 10' is requested in conjunction with constructing and maintaining an approximately 45 square foot (9' x 5') and an approximately 630 square foot (70' x 9') "planting box" structures in the site's 10' front yard setback along Maple Avenue;
  2. A variance to the front yard setback regulations of 10' is requested in conjunction with replacing an existing retaining wall with a new approximately 600 square foot (100' x 6') retaining wall and stair/ramp structures in the site's 10' front yard setback along Randall Street; and
  3. A special exception to the landscape regulations is requested in conjunction with increasing the existing building height, floor area ratio, and/or nonpermeable coverage on the site with the construction and maintenance of the proposed previously mentioned structures and a garage structure, and not fully meeting the landscape requirements of PD No. 193.

**STAFF RECOMMENDATION (variances):**

Denial

Rationale:

- The applicant had not substantiated how either the restrictive area, shape, or slope of the site/lot preclude it from being developed in a manner commensurate with development found on other PD No. 193 (LC Subdistrict) zoned lots.

**STAFF RECOMMENDATION (landscape special exception):**

Approval, subject to the following condition:

- Compliance with the submitted revised landscape plan is required except that the City Arborist may approve a deviation to the trees shown on the revised landscape plan along Randall Street if the City Arborist determines that the required trees will interfere with adjacent overhead utilities.

Rationale:

- The City's Chief Arborist recommends approval of this request whereby, if the modified revised landscape plan is imposed as a condition, the special exception

would not compromise the spirit and intent of the landscaping requirements of PD No. 193.

- In this particular case, the applicant's submitted revised alternate landscape plan is one that while is not in full compliance with the "garage screening and landscaping" requirements within PD No. 193, meets or exceeds the street tree, landscape site area, general planting area, and special planting area requirements of the ordinance.

#### **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:

- (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 LANDSCAPE REQUIREMENTS IN OAK LAWN:**

Section 26(a)(4) of Ordinance No. 21859, which establishes PD No. 193, specifies that the board may grant a special exception to the landscaping requirements of this section if, in the opinion of the Board, the special exception will not compromise the spirit and intent of this section. When feasible, the Board shall require that the applicant submit and that the property comply with a landscape plan as a condition to granting the special exception.

#### **GENERAL FACTS (variances):**

- The minimum front yard setback on a PD No. 193 (LC) zoned lot is 10 feet. The applicant had submitted a site plan with the original application indicating an approximately 90 square foot (15' x 6') "raised planter bed" structure in the site's 10' front yard setback along Maple Avenue, and a new 4' 9' high, approximately 600 square foot (100' x 6') "retaining wall/ "raised planting box" structure in the site's 10' front yard setback along Randall Street. On October 7, 2011, the applicant's representative submitted a revised site plan, revised elevations document, and a revised landscape plan to staff (see Attachment A). These revised plans were in part submitted to bring the site and proposed additions/modifications to the site in compliance with visual obstruction regulations, and to bring clarity to what had been noted on the originally submitted plans. The

applicant has stated that the revised plans do not affect the variance request for the front yard.

- According to calculations taken by the Board Administrator from the originally submitted and revised site plans, all of the structures mentioned above are in either one or both of the site's two 10' front yard setbacks.
- The site is sloped southwesterly from Maple Avenue towards Bookout Street. The site is rectangular in shape (255' x 100'), and according to the application, 0.58 acres in area. The site is zoned PD No. 193 (LC). The site has two 10' front yard setbacks which is typical of any corner lot that has a street frontage and is not zoned single family, duplex, or agricultural.
- DCAD records indicate that the improvements at 2817 Maple Avenue is an "office building" with 13,376 square feet built in 1971.

**GENERAL FACTS (landscape special exception):**

- PD No. 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind.

On October 7, 2011, the applicant's representative submitted a revised alternate landscape plan to replace the alternate landscape plan submitted with the original application (see Attachment A). According to the City of Dallas Chief Arborist, the applicant is seeking relief from the landscaping requirements of PD No. 193, specifically the "garage screening and landscaping" requirements of the ordinance.

- On October 12, 2011, the City of Dallas Chief Arborist submitted a memo to the Board Administrator pertaining to the landscape special exception request (see Attachment B). The memo stated among other things how the applicant's revised alternate landscape plan shows a site that is deficient from meeting PD No. 193 Landscaping Requirements by not providing the 10 foot landscaping buffer on a side of an above ground parking structure with the buffer containing 1 tree for every 25 feet of frontage. (The arborist notes that the applicant proposes to provide a reduced buffer with evergreen shrubs and no additional tree planting).

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD No. 193 (LC) (Planned Development District, Light commercial)  
North: PD No. 193 (LC) (Planned Development District, Light commercial)  
South: PD No. 193 (LC) (Planned Development District, Light commercial)  
East: PD No. 193 (LC) (Planned Development District, Light commercial)  
West: PD No. 193 (LC) (Planned Development District, Light commercial)

**Land Use:**

The subject site is developed with a vacant office building and related surface parking lot. The areas to the north, east, south, and west are a mix of office and 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.

**Timeline:**

July 15, 2011: 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 21, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

September 21, 2011: The Board Administrator emailed the applicant’s representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the September 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the October 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

October 4, 2011: 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 Department Current Planning Assistant Director, the Sustainable Development and Construction Department Engineering Assistant Director, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

October 7, 2011: The applicant’s representative submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

October 12, 2011: The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment B).

**STAFF ANALYSIS (variances):**

- These requests focus on constructing and maintaining an approximately “planting box” structures in the site’s 10’ front yard setback along Maple Avenue; and replacing an existing retaining wall with a new retaining wall and stair/ramp structures in the site’s 10’ front yard setback along Randall Street. The site is currently developed with a vacant office structure.
- According to calculations taken by the Board Administrator from the originally submitted and revised site plans, all of the structures mentioned above are in either one or both of the site’s two 10’ front yard setbacks.
- The site is sloped southwesterly from Maple Avenue towards Bookout Street. The site is rectangular in shape (255’ x 100’), and according to the application, 0.58 acres in area. The site is zoned PD No. 193 (LC). The site has two 10’ front yard setbacks which is typical of any corner lot that has a street frontage and is not zoned single family, duplex, or agricultural.
- DCAD records indicate that the improvements at 2817 Maple Avenue is an “office building” with 13,376 square feet built in 1971.
- The applicant has the burden of proof in establishing the following:
  - That granting the variances 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 variances are 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 No. 193 (LC) zoning classification.
  - The variances 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 PD No. 193 (LC) zoning classification.
- If the Board were to grant the front yard variance requests, imposing a condition whereby the applicant must comply with the submitted revised site plan, the structures in the front yard setbacks would be limited to what is shown on this plan – which in this case are planting box, retaining wall, and stair/ramp “structures” in the 10’ required front yard setbacks along Randall Street and Maple Avenue.

**STAFF ANALYSIS (related to the landscape special exception) :**

- This request focuses on increasing the existing building height, floor area ratio, and/or nonpermeable coverage on the site with the construction and maintenance of “planting box,” retaining wall, stair/ramp structures that require variance to front yard setback regulations, and a garage structure (that complies with front yard setbacks), and not fully meeting the landscape requirements of PD No. 193, more specifically, the “garage screening and landscaping” requirements within PD No. 193.
- The applicant seeks exception from the landscaping requirements of PD No. 193 by providing a reduced buffer with evergreen shrubs and no additional tree planting when the ordinance requires a 10 foot landscaping buffer on a side of an above ground parking structure with the buffer containing 1 tree for every 25 feet of frontage.

- The City of Dallas Chief Arborist recommends approval of the request with modifications to the submitted revised alternate landscape plan that would accommodate a tree reduction along Randall Street to avoid future conflicts with overhead and underground utilities. The Chief Arborist has prepared a memo that indicates how the site meets or exceeds street tree, landscape site area, general planting area, and special planting area requirements of PD No. 193 (see Attachment B).
- The applicant has the burden of proof in establishing the following:
  - The special exception will not compromise the spirit and intent of the section of the ordinance (Section 26: Landscape, streetscape, screening, and fencing standards).
- If the Board were to grant this request and impose the condition suggested by staff/the Chief Arborist previously mentioned in this case report, the site would be provided exception to full compliance with the “garage screening and landscaping” requirements within PD No. 193 while either meeting or exceeding the street tree, landscape site area, general planting area, and special planting area requirements of the ordinance.

**BOARD OF ADJUSTMENT ACTION:    OCTOBER 19, 2011**

APPEARING IN FAVOR:                    Mike Coker, 2700 Swiss Ave., Dallas, TX

APPEARING IN OPPOSITION:    No one

**MOTION#1:   Gillespie**

I move that the Board of Adjustment, in Appeal No. **BDA 101-089**, on application of Frank Waterhouse, represented by Michael R. Coker Company, **grant** the 10-foot variances to the minimum front yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan is required.

**SECONDED:   Chernock**

**AYES: 5– Reynolds, Gillespie, Chernock, Leone, Gaspard**

**NAYS: 0 –**

**MOTION PASSED 5 – 0 (unanimously)**

**MOTION#2:   Gillespie**

I move that the Board of Adjustment, in Appeal No. **BDA 101-089**, on application of Frank Waterhouse, represented by Michael R. Coker Company, **grant** the request of this applicant to provide an alternate landscape plan as a special exception to the landscape requirements contained in PD 193 because our evaluation of the property and the testimony shows that this special exception will not compromise the spirit and

intent of the Oak Lawn Ordinance. 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 landscape plan on 10-19-11 is required, except that the City Arborist may approve substitute landscaping along Randall Street for the trees shown on the revised landscape plan if the City Arborist determines that the required trees will interfere with the adjacent overhead utilities.

**SECONDED: Gaspard**

**AYES:** 5– Reynolds, Gillespie, Chernock, Leone, Gaspard

**NAYS:** 0 –

**MOTION PASSED 5 – 0 (unanimously)**

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**MOTION: Chernock**

I move to adjourn this meeting.

**SECONDED: Gaspard**

**AYES:** 5– Reynolds, Gillespie, Chernock, Leone, Gaspard

**NAYS:** 0 -

**MOTION PASSED 5– 0 (unanimously)**

**1:39 P.M.** - Board Meeting adjourned for **October 19, 2011.**

\_\_\_\_\_  
CHAIRPERSON

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

\_\_\_\_\_  
BOARD SECRETARY

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