

**BOARD OF ADJUSTMENT, PANEL C  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, COUNCIL CHAMBERS  
MONDAY, OCTOBER 17, 2011**

MEMBERS PRESENT AT BRIEFING: Sharon Boyd, Vice-Chair, Robert Moore, Panel Vice-Chair, Joel Maten, regular member, Ross Coulter, regular member and Bob Richard, regular member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Sharon Boyd, Vice-Chair, Robert Moore, Panel Vice-Chair, Joel Maten, regular member, Ross Coulter, regular member and Bob Richard, regular member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Tammy Palomino, Asst. City Attorney, David Cossam, Asst. Director, 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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**11:04 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **October 17, 2011** docket.

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**1:00 P.M.**

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

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel C September 19, 2011 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: OCTOBER 17, 2011**

**MOTION:** Richard

I move **approval** of the Monday, **September 19, 2011** public hearing minutes.

**SECONDED:** Maten

**AYES:** 5–Boyd, Moore, Maten, Coulter, Richard

**NAYS:** 0 –

**MOTION PASSED:** 5– 0 (unanimously)

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**MISCELLANEOUS ITEM NO. 2**

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

**BOARD OF ADJUSTMENT ACTION: OCTOBER 17, 2011**

**MOTION:** Coulter

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

**SECONDED:** Maten

**AYES:** 5–Boyd, Moore, Maten, Coulter, Richard

**NAYS:** 0 –

**MOTION PASSED:** 5– 0 (unanimously)

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**MISCELLANEOUS ITEM NO. 3**

**FILE NUMBER:** BDA 090-011

**REQUEST:** To waive the two year limitation on a request for a special exception to the off-street parking regulations of 6 parking spaces that was granted with an imposed condition by Board of Adjustment Panel C on December 14, 2009.

**LOCATION:** 3363 Park Lane

**APPLICANT:** Michael R. Coker Company

**STANDARD FOR WAIVING THE TWO YEAR TIME LIMITATION ON A FINAL DECISION REACHED BY THE BOARD:**

The Dallas Development Code states that the board may waive the two year time limitation on a final decision reached by the board if there are changed circumstances regarding the property sufficient to warrant a new hearing.

**GENERAL FACTS:**

- On December 14, 2009, the Board of Adjustment Panel C granted a request for a special exception to the off-street parking regulations of 6 spaces on the subject site (BDA 090-011), and imposed the following condition: The special exception shall automatically and immediately terminate if and when the church use is changed or discontinued as a condition to the request. (The case report stated that the request was made in conjunction with constructing and maintaining an approximately 12,000 square foot church where the applicant proposed to provide 54 of the required 60 off-street parking spaces).
- On October 3, 2011, the applicant submitted a letter to the Board Administrator requesting him to schedule for the board's consideration, a request to waive the two year time limit in place in conjunction with BDA 090-011 (see Attachment A). This letter provided an explanation as to why the owner was making the request (the applicant now seeks to add a child-care facility on the site which is a change to the church use and would cause the termination of the special exception).
- The Dallas Development Code states the following with regard to board action:
  - Except as provided below, after a final decision is reached by the board, no further request on the same or related issues may be considered for that property for two years from the date of the final decision.
  - If the board renders a final decision of denial without prejudice, the two year limitation is waived.
  - The applicant may apply for a waiver of the two year limitation in the following manner:
    - The applicant shall submit his request in writing to the director. The director shall inform the applicant of the date on which the board will consider the request and shall advise the applicant of his right to appear before the board.
    - The board may waive the two year time limitation if there are changed circumstances regarding the property sufficient to warrant a new hearing. A simple majority vote by the board is required to grant the waiver. If a rehearing is granted, the applicant shall follow the process outlined in the code.
- On October 4, 2011, the Board Administrator emailed the applicant the following information:
  - the public hearing date and panel that will consider the miscellaneous request (October 17, 2011 – Panel C);
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - an attachment that provided the public hearing date and panel that will consider the application; the October 7<sup>th</sup> to submit additional evidence to be incorporated into the Board's docket materials; and

- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

**BOARD OF ADJUSTMENT ACTION: OCTOBER 17, 2011**

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

**APPEARING IN OPPOSITION:** No one

**MOTION:** **Coulter**

I move to **waive** the two year limitation on a request for a special exception to the off-street parking regulations of 6 parking spaces that was granted with an imposed condition by Board of Adjustment Panel C on December 14, 2009.

**SECONDED:** **Maten**

**AYES:** 4–Moore, Maten, Coulter, Richard

**NAYS:** 1 – Boyd

**MOTION PASSED:** 4– 1

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**FILE NUMBER:** BDA 101-088

**BUILDING OFFICIAL’S REPORT:**

Application of Tahir Rana, represented by Ignacio Vasquez, for a special exception to the fence height regulations at 4345 Park Lane. This property is more fully described as Lot 2A in City Block D/5547 and is zoned R-10(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain a 7 foot high fence in a required front yard setback, which will require a special exception of 3 feet.

**LOCATION:** 4345 Park Lane

**APPLICANT:** Tahir Rana  
Represented by Ignacio Vasquez

**REQUEST:**

- A special exception to the fence height regulations of 3’ is requested in conjunction with constructing and maintaining a 6’ high open wrought iron picket fence with 6’ high “Austin stone or similar as approved by owner” veneer columns and 7’ high open iron gates flanked by approximately 6.5’ high, approximately 8’ long “Austin stone or similar as approved by owner” entry wing walls to be located in the 30’ front yard setback on a site developed with a single family home.

**STAFF RECOMMENDATION:**

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

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

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

**GENERAL FACTS:**

- The Dallas Development Code states that a person shall not erect or maintain a fence in a required yard more than nine feet above grade, and additionally states that in all residential districts except multifamily districts, a fence may not exceed four feet above grade when located in the required front yard. The applicant had originally submitted a site plan/partial elevation document indicating a proposal in the required front yard setback that reached a maximum height of 6' 4". However on September 28, 2011, the applicant submitted a revised site plan/partial elevation document indicating a proposal that reached 7' in height (see Attachment A).
- The following additional information was gleaned from the submitted site plan:
  - The proposed 6' high open iron picket fence is approximately 160 feet in length parallel to the street, and approximately 27' in length perpendicular to the street on the east and west sides of the site in the front yard setback.
  - The proposed fence/gates are shown to be located approximately 3' the front property line or about 23' from the pavement line.
- One single family home "fronts" to the proposal on the subject site. This home does not have a fence in its front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area (an area about 500 feet east and west of the subject site) and noted no other fences above 4' high which appeared to be located in a front yard setback.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-10(A) (Single family district 10,000 square feet)  
North: R-10(A) (Single family district 10,000 square feet)  
South: R-10(A) (Single family district 10,000 square feet)  
East: R-16(A) (Single family district 16,000 square feet)  
West: R-10(A) (Single family district 10,000 square feet)

**Land Use:**

The subject site is developed with a single family home. The areas to the north, east, south are developed with single family uses; and the lot immediately west of the site is undeveloped.

**Zoning/BDA History:**

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

**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 C.

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.

September 28, 2011: The applicant's representative submitted a revised site plan/partial elevation to staff (see 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 and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections."

## **STAFF ANALYSIS:**

- This request focuses on constructing and maintaining primarily a 6' high open wrought iron picket fence with 6' high "Austin stone or similar as approved by owner" veneer columns and 7' high open iron gates to be located in the front yard setback on a site developed with a single family home. (The proposal also includes approximately 6.5' high, approximately 8' long "Austin stone or similar as approved by owner" entry wing walls.
- The revised submitted site plan/partial elevation documents the location, height, and materials of the proposal over four feet in height in the required front yard. The site plan shows the proposal to be approximately 160' in length parallel to the street and approximately 27' in length perpendicular to the street on the east and west sides of the site in the front yard setback. The site plan additionally shows that the fence/gates are located approximately 3' from the front property line or about 23' from the pavement line. The partial elevation denotes a 6' high open wrought iron picket fence with 6' high "Austin stone or similar as approved by owner" veneer columns and 7' high open iron gates flanked by approximately 6.5' high, approximately 8' long "Austin stone or similar as approved by owner" entry wing walls.
- One single family home "fronts" to the proposal on the subject site. This home does not have a fence in its front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area (an area about 500 feet east and west of the subject site) and noted no other fences above 4' high which appeared to be located in a front yard setback.
- As of October 10, 2011, no letters had been submitted in support or opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 3' will not adversely affect neighboring property.
- Granting this special exception of 3' with a condition imposed that the applicant complies with the submitted revised site plan/partial elevation would require that the proposal exceeding 4' in height in the required front yard would be constructed and maintained in the location and of the heights and materials as shown on this document.

## **BOARD OF ADJUSTMENT ACTION: OCTOBER 17, 2011**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Moore**

I move that the Board of Adjustment grant application **BDA 101-088** 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/partial elevation is required.

**SECONDED:** Maten  
**AYES:** 5– Boyd, Moore, Maten, Coulter, Richard  
**NAYS:** 0 –  
**MOTION PASSED:** 5– 0(Unanimously)

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**FILE NUMBER:** BDA 101-094

**BUILDING OFFICIAL’S REPORT:**

Application of Lanny E. Perkins for a special exception for the handicapped to the side yard setback regulation at 5706 Monticello Avenue. This property is more fully described as Lot 14 in City Block 1/2146 and is zoned CD-11 which requires a side yard setback of 10 feet. The applicant proposes to construct and maintain a structure and provide an 8 foot 9 inch side yard setback, which will require a 1 foot 3 inch special exception to the side yard setback regulation necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.

**LOCATION:** 5706 Monticello Avenue

**APPLICANT:** Lanny E. Perkins

**REQUEST:**

- A special exception for the handicapped is requested in conjunction with constructing and maintaining an approximately 68 square foot bathroom addition to an existing approximately 1,400 square foot single family home, part of which would be located in the site’s required 10’ eastern side yard setback.

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception for the handicapped since the basis for this type of appeal is when the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.

**STANDARD FOR A SPECIAL EXCEPTION FOR THE HANDICAPPED:** Section 51A-1.107.(b)(1) states that the Board of Adjustment shall grant a special exception to any regulation in this chapter, if, after a public hearing, the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling. The term “handicapped person,” means a person with a “handicap,” as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended.

**GENERAL FACTS:**



- The minimum side yard for main structures in CD (Conservation District) No. 11 is 5' on the west side and 10' on the east side.  
A site plan has been submitted that denotes that the proposed bathroom addition is 8' 10.5" from the site's eastern side property line. The Building Official's Report states that structure is providing an 8' 9" setback requiring a special exception of 1' 3". (The site plan denotes that the proposed addition would be in alignment with the existing structure that according to DCAD was constructed in 1924 – a structure that is most likely a nonconforming structure – a structure that predates the provisions set forth in CD No. 11 created in 2004. Note that prior to the creation of CD No. 11 in 2004, the property had been zoned R-7.5(A) which is a zoning district that requires a 5' side yard setback).
- Section 51A-1.107(b)(1) states that the Board of Adjustment shall grant a special exception to any regulation in this chapter, if, after a public hearing, the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling. The term "handicapped person," means a person with a "handicap," as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended.  
A copy of the "handicap" definition from this act was provided to the Board Administrator by the City Attorney's Office. Section 3602 of this act states the following:  
“(h) “Handicap” means, with respect to a person -  
  1. a physical or mental impairment which substantially limits one or more of such person's major life activities,
  2. a record of having such an impairment, or
  3. being regarded as having such an impairment,
but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 802 of Title 21).”
- In this particular case, the applicant has submitted among other things a letter from a Board Certified Neurologist that the applicant's wife has multiple sclerosis and is unable to walk; and that she needs a bathroom that she can access with her scooter or a rolling chair.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: CD No. 11 (Conservation District)  
North: CD No. 11 (Conservation District)  
South: CD No. 11 (Conservation District)  
East: CD No. 11 (Conservation District)  
West: CD No. 11 (Conservation District)

**Land Use:**

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

### **Zoning/BDA History:**

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

### **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 C.

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 other related documents pertaining to this standard ; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

September 28, 2011: The Sustainable Development and Construction Department Conservation District Senior Planner emailed the Board Administrator with the following comments: "The Main house may be nonconforming but the addition is new and would have to comply with the Ordinance requirements and that is why I denied the Conservation District Work Review Form Application. I don not have any issues granting a 1' 3" variance in the East side yard for handicapped access by the homeowner in the bathroom. Once a variance is granted the Homeowner will need to apply for CD approval and bring in the variance documentation on the side yard setback."

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.

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

**STAFF ANALYSIS:**

- This request focuses constructing and maintaining an approximately 68 square foot bathroom addition to an existing approximately 1,400 square foot single family home that would be located (according to the application and Building Official’s Report) 8’ 9” from the eastern side property line or 1’ 3” into the required 10’ eastern side yard setback.
- The site plan denotes that the proposed addition would be in alignment with the existing structure that according to DCAD was constructed in 1924 – a structure that is most likely a nonconforming structure – a structure that predates the provisions set forth in CD No. 11 created in 2004. Note that prior to the creation of CD No. 11 in 2004, the property had been zoned R-7.5(A) which is a zoning district that requires a 5’ side yard setback.
- Unlike most requests where the board is considering a structure that encroaches into a setback via a variance (where property hardship must be demonstrated), the board is to consider this special exception for the handicapped request solely on whether they conclude that the special exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.
- In this particular case, the applicant has submitted among other things a letter from a Board Certified Neurologist that the applicant’s wife has multiple sclerosis and is unable to walk; and that she needs a bathroom which she can access with her scooter or a rolling chair.
- The applicant has the burden of proof in establishing the following:
  - The special exception (which in this case is requested to construct and maintain a bathroom addition in the eastern side yard setback) is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling; and
  - there is a person with a “handicap” (as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended) who resides and/or will reside on the site.
- If the Board were to grant the request, and impose conditions that compliance with the submitted site plan is required, and that the special exception expires when a handicapped person no longer resides on the property, the bathroom addition would be required to be constructed and maintained in the location shown on the document for as long as the applicant or any other handicapped person resides on the site.

**BOARD OF ADJUSTMENT ACTION: OCTOBER 17, 2011**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

**MOTION: Moore**

I move that the Board of Adjustment grant application **BDA 101-094** 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: Maten**

**AYES: 5– Boyd, Moore, Maten, Coulter, Richard**

**NAYS: 0 –**

**MOTION PASSED: 5– 0(Unanimously)**

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**FILE NUMBER: BDA 101-064**

**BUILDING OFFICIAL’S REPORT:**

Application of Robert Baldwin for a variance to the front yard setback regulations and a special exception to the visual obstruction regulations at 3403 McKinney Avenue. This property is more fully described as part of Lot 9 in City Block 9/972 and is zoned PD 193 (LC), which requires a front yard setback of 10 feet and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct and/or maintain a structure and provide a 0 foot front yard setback, which will require a variance of 10 feet, and to locate/maintain items in a required visibility triangle, which will require a special exception to the visual obstruction regulations.

**LOCATION: 3403 McKinney Avenue**

**APPLICANT: Robert Baldwin**

**REQUESTS:**

- The following appeals have been made in this application on a site developed with a restaurant structure/use (The Patio Grill):
  1. a variance to the front yard setback regulations of 10’ is requested in conjunction with maintaining an existing structure, part of which is located in the 10’ front yard setback; and
  2. a special exception to the visual obstruction regulations is requested in conjunction with maintaining what is represented on the submitted site plan a portion of a structure in a 20’ visibility triangle at the drive approach on the north side into the site from McKinney Avenue.

**STAFF RECOMMENDATION (variance):**

Denial

Rationale:

- Staff concludes that there is no property hardship to the site that warrants a front yard variance which in this case is requested to maintain a portion of a structure in the front yard setback.
- The site is relatively flat, somewhat irregular in shape, and over 8,000 square feet in area.
- The site is currently developed with a restaurant/bar use/structure where the part that appears to be the original structure built decades ago (and fully enclosed) complies with the front yard setback, and where another part of what appears to be a recent addition to the original structure (and partially enclosed with a roof) encroaches into the front yard setback. As a result, the physical features of the site/lot do not create hardship or preclude its development in a manner commensurate with other developments found in the same PD No. 193 (LC) zoning district. Although the site is slightly irregular in shape, this feature does not create hardship on the lot where the applicant must encroach into a front yard setback for him to develop the lot in a manner commensurate with the development upon other parcels of land with the same PD No. 193 (LC) zoning district – in this case with what appears to be a recent addition to a decades old structure on the property that complies with the front yard setback.
- The applicant has not substantiated how the restrictive area, shape, or slope of the site/lot precludes it from being developed in a manner commensurate with development found on other PD. No. 193 (LC) zoned lots.

**STAFF RECOMMENDATION (visual obstruction special exception):**

Denial

Rationale:

- The Sustainable Development and Construction Department Project Engineer recommends denial of this request based on: 1) the applicant's lack of information that fully establishes how the request does not constitute a traffic hazard, and/or 2) the fact that the sidewalk directly adjacent to the structure creates a blind corner.
- The applicant has not substantiated how the location of the proposed item in the 20' visibility triangle at the drive approach into the site from McKinney Avenue (as conveyed on his submitted site plan) does not constitute a traffic hazard.

**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:

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

**STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:**

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

**GENERAL FACTS (variance):**

- The minimum front yard setback for lots zoned PD No. 193 (LC Subdistrict) is 10 feet.  
A site plan has been submitted denoting a structure that is located 0' – 9' from the site's front property line or as much as 10' into the 10' required front yard setback.
- According to calculations taken by the Board Administrator from the submitted site plan, an approximately 150 square foot triangular-shaped area of the structure is in the 10' front yard setback -- an area that represents about 13 percent of the approximately 1,140 square foot covered dining room space of the existing structure or approximately 6 percent of the approximately 2,400 square feet of the entire structure on the property.
- According to DCAD records, the site is shows improvements being a 1,020 square foot "converted residence" built in 1920.
- The subject site is a parallelogram that is 163.5' x 50' (or 8,150 square feet) in area. The site is flat and is zoned PD No. 193 (LC - Light Commercial Subdistrict).

**GENERAL FACTS (visual obstruction special exception):**

- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
  - in a visibility triangle as defined in the Code (45-foot visibility triangles at intersections on properties in all zoning districts except central area districts, the Deep Ellum/Near Eastside District, State-Thomas Special Purpose District, and

20-foot visibility triangles at drive approaches on properties in all zoning districts); and

- between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).

A site plan and elevation has been submitted that shows a portion of the structure located in the 20' visibility triangle at the drive approach on the north side into the site from McKinney Avenue.

Note that the Board Administrator emailed the applicant his concern regarding the number of visual obstruction special exceptions were being requested with this application. The Board Administrator pointed out to the applicant that his submitted site plan denotes only one drive approach on the site (which allows one to see the part of the structure located in this drive approach triangle on the site) but how photographs taken at the site and forwarded to the applicant also show that a portion of the structure may be in the drive approach triangle originating from the property south of his site.

The Board Administrator relayed to the applicant how he planned to convey to the Board:

1. what the applicant had written on his amended application - that being “a visibility triangle special exception;”
2. what could be gleaned from the submitted site plan - that being certain items as it relates to the one drive approach shown on the site plan; and
3. how if the board were to approve his request for a visual obstruction special exception (subject to the submitted site plan), the approval with the submitted plan would only provide exception/relief to what the applicant has requested on the application and/or what the applicant has shown on the site plan, and that approval of the requested special exception would not provide relief for any proposed/existing item on the subject site that may be located in a visibility triangle that originates from a driveway located on the property to the south.

(Note that the applicant acknowledged these conclusions/observations).

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: PD No. 193 (LC) (Planned Development – Light Commercial)  
North: PD No. 193 (LC) (Planned Development – Light Commercial)  
South: PD No. 193 (LC) (Planned Development – Light Commercial)  
East: PD No. 193 (LC) (Planned Development – Light Commercial)  
West: PD No. 193 (LC) (Planned Development – Light Commercial)

### **Land Use:**

The subject site is developed with a restaurant use (The Patio Grill). The areas to the north and south appear to be developed with retail uses; and the areas to the east and west are developed with retail and multifamily uses.

### **Zoning/BDA History:**

1. BDA 990-353, Property at 3317 McKinney Avenue ( the property immediately south of the subject site)

On October 24, 2000, the Board of Adjustment Panel A denied requests for a special exception to the landscape regulations and a variance to the parking regulations without prejudice. The case report stated that the requests were made in conjunction with rehabilitating a 16-unit multifamily/retail structure into an office/retail development.
2. BDA 089-019, Property at 3309 McKinney Avenue ( the property two lots south of the subject site)

On March 18, 2009, the Board of Adjustment Panel B granted a request for a variance to the front yard setback regulations of 10' and imposed the submitted revised site plan and elevation as a condition. The case report stated that the request was made in conjunction with maintaining a covered canopy dining area structure on the site located in the front yard setback.
3. BDA 089-020, Property at 3309 McKinney Avenue ( the property two lots south of the subject site)

On March 18, 2009, the Board of Adjustment Panel B granted a request for a special exception to the landscape regulations and imposed the following conditions to this request: 1) compliance with the submitted revised site plan/landscape plan is required; 2) The open pedestrian sidewalk nearest the curb must remain open at no less than its current width with no additional temporary or permanent obstructions; 3) all plant materials must be maintained in a healthy, growing condition at all times; and 4) automatic irrigation is not required. The case report stated that the request was made in conjunction with maintaining a covered canopy dining area structure on the site located in the front yard setback.

### **Timeline:**

- April 27, 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.



- June 22, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- June 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 August 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the August 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- July 29, 2011: The Board Administrator acknowledged the applicant's request to postpone this application from Board of Adjustment Panel C's August 15<sup>th</sup> hearing to Panel C's September 19<sup>th</sup> hearing.
- August 11, 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 August 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the August 5<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 6, 2011: The Board Administrator acknowledged the applicant's request to postpone this application from Board of Adjustment Panel C's September 19<sup>th</sup> hearing to Panel C's October 17<sup>th</sup> hearing.
- September 7, 2011: The applicant amended his original application for variance to the front yard setback regulations by adding a special exception to the visual obstruction regulations.
- 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 requests; 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 “Recommends that this be denied” with the following comments: “Sidewalk is right up against structure creating a blind corner. Need more information on visibility triangle.”

**STAFF ANALYSIS (variance):**

- The request focuses on maintaining an existing restaurant/bar structure on the site (The Patio Grill), part of which is located as close as on the front property line or as much as 10’ into the 10’ front yard setback.
- According to calculations taken by the Board Administrator from the submitted site plan, an approximately 150 square foot triangular-shaped area of the structure is in the 10’ front yard setback -- an area that represents about 13 percent of the approximately 1,140 square foot covered dining room space of the existing structure or approximately 6 percent of the approximately 2,400 square feet of the entire structure on the property.
- According to DCAD records, the site is shows improvements being a 1,020 square foot “converted residence” built in 1920.
- The subject site is a parallelogram that is 163.5’ x 50’ (or 8,150 square feet) in area. The site is flat and is zoned PD No. 193 (LC - Light Commercial Subdistrict).
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to 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 PD No. 193 (LC) 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 PD No. 193 (LC) zoning classification.

- If the Board were to grant the variance request, subject to the submitted site plan, the structure as shown on this plan would be permitted to remain as close as on the front property line or as much as 10' into the 10' front yard setback.
- Note that if the board were to grant this request and impose the submitted site plan as a condition, but deny the request for the special exception to the visual obstruction regulations, notations would be made of such action on the submitted plan whereby the location of the items in the visibility triangle would not be "excepted."

**STAFF ANALYSIS (visual obstruction special exception):**

- The applicant has requested a special exception to the visual obstruction regulations to maintain what is represented on the submitted site plan a portion of a structure in a 20' visibility triangle at the drive approach on the north side into the site from McKinney Avenue.
- The applicant has acknowledged: 1) the fact that he is requesting a singular exception to the visual obstruction regulations to address a portion of the structure on the site that is located in a drive approach visibility triangle on the north side of the site as shown on his submitted site plan; and 2) the fact that how if the board were to approve his request for a visual obstruction special exception (subject to the submitted site plan), the approval with the submitted plan would only provide exception/relief to what the applicant has requested on the application and/or what the applicant has shown on the site plan.
- The Sustainable Development and Construction Department Project Engineer "Recommends that this be denied" with the following comments: "Sidewalk is right up against structure creating a blind corner. Need more information on visibility triangle."
- The applicant has the burden of proof in establishing how granting the request for special exception to the visual obstruction regulations in order to maintain a portion of the existing structure in 20' drive approach visibility triangle on the north side of the site will not constitute a traffic hazard.
- If the Board chooses to grant this request, subject to compliance with the submitted site plan and elevation, the item shown on these documents would be "excepted" into the 20' drive approach visibility triangle that has been requested in this application – that being the 20' drive approach visibility triangle on the north side of the site.
- Note that it appears from the submitted site plan and elevation that if the board were to deny the applicant's request for variance to the front yard setback regulations, there would no longer be any item located in what is represented in the 20' drive approach visibility triangle on the north side of the site.

**BOARD OF ADJUSTMENT ACTION: OCTOBER 17, 2011**

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

APPEARING IN OPPOSITION: Lyle Burgin, 3411 Mckinney Ave., Dallas, TX

**MOTION#1: Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 101-064**, on application of Robert Baldwin, **deny** the front yard setback variance requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

**SECONDED: Coulter**

**AYES:** 5– Boyd, Moore, Maten, Coulter, Richard

**NAYS:** 0 –

**MOTION PASSED:** 5– 0(Unanimously)

**MOTION#2: Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 101-064**, on application of Robert Baldwin, **deny** the special exception requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that granting the application would constitute a traffic hazard

**SECONDED: Coulter**

**AYES:** 5– Boyd, Moore, Maten, Coulter, Richard

**NAYS:** 0 –

**MOTION PASSED:** 5– 0(Unanimously)

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**FILE NUMBER:** BDA 101-090

**BUILDING OFFICIAL’S REPORT:**

Application of Robert Reeves for variances to the front yard setback regulations at 3324 McKinney Avenue. This property is more fully described as Lot 5B in City Block 11/971 and is zoned PD-193 (LC), which requires a 25 foot front yard setback for any portion of a structure over 36 feet in height. The applicant proposes to construct and/or maintain a structure and provide 10 foot front yard setbacks for portions of the structure over 36 feet in height, which will require variances of 15 feet.

**LOCATION:** 3324 McKinney Avenue

**APPLICANT:** Robert Reeves

**October 17, 2011 Public Hearing Notes:**

- The applicant submitted additional written documentation to the board at the briefing/public hearing.

**REQUESTS:**

- Variances to the front yard setback regulations of 15' are requested in conjunction with maintaining an existing 10 story multifamily structure with an approximately 31,000 square foot building footprint (The Marquis on McKinney), part of which (the lowest three floors) is located in the site's two 25' front yard setbacks along McKinney Avenue and Noble Street.

**STAFF RECOMMENDATION:**

Denial

Rationale:

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

**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:**

- PD No. 193 states that in the GR and LC Subdistrict (which includes this site: LC Subdistrict), the following minimum front yard setbacks must be provided for all buildings and structures:
  1. 10 feet for the first 36 feet in height.
  2. 25 feet for all portions of a building over 36 feet in height.The applicant has submitted a site plan and a revised elevation (see Attachment B) indicating that the lower portions (or first three floors) of the existing structure are 40' and 45' in height and are located 10' from the front property lines along the site's northwest side (McKinney Avenue) and southeast side (Noble Street), respectively,

or are 15' into the 25' front yard setback that is required for the portion of a building over 36' in height. (The portion of the structure that reaches the maximum approximately 102' in height of the structure appears to be in compliance with the 25' front yard setbacks).

- According to calculations taken by the Board Administrator from the submitted site plan and revised elevation, the portion of the existing approximately 102' high structure with the approximately 31,000 square foot building footprint only 15' from the McKinney Avenue and Noble Street front property lines and higher than 36' in height is a 40' high portion of the existing structure that is approximately 160 square feet in the McKinney Avenue 25' front yard setback; and a 45' high portion of the existing structure that is approximately 180 square feet located in the Noble Street 25' front yard setback. The vast majority of the building footprint that reaches approximately 102' in height meets the 25' front yard setback that is required for portions of the building above 36' in height.
- A "grading plan" has been submitted that denotes contour lines of the site. The applicant has stated that there is a 5' slope between the highest and lowest points of the site. The site is slightly irregular in shape, and according to the application, 0.914 acres in area. The site is zoned PD No. 193 (LC). The site has two front yard setbacks which is typical of any lot that has two street frontages and is not zoned single family, duplex, or agricultural.
- DCAD records indicate that the "improvements" at 3324 McKinney is an "apartment" with 141,392 square feet built in 2002.
- The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachments A, B, and C). (Note that Attachment C was a document not factored into the staff recommendation since it was submitted after the October 4<sup>th</sup> staff review team meeting).

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: PD No. 193 (LC) (Deed Restricted)\*(Planned Development, Light Commercial)  
North: PD No. 193 (LC) (Planned Development, Light Commercial)  
South: PD No. 193 (LC) (Planned Development, Light Commercial)  
East: PD No. 193 (O-2) (Planned Development, Office)  
West: PD No. 193 (LC) (Planned Development, Light Commercial)

- \* The applicant has represented that the deed restrictions on this site prohibit certain uses and required parking lot screening, and that his board of adjustment application does not violate any of the deed restrictions on the site.

### **Land Use:**

The subject site is developed with a multifamily structure (The Marquis on McKinney). The areas to the north, east, south, and west are developed with a mix of office, retail, 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:**

June 23, 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 C.

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.

Sept. 29 & October 4, 2011: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachments A and B).

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.

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

October 6, 2011: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment C).

**STAFF ANALYSIS:**

- The requests focus on maintaining an existing 10 story multifamily structure with an approximately 31,000 square foot building footprint (The Marquis on McKinney), part of which (the lowest three floors) is located in the site's two 25' front yard setbacks along McKinney Avenue and Noble Street.
- The applicant has stated that the previous owner's representative has stated that the structure was permitted in 2000 and built based on City policies for determining height, and that 40' was allowed on McKinney Avenue and 45' was allowed on Noble Street. The applicant states, however, when the new owners recently purchased the property, it was discovered that building height is based on the average of the highest and lowest finish grade and, given a 5' difference in the grade, the structure height within 25' from McKinney Avenue should be 37.5' (not the currently built 40'), and the structure height from Noble Street should be 42.5' (not the currently built 45').
- According to calculations taken by the Board Administrator from the submitted site plan and revised elevation, the portion of the existing approximately 102' high structure with the approximately 31,000 square foot building footprint that is only 15' from the McKinney Avenue and Noble Street front property lines and higher than 36' in height is a 40' high portion of the existing structure that is approximately 160 square feet in the McKinney Avenue 25' front yard setback; and a 45' high portion of the existing structure that is approximately 180 square feet located in the Noble Street 25' front yard setback. The vast majority of the building footprint that reaches approximately 102' in height meets the 25' front yard setback that is required for portions of the building above 36' in height.
- A "grading plan" has been submitted that denotes contour lines of the site. The applicant has stated that there is a 5' slope between the highest and lowest points of the site. The site is slightly irregular in shape, and according to the application, 0.914 acres in area. The site is zoned PD No. 193 (LC). The site has two front yard setbacks which is typical of any lot that has two street frontages and is not zoned single family, duplex, or agricultural.
- DCAD records indicate that the "improvements" at 3324 McKinney is an "apartment" with 141,392 square feet built in 2002.
- The applicant has the burden of proof in establishing the following:
  - That granting the variances to 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 same PD No. 193 (LC) zoning classification.
- If the Board were to grant the variance requests, and impose the submitted site plan and revised elevation as conditions, the structure encroaching into the required front yard setbacks would be required to be maintained in the location and to the features shown on these documents.

**BOARD OF ADJUSTMENT ACTION: OCTOBER 17, 2011**

APPEARING IN FAVOR: Robert Reeves, 900 Jackson St., #160, Dallas, TX

APPEARING IN OPPOSITION: No one

**MOTION#1: Coulter**

I move that the Board of Adjustment, in Appeal No. **BDA 101-090**, on application of Robert Reeves, **grant** the 15-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 site plan and revised elevation is required.

**SECONDED: Maten**

**AYES:** 5– Boyd, Moore, Maten, Coulter, Richard

**NAYS:** 0 –

**MOTION PASSED:** 5– 0(Unanimously)

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**FILE NUMBER:** BDA 101-097

**BUILDING OFFICIAL’S REPORT:**

Application of George Moussa for special exceptions to the landscape and tree preservation regulations at 4020 Platinum Way (AKA 4120 Platinum Way). This property is more fully described as Lot 1A in City Block E/6044 and is zoned IM, which requires mandatory landscaping and tree preservation. The applicant proposes to construct a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations, and to 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:** 4020 Platinum Way (AKA 4120 Platinum Way)  
**APPLICANT:** George Moussa

**REQUESTS:**

- The following appeals had been made in this application on site currently developed with an existing vacant approximately 175,000 square foot warehouse structure/use:
  1. A special exception to the landscape regulations is requested in conjunction with increasing the impervious surface on the site by over 2,000 square feet and not fully meeting the landscape regulations; and
  2. A special exception to the tree preservation regulations is requested in conjunction removing protected trees on the site and not fully meeting the tree preservation regulations.

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

Denial

Rationale:

- The applicant has not 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.
- The City of Dallas Chief Arborist recommends denial of the request as submitted.

**STAFF RECOMMENDATION (tree preservation special exception):**

Denial

Rationale:

- Given that the Dallas Development Code states that the applicant has the burden of proof in establishing the necessary facts to warrant favorable action of the board, staff is recommending denial of this request. The applicant has not substantiated with his submittals how strict compliance with the requirements of the Tree Preservation 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 AND TREE PRESERVATION REGULATIONS:**

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

- (1) strict compliance with the requirements of this article will unreasonably burden the use of the property;

- (2) the special exception will not adversely affect neighboring property; and
- (3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

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

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

**GENERAL FACTS (related to the landscape special exception):**

- 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.  
A revised alternate landscape/tree mitigation plan has been submitted (see Attachment A) that is deficient from meeting the landscape requirements of Article X.
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator regarding the applicant's request for a special exception to the landscape regulations (see Attachment B). The memo stated among other things how the applicant's revised landscape plan shows a site that is deficient from meeting Article X: Landscape Regulations by not providing the two required design standards, possibly not providing required screening of off-street parking, and not providing required landscaping within 6 months of completion of a project.

**GENERAL FACTS (related to tree preservation special exception):**

- 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.
- A revised alternate landscape/tree mitigation plan has been submitted to staff (see Attachment A) that is deficient from meeting the tree preservation requirements of Article X.
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator regarding the applicant’s request for a special exception to the tree preservation regulations (see Attachment C). The memo stated among other things how the applicant’s revised mitigation plan shows a site that is deficient from meeting Article X: Tree Preservation Regulations by not fully mitigating for 151 caliper inches of trees on the site within 18 months from removal.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: IM (Mixed Use)  
North: IR (Industrial Research)  
South: IR (Industrial Research)  
East: IR (Industrial Research)  
West: IR (Industrial Research)

### **Land Use:**

The site is currently developed with a vacant warehouse structure. The areas to the north, east, and west are developed with warehouse and/or office/warehouse uses; and the area to the south appears undeveloped.

### **Zoning/BDA History:**

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

### **Timeline:**

July 28, 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 C.

September 22, 2011: The Board Administrator emailed a colleague of 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 7, 2011: The applicant forwarded additional information on this application beyond what was submitted with the original application (see Attachment A).

October 10, 2011: The Chief Arborist submitted memos pertaining to the landscape and tree preservation special exception requests to the Board Administrator (see Attachment B and C).

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

- This request focuses increasing the impervious surface on the site by over 2,000 square feet and not fully meeting the landscape regulations on site currently developed with an existing vacant approximately 175,000 square foot warehouse structure/use.
- The City of Dallas Chief Arborist states how the applicant's alternate revised landscape/tree mitigation plan shows a site is deficient from meeting Article X: Landscape Regulations by not providing the two required design standards, possibly not providing required screening of off-street parking, and not providing required landscaping within 6 months of completion of a project.
- The City of Dallas Chief Arborist recommends denial of the request.
- The applicant has the burden of proof in establishing the following:
  - Strict compliance with the requirements of the Landscape Regulations of the Dallas Development Code will unreasonably burden the use of the property; and
  - The special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose the submitted alternate revised landscape plan as a condition, the site would be provided exception to full compliance to the design standards, and parking lot screening of Article X: Landscape Regulations. Further, if the Board were to grant this request and impose a condition that the landscape on the revised landscape plan must be installed before the final inspection/approval of the street sections required by the infrastructure covenant agreement with the City, the site would be provided exception to compliance with the timing requirement of Article X: Landscape Regulations.

**STAFF ANALYSIS (related to tree preservation special exception):**

- This request focuses on removing protected trees on the site and not fully meeting the tree preservation regulations on site currently developed with an existing vacant approximately 175,000 square foot warehouse structure/use.
- The City of Dallas Chief Arborist states how the applicant's revised alternate landscape/tree mitigation plan is deficient from meeting Article X: Tree Preservation Regulations by not fully mitigating for 151 caliper inches of trees on the site within 18 months from removal.
- The City of Dallas Chief Arborist has deferred making any recommendation on this request pending the conclusions that the Board makes on the applicant's other request on this property that being a special exception to the landscape regulations, specifying the exception in that request regarding the timing of when landscape materials must be completed on the site. The Chief Arborist stated that if certain landscape elements are required to be installed, then one or more of the applicant's mitigation issues may be resolved. The Chief Arborist also notes that the applicant should provide the Board with a clear, full, and accurate identification/representation as to when, where, and how many trees identified in tables on the submitted revised alternate landscape/tree mitigation plan will be planted.
- 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 submitted alternate revised tree mitigation plan as a condition, the site would be provided exception to full compliance to mitigation and timing provisions of Article X: Tree Preservation Regulations.

**BOARD OF ADJUSTMENT ACTION: OCTOBER 17, 2011**

APPEARING IN FAVOR: Luis Salcedo, 400 S. Zang Blvd., Ste 1420, Dallas, TX  
George Moussa, 4910 Lakawana St., Dallas, TX

APPEARING IN OPPOSITION: No one

**MOTION#1: Richard**

I move that the Board of Adjustment, in Appeal No. **BDA 101-097**, on application of George Moussa, **grant** the request of this applicant to provide an alternate landscape plan (and/or) the time extension for installation as a special exception to the landscape requirements in the Dallas Development Code because our evaluation of the property and the testimony shows that: (1) strict compliance with the requirements 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. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted alternate landscape plan is required.
- Landscaping shown on the alternate landscape plan must be installed before the final inspection/approval of the street sections covered by the infrastructure covenants on this property.

SECONDED: **Coulter**

AYES: 5– Boyd, Moore, Maten, Coulter, Richard

NAYS: 0 –

MOTION PASSED: 5– 0(Unanimously)

MOTION#2: **Richard**

I move that the Board of Adjustment, in Appeal No. **BDA 101-097**, on application of George Moussa, **grant** the request of this applicant for a special exception to the tree preservation requirements in the Dallas Development Code because our evaluation of the property and the testimony shows that: (1) strict compliance with the requirements 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, subject to the following conditions:

- Compliance with the submitted alternate landscape plan is required.
- Twelve 3 inch approved trees irrigated/maintained must be provided along Platinum Way.
- Compliance with the tree mitigation timing requirements in Article X is required.

SECONDED: **Coulter**

AYES: 5– Boyd, Moore, Maten, Coulter, Richard

NAYS: 0 –

MOTION PASSED: 5– 0(Unanimously)

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MOTION: **Maten**

I move to adjourn this meeting.

SECONDED: **Moore**

AYES: 5–Boyd, Moore, Maten, Coulter, Richard

NAYS: 0 - None

MOTION PASSED: 5 – 0 (Unanimously)

**2:29 P. M.** - Board Meeting adjourned for **October 17, 2011.**

\_\_\_\_\_  
CHAIRPERSON

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



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