

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN AUDITORIUM
WEDNESDAY, APRIL 22, 2015**

MEMBERS PRESENT AT BRIEFING: Darlene Reynolds, Vice Chair, Sam Gillespie, Panel Vice Chair, Scott Hounsel, regular member, Charles Johnson, regular member and Robert Agnich, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Darlene Reynolds, Vice Chair, Sam Gillespie, Panel Vice Chair, Scott Hounsel, regular member, Charles Johnson, regular member and Robert Agnich, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Donna Moorman, Chief Planner, Jamilah Way, Asst. City Attorney, Todd Duerksen, Development Code Specialist, David Lam, Engineer, and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Donna Moorman, Chief Planner, Jamilah Way, Asst. City Attorney, Todd Duerksen, Development Code Specialist, David Lam, Engineer, and Trena Law, Board Secretary

10:32 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **April 22, 2015 docket.**

1:04 P.M.
The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel B March 18, 2015 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: APRIL 22, 2015

MOTION: None

The minutes were approved as amended.

FILE NUMBER: BDA 145-040

BUILDING OFFICIAL'S REPORT: Application of Elaine Hewlett for a variance to the front yard setback regulations at 4734 Tremont Street. This property is more fully described as Lot 1, Block C/795, and is zoned PD-98, which requires a front yard setback of 25 feet. The applicant proposes to construct and maintain a structure and provide a 5 foot front yard setback, which will require a 20 foot variance to the front yard setback regulations.

LOCATION: 4734 Tremont Street

APPLICANT: Elaine Hewlett

REQUEST:

A variance to front yard setback regulations of 20' is made to replace an existing one-story nonconforming single family home structure on the subject site with a two-story single family home, part of which would be located 5' from one of the site's two front property lines (N. Prairie Avenue) or 20' into this 25' front yard setback.

(No variance is requested to construct and maintain any structure in the site's 25' front yard setback along Tremont Street).

STANDARD FOR A VARIANCE:

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

- (A) not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;
- (B) necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and

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

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted revised site plan is required

Rationale:

- The subject site is unique and different from most lots in the PD 98 zoning district in that it is a corner lot with a restrictive area due to its two front yard setbacks and total square footage. The property is approximately 4,600 square feet in area and 46' in width making it about 3,000 square feet less in area and 4' less in width than other properties in the zoning district that are 7,500 square feet in area and 50 feet in width. This atypical lot with two front yard setbacks with less than the average area and width of other similarly zoned properties precludes the applicant from developing it manner commensurate with the development upon other parcels of land with the same zoning with one front yard setback, are 7,500 square feet in area, and are 50' in width. Documentation submitted by the applicant shows that the proposed living area of the replacement home on the site would have approximately 2,600 square feet where the average of nine others in the zoning district is approximately 3,200 square feet.
- The corner lot subject site has an approximately 15' width for development once a 25' front yard and a 5' side yard setback is accounted for on the approximately 45' wide subject site. Other lots of this width in this zoning district with one front yard, two side yards, and one rear yard of the same width would have a 45' width for development.
- The construction/maintenance of the proposed single family home that would replace a nonconforming structure on the site would require no variance if the lot's N. Prairie Avenue frontage were a side yard where only a 5' side yard setback is required in this zoning district.
- The applicant has stated that the existing structure on the property provides the same setback as what is proposed for the new structure; that the width of the existing house is 36' 2" and that the proposed house would be 34' 5"; and that the structure to the southeast that fronts N. Prairie Avenue and causes a 25' front yard setback on the subject site does not provide a 25' front yard setback.

BACKGROUND INFORMATION:

Zoning:

Site: PD 98 (Planned Development)
North: PD 97 (Planned Development)
South: PD 98 (Planned Development)
East: PD 98 (Planned Development)
West: PD 98 (Planned Development)

Land Use:

The subject site is developed with a one-story 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.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on replacing an existing one-story nonconforming single family home structure on the subject site with a two-story single family home with (according to the submitted revised site plan) a building footprint of about 2,000 square feet and a total living area of about 2,600 square feet, part of which would be located 5' from one of the site's two front property lines (N. Prairie Avenue) or 20' into this 25' front yard setback.
- PD 98 states that generally standards for development of single-family uses with regard to setbacks must be in accordance with the provisions of the Residential - 7,500 Square Feet District of Chapter 51. Structures on lots zoned R-7.5 are required to provide a minimum front yard setback of 25'.
- The subject site is located at the south corner of Tremont Street and N. Prairie Avenue. Regardless of how the existing and replacement structure fronts Tremont Street and "sides" to N. Prairie Avenue, the subject site has front yard setbacks along both streets. The site has a 25' front yard setback along Tremont Street, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in this zoning district. The site also has a 25' front yard setback along N. Prairie Avenue, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where 5' side yard setback is required. But the site's N. Prairie Avenue frontage that functions as side yard on the property is treated as a front yard setback nonetheless to maintain the continuity of the front yard setback established by the one lot to the southeast that fronts/is oriented northeastward towards N. Prairie Avenue though this structure does not provide the 25' required front yard setback.
- A revised site plan has been submitted indicating that a portion of the proposed single family home is to be located 5' from the N. Prairie Avenue front property line or 20' into this 25' front yard setback.
- The applicant has stated that the existing structure on the property provides the same setback as what is proposed for the new structure; that the width of the existing house is 36' 2" and that the proposed house would be 34' 5"; and that the structure to the southeast that fronts N. Prairie Avenue and causes a 25' front yard setback on the subject site does not provide a 25' front yard setback.
- According to DCAD records, the "main improvement" for property addressed at 4734 Tremont Street is a structure with 1,400 square feet of living/total area built in 1945 with no "additional improvements."

- Building Inspection has stated that the structure on the site is a nonconforming structure – a structure that does not conform to the regulations of the code, but which was lawfully constructed under the regulations in force at the time of construction.
- The Dallas Development Code states that a person may renovate, remodel, repair, rebuild or enlarge a nonconforming structure if the work does not cause the structure to become more nonconforming as to the yard, lot, and space regulations.
- The Dallas Development Code states that the right to rebuild a nonconforming uses ceases if the structure is destroyed by the intentional act of the owner or the owner's agent.
- The applicant is required to apply for variance in this case not because the replacement structure would be more nonconforming to the yard regulations but because the owner proposes to intentionally destroy the existing nonconforming structure on the subject site.
- The subject site is flat, virtually rectangular in shape (103' x 45'), and is approximately 4,600 square feet) in area. The site is zoned PD 98 where setbacks are generally R-7.5 standards where lots are typically 7,500 square feet in area.
- Most lots in R-7.5 zoning in which the property setbacks in PD 98 are derived from have one 25' front yard setback, two 5' side yard setbacks, and one 5' rear yard setback; this site has two front yard setbacks (a 25' front yard setback along Tremont Street and a 25' front yard setback along N. Prairie Avenue) and two 5' side yard setbacks.
- The revised submitted site plan shows that over half of the proposed structure is located in the N. Prairie Avenue front yard setback.
- The applicant has submitted information from DCAD of nine other single family residences in PD 98 where the average area is approximately 3,200 square feet- the proposed home on the subject site would have about 2,600 square feet.
- The 45' wide subject site has approximately 15' of developable width available once a 25' front yard setback is accounted for on the northwest and a 5' side yard setback is accounted for on the southeast. If the lot were more typical to others in the zoning district with only one front yard setback, the 45' wide site would have 35' of developable width with 5' side yard setbacks accounted for on the northeast and southwest sides of the site.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD 98 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 98 zoning classification.

- If the Board were to grant the variance request, and impose the submitted revised site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document– which in this case is a structure located 5’ from the site’s N. Prairie Avenue front property line (or 20’ into this 25’ front yard setback).

Timeline:

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

March 11, 2015: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

March 11, 2015: The Board Administrator emailed the applicant the following information:

- a copy of the application materials including the Building Official’s report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the April 1st deadline to submit additional evidence for staff to factor into their analysis; and the April 10th 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.”

March 31, 2015: The Building Inspection Senior Plans Examiners/Development Code Specialist forwarded a revised Building Official’s report to the Board Administrator, and the applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).

April 7, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: APRIL 22, 2015

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Hounsel

I move to grant that the Board of Adjustment grant application **BDA 145-040** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan is required.

SECONDED: Agnich

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

NAYS: 0 –

MOTION PASSED 5– 0 (unanimously)

FILE NUMBER: BDA 145-043

BUILDING OFFICIAL'S REPORT: Application of Marley Phillips for a special exception to the parking regulations at 13910 Dallas Parkway (aka: 13900). This property is more fully described as Lot 2, Block A/7005, and is zoned MU-3(SAH), which requires parking to be provided. The applicant proposes to construct and maintain a nonresidential structure for a general merchandise or food store greater than 3,500 square feet uses, and provide 642 of the required 784 parking spaces, which will require a 142 space special exception (18% reduction) to the parking regulation.

LOCATION: 13910 Dallas Parkway (aka: 13900)

APPLICANT: Marley Phillips

April 22, 2015 Public Hearing Notes:

- Upon further review of the parking ratios required for a general merchandise or food store greater than 3,500 square feet use, the current planner informed the Board that a 13 space special exception (2% reduction), and not a 142 space special exception (18% reduction), was required.

REQUEST:

A request for a special exception to the off-street parking regulations of 142 spaces (or 18 percent) is made to construct and maintain a general merchandise or food store

greater than 3,500 square feet use (Cost Plus World Market), and provide 642 (or 82 percent) of the 784 required off-street parking spaces.

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 delta credits, as defined in Section 51A-4.704(b)(A). For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 75 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). For the office use, the maximum reduction authorized by this section is 35 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). Applicants may seek a special exception to the parking requirements under this section and an administrative parking reduction under Section 51A-4.313. The greater reduction will apply, but the reduction may not be combined.
- 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.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The special exception of 142 spaces shall automatically and immediately terminate if and when the general merchandise or food store greater than 3,500 square feet use that would normally need no more than 784 required parking spaces is changed or discontinued.

Rationale:

- The Sustainable Development and Construction Department Project Engineer has indicated that he has no objections to the applicant’s request.
- The applicant has substantiated how the parking demand generated by this particular 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 applicant has submitted information stating that the existing parking demand of the retail-centered development shows that no more than approximately 178 spaces were needed at 12:30 PM on Thursday, and no more than approximately 221 spaces were needed at 3:00 PM on a Saturday, providing for a peak period parking surplus of 550 spaces and 507 spaces, respectively, for this particular use in this particular location.

BACKGROUND INFORMATION:

Zoning:

- Site: MU-3(SAH) (Mixed Use)
- North: PDD 289 (Planned Development District), CR (Community Retail), MU-1 (Mixed Use), and MU-2 (Mixed Use)
- South: RR(Regional Retail) and PDD 887 (Planned Development District)
- East: GO(A) (Office) and PDD 216 (Planned Development District)
- West: City of Farmers Branch

Land Use:

The subject site is a retail-centered development containing several general merchandise or food store greater than 3,500 square feet uses (Nordstrom Rack, Buy Buy Baby, and Bed, Bath & Beyond). The areas to the north, south, east, and west are developed with a mix of commercial and multifamily residential uses.

Zoning/BDA History:

1. BDA 95-056, Property located at 13700 N. Dallas Parkway (the lot immediately south of the subject site)

On April 25, 1995, the Board of Adjustment granted a request for a special exception of 127 off-street parking spaces, allowing the applicant to provide 673 of the required 800 off-street parking spaces, and imposed the following condition: Within three (3) years from the date of issuance of a Certificate of Occupancy that results in occupancy of 142,714 square feet on the property, the owners must submit a parking study to the Board Administrator conducted pursuant to City specifications. If the parking study demonstrates that demand exceeds supply on the property, the owners shall cause the parking lot to be restriped to provide a total of 719 standard and compact off-street parking spaces on the property. This will make 25% of the total number of spaces required compact spaces.

The case report stated the request was made to construct a new 159,915 square foot retail center, and that the applicant could not comply with the required one space per 200 square feet for retail use because only 673 off-street parking spaces were being provided.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining a nonresidential structure for a general merchandise or food store greater than 3,500 square feet use (Cost Plus World Market), and providing 642 (or 82 percent) of the 784 required off-street parking spaces.
- The Dallas Development Code requires the following off-street parking requirement for general merchandise or food store greater than 3,500 square feet use:
 - One space for each 200 square feet of floor area.
- The applicant has submitted a parking analysis stating that the current retail development has a total of 138,112 square feet, and, while required to provide 692 off-street parking spaces as per the Dallas Development Code, 728 were actually

provided. Therefore, up until this proposal, the site had an excess of off-street parking spaces.

- However, this proposal, which would allow an increase of floor area (18,302 square feet) in conjunction with the construction of a new general merchandise or food store greater than 3,500 square feet use (4 Cost and World Market), requires an additional 92 spaces, thereby bringing the number of required off-street parking spaces to 784.
- The location of the proposed general merchandise store will cover some of the existing parking spaces, which is why the applicant seeks relief to the off-street parking regulation.
- Therefore, the applicant proposes to provide 642 (or 82 percent) of the required 784 off-street parking spaces in conjunction with completing and maintaining the general merchandise or food store greater than 3,500 square feet use.
- The Sustainable Development Department Project Engineer has indicated that he has no objections to this request.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the proposed general merchandise or food store greater than 3,500 square feet use on the site does not warrant the number of off-street parking spaces required, and
 - The special exception of 142 spaces (or an 18 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, and impose the condition that the special exception of 142 spaces shall automatically and immediately terminate if and when the general merchandise or food store greater than 3,500 square feet use is changed or discontinued, the applicant would be allowed to construct and maintain the structure on the site with this specific use with the proposed general merchandise or food store greater than 3,500 square feet uses, and provide 642 of the 784 code required off-street parking spaces.

Timeline:

- February 2, 2015: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- March 11, 2015: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- March 16, 2015: The Current Planner shared the following information with the applicant via e-mail:
- a copy of the application materials including the Building Official's report on the application;
 - an attachment that provided the public hearing date and panel that will consider the application; the April 1st deadline to submit additional evidence for staff to factor into their analysis; and the April 10th 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.

April 7, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

April 9, 2015: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Has no objections.”

BOARD OF ADJUSTMENT ACTION: APRIL 22, 2015

APPEARING IN FAVOR: Marley Phillips, 5500 Democracy Dr., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Agnich

I move that the Board of Adjustment, in request No. **BDA 145-043**, on application Marley Phillips, **grant** the request to reduce the number of required off-street parking spaces in the Dallas Development Code by **13** spaces because our evaluation of the property and the testimony shows that the parking demand generated by the proposed use on the site 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. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception of 13 spaces shall automatically and immediately terminate if and when the general merchandise or food store greater than 3,500 square feet use is changed or discontinued.

SECONDED: Johnson

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

NAYS: 0 –

MOTION PASSED 5– 0 (unanimously)

FILE NUMBER: BDA 145-046

BUILDING OFFICIAL'S REPORT: Application of Hector Espinoza for a special exception to the fence height regulations at 8606 Ashcroft Avenue. This property is more fully described as Lot 12, Block 22/7522, and is zoned R-7.5(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct an 8 foot high fence in a required front yard, which will require a 4 foot special exception to the fence regulation.

LOCATION: 8606 Ashcroft Avenue

APPLICANT: Hector Espinoza

REQUEST:

The following request has been made on a site that is developed with a single family home/use:

1. A request for a special exception to the fence height regulations of 4' is made to construct an 8' high wooden fence parallel and perpendicular to the street in one of the site's two required front yards: the Boundbrook Avenue required 15' front yard.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STAFF RECOMMENDATION (FENCE HEIGHT):

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

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA 056-246, Property at 8805 Boundbrook Avenue (Lot Southwest of the Subject Site)

On November 14, 2006, the Board of Adjustment Panel A granted a special exception to the fence height regulations and imposed the following conditions: Compliance with the submitted revised site plan and elevation is required; and the applicant must comply with the visibility obstruction regulations unless they obtain a special exception to allow items in the visibility triangle.

The case report stated the request for a special exception of 5 feet 3 inches to the fence height regulations was made to maintain a cedar board-on-board fence that ranged in height from 8'- 9' 3" high in the site's Royal Lane 25' required front yard, and to replace an approximately 6' high solid wooden fence with an 8' high cedar board-on-board fence in the site's Boundbrook Avenue 25' required front yard on a site developed with a single family home.

GENERAL FACTS/STAFF ANALYSIS (FENCE HEIGHT):

- This request focuses on constructing an 8' high contemporary wooden fence, parallel and perpendicular to Boundbrook Avenue, in the required front yard on a site developed with a single family home/use.
- The Dallas Development Code states that in all residential districts, except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The subject site is located at the northeast corner of Ashcroft Avenue and Boundbrook Avenue. Regardless of how the existing structure is oriented to front Ashcroft Avenue, the subject site has two front yard setbacks, one along each street. The site has a 30' required front yard along Ashcroft Avenue, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in this zoning district. The site also has a 15' required front yard along Boundbrook Avenue, the longer of the two frontages of this corner lot, which is typically regarded as a side yard. But the site's Boundbrook Avenue frontage, though it functions as a side yard, is treated as a front yard setback to maintain the continuity of the front yard setback established by the lots to the northeast zoned R-7.5(A) that front and are oriented southward towards Boundbrook Avenue.

- An R-7.5(A) Single Family Residential District requires the minimum front yard setback to be 25'. However, according to Sec. 51A-4.401(a)(3), "If a building line that is established by ordinance requires a greater or lesser front yard than prescribed by this section, the building line established by ordinance determines the minimum required front yard." Therefore, the platted building lines of 30' along Ashcroft Avenue and 15' along Boundbrook Avenue supersedes the 25' front yard setback required in an R-7.5(A) District.
- The following additional information was gleaned from the submitted site plan:
 - The proposal is represented as being approximately 65' in length parallel to Boundbrook Avenue and extending approximately 14' in length into the 15' required front yard.
 - The proposal is represented as being located approximately 12' from the pavement line.
 - The majority of the fence is represented as being located approximately 1' from the property line towards the southern border of the property, while, from the eastern border of the property line, the fence encroaches approximately 2'-15' into the required front yard.
- The Current Planner conducted a field visit of the site and surrounding area and noted two other visible fences above 4 feet in height which appeared to be located in a front yard setback. One fence, located at 8805 Boundbrook Avenue, has recorded BDA history (BDA 056-246).
- Two homes front the proposal.
- As of April 13th, no letters have been submitted in support of or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' will not adversely affect neighboring property.
- Granting this special exception of 4' with a condition imposed that the applicant complies with the submitted site plan and elevations would require the proposal exceeding 4' in height in the front yard setback to be maintained in the location and of the heights and materials shown on these documents.

Timeline:

February 10, 2015: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

March 11, 2015: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

March 16, 2015: The Current Planner shared the following information with the applicant via e-mail:

- a copy of the application materials including the Building Official's report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the April 1st deadline to submit additional evidence for staff to factor into their analysis; and the

April 10th 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.

April 7, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Chief Planner, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: APRIL 22, 2015

APPEARING IN FAVOR: Hector Espinoza, 8006 Ashcroft Ave., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Gillespie

I move that the Board of Adjustment, in request No. **BDA 145-046**, on application of Hector Espinoza, **grant** the request to construct and maintain an 8-foot-high fence in the property's front yard as a special exception to the fence height requirements in the Dallas Development Code because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with submitted site plan and elevations is required.

SECONDED: Johnson

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

NAYS: 0 –

MOTION PASSED 5– 0 (unanimously)

FILE NUMBER: BDA 145-049

BUILDING OFFICIAL'S REPORT: Application of Carl Baggett, represented by Michael R. Coker, for variances to the front yard setback regulations at 6939 Blackwood Drive.

This property is more fully described as Lot 13, Block 2/7682, and is zoned R-10(A), which requires a front yard setback of 30 feet. The applicant proposes to construct and/or maintain structures and provide as close as a 0 foot front yard setback, which will require up to a 30 foot variance to the front yard setback regulations.

LOCATION: 6939 Blackwood Drive

APPLICANT: Carl Baggett
Represented by Michael R. Coker

REQUESTS:

Requests for variances to the front yard setback regulations of up to 30' are made to maintain the following structures on a site developed with a single family home use/structure:

- In the Hyde Park Drive 30' front yard setback: retaining walls ranging from 14" – 42"; a portion of an 8" high concrete porch; a gable roof, concrete porch, and stairs; and a variable height stone landscape terrace up to 12"; and
- In the Blackwood Drive 30' front yard setback: variable height stone landscape terraces ranging from 21" – 38"; stairs; and portion of concrete front porch 39".

STANDARD FOR A VARIANCE:

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

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

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted revised site plan is required.

Rationale:

- The topography/slope of the subject site is unique and different from most lots zoned R-10(A) to such a degree that warrants variances for the structures that the applicant has applied for in this application – porch, gable roof, stairs, landscape

terraces, and retaining walls located in the site's 30' front yard setbacks along Hyde Park Drive and Blackwood Drive.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- These variance requests focus on maintaining the following structures on a site developed with a single family home use/structure:
 - In the Hyde Park Drive 30' front yard setback: retaining walls ranging from 14" – 42"; a portion of an 8" high concrete porch; a gable roof, concrete porch, and stairs; and a variable height stone landscape terrace up to 12"; and
 - In the Blackwood Drive 30' front yard setback: variable height stone landscape terraces ranging from 21" – 38"; stairs; and portion of concrete front porch 39".
- Structures on lots zoned R-10(A) are required to provide a minimum front yard setback of 30'.
- The subject site is located at the southwest corner of Hyde Park Drive and Blackwood Drive. Regardless of how the existing structure is oriented to front Blackwood Drive and to "side" to Hyde Park Drive, the subject site has front yard setbacks along both streets. The site has a 30' front yard setback along Hyde Park Drive, the shorter of the two frontages, which regardless of the fact that it functions as a side yard to the property is always deemed the front yard setback on a corner lot in this zoning district. The site also has a 30' front yard setback along Blackwood Drive, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where 6' side yard setback is required. The site's Blackwood Drive frontage that functions as its front yard is treated as a front yard setback even though it is the longer frontage in order to maintain the continuity of the front yard setbacks established by the lots to the south zoned R-10(A) that front/are oriented eastward towards Blackwood Drive.

- A revised site plan has been submitted indicating structures (a 14” and 42” high retaining wall “structure”) located on the site’s Hyde Park Drive front property line or as much as 30’ into this 30’ front yard setback. (The revised scaled site plan indicates the nearest structure to the Blackwood Drive front property line is a variable height stone landscape terrace up to 31” in height located approximately 6’ from this front property line or 24’ into this 30’ front yard setback).
- According to DCAD records, the “main improvement” for property addressed at 6939 Blackwood Drive is a structure built in 2005 with 4,129 square feet of living/total area, and the “additional improvement” is a 484 square foot attached garage.
- The subject site is sloped, slightly irregular in shape, and according to the submitted application is 0.416 acres (or approximately 18,000 square feet) in area. The site is zoned R-10(A) where lots are typically 10,000 square feet in area.
- Most lots in R-10(A) zoning have one 30’ front yard setback, two 6’ side yard setbacks, and one 6’ rear yard setback. This site however has two 30’ front yard setbacks, and two 6’ side yard setbacks.
- 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 R-10(A) 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 R-10(A) zoning classification.
- If the Board were to grant the variance requests, and impose the submitted revised site plan as a condition, the structures in the front yard setbacks would be limited to what is shown on this document– which in this case is a portion of a structure (14” and 42” retaining walls) located as close as on the Hyde Park Drive front property line (or 30’ into this 30’ front yard setback) and a structure (variable height stone landscape terrace up to 31”) located as close as approximately 6’ from the Blackwood Drive front property line (or 24’ into this 30’ front yard setback).

Timeline:

- February 5, 2015: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- March 11, 2015: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- March 11, 2015: The Board Administrator emailed the applicant’s representative the following information:

- a copy of the application materials including the Building Official's report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the April 1st deadline to submit additional evidence for staff to factor into their analysis; and the April 10th 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."

March 31, 2015: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).

April 7, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: APRIL 22, 2015

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Hounsel**

I move to grant that the Board of Adjustment grant application **BDA 145-049** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan is required.

SECONDED: **Agnich**

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

NAYS: 0 –
MOTION PASSED 5– 0 (unanimously)

FILE NUMBER: BDA 145-007

UPDATED BUILDING OFFICIAL’S REPORT: Application of Suzan Kedron for a special exception to the pedestrian skybridge standards at 8301 Westchester Drive. This property is more fully described as Lot 6A, Block 5623, and at 8300 Westchester Drive, Tract 1, Block 5623, and are zoned PD-314, which requires that pedestrian skybridge supports must not be located within the public right-of-way. The applicant proposes to construct and maintain a pedestrian skybridge and locate supports within a public right-of-way, which will require a special exception to the pedestrian skybridge standards.

ORIGINAL BUILDING OFFICIAL’S REPORT: Application of Suzan Kedron for special exceptions to the pedestrian skybridge standards at 8301 Westchester Drive. This property is more fully described as Lot 6A, Block 5623, and at 8300 Westchester Drive, Tract 1, Block 5623, and are zoned PD-314, which requires that pedestrian skybridge supports must not be located within the public right-of-way, that a pedestrian skybridge must provide clearance above the public right-of-way of at least 18 feet above grade, that the interior passageway must be no greater than 20 feet in width, and must not diverge from a perpendicular angle to the right-of-way by more than 30 degrees. The applicant proposes to construct and maintain a pedestrian skybridge and locate supports within a public right-of-way, reduce the minimum 18 foot clearance above the public right-of-way to 14 feet, increase the maximum 20 foot interior passageway width to 61 feet, and increase the maximum 30 degree divergance from the perpendicular angle to the right-of-way to 45 degrees, which will require special exceptions to the pedestrian skybridge standards.

LOCATION: 8301 Westchester Drive

APPLICANT: Suzan Kedron and Jonathan Vinson of Jackson Walker LLP

April 22, 2015 Public Hearing Notes:

- The applicant and citizens in opposition to the request submitted additional written documentation to the Board at the public hearing.

ORIGINAL REQUESTS:

Requests for special exceptions to the mandatory pedestrian skybridge standards were made to construct and maintain a pedestrian skybridge over Westchester Drive between Berkshire Street and Luther Lane that would connect an existing retail structure to an existing parking garage:

1. With a clearance above public right-of-way of 14’ above grade;
2. With an interior passageway width of 61’;
3. With support columns located within the Westchester Drive public right-of-way; and
4. That will diverge from a perpendicular angle to the right-of-way by 45 degrees.

UPDATED APRIL 22, 2015 REQUEST:

A request for a special exception to the mandatory pedestrian skybridge standards is made to construct and maintain a pedestrian skybridge over Westchester Drive between Berkshire Street and Luther Lane that would connect an existing retail structure to an existing parking garage with support columns located within the Westchester Drive public right-of-way.

Note that on March 18, 2015, the Board of Adjustment Panel B conducted a public hearing on this application and took the following actions:

1. Granted a request for a special exception to reduce the skybridge clearance above the public right-of-way to **15** feet above grade;
2. Granted a request for a special exception to increase the divergence from a perpendicular angle to 45 degrees;
3. Granted a request for a special exception to increase the maximum interior passageway width of the skybridge to **61** feet; and
4. Held the applicant's request for a special exception to locate support columns within the Westchester Drive public right-of-way until **April 22, 2015**.

STANDARD FOR A SPECIAL EXCEPTION TO THE MANDATORY PEDESTRIAN SKYBRIDGE STANDARDS:

Section 51A-4.217 of the Dallas Development Code states that the board of adjustment may grant a special exception to the pedestrian skybridge standards if the board finds that:

1. Strict compliance with the requirements will unreasonably burden the use of either of the properties;
2. The special exception will not adversely affect neighboring property; and
3. The special exception will not be contrary to the public interest.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to the pedestrian skybridge standards since the basis for this type of appeal is if the board finds that: strict compliance with the requirements will unreasonably burden the use of either of the properties; the special exception will not adversely affect neighboring property; and the special exception will not be contrary to the public interest.

BACKGROUND INFORMATION:

Zoning:

Site: PD 314 (Planned Development)
North: PD 314 (Planned Development)
South: PD 314 (Planned Development)
East: PD 314 (Planned Development)
West: PD 314 (Planned Development)

Land Use:

The proposed skybridge would connect an existing two story retail structure to an existing one-story parking garage/deck. The areas to the north, east, south, and west are developed with mostly with retail uses.

Zoning/BDA History:

1. Z 134-341 (the subject site)

On March 5, 2015, the City Plan Commission recommended approval of an application for a specific use permit for a pedestrian skybridge. (A City Council date for consideration of the SUP and a real estate license will be scheduled after the Board of Adjustment takes action on the requests for special exceptions to the pedestrian skybridge standards).

GENERAL FACTS/STAFF ANALYSIS:

- The request focuses on constructing and maintaining a pedestrian skybridge over Westchester Drive between Berkshire Street and Luther Lane that would connect an existing retail structure to an existing parking garage – a skybridge that would have support columns within the Westchester Drive public right-of-way.
- The Dallas Development Code states that the purpose of pedestrian skybridge section of the code is to promote the health, safety, and general welfare of persons and property within the city by providing for the structural integrity of pedestrian skybridges over public right-of-ways; preventing visual obstruction of public right-of-ways and urban landscapes; facilitating the flow of traffic; encouraging use of public skybridges by pedestrians through well designed additions to the existing pedestrian system; minimizing the negative impact of pedestrian skybridges on adjoining properties, communication and utility company facilities, and public street lighting and safety facilities; and establishing standards for construction and maintenance of pedestrian skybridges.
- The Dallas Development Code provides 19 mandatory skybridge provisions of which the applicant originally sought special exceptions from the following four:
 1. Pedestrian skybridges must have a clearance above the public right-of-way of at least 18 feet above grade. (The applicant had submitted a site plan and bridge section that indicates the clearance above the public right of way is 14' above grade.)
 2. If the pedestrian skybridge has a length of less than 150 feet, the interior passageway must be no less than 10 feet and no greater than 20 feet in width. (The applicant requested interior passageway dimensions from 28 feet to a maximum of 61 feet).
 3. Pedestrian skybridge supports must not be located within the public right-of-way. (The applicant had originally submitted a site plan and bridge section that indicated 5 support columns in the public right-of-way, four on the west side of Westchester Drive, one on the east side of Westchester Drive, however on

March 6th, the applicant submitted a revised site plan that However on March 6th, the applicant submitted a revised site plan that changed two items: removal of one of the bridge support columns formerly located on the west side of Westchester, and moving/relocating the bridge column on the east side of Westchester to the south several feet).

4. Pedestrian skybridges must not diverge from a perpendicular angle to the right-of-way by more than 30 degrees). (The applicant had stated on the application that a request had been made to increase the divergence from 30 degrees to 45 degrees).
- On March 5, 2015, the Sustainable Development and Construction Department Project Engineer submitted a review comment sheet regarding the applicant's request marked "Has no objections if certain conditions are met" commenting "Bridge column locations within public right-of-way shall be revised to comply with PD 314 and ADA standards with regards to sidewalk and pedestrian clearance. No columns shall be located within roadway or ground level parking spaces within right-of-way."
- The Assistant Director of Transportation Operations with the Department of Street Services has stated among other things in a February 25th email that "if a truck is allowed to have a maximum height of 14' per Texas Transportation Code, our bridges should have a minimum clearance of at least 1', preferably 2' above that height."
- On March 18, 2015, the Board of Adjustment Panel B conducted a public hearing on this application and took the following actions:
 - Granted a request for a special exception to reduce the skybridge clearance above the public right-of-way to **15** feet above grade;
 - Granted a request for a special exception to increase the divergence from a perpendicular angle to 45 degrees;
 - Granted a request for a special exception to increase the maximum interior passageway width of the skybridge to **61** feet; and
 - Held the applicant's request for a special exception to locate support columns within the Westchester Drive public right-of-way until **April 22, 2015**.
- On April 3, 2015, the applicant submitted two revised plans: one plan entitled "Site Plan 01" dated 04-01-15; the other plan entitled "Enlarge Plans 02" dated 04-01-15 (see Attachment G). The applicant's representative has conveyed in an April 3rd email to the Board Administrator that he has shown these to both the Sustainable Development and Construction Assistant Director of Engineering and the Sustainable Development and Construction Department Project Engineer. Both plans indicate three "new pedestrian bridge col. 24" dia." located in the public right-of-way on the west side of Westchester Drive, and one "24" dia. Column" located in the public right-of-way on the east side of Westchester Drive.
- Note that while the applicant's submitted revised plans dated 04-01-15 shows one of the proposed columns in the public right-of-way to be located in a visibility triangle, it is not a violation of the visual obstruction regulations because it is not located on a lot.
- On April 9, 2015, the Sustainable Development and Construction Department Project Engineer submitted a review comment sheet regarding the applicant's request marked "Has no objections."

- The applicant has the burden of proof in establishing how strict compliance with the skybridge standards (constructing/maintaining a pedestrian skybridge that would have support columns within the Westchester Drive public right-of-way) will unreasonably burden the use of either of the properties; that the special exception will not adversely affect neighboring property; and the special exception will not be contrary to the public interest.
- If the Board were to grant this request, the Board can consider imposing the applicant's submitted revised plans entitled "Site Plan 01" and "Enlarge Plans 02" dated 04-01-15 as a condition. If the Board were to grant this request and impose the applicant's submitted plans as a condition, the granted exception would be required to be constructed and maintained as shown on these documents.
- However note that if the Board were to grant this request and impose the applicant's revised plans entitled "Site Plan 01" and "Enlarge Plans 02" dated 04-01-15 as a condition, the applicant would still be required to obtain an SUP and license from City Council before the City could issue a building permit for the skybridge.

Timeline:

November 20, 2014: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

December 10, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

December 10, 2014: The Board Administrator contacted the applicant and emailed him the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the December 29th deadline to submit additional evidence for staff to factor into their analysis; and the January 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

December 24, 2014: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

January 6, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and

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

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

January 9, 2015: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment B).

January 21, 2015: The Board of Adjustment Panel B conducted a public hearing on this application. The Board Administrator circulated additional written documentation to the Board at the briefing (see Attachment C). This documentation was a letter from the applicant requesting that the Board move to hold the application over until their March 18th public hearing given that “we are continuing to work with our architects and engineers to further refine our plans, and to be able to continue our outreach with other stakeholders in the vicinity of our request.” The Board delayed action on this application until their next public hearing to be held on March 18, 2015.

January 30, 2015: The Board Administrator sent a letter to the applicant that noted the decision of the panel, and the March 6th deadline to submit additional evidence to be incorporated into the Board’s docket materials.

March 3, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Board Administrator, Building Inspection Chief Planners, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

March 6, 2015: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment D).

March 6, 2015: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet regarding the applicant’s request marked “Has no objections if certain conditions are met” commenting “Bridge column locations within public right-of-way shall be revised to comply with PD 314 and ADA standards with regards to sidewalk and pedestrian clearance. No columns shall be located within roadway or ground level parking spaces within right-of-way.”

- March 11, 2015: The Interim Assistant Director of Sustainable Development and Construction forwarded an email from the Assistant Director of Transportation Operations with the Department of Street Services to the Board Administrator (see Attachment E). The email stated among other things that “if a truck is allowed to have a maximum height of 14’ per Texas Transportation Code, our bridges should have a minimum clearance of at least 1’, preferably 2’ above that height.”
- March 17, 2015: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment F).
- March 18, 2015: The Board of Adjustment Panel B conducted a public hearing on this application where the board took the following actions:
1. Granted a request for a special exception to reduce the skybridge clearance above the public right-of-way to **15** feet above grade;
 2. Granted a request for a special exception to increase the divergence from a perpendicular angle to 45 degrees;
 3. Granted a request for a special exception to increase the maximum interior passageway width of the skybridge to **61** feet; and
 4. Held the applicant’s request for a special exception to locate support columns within the Westchester Drive public right-of-way until **April 22, 2015**.
- March 24, 2015: The Board Administrator sent a letter to the applicant that noted the decision of the panel, the April 1st, deadline to submit any additional information to staff for their review, and the April 10th deadline to submit additional evidence to be incorporated into the Board’s docket materials.
- April 6, 2015: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment G).
- April 7, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

April 9, 2015: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet regarding the applicant's request marked "Has no objections."

April 10, 2015: The applicant submitted additional information to staff beyond what was submitted with the original application and beyond what was submitted at the two previous public hearings (see Attachment H).

BOARD OF ADJUSTMENT ACTION: JANUARY 21, 2015

APPEARING IN FAVOR: Jonathan Vinson, 901 Main St., Dallas, TX
Robert Dozier, 2000 McKinney, Dallas, TX
Jack O'Brien, 5310 Harvest Hill, Dallas, TX

APPEARING IN OPPOSITION: Laura Miller, 5335 S. Dentwood Dr., Dallas, TX

MOTION: Gillespie

I move that the Board of Adjustment in request No. **BDA 145-007**, hold this matter under advisement until **March 18, 2015**.

SECONDED: Leone

AYES: 5 – Reynolds, Gillespie, Leone, Hounsel, Agnich

NAYS: 0 –

MOTION PASSED 5– 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: MARCH 18, 2015

APPEARING IN FAVOR: Jonathan Vinson, 901 Main St., Dallas, TX
Dan Feeney, 3819 McKinney Ave., Dallas, TX
Bill Willingham, 6343 Kalani, Dallas, TX
Robert Dozier, 2000 McKinney, Dallas, TX
David Culbertson, 5310 Harvest Hill Rd., Dallas, TX

APPEARING IN OPPOSITION: Michael Jung, 4400 Bank of America Plaza, Dallas, TX

MOTION #1: Agnich

I move that the Board of Adjustment, in request No. **BDA 145-007**, on application of Suzan Kedron, **grant** the request to reduce the skybridge clearance above the public right-of-way to **15-foot** above grade, as a special exception to the pedestrian skybridge accessory use standards 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 special exception will not be contrary to the public interest.

SECONDED: Hounsel

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

NAYS: 0 –
MOTION PASSED 5– 0 (unanimously)

MOTION #2: Agnich

I move that the Board of Adjustment, in request No. **BDA 145-007**, on application of Suzan Kedron, **grant** the request to increase the divergence from a perpendicular angle to 45 degrees, as a special exception to the pedestrian skybridge accessory use standards 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 special exception will not be contrary to the public interest.

SECONDED: Hounsel

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

NAYS: 0 –

MOTION PASSED 5– 0 (unanimously)

MOTION #3: Agnich

I move that the Board of Adjustment, in request No. **BDA 145-007**, on application of Suzan Kedron, **grant** the request to increase the maximum interior passageway width of the skybridge to **61**-feet, as a special exception to the pedestrian skybridge accessory use standards 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 special exception will not be contrary to the public interest.

SECONDED: Hounsel

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

NAYS: 0 –

MOTION PASSED 5– 0 (unanimously)

Break: 3:15 P.M.

Resumed: 3:22 P.M.

MOTION #4: Agnich

I move that the Board of Adjustment, in request No. **BDA 145-007**, on application of Suzan Kedron, **grant** the request to install and maintain a maximum of 4 columns for a pedestrian skybridge in a public right-of-way, as a special exception to pedestrian skybridge accessory use standards 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 special exception will not be

contrary to the public interest. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development code:

- Compliance with the submitted revised site plan with elevation dated February 25, 2015 is required. The columns may be moved up to 5 feet on the east side of Westchester.

SECONDED: **Hounsel**

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

NAYS: 0 –

MOTION PASSED 5– 0 (unanimously)

MOTION #5: **Gillespie**

In the matter of **BDA 145-007**, I move to reconsider the fourth request to place a maximum of four (4) columns in the right-of-way.

SECONDED: **Hounsel**

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

NAYS: 0 –

MOTION PASSED 5– 0 (unanimously)

MOTION #6: **Gillespie**

I move that the Board of Adjustment in request No. **BDA 145-007**, hold only the request for the four (4) columns in the right-of-way to **April 22, 2015** and instruct staff to re-advertise this matter for a public hearing.

SECONDED: **Johnson**

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

NAYS: 0 –

MOTION PASSED 5– 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: **APRIL 22, 2015**

APPEARING IN FAVOR: Suzan Kedron, 901 Main St., Dallas, TX
Robert Dozier, 2000 McKinney, Dallas, TX

APPEARING IN OPPOSITION: Laura Miller, 5335 S. Dentwood Dr., Dallas, TX
P. Michael Jung, 4400 Bank of America Plaza, Dallas,
Rick Williamson, 8411 Preston Rd., #750, Dallas, TX

MOTION: **Hounsel**

I move that the Board of Adjustment, in request No. **BDA 145-007**, on application of Suzan Kedron, **grant** the request to install and maintain 24 inch columns for a

pedestrian skybridge in a public right-of-way, as a special exception to pedestrian skybridge accessory use standards 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 special exception will not be contrary to the public interest. 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 plans titled “Site Plan 01” and “Enlarge Plans 02” dated 04-01-15 is required.

SECONDED: Agnich

AYES: 5 – Reynolds, Gillespie, Housel, Johnson, Agnich

NAYS: 0 –

MOTION PASSED 5– 0 (unanimously)

FILE NUMBER: BDA 145-044

BUILDING OFFICIAL’S REPORT: Application of Raul M. Ruiz, represented by Elias Rodriguez of Construction Concepts, for a variance to the lot coverage regulation at 1019 (AKA 1021) N. Justin Avenue. This property is more fully described as Lot 16, Block 8/8335, and is zoned R-7.5(A), which limits maximum lot coverage to 45 percent for residential structures. The applicant proposes to construct and/or maintain a nonconforming duplex residential structure and accessory structures with a 49.25 percent lot coverage which will require a 371.5 square foot variance to the lot coverage regulations.

LOCATION: 1019 (AKA 1021) N. Justin Avenue

**APPLICANT: Raul M. Ruiz
Represented by Elias Rodriguez of Construction Concepts**

REQUEST:

A variance to the lot coverage regulations of 4.25 percent (or 371 square feet) is made to maintain structures on the subject site (a “one story frame existing” structure, an “existing carport” structure, a detached “one story garage/servants quarters” structure, and a detached “one story detached storage” structure, and a “new covered patio” structure) that total 4,309 square feet or that exceed the 45 percent lot coverage (or 3,938 square feet) allowed on the 8,750 square foot subject site.

STANDARD FOR A VARIANCE:

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, lot coverage, floor area for structures accessory to single family uses, height, minimum sidewalks,

off-street parking or off-street loading, or landscape regulations provided that the variance is:

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

STAFF RECOMMENDATION:

Denial

Rationale:

- The applicant had not substantiated how the features of the flat, rectangular-shaped, and approximately 8700 square foot subject site (that is over 1,000 square feet larger than most in the zoning district) precluded him from developing it in a manner commensurate with the development upon other parcels of land with the same R-7.5(A) zoning classification. There is no special condition or physical site constraint that would appear to restrict the applicant from developing/maintaining the site with commensurately-sized development that complies with lot coverage regulations.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is developed with a nonconforming duplex use. (Note the while a structure is noted on the site plan as garage/servants quarters, the applicant's representative has informed the Board Administrator that the site only has one dwelling unit, and that there is no need for any application to be made for a special exception to the single family use regulations for an additional dwelling unit). The areas to the north, east, south, and west appear to be developed with residential uses.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on maintaining structures on the subject site (a “one story frame existing” structure, an “existing carport” structure, a detached “one story garage/servants quarters” structure, and a detached “one story detached storage” structure, and a “new covered patio” structure) that (according to the submitted site plan) total 4,309 square feet or that exceed the 45 percent (or 3,938 square feet) lot coverage allowed on the 8,750 square foot subject site by 4.25 percent or 371 square feet.
 - The maximum lot coverage is 45 percent for residential structures on lots zoned R-7.5(A).
 - The Dallas Development Code defines “coverage” as “the percentage of the lot area covered by a roof, floor area, or other structures, except that roof eaves up to 24 inches and other ordinary building projections up to 12 inches are excluded.”
 - A site plan has been submitted which provides the square footage of each structure on the site, the total of structures on the site, the total lot size, the total lot coverage, the maximum allowable lot coverage, and the total above the maximum allowable.
 - While the submitted site plan includes a legend that distinguishes “proposed areas” from “existing areas” the applicant’s representative has informed the Board Administrator that the lot coverage variance application is made to maintain all structures noted on the site plan labeled “existing” and “proposed” as they currently now all exist on the property.
- (D) According to DCAD records, the “main improvement” for property addressed at 1019 N. Justin Avenue is a structure built in 1951 with 1,770 square feet of living/total area, and with the following “additional improvements”: a 320 square foot storage building; a 720 square foot detached servants quarters; and a 310 square foot attached carport.
- (E) The subject site is flat, rectangular in shape (175’ x 50’), and according to the submitted application is 0.2009 acres (or approximately 8,700 square feet) in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- (F) The applicant has the burden of proof in establishing the following:
- That granting the variance to the lot coverage regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.
 - The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.

- If the Board were to grant the variance request, and impose the submitted site plan as a condition, the structures would be limited to what is shown on this document— which in this case are structures that exceed the 45 percent (or 3,938 square feet) coverage allowed on the 8,750 square foot subject site by 4.25 percent of 371 square feet.
- Additionally note that if the Board were to grant the applicant’s request for a variance to the lot coverage regulations, and impose the submitted site plan as a condition, no relief would be provided to any existing/proposed noncompliance on the subject site to any code provision other than to maximum lot coverage.

Timeline:

- February 2, 2015: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- March 11, 2015: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- March 11, 2015: The Board Administrator emailed the applicant’s representative the following information:
- a copy of the application materials including the Building Official’s report on the application;
 - an attachment that provided the public hearing date and panel that will consider the application; the April 1st deadline to submit additional evidence for staff to factor into their analysis; and the April 10th 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.”
- April 1, 2015: The Building Inspection Senior Plans Examiners/Development Code Specialist forwarded a revised Building Official’s report to the Board Administrator (see Attachment A).
- April 1, 2015: The Board Administrator emailed the applicant’s representative the code provisions related to nonconforming uses.
- April 7, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and

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

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

BOARD OF ADJUSTMENT ACTION: APRIL 22, 2015

APPEARING IN FAVOR: Mike Arreguin, 317 E. Jefferson, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION#1: Johnson

I move that the Board of Adjustment, in request No. BDA **145-044**, hold this matter under advisement until **May 20, 2015**.

SECONDED: Gillespie

AYES: 2 – Hounsel, Johnson

NAYS: 3 – Reynolds, Gillespie, Agnich

MOTION FAILED 3– 2

MOTION#2: Johnson

I move that the Board of Adjustment, in request No. **BDA 145-044**, on application of Raul M. Ruiz, represented by Elias Rodriguez of Construction Concepts, **deny** the lot coverage variance **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, and that it is not a restrictive 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 is a self-created or personal hardship.

SECONDED: Hounsel

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

NAYS: 0 –

MOTION PASSED 5– 0 (unanimously)

MOTION: Gillespie

I move to adjourn this meeting.

SECONDED Johnson

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

2:10 P.M. Board Meeting adjourned for **April 22, 2015**

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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