

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1 AUDITORIUM
MONDAY, AUGUST 24, 2015**

MEMBERS PRESENT AT BRIEFING: Bruce Richardson, Chair, Joe Carreon, regular member, Peter Schulte, regular member, Marla Beikman, regular member and Jim Gaspard, alternate member

MEMBERS ABSENT FROM BRIEFING: Ross Coulter, regular member

MEMBERS PRESENT AT HEARING: Bruce Richardson, Chair, Joe Carreon, regular member, Peter Schulte, regular member, Marla Beikman, regular member and Jim Gaspard, alternate member

MEMBERS ABSENT FROM HEARING: Ross Coulter, regular member

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Jamilah Way, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Lloyd Denman, Asst. Director Engineering, Phil Erwin, Chief Arborist, Donna Moorman, Chief Planner, David Cossum, Director, Sustainable Development and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Jamilah Way, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Lloyd Denman, Asst. Director Engineering, Phil Erwin, Chief Arborist, Donna Moorman, Chief Planner, David Cossum, Director, Sustainable Development and Trena Law, Board Secretary

12:15 p.m. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **August 24, 2015** docket.

1:15 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

Approval of the Board of Adjustment Panel C June 22, 2015 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: AUGUST 24, 2015

MOTION: None

The minutes were approved without a formal vote.

FILE NUMBER: BDA 145-063

BUILDING OFFICIAL'S REPORT: Application of Ed Simons for variances to the front yard setback and minimum sidewalk regulations, and a special exception to the landscaping requirements at 1712 Commerce Street. This property is more fully described as Block 136/97-1/4, and is zoned PD 619 (Subdistricts A, B, & C), which requires a front yard setback of 10 feet from the street curb per the SP Secondary Pedestrian Precinct overlay in Section 51A-4.124(a)(8), and requires mandatory minimum sidewalks and landscaping. The applicant proposes to construct and/or maintain a structure and provide 5 foot front yard setbacks, which will require 5 foot variances to the front yard setback regulations, provide an alternate sidewalk plan, which will require variances to the minimum sidewalk regulations, and provide an alternate landscape plan, which will require a special exception to the landscaping requirements.

LOCATION: 1712 Commerce Street

APPLICANT: Ed Simons

REQUESTS:

The following requests have been made on a site that is in part developed with two multi-story office structures that the applicant intends to convert to two hotels, and in part developed with a surface parking lot that the applicant intends to develop with a ten-level parking garage for use by the hotels:

1. Requests for variances of up to 5' to the required minimum 10' foot setback measured from the street curb are made to construct and maintain the aforementioned ten-level parking garage to be located as close as 5' from the S.

Ervay Street, Jackson Street, and Prather Street curb lines or as much 5' into these 10' required front yard setbacks;

2. Requests for variances to the minimum sidewalk regulations are made to construct and maintain the aforementioned ten-level parking garage and provide sidewalks along S. Ervay Street, Jackson Street, and Prather Street at a minimum 5' width when an average minimum sidewalk width of 15 feet and a minimum of width of 9' are required.
3. A request for a special exception to the landscaping requirements is made to construct and maintain the aforementioned ten-level parking garage, and not fully provide the landscaping regulations required for commercial parking garages and surface parking lots in the PD 619/CA-1 zoning districts.

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.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPING REQUIREMENTS FOR COMMERCIAL PARKING GARAGES AND SURFACE PARKING LOTS IN PD 619/CA-1(A) ZONING:

The board may grant a special exception to the landscaping requirements for commercial parking garages and surface parking lots in PD 619/CA-1(A) zoning if the board finds, after a public hearing, the special exception will not adversely affect the other properties within the subdistrict and strict compliance with the requirement would result in unnecessary hardship. If the Board grants a special exception, it must specify the length of time the special exception is effective.

STAFF RECOMMENDATION (variances):

Denial

Rationale:

- The applicant had not substantiated how the physical features of the flat, rectangular shaped, and approximately 40,500 square foot subject site with two front yard setbacks constrain it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 619 zoning classification while simultaneously complying with code provisions including front yard setback and minimum sidewalk regulations.

STAFF RECOMMENDATION (landscaping special exception):

Denial

Rationale:

- The applicant had not substantiated how the special exception will not adversely affect the other properties within the subdistrict and strict compliance with the requirement would result in unnecessary hardship.

BACKGROUND INFORMATION:

Zoning:

Site: PD 619 (Subdistricts A, B, &C) (Planned Development District)
North: PD 619 (Subdistricts A, B, &C) (Planned Development District)
South: CA-1 (Central Area)
East: PD 619 (Subdistricts A, B, &C) (Planned Development District)
West: PD 619 (Subdistricts A, B, &C) (Planned Development District)

Land Use:

The subject site is in part developed with two multi-story office structures, and in part developed with a surface parking lot. The areas to the north, east, and west are developed with a mix of retail, office, and residential uses; and the area to the south is developed with a surface parking lot.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS (front yard variances):

- This request focuses on constructing and maintaining a ten-level parking garage on the subject site to be located 5' from the S. Ervay Street, Jackson Street, and Prather Street curb lines or 5' into these 10' required front yard setbacks.

- The subject site is located in PD 619 (Subdistricts A, B, and C) where yard regulations contained in CA-1(A) and where SP Secondary Pedestrian Precinct overlays apply.
- The Dallas Development Code states that lots located within a CA -1(A)-SP zoning district are required to provide a 10' setback measured from the street curb.
- A revised site plan has been submitted that indicates a structure as close as 5' from the S. Ervay Street, Jackson Street, and/or Prather Street curb lines or as much 5' into these 10' required front yard setbacks.
- While the revised site plan indicates that a portion of the existing structures on the site do not comply with the required front yard setback, the applicant has stated that his application is only focused on the new parking garage structure and not to remedy any aspect of nonconforming structures on the subject site.
- According to DCAD records, the "improvements" at 1712 Commerce Street is an "office building" that is 190,271 square feet in area built in 1956 and at 1700 Commerce Street is office building that is 132,218 square feet in area built in 1926.
- The two existing structures on the block are contributing structures to the Downtown Dallas National Register of Historic Places, one of which is currently going through local designation process (1700 Commerce Street, constructed in 1925).
- The proposed development on the request site, a 10 story parking garage, is being developed to support the rehabilitation of the two existing structures on the block.
- The subject site is flat, rectangular in shape, and is according to the application, 0.93 acres (or approximately 40,500 square feet) in area. The site is zoned PD 619 (Subdistricts A, B, and C). The site has three, 10' front yard setbacks which is typical of any lot that with three street frontages that is not zoned single family, duplex, or agricultural.
- The applicant has the burden of proof in establishing the following:
 - That granting the variances to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variances are necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD 619 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 619 zoning classification.
- If the Board were to grant the variance requests and impose the submitted revised site plan as a condition, the structure in the front yard setbacks would be limited to what is shown on this document where portions of the parking garage structure is located as close as 5' into the required 10' front yard setbacks.

GENERAL FACTS/STAFF ANALYSIS (sidewalk variances):

- This request focuses on constructing and maintaining a ten-level parking garage on the subject site and providing 5' wide sidewalks along S. Ervay Street, Jackson Street, and Prather Street when an average minimum sidewalk width of 15' and a minimum of width of 9' is required.
- The subject site is located in PD 619 (Subdistricts A, B, and C) where additional provisions applicable to CA-1(A) and where SP Secondary Pedestrian Precinct overlays apply.
- The Dallas Development Code states certain sidewalk regulations for properties within CA -1(A)-SP zoning district, specifically that a building with a floor area ratio of 15 to one or less must have an average sidewalk of 15 feet and a minimum sidewalk width of 9 feet that is unobstructed by any structure or planting.
- A revised site plan has been submitted that indicates sidewalks along S. Ervay Street, Jackson Street, and Prather Street at a minimum 5' width.
- While the revised site plan indicates that sidewalks around the existing structures on the site do not comply with the sidewalk regulations, the applicant has stated that his application is only focused on sidewalks around the new parking garage structure and not to remedy any aspect of nonconforming sidewalks around the existing structures on the subject site.
- According to DCAD records, the "improvements" at 1712 Commerce Street is an "office building" that is 190,271 square feet in area built in 1956 and at 1700 Commerce Street is office building that is 132,218 square feet in area built in 1926.
- The two existing structures on the block are contributing structures to the Downtown Dallas National Register of Historic Places, one of which is currently going through local designation process (1700 Commerce Street, constructed in 1925).
- The proposed development on the request site, a 10 story parking garage, is being developed to support the rehabilitation of the two existing structures on the block.
- The subject site is flat, rectangular in shape, and is according to the application, 0.93 acres (or approximately 40,500 square feet) in area. The site is zoned PD 619 (Subdistricts A, B, and C). The site has three, 10' front yard setbacks which is typical of any lot that with three street frontages that is not zoned single family, duplex, or agricultural.
- The applicant has the burden of proof in establishing the following:
 - That granting the variances to the minimum sidewalk 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 619 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 619 zoning classification.

- If the Board were to grant the variance requests and impose the submitted revised site plan, the width of the sidewalks on the subject site would be limited to what is shown on this document where sidewalks along S. Ervay Street, Jackson Street, and Prather Street at a minimum 5' width.

GENERAL FACTS/STAFF ANALYSIS (landscaping special exception):

- This request focuses on constructing and maintaining the aforementioned ten-level parking garage, and not fully providing the landscaping regulations required for commercial parking garages and surface parking lots in the PD 619/CA-1 zoning districts.
- The City of Dallas Chief Arborist had submitted a memo regarding this request to the Board Administrator (see Attachment E). The memo stated among other things how the request is triggered by new construction of a commercial parking garage.
- The City of Dallas Chief Arborist's memo identifies that the deficiencies in this case are: 1) that tree grates are required for all trees planted in a public sidewalk where the applicant is proposing trees situated in an open planting bed, and 2) that shrubs are required to be a minimum of 30" in height where the applicant is proposing 18" shrubs.
- The City of Dallas Chief Arborist's memo lists several factors for consideration:
 - The district regulations state the following: "Alternate landscape plan. The director may approve an alternative landscape plan only if compliance with this paragraph is not possible, the inability to comply is not self-created, and the alternative landscape plan is in keeping with the intent of this paragraph. An alternative landscape plan may include the placement of landscaping in alternative locations. An alternative landscape plan may reduce the square footage of landscape area if additional trees or shrubs are provided."
 - An alternative landscape plan has not been submitted to the director under a parkway landscape permit review to determine if the plan may be approved under standard conditions. It has not been proven whether the site with or without the variances is unable to comply with the requirements of one tree or shrub in the adjoining parkway for each 30 feet of frontage.
 - Planting conditions in this ordinance for shrubs can vary from planting conditions for trees which require tree grates. Various methods can be used to create soil conditions for different plant types, including engineered solutions or smaller linear planting beds. The ordinance provides for significant variability in plant type, size, form, location, and species to allow maximum flexibility to designers.
 - There is no effective time period request from the applicant for the duration of the alternate landscape plan.
 - Landscaping shown facing Commerce Street is not part of this application for the commercial parking garage structure.
- The applicant has the burden of proof in establishing that the special exception will not adversely affect the other properties within the subdistrict and strict compliance with the requirement would result in unnecessary hardship.
- If the Board grants a special exception, it must specify the length of time the special exception is effective.

- If the Board was to grant this request and impose the submitted alternate landscape plan as a condition, the subject site would be provided exception from full compliance with the landscaping regulations required for commercial parking garages and surface parking lots in the PD 619/CA-1 zoning districts.

Timeline:

- April 1, 2015: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- May 12, 2015: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- May 13, 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 June 3rd deadline to submit additional evidence for staff to factor into their analysis; and the June 12th 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.”
- June 2, 4, 5 & 8, 2015: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachments A, B, C, and D).
- June 9, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June 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.
- June 11, 2015: The Sustainable Development Project Engineer submitted a review comment sheet marked “recommends that this be denied” commenting Due to proximity to City Hall, Convention Center, Main

Street Garden Park, and restaurant/retail along Commerce and Main Streets, sidewalk widths as prescribed by PD 619 is warranted. Vehicular traffic will increase with construction of garage and will result in increase of pedestrian traffic with hotel use. Recommendation of denial based on coordination with Thoroughfare Planning and Urban Design Group.”

- June 12, 2015: The City of Dallas Chief Arborist submitted a memo regarding the request for a special exception to the landscaping requirements (see Attachment E).
- June 19, 2015: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment F).
- June 22, 2015: The Board of Adjustment Panel C conducted a public hearing on this application and delayed action on this application until their next public hearing to be held on August 24, 2015.
- June 22, 2015: The Board Administrator sent a letter to the applicant that noted the decision of the panel, the July 29th deadline to submit any additional information to staff for their review, and the August 14th deadline to submit additional evidence to be incorporated into the Board’s docket materials.
- June 30, 2015: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment G).
- August 11, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.
- August 12, 2015: The City of Dallas Chief Arborist emailed the Board Administrator stating that no new information has come forward that influences his recommendation originally presented in June.
- August 13, 2015: The Sustainable Development Project Engineer re-submitted his review comment sheet from June 11th marked “recommends that this be denied” commenting Due to proximity to City Hall, Convention Center, Main Street Garden Park, and restaurant/retail along Commerce and Main Streets, sidewalk widths as prescribed

by PD 619 is warranted. Vehicular traffic will increase with construction of garage and will result in increase of pedestrian traffic with hotel use. Recommendation of denial based on coordination with Thoroughfare Planning and Urban Design Group.”

BOARD OF ADJUSTMENT ACTION: JUNE 22, 2015

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Schulte**

I move that the Board of Adjustment in Appeal No. **BDA 145-063** hold this matter under advisement until **August 24, 2015**.

SECONDED: **Beikman**

AYES: 5 – Richardson, Coulter, Carreon, Schulte, Beikman

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: AUGUST 24, 2015

APPEARING IN FAVOR: Mehul Patel, 700 State Hwy 121, Lewisville, TX
Milton Anderson, 300 N Field St., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: **Schulte**

I move that the Board of Adjustment, in request No. **BDA 145-063**, on application of Ed Simons, **grant** a 5-foot variance to the front yard setback regulations because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan is required.

SECONDED: **Richardson**

AYES: 2 – Richardson, Schulte

NAYS: 3 - Carreon, Beikman, Gaspard

MOTION FAILED: 2-3

MOTION #2: Schulte

I move that the Board of Adjustment, in request No. **BDA 145-063**, on application of Ed Simons, **deny** the front yard setback 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.

SECONDED: Gaspard

AYES: 5 – Richardson, Schulte, Carreon, Beikman, Gaspard

NAYS: 0 -

MOTION PASSED: 5-0 (unanimously)

MOTION #3: Schulte

I move that the Board of Adjustment, in request No. **BDA 145-063**, on application of Ed Simons, **deny** the special exception **with prejudice** because our evaluation of the property and the testimony shows that strict compliance would not result in unnecessary hardship to this applicant and will adversely affect the other properties within the subdistrict.

SECONDED: No One

MOTION FAILED FOR LACK OF A SECOND.

MOTION #4: Beikman

I move that the Board of Adjustment, in request No. **BDA 145-063**, on application of Ed Simons, **grant** an alternate landscape plan as a special exception to the landscape requirements to the commercial parking garage and surface parking lot requirements in PD 619/CA-1(A) because our evaluation of the property and testimony shows that strict compliance would result in unnecessary hardship to this applicant and will not adversely affect the other properties within the subdistrict, and this special exception is effective until August 24,2020. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted alternate landscape plan is required.

SECONDED: No One

MOTION FAILED FOR LACK OF A SECOND.

MOTION #5: Gaspard

I move that the Board of Adjustment, in request No. **BDA 145-063**, on application of Ed Simons, **deny** the special exception **without** prejudice because our evaluation of the property and the testimony shows that strict compliance would not result in unnecessary

hardship to this applicant and will adversely affect the other properties within the subdistrict.

SECONDED: Carreon

AYES: 5 – Richardson, Schulte, Carreon, Beikman, Gaspard

NAYS: 0 -

MOTION PASSED: 5-0(unanimously)

MOTION #6: Schulte

I move that the Board of Adjustment, in request No. **BDA 145-063**, on application of Ed Simons, **grant** an alternate side walk plan as a variance to the minimum side walk regulations because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan is required only to the effect of the sidewalk regulation variance.

SECONDED: Beikman

AYES: 3 – Richardson, Schulte, Beikman

NAYS: 2 – Carreon, Gaspard

MOTION FAILED: 3-2

MOTION #7: Carreon

I move that the Board of Adjustment, in request No. **BDA 145-063**, on application of Ed Simons, **deny** the variance to the minimum side walk regulations **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: Gaspard

AYES: 5 – Richardson, Schulte, Carreon, Beikman, Gaspard

NAYS: 0 -

MOTION PASSED: 5-0 (unanimously)

MOTION: Gaspard

I move to adjourn this meeting.

SECONDED: Richardson

AYES: 5 – Richardson, Carreon, Schulte, Beikman, Gaspard

NAYS: 0 -

MOTION PASSED: 5 – 0(unanimously)

2:20 P. M. - Board Meeting adjourned for August 24, 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.