

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
MONDAY, August 20, 2018**

MEMBERS PRESENT AT BRIEFING: Bruce Richardson, Chair, Cheri Gambow, regular member Ryan Behring, regular member Matt Shouse, regular member

MEMBERS ABSENT FROM BRIEFING: Robert Agnich, regular member

MEMBERS PRESENT AT HEARING: Bruce Richardson, Chair, Robert Agnich, regular member, Matt Shouse, regular member, Cheri Gambow, regular member and Ryan Behring, regular member

MEMBERS ABSENT FROM HEARING: No One

STAFF PRESENT AT BRIEFING: Neva Dean, Asst. Director, Steve Long, Chief Planner/Board Administrator, Oscar Aguilera, Senior Planner, Theresa Pham, Asst. City Atty., David Navarez, Project Engineer, Charles Trammell, Development Code Specialist, Phil Erwin, Chief Arborist, Carolina Yumet, Senior Planner and Elaine Hill, Board Secretary

STAFF PRESENT AT HEARING: Neva Dean, Asst. Director, Steve Long, Chief Planner/Board Administrator, Oscar Aguilera, Senior Planner, Theresa Pham, Asst. City Atty., Charles Trammell, Development Code Specialist, Phil Erwin, Chief Arborist, Carolina Yumet, Senior Planner and Elaine Hill, Board Secretary

11:17 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's August 20, 2018 docket.

1:17 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 18, 2018 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: August 20, 2018

MOTION: None

The minutes were approved without a formal vote.

FILE NUMBER: BDA178-083(OA)

BUILDING OFFICIAL'S REPORT: Application of Andrea Gonzalez for a special exception to the single family use regulations at 2639 Searcy Drive. This property is more fully described as Lot 17, Block 9/5032, and is zoned R-7.5(A), which limits the number of dwelling units to one. The applicant proposes to construct and/or maintain an additional dwelling unit, which will require a special exception to the single family use regulations.

LOCATION: 2639 Searcy Drive

APPLICANT: Andrea Gonzalez

REQUEST:

A request for a special exception to the single family use regulations is made to maintain an existing 1-story additional "dwelling unit" structure on a site developed with a 1-story main single family home/dwelling unit structure.

STANDARD FOR A SPECIAL EXCEPTION TO THE SINGLE FAMILY USE REGULATIONS TO AUTHORIZE AN ADDITIONAL DWELLING UNIT:

The board may grant a special exception to the single family use regulations of the Dallas Development Code to authorize an additional dwelling unit on a lot when, in the opinion of the board, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties.

In granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent use of the additional dwelling unit as rental accommodations.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to authorize an additional dwelling unit since the basis for this type of appeal is when in the opinion of the board, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties.

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 uses.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- This request for a special exception to the single family use regulations focuses on maintaining an existing 1-story additional “dwelling unit” structure on a site developed with a 1-story main single family home/dwelling unit structure.
- The site is zoned R-7.5(A) where the Dallas Development Code permits one dwelling unit per lot.
- The single family use regulations of the Dallas Development Code states that only one dwelling unit may be located on a lot, and that the board of adjustment may grant a special exception to this provision and authorize an additional dwelling unit on a lot when, in the opinion of the board, the special exception will not: 1) be contrary to the public interest; or 2) adversely affect neighboring properties.
- The Dallas Development Code defines “single family” use as “one dwelling unit located on a lot;” and a “dwelling unit” as “one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms.”
- The Dallas Development Code defines “kitchen” as “any room or area used for cooking or preparing food and containing one or more ovens, stoves, hot plates, or

microwave ovens; one or more refrigerators; and one or more sinks. This definition does not include outdoor cooking facilities.”

- The Dallas Development Code defines “bathroom” as “any room used for personal hygiene and containing a shower or bathtub, or containing a toilet and sink.”
- The Dallas Development Code defines “bedroom” as “any room in a dwelling unit other than a kitchen, dining room, living room, bathroom, or closet. Additional dining rooms and living rooms, and all dens, game rooms, sun rooms, and other similar rooms are considered bedrooms.”
- The submitted site plan denotes the locations of two building footprints, the larger of the two with what appears to be the existing single family main structure and the smaller of the two denoted as “living quarters”.
- The submitted floor plan of what appears to be the “living quarters” denoted on the site plan shows a number of rooms/features that Building Inspection has determined makes it an additional dwelling unit - that is per Code definition: “one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms.”
- This request centers on the function of what is proposed to be inside the smaller structure on the site – the “living quarters” structure, specifically its collection of rooms/features shown on the floor plan.
- The application states a request has been made for: “to allow my daughter and children to live there”.
- According to DCAD records, the “main improvement” for property addressed at 2639 Searcy Drive is a structure built in 1949 with 1411 square feet of total/living area with the following “additional improvements”: a 480 square-foot detached garage, a 416 square-foot room addition, and a 240 square-foot storage building.
- According to the submitted site plan the main structure contains 1,308 square feet and the additional dwelling unit structure contains 780 square feet.
- On August 1, 2018, the applicant provided a petition with 25 signatures from her neighbors supporting the existing additional dwelling unit, located at 2639 Searcy Drive, to the Board of Adjustment Senior Planner (see Attachment A).
- The applicant has the burden of proof in establishing that the additional dwelling unit will not be used as rental accommodations (by providing deed restrictions, if approved) and will not adversely affect neighboring properties.
- If the Board were to approve this request, the Board may choose to impose a condition that the applicant comply with the site plan if they feel it is necessary to ensure that the special exception will not adversely affect neighboring properties. But granting this special exception request will not provide any relief to the Dallas Development Code regulations other than allowing an additional dwelling unit on the site (i.e. development on the site must meet all required code requirements).
- The Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.
- If the Board were to grant this request, Building Inspection would view the structure denoted on the submitted site plan as “living quarters” as an additional “dwelling unit”.

- If the Board were to deny this request, Building Inspection would view the structure denoted on the submitted site plan as “living quarters” as an “accessory structure” whereby the applicant will be required to comply with the accessory structure code provision set forth in Section 51A-4.209(6) – provisions including but not limited to how the floor area of any individual accessory structure on a lot, excluding floor area used for parking, may not exceed 25 percent the floor area of the main building; and that the height of an accessory structure may not exceed the height of the main building.

Timeline:

- May 7, 2018: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- July 10, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- July 11, 2018: The Board Senior Planner 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 August 1st deadline to submit additional evidence for staff to factor into their analysis; and the August 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.”
- August 1, 2018: The applicant’s representative submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).
- August 7, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: August 20, 2018

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Agnich**

I move to **grant** the Board of Adjustment application **BDA178-083** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence that the application satisfy all the requirements of the Dallas Development Code, as amended, and is consistent with the general purpose and intent of the Code as amended, and is consistent with the general purpose and intent of the Code, as applicable, to wit. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- The applicant must deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

SECOND: **Behring**

AYES: 5 – Behring, Richardson, Agnich, Gambow, Shouse

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA178-085(OA)

BUILDING OFFICIAL’S REPORT: Application of John Chisholm, represented by Chase Flanary of Kirkham Engineering, for a special exception to the landscape regulations at 4101 Duncanville Road. This property is more fully described as Lot 3, Block A/8032 and is zoned IR, which requires mandatory landscaping. The applicant proposes to construct and/or maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 4101 Duncanville Road

APPLICANT: John Chisholm
Represented by Chase Flanary of Kirkham Engineering

REQUEST:

A request for a special exception to the landscape regulations is made to construct and maintain a commercial/office use/structure, and not fully meet the landscape

regulations, more specifically, to not meet street tree location requirements on the subject site.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE AND TREE PRESERVATION REGULATIONS:

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

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

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

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

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan is required.

Rationale:

- The chief arborist recommends approval of the alternative landscape plan because strict compliance with Article X will unreasonably burden the use of the property, and the special exception will have no negative impacts on neighboring properties.

BACKGROUND INFORMATION:

Zoning:

Site: IR (Industrial / Research District)
North: IR (Industrial / Research District)
South: IR (Industrial / Research District)
East: IR (Industrial / Research District)
West: IR (Industrial / Research District)

Land Use:

The subject site is undeveloped. The area to the north is developed with an office/warehouse use, and the areas to the east, south, and west are undeveloped.

Zoning/BDA History:

1. BDA167-132, Property at 4104 Duncanville Road (site)

On December 11, 2017, the Board of Adjustment Panel C granted a request for a special exception to the landscape regulations and imposed the submitted alternate landscape plan as a condition. The case report states that the request was made to maintain commercial/office use/structure and not fully meet the landscape regulations - more specifically, according to the City of Dallas Chief Arborist, the submitted alternate landscape plan did not provide the required street trees not providing street trees in the required location within 30' from the back of the street curb.

2. BDA134-119, Property at 4243 Duncanville Road (three lots south of subject site)

On December 15, 2014, the Board of Adjustment Panel C granted a request for a special exception to the landscape regulations and imposed the submitted alternate landscape plan as a condition. The case report states that the request was made to maintain a motor vehicle fueling station use (Questar Fueling Station), and not fully meet the landscape regulations - more specifically, according to the City of Dallas Chief Arborist, the submitted alternate landscape plan did not provide the required street trees factored at one tree per 50 linear feet of frontage within 30 feet of the curb.

GENERAL FACTS/STAFF ANALYSIS:

- This request for a special exception to the landscape regulations focuses on constructing and maintaining a commercial/office use/structure, and not fully meeting the landscape regulations, more specifically, not providing street trees in the required location within 30' from the back of the street curb.
- The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or

increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period.

- The City of Dallas Chief Arborist submitted a memo regarding the applicant's request (see Attachment A).
- The Chief Arborist's memo states the following with regard to "request":
 - The applicant requests a special exception to the landscape regulations in Article X for the construction of a non-residential structure. The special exception would allow for required street trees to be planted more than 30 feet from the back of the street curb (Sec. 51A-10.125(b) (4)), and parking spaces adjacent to the new southern building addition would not be within 120 feet of a large canopy tree (Sec. 51A-10.125(b) (5)).
- The Chief Arborist's memo states the following with regard to "provision":
 - The applicant is proposing to provide an alternative landscape plan which would comply with Article X with the exception of street tree location requirements and parking lot requirements for distance from a large canopy tree. The street buffer design standard is used on the plan which will provide one large non-canopy tree with each required canopy tree. The property will also retain a 3.5 acre preserved wooded area with a floodway easement.
- The Chief Arborist's memo states the following with regard to "deficiencies":
 - The property would not provide street trees within 30 feet of the curb, as required by ordinance. Two large easements forces trees to the edge of the easement and away from Duncanville Road. The easement areas in the front yard will be maintained with permeable groundcover.
- The City of Dallas Chief Arborist recommends approval of the alternative landscape plan because strict compliance with Article X will unreasonably burden the use of the property, and the special exception will have no negative impacts on neighboring properties.
- The applicant has the burden of proof in establishing the following:
 - Strict compliance with the requirements of the landscape regulations of the Dallas Development Code will unreasonably burden the use of the property; and
 - The special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose the submitted alternate landscape plan as a condition to the request, the site would be provided exception from providing the street trees in the required location on the subject site.

Timeline:

May 2, 2018: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

July 10, 2018: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the

same request, that case must be returned to the panel hearing the previously filed case”.

July 11, 2018: The Board Administrator emailed the applicant’s representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the August 1st deadline to submit additional evidence for staff to factor into their analysis; and the August 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.

August 7, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

August 9, 2018: The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment A).

BOARD OF ADJUSTMENT ACTION: AUGUST 20, 2018

APPEARING IN FAVOR: No One

APPEARING IN OPPOSITION: No One

MOTION: Agnich

I move to **grant** the Board of Adjustment application **BDA178-085** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence that the application satisfy all the requirements of the Dallas Development Code, as amended, and is consistent with the general purpose and intent of the Code, as applicable, to wit. 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.

SECOND: Behring

AYES: 5 – Behring, Richardson, Agnich, Gambow, Shouse
NAYS: 0
MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA178-088(OA)

BUILDING OFFICIAL’S REPORT: Application of Brandon Oberschlake, represented by Bang Dang, for a variance to the front yard setback regulations, and for special exceptions to the fence standards regulations at 2015 Cullen Avenue. This property is more fully described as Lot 6, Block C/1978, and is zoned R-7.5(A), which requires a front yard setback of 25 feet, which limits the height of a fence in the front yard to 4 feet, and requires a fence panel with a surface area that is less than 50 percent open may not be located less than 5 feet from the front lot line. The applicant proposes to construct and/or maintain a structure and provide a 5 foot front yard setback, which will require a 20 foot variance to the front yard setback regulations, to construct and/or maintain a 8 foot high fence in a required front yard, which will require a 4 foot special exception to the fence standards regulations, and to construct and/or maintain a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than 5 feet from the front lot line, which will require a special exception to the fence standards regulations.

LOCATION: 2015 Cullen Avenue

APPLICANT: Brandon Oberschlake
Represented by Bang Dang

REQUESTS:

The following requests have been made on a site that is undeveloped:

1. A variance to the front yard setback regulations is made to construct/maintain:
 - (a) a one-story single-family home structure with a total “slab area” of approximately 2,720 square feet or with a total “home size” of approximately 2,260 square feet to be located 5’ from one of the site’s two front property lines (Madera Street) or 20’ into this 25’ front yard setback; and,
 - (b) a “pool” structure part of which is to be located 10’ from one of the site’s two front property lines (Madera Street) or 15’ into this 25’ front yard setback;
2. A request for special exception to the fence standards regulations related to fence height of 4’ is made to construct and maintain a fence (an 8’ high solid board-on-board wood fence) higher than 4’ in height in one of the site’s two required front yards (Madera Street); and
3. A request for a special exception to the fence standards regulations related to a fence panel with a surface area that is less than 50 percent open is made to maintain an 8’ high solid board-on-board wood fence located on the Madera Street front lot line (or less than 5’ from this front lot line).

STANDARD FOR A VARIANCE:

Section 51(A)-3.102(d)(10) of 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 FENCE STANDARDS:

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

STAFF RECOMMENDATION:

Approval, subject to the following condition;

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that the subject site is unique and different from most lots in the R7.5 (A) zoning district. It is restrictive in area due to having an irregular shaped lot, it has two, 25' front yard setbacks when most lots in this zoning district have one 25' front yard setback. The approximately 8,900 square feet subject site has approximately 2,200 square feet of developable area available once the 25' front yard setback is accounted for the west, 25' front yard setback is accounted for the east and 5' side yard setback is accounted for on the north. If the lot were more typical to others in the zoning district with only one front yard setback, the site would have approximately 4,700 square feet of developable area.
- Staff concluded that the applicant has shown by submitting a document indicating among other things that that the total home size of the proposed home on the subject site at approximately 2,264 square feet is commensurate to 10 other homes in the same R-7.5(A) zoning district that have average home size of approximately 3,600 square feet.

STAFF RECOMMENDATION (fence standards):

No staff recommendation is made on this or any request for a special exception to the fence standards 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 being developed with a single family home. The areas to the north, south, east, and west are developed with single family uses.

Zoning/BDA History:

1. BDA167-022, Property at 2228 Madera Street (two lots northwest of the subject site) On February 23, 2017, the Board of Adjustment Panel C granted a variance to the front yard setback regulations. The case report stated that the requests were made to replace an existing single family structure in the front yard setback with a new single family structure that would be located as close as 14' from the front property line or as much as 11' into the required 25' front yard setback.
2. BDA123-086, Property at 5410 Melrose Avenue (four lots northwest of the subject site) On September 17, 2013, the Board of Adjustment Panel B granted variances to the front yard setback regulations, lot coverage regulations, and off-street parking regulations. The case report stated that the requests were made to replace an existing one-story structure with a two story structure.

GENERAL FACTS/STAFF ANALYSIS (front yard variance):

- This request for a variance to the front yard setback regulations of 20' focuses on constructing and maintaining:
 - a) a one-story single family home structure with a total "slab area" of approximately 2,720 square feet or with a total "home size" of approximately 2,260 square feet

- to be located 5' from one of the site's two front property lines (Madera Street) or 20' into this 25' front yard setback; and
- b) a "pool" structure, part of which is to be located 10' from one of the site's two front property lines (Madera Street) or 15' into this 25' front yard setback.
- The property is located in an R-7.5 (A) (Single family district 7,500 square-feet) zoning district which requires a minimum front yard setback of 25 feet.
 - The subject site is located at the northwest corner of Cullen Avenue and Madera Street. Regardless of how the structure is proposed to be oriented to front Cullen Avenue, the subject site has 25' front yard setbacks along both street frontages. The site has a 25' front yard setback along Cullen 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 25' front yard setback along Madera Street, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where a 5' side yard setback is required. However, the site's Madera Street frontage that would function as a side yard on the property is treated as a front yard setback nonetheless, to maintain the continuity of the established front yard setback established by the lots to the west that front/are oriented southward towards Madera Street.
 - The submitted site plan indicates that the proposed home structure is located as near as 5' from the Madera Street front property line or 20' into this 25' front yard setback.
 - According to DCAD records, the "main improvement" for property addressed at 2015 Cullen Avenue is a structure built in 1926 with 862 square feet of total living area, however, this structure has been demolished.
 - The subject site is flat, irregular in shape and according to the submitted application is 0.20 acres (or approximately 8,900 square feet) in area. The site is zoned R-7.5 (A) where lots are typically 7,500 square feet in area.
 - Most lots in the R-7.5(A) zoning district have one 25' front yard setback, two 5' side yard setbacks, and one 5' rear yard setback; this site has two 25' front yard setbacks and one 5' side yard setback.
 - The site plan represents that approximately 1/2 of the home structure and 3/4 of the pool are located in the 25' Madera Street front yard setback.
 - The approximately 8,900 square feet subject site has approximately 2,200 square feet of developable area available once the 25' front yard setback is accounted for the west, 25' front yard setback is accounted for the east and 5' side yard setback is accounted for on the north. If the lot were more typical to others in the zoning district with only one front yard setback, the site would have approximately 4,700 square feet of developable area.
 - The applicant submitted a document with this application, indicating among other things that that the total home size of the proposed home on the subject site is 2,264 square feet, and the average of 10 other properties in the same zoning is approximately 3,600 square feet.
 - The following additional information was gleaned from the submitted site plan and elevation:
 - The "pool" structure is represented as being approximately 37' in length parallel to Madera Street.

- The “pool” structure is represented as being located approximately 10’ from the property line.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.
 - The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.
- If the Board were to grant the variance request, and impose the submitted site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document– which in this case is a home structure that would be located 5’ from the site’s Madera Street front property line (or 20’ into this 25’ front yard setback) and a pool structure that would be located 10’ from the site’s Madera Street front property line (or 15’ into this 25’ front yard setback).

GENERAL FACTS/STAFF ANALYSIS (fence standards):

- The requests for special exceptions to the fence standard regulations are twofold. A special exception to the fence standards regulations related to height of 4’ is to maintain an 8’ high solid board-on-board wood fence in one of the site’s two required front yards (Madera Street). A special exception to the fence standard regulations related to a fence with panels with surface areas less than 50 percent open is made to maintain an 8’ high solid board-on-board wood fence located on Madera Street front lot line (or less than 5’ from this front lot line).
- The property is located in an R-7.5 (A) (Single family district 7,500 square-feet) zoning district which requires a minimum front yard setback of 25 feet.
- The Dallas Development Code Sec. 4.602 (a) states that:
 - 1) In all residential districts except multifamily districts, a fence may not exceed 4’ above grade when located in the required front yard.
 - 2) In single family districts, a fence panel with a surface area that is less than 50 percent open may not be located less than five feet from the front lot line.
- The applicant submitted site plan and a site plan/elevation representing the proposed fence in the front yard setback with notations indicating that the proposal reaches a maximum height of 8’.
- The following additional information was gleaned from the submitted site plan:
 - The proposal is represented as being approximately 116’ in length parallel to Madera Street and approximately 25’ perpendicular to Madera Street on the north and approximately 6’ on the south side of the site in this front yard setback.

- The proposal is represented as being located approximately at the front property line or approximately 12' from the pavement line.
- The Sustainable Development and Construction Department Senior Planner conducted a field visit of the site and surrounding area from Cullen Avenue to Melrose Avenue and noted a similar fence that appeared to be over 4' in height and in a front yard setback - a solid wood fence that appeared to be above 8' in height located immediately north of subject site with no recorded BDA history.
- The applicant has the burden of proof in establishing that the special exception to the fence standards regulations related to fence height of 8' will not adversely affect neighboring property.
- As of August 10th, no letters have been submitted in support of or in opposition to this request.
- Granting these special exceptions with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding 4' in height to be located in the front yard setback to be constructed and maintained in the location and of the heights and materials as shown on these documents.

Timeline:

- May 16, 2018: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 10, 2018: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- July 11, 2018: The Sustainable Development and Construction Department Senior Planner emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the August 1st deadline to submit additional evidence for staff to factor into their analysis; and the August 10th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standards 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.
- August 7, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and

Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: AUGUST 20, 2018

APPEARING IN FAVOR: Bang Dang, 4414 Buena Vista St., #18, Dallas, TX 75205
Brandon Oberschlare, 1945 & 4009 Bennett Ave. Dallas, TX 75206

APPEARING IN OPPOSITION: No One

MOTION 1 OF 3: Shouse

I move that the Board of Adjustment, in Appeal No. BDA 178-088, on application of Brandon Oberschlake, represented by Bang Dang, **grant** the 20-foot variance to the front yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code, as amended:

- Compliance with the submitted site plan is required.

SECOND: Behring

AYES: 5 – Behring, Gambow, Shouse, Richardson, Agnich

NAYS: 0

MOTION PASSED: 5 – 0

MOTION 2 OF 3: Behring

I move that the Board of Adjustment, in Appeal No. BDA 178-088, on application of Brandon Oberschlake, represented by Bang Dang, **grant** the request of this applicant to construct and/or maintain an eight-foot fence as a special exception to the height requirement for fences contained in the Dallas Development Code, as amended, 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 condition be imposed to further the purpose and intent of the Dallas Development Code, as amended:

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

SECOND: Shouse

AYES: 5 – Behring, Gambow, Shouse, Richardson, Agnich

NAYS: 0

MOTION PASSED: 5 – 0

MOTION 3 OF 3: Shouse

I move that the Board of Adjustment, in Appeal No. BDA 178-088, on application of Brandon Oberschlake, represented by Bang Dang, **grant** the request of this applicant to complete and maintain fence panels with a surface area less than 50 percent open located less than 5 feet from the front lot lines as a special exception to the surface area openness requirement for fences in the Dallas Development Code, as amended, 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 condition be imposed to further the purpose and intent of the Dallas Development Code, as amended:

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

SECOND: Agnich

AYES: 5 – Behring, Gambow, Shouse, Richardson, Agnich

NAYS: 0

MOTION PASSED: 5 – 0

FILE NUMBER: BDA178-064(SL)

BUILDING OFFICIAL'S REPORT: Application of Robert Baldwin, represented by Baldwin Associates, for a variance to the off-street parking regulation at 5117 W. Lovers Lane. This property is more fully described as Lot 19&20, Block A/5006, and is zoned CR, which requires that the owner of off-street parking must provide screening to separate the parking area from a contiguous residential use or vacant lot if either is in an A, A(A), R, R(A), D, D(A), TH, TH(A), CH, MF, MF(A), MH, or MH(A) district and the parking area serves a nonresidential use. The applicant proposes to construct and maintain a nonresidential structure and not provide the required screening, which will require a variance to the off-street parking regulations.

LOCATION: 5117 W. Lovers Lane

APPLICANT: Robert Baldwin, Represented by Baldwin Associates

REQUEST:

A request for a variance to the off-street parking regulations, more specifically the screening provisions for off-street parking, is made to lease and maintain a particular use that requires a greater number of off-street parking spaces than the original use on the subject site that is developed with a vacant nonresidential structure, and not provided required screening between the required off-street parking on the site for this proposed use and the property to the north across an alley zoned R-7.5(A) and single family residential in use.

STANDARD FOR A VARIANCE:

Section 51(A)-3.102(d)(10) of 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:

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

STAFF RECOMMENDATION:

Denial

Rationale:

- The applicant had not substantiated how the physical features of the flat, rectangular in shape (137'x 50'), 0.157 acres (or approximately 6,900 square feet) site preclude it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same CR zoning classification.
- Staff concluded that any hardship in this case is self-created in that the required screening that the applicant seeks variance for is prompted by the applicant's proposal/choice to obtain a certificate of occupancy (CO) for a particular use that requires a greater number of off-street parking spaces than the original use, and that the City could issue a new CO to the applicant for the same use that had occupied the site with no screening required or variance to the off-street parking regulations related to required screening.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is developed with a vacant nonresidential structure. The area to the north is developed with a single family residential; the areas to the east, south, and west are developed with retail uses.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS (screening of off-street parking variance):

- This request for a variance to the off-street parking regulations focuses on leasing and maintaining a particular use that requires a greater number of off-street parking spaces than the original use on the subject site that is developed with a vacant nonresidential structure, and not providing required screening between the required off-street parking on the site for this proposed use and the property to the north across an alley zoned R-7.5(A) and single family residential in use.
- The Dallas Development Code states the following related to the screening of off-street parking:
 - (1) The owner of off-street parking must provide screening to separate the parking area from:
 - (A) a contiguous residential use or vacant lot if either is in an A, A(A), R, R(A), D, D(A), TH, TH(A), CH, MF, MF(A), MH, or MH(A) district and the parking area serves a nonresidential use; or
 - (B) a contiguous single family or duplex use or a vacant lot if any of these are in an R, R(A), D, D(A), TH, TH(A), or CH district and the parking area serves a multifamily use.
 - (2) If an alley separates a parking area from another use, the use is considered contiguous to the parking area. If a street separates a parking area from another use, the use is not considered contiguous to the parking area.
- The Dallas Development Code states that the screening for off-street parking required under Subsection (f)(1) must be a brick, stone, or concrete masonry, stucco, concrete, or wood wall or fence that is not less than six feet in height. The wall or fence may not have more than ten square inches of open area for each square foot of surface area and may not contain any openings or gates for vehicular access. The owner of off-street parking must maintain the screening in compliance with these standards.

- The applicant submitted a site plan representing the location of a 6' tall wood fence and rolling gate on the north side of the property between the off-street parking on the site and the property to the north across an alley zoned R-7.5(A) and single family residential in use.
- Building Inspection has interpreted that the screening as represented on the submitted site plan is noncompliant with required screening on this site because of the rolling gate.
- Building Inspection has stated that the required screening that the applicant seeks variance for is prompted by the applicant's proposal/choice to obtain a certificate of occupancy (CO) for a new use that requires a greater number of off-street parking spaces than the original use, and that the City could issue a new CO to the applicant for the same use that had occupied the site with no screening required or variance to the off-street parking regulations related to screening required.
- According to DCAD records, the "improvements" for property addressed at 5117 W. Lovers Lane is a 3,000 square foot "free standing retail store" constructed in 1949.
- The subject site is flat, rectangular in shape (137'x 50'), 0.157 acres (or approximately 6,900 square feet) in area.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the off-street parking regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed, and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same CR zoning classification.
 - The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same CR zoning classification.
- If the Board were to grant the variance request, and impose the submitted site plan as a condition, the applicant would be able to lease the vacant nonresidential structure on the with a particular use that requires a greater number of off-street parking spaces than the original use without required screening between the required off-street parking for this proposed use on the site and the property to the north across an alley zoned R-7.5(A) and single family residential in use.

Timeline:

March 19, 2018: 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 15, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

May 15, 2018: 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 May 30th deadline to submit additional evidence for staff to factor into their analysis; and the June 8th 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."

June 5, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Sustainable Development and Construction Director the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Sustainable Development and Construction Department Authorized Hearing/Code Amendment Senior Planner, and the Assistant City Attorney to the Board.

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

June 18, 2018: The Board of Adjustment Panel C conducted a public hearing on this application, and delayed action on this application until the next public hearing to be held on August 20, 2018.

June 19, 2018: The Board Administrator wrote the applicant a letter of the board's action; the August 1st deadline to submit additional evidence for staff to factor into their analysis; and the August 10th deadline to submit additional evidence to be incorporated into the Board's docket materials. (Note that the applicant has not submitted any additional documentation to staff since the June 18th public hearing).

August 7, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the

Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: AUGUST 20, 2018

APPEARING IN FAVOR: Rob Baldwin, 3604 Elm, #B, Dallas, TX

APPEARING IN OPPOSITION: No One

MOTION: Gambow

I move that the Board of Adjustment, in Appeal No. BDA 178-064, on application of Robert Baldwin, represented by Baldwin Associates, **grant** the variance to the off-street parking regulations to not provide the required screening as requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

1. Compliance with the submitted site plan is required.
2. Rear parking only for tenants.
3. Rolling gate must remained closed when not in use and can only be opened when tenants are entering and existing.

SECOND: Behring

AYES: 3 – Behring, Gambow, Shouse

NAYS: 2 - Richardson, Agnich

MOTION FAILED: 3 – 0

Application was denied with prejudice

NOTE: IF A MOTION TO GRANT ALL OR A PORTION OF THE APPLICANT'S REQUEST DOES NOT GET FOUR CONCURRING VOTES, THE MOTION FAILS.

FILE NUMBER: BDA178-072(SL)

BUILDING OFFICIAL’S REPORT: Application of Christopher Johnson, represented by Michael R, Coker Company, for a variance to the front yard setback regulations, at 3407 McKinney Avenue. This property is more fully described as part of Lot 9, Block 9/972, and is zoned PD 193 (LC), which requires a front yard setback of 10 feet. The applicant proposes to construct/maintain a structure and provide a 0-foot front yard setback, which will require a 10 foot variance to the front yard setback regulations.

LOCATION: 3407 McKinney Avenue

APPLICANT: Christopher Johnson
Represented by Michael R, Coker Company

REQUEST:

A request for a variance to the front yard setback regulations of 10’ is made to maintain the following “structures” located as close as on the site’s front property line or as much as 10’ into the site’s 10’ front yard setback on a site developed with a restaurant/bar use (Eastwood’s Bar):

1. a “brick deck 10” above grade”;
2. a “partially covered wood deck 31” above grade”;
3. a “concrete walk/step 8” above grade”;
4. a “concrete walk/step 15’ above grade”;
5. a “pole umbrella”; and
6. a “pole fan”.

(Note that while the applicant’s representative references “retaining walls” that require variance, Building Inspection states that in this particular case, the retaining walls are not “structures” that require variance to the front yard setback regulations).

STANDARD FOR A VARIANCE:

Section 51(A)-3.102(d) (10) of 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:

- While staff recognized that the site was slightly irregular in shape, staff concluded that the applicant had not substantiated how this feature of the generally flat (an approximately 163' long site which, according to the applicant's representative, drops approximately 31" approximately halfway from the rear to the front property line), approximately 8,200 square foot site precludes it from being developed in a manner commensurate with the development upon other parcels of land with the same PD 193 (LC Subdistrict), nor how the size, shape or slope of the site precludes it from being developed with a structure/use that could meet the front yard setback regulations.
- The physical features of the subject site have allowed it to be developed with a structure where the submitted site plan represents that the "existing single story frame" structure and the steps leading to it are located out of the front yard setback and in compliance with the front yard setback regulations. The submitted site plan represents that the variance in this case is requested to maintain added deck structures (and steps within these deck structures) along with pole fan and pole umbrellas structures atop the added deck structures in the front yard setback.
- Staff concluded that the applicant had not substantiated how if the Board were to grant this request, it would not be to relieve a self-created or personal hardship, nor for financial reasons only.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	PD 193 (GR) (Planned Development, General Retail)
<u>North:</u>	PD 193 (GR) (Planned Development, General Retail)
<u>South:</u>	PD 193 (GR) (Planned Development, General Retail)
<u>East:</u>	PD 193 (GR) (Planned Development, General Retail)
<u>West:</u>	PD 193 (PDS 13) (Planned Development, Planned Development)

Land Use:

The subject site is developed with a restaurant/bar use (Eastwood's Bar). The areas to the north, east, and south are developed with retail uses, and the area to the west is developed with multifamily use.

Zoning/BDA History:

1. BDA101-064, Property at 3403 McKinney Avenue (the lot south of the subject site) On October 17, 2011, the Board of Adjustment Panel C denied requests for a variance to the front yard setback regulations and special exception to the

visual obstruction regulations without prejudice.

The case report stated that the requests were made to maintain an existing structure in the front yard setback, and to maintain a structure in the 20' visibility triangle at the drive approach on the north side of the site developed with a restaurant structure/use (The Patio Grill).

GENERAL FACTS/STAFF ANALYSIS:

- The request for variance to the front yard setback regulations focuses on maintaining certain “structures” represented on the submitted site plan that are located on the site’s front property line or 10’ into the site’s 10’ front yard setback on a site developed with a restaurant/bar use (Eastwood’s Bar). The structures represented on the submitted site plan in the front yard setback are: a “brick deck 10” above grade”, a “partially covered wood deck 31” above grade”; a “concrete walk/step 8” above grade”; a “concrete walk/step 15’ above grade”; a “pole umbrella”; and a “pole fan”.
- The site is zoned PD 193 (LC Subdistrict) which requires a minimum front yard setback of 10’.
- According to DCAD records, the “improvements” at 3407 McKinney Avenue is a “restaurant” with 1,966 square feet built in 1964.
- The subject site is generally flat, slightly irregular in shape, and according to the submitted application is 0.176 acres (or approximately 8,200 square feet) in area. The site is zoned PD 193 (LC Subdistrict).
- The applicant has the burden of proof in establishing the following:
 - That granting the variance 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 IM (Industrial/manufacturing) zoning classification.
 - If the Board were to grant the variance, it would not be 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 193 (LC) zoning classification.
- If the Board were to grant this request, and impose the submitted site plan as a condition, the structures in the front yard setback would be limited to what is shown on this document.

- Granting the applicant’s request for a variance to the front yard setback regulations would not provide any relief to any existing or proposed noncompliance on the site related to landscape and/or visual obstruction regulations.

Timeline:

April 17, 2108: 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 15, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

May 15, 2018: 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 May 30th deadline to submit additional evidence for staff to factor into their analysis; and the June 8th 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.”

May 31, 2018: The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded a revised Building Official’s report to the Board Administrator (see Attachment A).

June 5, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Sustainable Development and Construction Director the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Sustainable Development and Construction Department Authorized Hearing/Code Amendment Senior Planner, and the Assistant City Attorney to the Board.

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

- June 18, 2018: The Board of Adjustment Panel C conducted a public hearing on this application, and delayed action on this application until the next public hearing to be held on August 20, 2018.
- June 19, 2018: The Board Administrator wrote the applicant's representative a letter of the board's action; the August 1st deadline to submit additional evidence for staff to factor into their analysis; and the August 10th deadline to submit additional evidence to be incorporated into the Board's docket materials.
- July 31, 2018 The applicant's representative submitted additional information to staff beyond what was submitted with the original application (see Attachment B).
- August 7, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: August 20, 2018

APPEARING IN FAVOR: Michael R. Coker, 3112 Canton St., Dallas, TX

APPEARING IN OPPOSITION: No One

MOTION: Agnich

I move that the Board of Adjustment, in Appeal No. BDA 178-072, on application of Christopher Johnson, represented by Michael R. Coker Company, **grant** the 10-foot variance to the front yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECOND: Shouse

AYES: 4 – Richardson, Gambow, Behring, Shouse, Agnich

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA178-089(OA)

BUILDING OFFICIAL’S REPORT: Application of David H. Goettsche for a variance to the front yard setback regulations at 1 Bella Porta Place. This property is more fully described as Lot 1, Block B/8176, and is zoned R-1/2ac(A), which requires a front yard setback of 40 feet. The applicant proposes to construct and/or maintain a structure and provide a 10 foot front yard setback, which will require a 30 foot variance to the front yard setback regulations.

LOCATION: 1 Bella Porta Place

APPLICANT: David H. Goettsche

August 20, 2018 Public Hearing Notes:

- The Board of Adjustment Senior Planner circulated additional written documentation from the applicant to the Board members at the briefing (see Attachment B).

REQUEST:

A request for a variance to the front yard setback regulations of 30’ is made to construct and maintain a “pool” and “cabana” structures on an undeveloped lot, which would be located as close as 10’ from the front property line or as much as 30’ into the 40’ front yard setback.

STANDARD FOR A VARIANCE:

Section 51(A)-3.102(d)(10) of 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:

- While staff recognized that applicant had shown by submitting a document indicating among other things that the total living area/additional improvements on the subject site at approximately 7,700 square feet is commensurate to that what is found on 10 other properties in the same R-1/2ac (A) zoning district with approximately 7,880 square feet, staff concluded that the applicant had not substantiated how if the Board were to grant this request it would not be to relieve a self-created or personal hardship since the lot even though it is less than 1/2 acre in area was a result of a Community Unit Development (CUD) created on the site and surrounding properties in 2007.

BACKGROUND INFORMATION:

Zoning:

- Site: R-1/2ac (A) (Single family district 1/2 acre)
- North: R-1/2ac (A) (Single family district 1/2 acre)
- South: R-1/2ac (A) (Single family district 1/2 acre)
- East: R-1/2ac (A) (Single family district 1/2 acre)
- West: R-1/2ac (A) (Single family district 1/2 acre)

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS /STAFF ANALYSIS:

- The request for variance to the front yard setback regulations of 30' focuses on constructing and maintaining a "pool" and "cabana" structures on a property developed with a single family home, which, according to the submitted revised site

plan, would be located as close as 10' from the front property line or as much as 30' into the 40' front yard setback.

- The subject site is zoned R-1/2ac (A) which requires a 40' front yard setback.
- The submitted plan represents that a “pool” and cabana structures are proposed to be located as close as 10' from the site’s front property line (or 30' into the 40' front yard setback).
- The subject site is flat, rectangular in shape, and according to the application, is 0.386 acres (or 16,819 square feet) in area. While most lots in this R-1/2ac(A) zoning have a typical lot size of 21,780 square feet, this 16,819 square feet lot size is less than what is typical in this zoning district because of a Community Unit Development (CUD) created in 2007 part of which was due to the site and surrounding area being located in the 100 year flood plain.
- DCAD records indicate “no main improvements” for the property at 1 Bella Porta Place.
- The following additional information was gleaned from the submitted site plan and elevation:
 - The pool structure is represented as being approximately 37' in length and 17' in width or approximately 630 square feet in area.
 - The pool structure is represented as being located approximately 10' from the property line.
 - The cabana structure is represented as being approximately 14' in length by 17' in width or approximately 240 square feet in area.
 - The cabana structure is represented as being located approximately 10' from the property line.
 - The cabana structure reaches approximately a maximum height of 12' 2”
- The subject site has a 7' 5” screening wall & traffic barrier easement along the north frontage that prevents access from Spring Valley Road.
- The applicant has submitted a document indicating that that the total “maximum AC space” of the proposed home on the subject site is approximately 7,660 square feet which is smaller than that of 10 other homes he listed of properties in R-1/2ac (A) zoning. (The average square footage of 10 other properties listed in the applicant’s document is approximately 7,880 square feet).
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance to front yard setback regulations is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-1/2ac(A) zoning classification.
 - The variance to front yard setback regulations would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not

permitted by this chapter to other parcels of land in districts with the same R-1/2ac(A) zoning classification.

- If the Board were to grant this request and impose the submitted site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document which are pool and cabana structures to be located 10' from the site's front property line or 30' into the required 40' front yard setback.
- Granting this request for a variance to the front yard setback regulations would provide no relief to the Flood Plain regulations on the subject site.

Timeline:

May 8, 2018: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

July 10, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

July 11, 2018: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the August 1st deadline to submit additional evidence for staff to factor into their analysis; and the August 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.

August 2, 2018: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

August 7, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Sustainable Development and Construction Director the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Sustainable Development and Construction Department Authorized Hearing/Code Amendment Senior Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: August 20, 2018

APPEARING IN FAVOR: No One

APPEARING IN OPPOSITION: No One

MOTION: **Richardson**

I move that the Board of Adjustment, in Appeal No. BDA 178-089, hold this matter under advisement until September 17, 2018.

SECOND: **Agnich**

AYES: 5 – Richardson, Gambow, Behring, Shouse, Agnich

NAYS: 0

MOTION PASSED: 5– 0 (unanimously)

3:36 P. M. - Board Meeting adjourned for **August 20, 2018**

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.