

**BOARD OF ADJUSTMENT, PANEL C  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, COUNCIL CHAMBERS  
MONDAY, October 15, 2018**

MEMBERS PRESENT AT BRIEFING: Bruce Richardson, Chair, Cheri Gambow, regular member, Robert Agnich, regular member Matt Shouse, regular member, Lorlee Bartos, Alternate member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Bruce Richardson, Chair, Cheri Gambow, regular member, Robert Agnich, regular member Matt Shouse, regular member, Lorlee Bartos, Alternate member

MEMBERS ABSENT FROM HEARING: No one

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

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

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**11:10 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's October 15, 2018 docket.

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**1:13 P.M.**

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

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**MISCELLANEOUS ITEM NO. 1**

Approval of the Board of Adjustment Panel C, September 17, 2018 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: October 15, 2018**

MOTION: None

The minutes were approved without a formal vote.

**MISCELLANEOUS ITEM NO. 2**

Approval of Panel C's 2019 public hearing calendar.

**BOARD OF ADJUSTMENT ACTION: October 15, 2018**

MOTION: None

The public hearing calendar was approved without a formal vote.

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**FILE NUMBER: BDA178-101(SL)**

**BUILDING OFFICIAL'S REPORT:** Application of David Martin of Winstead, PC, for variances to the minimum and maximum front yard setback regulations at 120 W. Commerce Street. This property is more fully described as Lot 1A, Block 1/6810, and is zoned PD 714 (Subdistrict 1A), which requires a minimum front yard setback of 6 feet with at least 50 percent of the front facade at the minimum front yard setback and requires a maximum front yard setback of 15 feet. The applicant proposes to construct and/or maintain structures and provide a 173 foot front yard setback with 0 percent of the front facade at the minimum 6 foot front yard setback, which will require a 167 foot variance to the minimum front yard setback regulation, and to construct and/or maintain structures and provide a 173 foot front yard setback, which will require a 158 foot variance to the maximum front yard setback regulations.

**LOCATION: 120 W. Commerce Street**

**APPLICANT: David Martin of Winstead PC**

**REQUESTS:**

Requests for variances to the PD 714 (Subdistrict 1A) minimum and maximum front yard setback regulations are made to construct and maintain structures (two, 4-story, 45' high apartment building structures, a 5-story, 55' high parking garage structure, and two, 1-story, 30' high restaurant structures) of unspecified square footages on an approximately 4.7 acre subject site that is partly undeveloped and partly developed with a warehouse that the application intends to demolish – more specifically:

1. Variances to the required 6' (minimum/maximum) front yard setback for at least 50 percent of the front façade along W. Commerce Street, Beatrice Street and the east/west street easement between Beatrice Street and Beckley Avenue are made to construct and maintain structures with a setback of up to 173' away from the one of the site's six front property lines (the dead-end of Beatrice Street) since over 50 percent of the façade of one of the structures is proposed to be located as far as 173' from one of the site's six front property lines (the dead-end of Beatrice Street), which will require a variance of up to 167'; and
2. Variances to the required 15' maximum front yard setback along W. Commerce Street, the dead-end of Beatrice Street, and the east/west easement between Beatrice Street and Beckley Avenue are made to construct and maintain a structure with a setback of up to 173' away from a front property line (the dead-end of Beatrice Street) since a structure is proposed to be located as far as 173' from one of the site's six front property lines (the dead-end of Beatrice Street), which will require a variance of 158'.

**STANDARD FOR A VARIANCE:**

The Dallas Development Code Section 51A-3.102(d) (10) 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 subject site has six front yard setbacks, is somewhat sloped, and is irregular in shape, staff concluded that the applicant had not substantiated how these features preclude the applicant from developing it in a manner commensurate with the development upon other parcels of land with the same PD 714 (Subdistrict 1A) zoning, and had not substantiated how granting these variances are not needed to relieve a self-created hardship.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 714 (Subdistrict 1A) (Planned Development)  
North: PD 714 (Subdistrict 1A) (Planned Development)  
South: PD 714 (Subdistrict 1A) (Planned Development)  
East: PD 714 (Subdistrict 1A) (Planned Development)  
West: PD 714 (Subdistrict 1A) (Planned Development)

**Land Use:**

The subject site is partly undeveloped and partly developed with a warehouse that the application intends to demolish. The areas to the north, south, east, and west are a mix of undeveloped land and mostly commercial uses.

**Zoning/BDA History:**

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|--|---|
| <ol style="list-style-type: none"> <li>1. BDA167-120, Property at 120 W. Commerce Street (the subject site)</li> </ol> | <p>On November 13, 2017, the Board of Adjustment Panel C denied requests for variances to the front yard setback regulations without prejudice. The case report stated that requests were made to construct and maintain a mixed-use structure/development of an unspecified square footage and height on an approximately 4-acre subject site that is partly undeveloped and partly developed with a warehouse that the application intends to demolish.</p> |
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**GENERAL FACTS /STAFF ANALYSIS:**

- The requests for variances to the required minimum/maximum and maximum front yard setback regulations focuses on constructing and maintaining structures (two, 4-story, 45' high apartment building structures, a 5-story, 55' high parking garage structure, and two, 1-story, 30' high restaurant structures) of unspecified square footages unspecified square footages and heights on an approximately 4.7 acre

subject site that is partly undeveloped and partly developed with a warehouse that the application intends to demolish.

- The subject site is located in/zoned PD 714 (Subdistrict 1A).
- PD 714 (Subdistrict 1A) states the following with regard to “Front yard”:
  1. Minimum front yard is 6’. At least 50 percent of the front façade must be at the minimum front yard setback.
  2. Maximum front yard is 15’.
  3. An additional 20’ front yard setback is required for that portion of a structure above 45’ in height.
- The subject site has 6 street frontages with minimum/maximum and/or maximum front yard setbacks required on each.
- The submitted site plan denotes the areas of the subject site that require variances to the 6’ minimum/maximum and 15’ maximum front yard setback regulations.
- The submitted site plan denotes variances to the 6’ minimum/maximum front yard setback on the north (a 7’ 2” variance on a portion of W. Commerce Street); on the south (a 166’ 8” variance on the dead-end of Beatrice Street), and on the southeast (a 147’ 4” variance on east/west easement between Beatrice Street and Beckley Avenue).
- The submitted site plan denotes variances to the 15’ maximum front yard setback on the north (a 12’ variance on a portion of W. Commerce Street), on the south (an approximately 158’ variance on the dead-end of Beatrice Street), on the southeast (an approximately 139’ variance on east/west easement between Beatrice Street and Beckley Avenue). The site plan represents compliance with minimum and maximum front yard setbacks along Beckley Avenue, Wink Street, Langford Street, and Beatrice Street (excluding the dead-end portion).
- The applicant has provided a document stating among other things that the subject site has hardship because of having 6 front yards and irregular shape.
- According to DCAD records, there are “no improvements” for property addressed at 120 W. Commerce Street.
- The site is relatively flat but (with according to the applicant) an approximately 8 foot grade change on the northeastern portion of the site, irregular in shape, and according to the application is approximately 4.748 acres in area. The site has six front yard setbacks.
- The applicant has the burden of proof in establishing the following:
  - That granting the variances to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed, and substantial justice done.
  - The variances to front yard setback regulations 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 714 (Subdistrict 1A) zoning classification.
  - The variances 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 PD 714 (Subdistrict 1A) zoning classification.

- If the Board were to grant the requests for variances to the front yard setback regulations and impose the applicant's submitted site plan as a condition, the structure that do not comply with front yard setbacks would be limited to that what is shown on this document.

**Timeline:**

June 20, 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.

September 11, 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".

September 11, 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 September 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the October 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

September 26 & October 1, 2018: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachments A, B, and C).

October 2, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: The Sustainable Development and Construction Assistant Director, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, 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: October 15, 2018**

**APPEARING IN FAVOR:** Tommy Mann, 500 Winstead Bldg. Dallas, TX  
Kyle Ward, 410 N. Montclair Ave., Dallas, TX  
Deborah Carpenter, 2009 Neal, Dallas, TX  
Evan Beattie, 2808 Fairmount St., #300, Dallas, TX

**APPEARING IN OPPOSITION:** No one

**MOTION #1: Gambow**

I move that the Board of Adjustment, in Appeal No. BDA 178-101, on application of David Martin of Winstead, PC, **grant** the 167-foot variance to the minimum front yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

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

- Compliance with the submitted site plan is required.

**SECOND: Bartos**

**AYES:** 4 – Richardson, Gambow, Shouse, Bartos

**NAYS:** 1 - Agnich

**MOTION PASSED:** 4 – 1

**MOTION # 2: Gambow**

I move that the Board of Adjustment, in Appeal No. BDA 178-101, on application of David Martin of Winstead, PC, **grant** the 158-foot variance to the maximum 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: Bartos**

**AYES:** 4 – Richardson, Gambow, Shouse, Bartos

**NAYS:** 1 - Agnich

**MOTION PASSED:** 4 – 1

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**FILE NUMBER:** BDA178-105(OA)

**BUILDING OFFICIAL’S REPORT:** Application of Kurt Michels for a special exception to the landscape regulations at 6605, 6615, and 6625 Bandera Avenue. This property is more fully described as Lot 8A, Block 6/5464, and is zoned MF-1(A), 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:** 6605, 6615, and 6625 Bandera Avenue

**APPLICANT:** Kurt Michels

**REQUEST:**

A request for a special exception to the landscape regulations is made to maintain a multifamily use (Drexel Park Hollow Condominiums), and not fully meet the landscape regulations more specifically, to not provide the required site trees and the residential adjacency buffer 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 revised alternate landscape plan is required.

Rationale:

- The City of Dallas Chief Arborist recommends approval of the alternate landscape plan because strict compliance with the Article X regulations for adjusting for the street trees and the perimeter landscape buffer will unreasonably burden the use of the property. I believe the special exception will not adversely affect neighboring properties.

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: MF-1(A) (Multifamily)
- North: D (A) (Duplex)
- South: PD 570 (Planned Development)
- East: MF-1(A) (Multifamily) and MF-3 (A) (Multifamily)
- West: MF-1(A) (Multifamily)

**Land Use:**

The subject site is developed with multifamily use. The area to the north is developed with townhome uses, and the areas to the east, south, and west are developed with multifamily uses.

**Zoning/BDA History:**

1. BDA145-014, Property at 6405 Bandera Avenue (the lot north to the subject site)

On March 18, 2014, the Board of Adjustment Panel C granted a request for a special exception to the landscape regulations and imposed the submitted alternate revised landscape plan as a condition.

The case report states that the request was made to maintain a multifamily 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 the north perimeter buffer and no buffer plant groups when 1 large tree per 50 linear feet of adjacency (or 22 large trees) is required. (A tall solid screen

fence provides the only visual buffer between the multifamily use and the adjacent residential uses).

### **GENERAL FACTS/STAFF ANALYSIS:**

- This request for a special exception to the landscape regulations focuses on maintaining multifamily use (Drexel Park Hollow Condominiums), and not fully meeting the landscape regulations more specifically, not providing the required site trees and the residential adjacency buffer requirements on the subject site.
- 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. Specifically, the applicant requests approval of an alternate landscape plan to authorize the completion of the development with the existing landscaping after installation from before 2009.
- The Chief Arborist's memo states the following with regard to "provision":
  - The alternate landscape plan provides for a landscape layout which does not fully comply with Article X requirements at the time of permit, but is established with required street trees and design standards. On-site parking is fully concealed.
- The Chief Arborist's memo states the following with regard to "deficiencies":

The plan fails to provide for the following:

  - the northern perimeter landscape buffer strip and the required plant groups (Sec. 51A-10.125(b)(1) and (b)(7));
  - the 1.936 acre property requires 21 site trees. Twelve small trees are provided on the lot. The large established street trees planted slightly off the property do not apply as site trees, per ordinance. However, the established trees are uniformly spaced in open landscape areas.
- The Chief Arborist's memo states the following with regard to "factors":
  - The property was built before 2009 without the completion of final landscape review and inspections. Since this time, the Drexel projects came under a process with city inspectors to bring the site into compliance with all city regulations. The completion of landscaping is a part of this process;
  - Tree mitigation was resolved with the installation of landscaping and is not under consideration.

- The City of Dallas Chief Arborist The chief arborist recommends approval of the alternate landscape plan because strict compliance with the Article X regulations for adjusting for the street trees and the perimeter landscape buffer will unreasonably burden the use of the property. I believe the special exception will not adversely affect 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 an exception from providing the site trees in the required location and the residential adjacency buffer requirements on the subject site.

**Timeline:**

July 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.

September 11, 2018: The Board of Adjustment Secretary randomly assigned this case to the Board of Adjustment Panel C.

September 13, 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 September 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the October 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

October 2, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, 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.

October 4, 2018: The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment A).

**MOTION: Agnich**

I move that the Board of Adjustment, in Appeal No. BDA 178-105, on application of Kurt Michaels, **grant** the request of this applicant for a special exception to the landscaping requirements contained in Article X of the Dallas Development Code, as amended, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that (1) strict compliance with the requirements of the 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.

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: Bartos**

**AYES:** 5 – Richardson, Gambow, Shouse, Bartos, Agnich

**NAYS:** 0

**MOTION PASSED:** 5 – 0

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**FILE NUMBER:** BDA178-108(OA)

**BUILDING OFFICIAL’S REPORT:** Application of Denise Moore, represented by Robert O’Malley, for a special exception to the single-family use regulations at 5014 Stanford Avenue. This property is more fully described as Lot 4, Block B/5007, 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 zoning use regulations.

**LOCATION:** 5014 Stanford Avenue

**APPLICANT:** Denise Moore  
Represented by Robert O’Malley

**REQUEST:**

A request for a special exception to the single-family use regulations is made to construct and maintain a two-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 have 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 constructing and maintaining a two-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 used as a rental accommodations; 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, sunrooms, 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 “new studio type dwelling unit”.
- The submitted floor plan of what appears to be the “new studio type dwelling unit” 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 “new studio type dwelling unit” structure, specifically its collection of rooms/features shown on the floor plan.
- The application states a request has been made for: “home owner’s guests only, not to be used as a rental property”.
- According to DCAD records, the “main improvement” for property addressed at 5014 Stanford Avenue is a structure built in 1954 with 1,218 square feet of total/living area with the following “additional improvements”: a 480 square-foot detached garage, and a pool.
- According to the submitted site plan the main structure contains 1,251 square feet and the additional dwelling unit structure contains 780 square feet.
- 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 complies 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 “new studio type dwelling unit” as an additional “dwelling unit”.

**Timeline:**

July 23, 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.

September 11, 2018: The Board of Adjustment Secretary randomly assigned this case to the Board of Adjustment Panel C.

September 13, 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 September 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the October 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

October 2, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, 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: October 15, 2018**

APPEARING IN FAVOR: Robert O’malley, 17125 Hillside Dr. N.E.,  
Lake Forest Park, WA

APPEARING IN OPPOSITION: No One

**MOTION: Shouse**

I move that the Board of Adjustment, in request No. BDA 178-108 on application of Denise Moore, represented by Robert O'Malley, **grant** the request to construct and maintain an additional dwelling unit on a site developed with a single family structure and use as a special exception to the single family use regulations requirements in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not be used as rental accommodations, and will not adversely affect neighboring properties.

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: Bartos**

**AYES:** 5 – Bartos, Richardson, Agnich, Gambow, Shouse

**NAYS:** 0

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

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**FILE NUMBER:** BDA178-113(SL)

**BUILDING OFFICIAL'S REPORT:** Application of Tom Leiser, represented by Mark Fewin of Guidon Real Estate Solutions, for a variance to the off-street parking regulations at 6141 Sherry Lane. This property is more fully described as Lot 5, Block 4/5624, and is zoned PD 314 (Tract 6), which requires off-street parking to be provided. The applicant proposes to construct and/or maintain a structure for financial Institution with drive-in window and office uses, and provide 11 of the required 17 parking spaces, which will require a 6-space variance to the off-street parking regulations.

**LOCATION:** 6141 Sherry Lane

**APPLICANT:** Tom Leiser  
Represented by Mark Fewin of Guidon Real Estate Solutions

**REQUEST:**

A request for a variance to the off-street parking regulations of 6 spaces is made to replace an existing one-story (according to DCAD) approximately 3,500 square foot “medical office building” constructed in 1958 with a 2-story, approximately 5,700 square foot combination “financial institution with drive-in window” and “office” use/structure, and provide 11 (or 64 percent) of the 17 required off-street parking spaces on the subject site.

**STANDARD FOR A VARIANCE:**

The Dallas Development Code Section 51A-3.102(d)(10) 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:

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

### **STAFF RECOMMENDATION:**

Denial

Rationale:

- The applicant has not substantiated how the variance to the off-street parking regulations of 6 spaces is necessary to permit development of this flat, shaped, approximately 8,700 square foot site in order for it to be developed in a manner commensurate with the development upon other parcels of land with the same PD 314 (Tract 6) zoning. The features of the site have not restricted it from being developed with a one-story office that complies with off-street parking regulations.
- The applicant has not substantiated how granting the variance is not to relieve a self-created or personal hardship, nor for financial reasons, particularly when this request focuses on demolishing an existing one-story office structure use that complies with off-street parking, and replacing it with a two-story office that because of its proposed square footage seeks variance from the off-street parking requirement.
- Lastly, granting the variance appears to be contrary to public interest since the Sustainable Development Department Senior Engineer submitted a review comment sheet marked "Recommends denial" with the following comments: "The parking demand for the proposed 5690 square foot financial institution with drive-thru plus office is anticipated to exceed a parking supply of 14 spaces during its peak hours of operation. Shared parking is not a practical approach at this location given existing, strict parking management strategies and enforcement of reserved parking by neighboring tenants."

### **BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 314 (Tract 6) (Planned Development)  
North: PD 314 (Tract 3) (Planned Development)  
South: PD 314 (Tract 6) (Planned Development)  
East: PD 314 (Tract 6) (Planned Development)  
West: PD 314 (Tract 6) (Planned Development)

### **Land Use:**

The subject site is developed with an existing one-story office use. The areas to the east and west are developed with retail uses; the area to the north is developed with a parking garage; and the area to the south is developed with what appears to be mostly office uses.

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

1. BDA056-052, Property at 6147 Sherry Lane (the lot immediately east of the subject site)

On December 12, 2005, the Board of Adjustment Panel C granted requests for a variance to the off-street parking regulations of 18 spaces (where 32 off-street parking spaces were required) and a special exception to the landscape regulations. The board imposed the submitted revised site plan as a condition to these requests.

The case report stated that requests were made to construct and maintain a two-story retail use (Dee ad Hattie's Specialty Cleaners) with 6,340 square feet on a site that was developed with a vacant one-story retail structure.

2. BDA101-046, Property at 6150 Sherry Lane (a lot south of the subject site)

On June 14, 2011, the Board of Adjustment Panel A granted a request for a special exception to the off-street parking regulations of 4 spaces (where 17 off-street parking spaces were required) The board imposed the following condition to this request: The special exception shall automatically and immediately terminate if and when the office use is changed or discontinued.

The case report stated the request was made to construct and maintain a two-story, approximately 5,700 square foot "office" use (Bandera Ventures

Headquarters) on a site that is currently undeveloped. The applicant proposed to provide 13 (or 76 percent) of the 17 off-street parking spaces that are required for the proposed approximately 5,700 square foot office use structure.

### **GENERAL FACTS/STAFF ANALYSIS:**

- This request for a variance to the off-street parking regulations of 6 spaces (or a 35 percent reduction of the off-street parking spaces required) focuses on replacing an existing one-story (according to DCAD) approximately 3,500 square foot “medical office building” constructed in 1958 with a 2-story, approximately 5,700 square foot combination “financial institution with drive-in window” and “office” use/structure, and provide 11 (or 64 percent) of the 17 required off-street parking spaces on the subject site.
- The Dallas Development Code requires the following off-street parking requirements:
  - Financial institution with drive-in window: One space per 333 square feet of floor area.
  - Office: One space per 333 square feet of floor area
- A site plan has been submitted with this application that denotes a 5,690 square foot 2-story financial institution and office use. This plan denotes that 17 off-street spaces are required and that 11 off-street parking spaces will be provided.
- The applicant must seek this parking reduction request as a variance since the maximum reduction authorized by this code for a special exception to off-street parking regulations is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(A).
- According to DCAD, the “improvements” for property addressed at 6141 Sherry Lane is a “medical office building” built in 1958 with 3,552 square feet.
- The subject site is flat, rectangular in shape, and (according to the application) is 0.2 acres (or approximately 8,700 square feet) in area. The site is zoned PD 314 (Tract 6).
- On October 3, 2018, the Sustainable Development Department Senior Engineer submitted a review comment sheet marked “Recommends denial” with the following comments: “The parking demand for the proposed 5690 square foot financial institution with drive-thru plus office is anticipated to exceed a parking supply of 14 spaces during its peak hours of operation. Shared parking is not a practical approach at this location given existing, strict parking management strategies and enforcement of reserved parking by neighboring tenants”.
- 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 PD 314 (Tract 6) 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 314 (Tract 6) zoning classification.
- If the Board were to grant this request, and impose the submitted site plan as a condition, the applicant could construct and maintain the approximately 5,700 square foot combination “financial institution with drive-in window” and “office” use/structure and provide only 11 (or 64 percent) of the 17 required off-street parking spaces on the subject site.

**Timeline:**

July 27, 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.

September 11, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

September 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 September 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and October 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

September 27, 2018: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

October 2, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: The Sustainable Development and Construction Assistant Director, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, 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.

October 3, 2018: The Sustainable Development Department Senior Engineer submitted a review comment sheet marked "Recommends denial" with the following comments: "The parking demand for the proposed 5690 square foot financial institution with drive-thru plus office is anticipated to exceed a parking supply of 14 spaces during its peak hours of operation. Shared parking is not a practical approach at this location given existing, strict parking management strategies and enforcement of reserved parking by neighboring tenants".

**BOARD OF ADJUSTMENT ACTION: October 15, 2018**

**APPEARING IN FAVOR:** Mark Fewin, 5115 McKinney, #B, Dallas, TX  
John Deshazo, 400 S. Houston, Dallas, TX  
Pryor Blackwell, 5820 W. Northwest Hwy., Dallas, TX

**APPEARING IN OPPOSITION:** No one

**MOTION: Agnich**

I move that the Board of Adjustment, in request No. BDA 178-113, on application of Tom Leiser, represented by Mark Fewin of Guidon Real Estate Solutions, **deny** the off-street parking regulations variance **without** prejudice because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would NOT result in unnecessary hardship to this applicant, **and** that it is not a restrictive parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning.

**SECOND: Richardson**

**AYES:** 2 –Richardson, Agnich,

**NAYS:** 3 - Gambow, Bartos, Shouse

**MOTION FAILED:** 2 – 3

**MOTION: Bartos**

I move that the Board of Adjustment, in request No. BDA 178-113, on application of Tom Leiser, represented by Mark Fewin of Guidon Real Estate Solutions, **grant** a variance of 6 off-street parking spaces to the off-street parking regulations which requires 17 off-street parking spaces to be provided 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: 3 - Gambow, Bartos, Shouse

NAYS: 2 –Richardson, Agnich

MOTION FAILED: 3 – 2

MOTION: **Gambow**

I move to reconsider the motion to deny without prejudice.

SECOND: Shouse

AYES: 5 - Gambow, Bartos, Shouse, Richardson, Agnich

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

MOTION: **Gambow**

I move to reconsider the motion to deny without prejudice. I move that the Board of Adjustment, in request No. BDA 178-113, on application of Tom Leiser, represented by Mark Fewin of Guidon Real Estate Solutions, **deny** the off-street parking regulations variance **without** prejudice because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would NOT result in unnecessary hardship to this applicant, **and** that it is not a restrictive parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning.

SECOND: Shouse

AYES: 5 - Gambow, Bartos, Shouse, Richardson, Agnich

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

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**MOTION: Agnich**

I move to adjourn this meeting.

**SECONDED: Shouse**

**3:22 P. M.** Board Meeting adjourned for **October 15, 2018.**

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CHAIRPERSON

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BOARD ADMINISTRATOR

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BOARD SECRETARY

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