

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, 6ES
TUESDAY, JANUARY 15, 2013**

MEMBERS PRESENT AT BRIEFING: Robert Moore, Vice Chair, Jordan Schweitzer, regular member, Scott Hounsel, regular member, Clint Nolen, regular member and Scott Jackson, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Tammy Palomino, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Lloyd Denman, Traffic Engineer, Phil Erwin, Chief Arborist and Trena Law, Board Secretary

MEMBERS PRESENT AT HEARING: Robert Moore, Vice Chair, Jordan Schweitzer, regular member, Scott Hounsel, regular member, Clint Nolen, regular member and Scott Jackson, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Tammy Palomino, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Lloyd Denman, Traffic Engineer, Phil Erwin, Chief Arborist and Trena Law, Board Secretary

11:00 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **January 15, 2013** docket.

1:00 P.M.

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

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel A **November 13, 2012** public hearing minutes as amended.

BOARD OF ADJUSTMENT ACTION: JANUARY 15, 2013

MOTION: Jackson

I move **approval** of the Tuesday, **November 13, 2012** public hearing minutes.

SECONDED: Hounsel

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: BDA 112-040

REQUEST: To waive the two year limitation on requests for (1) a variance to the front yard setback regulations; and (2) a special exception to the landscape regulations granted by Board of Adjustment Panel A on 5-15-12, subject to a revised site plan dated 5-15-12 and submitted landscape plan dated 5-15-12.

LOCATION: 2612 Boll Street

APPLICANT: Herbert B, Story, Jr.
Represented by Michael R. Coker

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

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

GENERAL FACTS/TIMELINE:

May 15, 2012: The Board of Adjustment Panel A granted a request for variance to the front yard setback regulations and a special exception to the landscape regulations and imposed the submitted revised site plan dated 5-15-12 and submitted landscape plan dated 5-15-12 as conditions to the requests. The case report stated that requests were made in conjunction with constructing and maintaining a “raised planting bed” structure, a staircase structure, and the westernmost wall of a “proposed two story brick addition” structure

(with an approximately 600 square foot building footprint that is proposed to be located on the lot immediately to the east/adjacent to the subject site).

May 22, 2012: The Board Administrator wrote the applicant's representative a letter documenting the May 15th action of the board, and noting to "Contact Building Inspection at 320 E. Jefferson, Room 105 to file an application for a building permit or certificate of occupancy within 180 days from the date of the favorable action of the board."

October 16, 2012: The Board of Adjustment Panel A conducted a public hearing and granted the applicant's Miscellaneous Item Request to extend the time period in which to file an application for a building permit or certificate of occupancy an additional 180 days (or 6 months) beyond the 180 days from the Board of Adjustment's favorable action on a request for variance to the front yard setback regulations and a special exception to the landscape regulations granted by Board of Adjustment Panel A on May 15, 2012, subject to a revised site plan dated 5-15-12 and submitted landscape plan dated 5-15-12.

January 4, 2013: The applicant's newly designated representative submitted a letter to staff requesting that the Board waive the two year limitation on a request for variance to the front yard setback regulations and a special exception to the landscape regulations granted by Board of Adjustment Panel A on May 15, 2012, subject to a revised site plan dated 5-15-12 and submitted landscape plan dated 5-15-12 (see Attachment A).

Note that The Dallas Development Code states the following with regard to board action:

- Except as provided below, after a final decision is reached by the board, no further request on the same or related issues may be considered for that property for two years from the date of the final decision.
- If the board renders a final decision of denial without prejudice, the two year limitation is waived.
- The applicant may apply for a waiver of the two year limitation in the following manner:
 - The applicant shall submit his request in writing to the director. The director shall inform the applicant of the date on which the board will consider the request and shall advise the applicant of his right to appear before the board.
 - The board may waive the two year time limitation if there are changed circumstances regarding the property sufficient to warrant a new hearing. A simple majority vote by the board is required to grant the waiver. If a rehearing is granted, the applicant shall follow the process outlined in the code.

January 7, 2013: The Board Administrator emailed the applicant's representative the following information:

- the public hearing date and panel that will consider the miscellaneous request (January 15, 2013 – Panel A);
- the criteria/standard that the board will use in their decision to approve or deny the request;
- information related to the original application (see Attachment B); and

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

BOARD OF ADJUSTMENT ACTION: JANUARY 15, 2013

APPEARING IN FAVOR: Michael Coker, 2700 Swiss Avenue, Ste 100, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Hounsel

I move to **approve** to waive the two year limitation on requests for (1) a variance to the front yard setback regulations; and (2) a special exception to the landscape regulations granted by Board of Adjustment Panel A on 5-15-12, subject to a revised site plan dated 5-15-12 and submitted landscape plan dated 5-15-12.

SECONDED: Jackson

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MISCELLANEOUS ITEM NO. 3

FILE NUMBER: BDA 112-058

REQUEST: To waive the two year limitation on requests for (1) variances to the front yard setback regulations and a special exception to the landscape regulations granted by Board of Adjustment Panel A on 5- 15-12, subject to a revised site plan dated 5-15-12 and submitted landscape plan dated 5-15-12.

LOCATION: 2701 McKinney Avenue

APPLICANT: Herbert B, Story, Jr.
Represented by Michael R. Coker

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

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

GENERAL FACTS/TIMELINE:

May 15, 2012: The Board of Adjustment Panel A granted a request for a variance to the front yard setback regulations made in conjunction with constructing and maintaining a “proposed two story brick addition” structure with an approximately 600 square foot building footprint, denied a request for a variance to the front yard setback regulations made in conjunction with remedying the nonconforming aspect of the existing nonconforming structure that is located in the site’s two front yard setbacks along McKinney Avenue and Boll Street, and granted a special exception to the landscape regulations. The Board imposed the submitted revised site plan dated 5-15-12 and submitted landscape plan dated 5-15-12 as conditions to these granted requests.

May 22, 2012: The Board Administrator wrote the applicant’s representative a letter documenting the May 15th action of the board, and noting to “Contact Building Inspection at 320 E. Jefferson, Room 105 to file an application for a building permit or certificate of occupancy within 180 days from the date of the favorable action of the board.”

October 16, 2012: The Board of Adjustment Panel A conducted a public hearing and granted the applicant’s Miscellaneous Item Request to extend the time period in which to file an application for a building permit or certificate of occupancy an additional 180 days (or 6 months) beyond the 180 days from the Board of Adjustment’s favorable action on a request for variance to the front yard setback regulations and a special exception to the landscape regulations granted by Board of Adjustment Panel A on May 15, 2012, subject to a revised site plan dated 5-15-12 and submitted landscape plan dated 5-15-12.

January 4, 2013: The applicant’s newly designated representative submitted a letter to staff requesting that the Board waive the two year limitation on a request for certain variances to the front yard setback regulations and a special exception to the landscape regulations granted by Board of Adjustment Panel A on May 15, 2012, subject to a revised site plan dated 5-15-12 and submitted landscape plan dated 5-15-12 (see Attachment A).

Note that The Dallas Development Code states the following with regard to board action:

- Except as provided below, after a final decision is reached by the board, no further request on the same or related issues may be considered for that property for two years from the date of the final decision.

- If the board renders a final decision of denial without prejudice, the two year limitation is waived.
- The applicant may apply for a waiver of the two year limitation in the following manner:
 - The applicant shall submit his request in writing to the director. The director shall inform the applicant of the date on which the board will consider the request and shall advise the applicant of his right to appear before the board.
 - The board may waive the two year time limitation if there are changed circumstances regarding the property sufficient to warrant a new hearing. A simple majority vote by the board is required to grant the waiver. If a rehearing is granted, the applicant shall follow the process outlined in the code.

January 7, 2013: The Board Administrator emailed the applicant’s representative the following information:

- the public hearing date and panel that will consider the miscellaneous request (January 15, 2013 – Panel A);
- the criteria/standard that the board will use in their decision to approve or deny the request;
- information related to the original application (see Attachment B); and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

BOARD OF ADJUSTMENT ACTION: JANUARY 15, 2013

APPEARING IN FAVOR: Michael Coker, 2700 Swiss Avenue, Ste 100, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Hounsel**

I move to approve to **waive** the two year limitation on requests for (1) variances to the front yard setback regulations and a special exception to the landscape regulations granted by Board of Adjustment Panel A on 5- 15-12, subject to a revised site plan dated 5-15-12 and submitted landscape plan dated 5-15-12.

SECONDED: **Jackson**

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 112-122

BUILDING OFFICIAL’S REPORT:

Application of Ed Simons for a special exception to the landscape regulations at 10011 N. Central Expressway. This property is more fully described as Lot 31A, Block 7294 and is zoned MU-3(SAH), which requires mandatory landscaping. The applicant proposes to construct a structure and provide an alternate landscape plan, which will require a special exception.

LOCATION: 10011 N. Central Expressway

APPLICANT: Ed Simons

January 15, 2013 Public Hearing Notes:

- The applicant submitted a revised landscape plan to the board at the public hearing.

REQUEST:

A special exception to the landscape regulations is requested in conjunction with constructing and maintaining a multifamily residential structure (The Fountains Apartments) on a site that is undeveloped, and not fully meeting the landscape regulations.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

The board may grant a special exception to the landscape 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; and
- the extent to which other existing or proposed amenities will compensate for the reduction of landscaping.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

1. Applicant must submit a revised alternate landscape plan before the January 15th public hearing that revises the landscape plan dated 12-21-12 as follows: Change the notation "highrise" live oak to "large canopy tree."

Rationale:

- The City’s Chief Arborist supports the request given that the lot has underground and overhead utilities, and utility easements that place limitations on the applicant being able to fully comply with Article X: The Landscape Regulations.
- The applicant has substantiated how strict compliance with the requirements of the Landscape Regulations of the Dallas Development Code will unreasonably burden the use of the property, and that the special exception will not adversely affect neighboring property.

BACKGROUND INFORMATION:

Zoning:

Site: MU-3(SAH) (Mixed Use, Standard Affordable Housing)
North: GO (A) (General Office)
South: GO (A) (General Office)
East: GO (A) (General Office)
West: MU-3(SAH) (Mixed Use, Standard Affordable Housing)

Land Use:

The subject site is undeveloped. The area to the north is developed with a communications use (Channel 11); the area immediately east is the North Central Expressway; the area to the south is developed with a hotel; and the area to the west is developed with multifamily use.

Zoning/BDA History:

- | | |
|---|---|
| <p>1. BDA 001-193, Property located at 10011 N. Central Expressway (the subject site)</p> | <p>On April 26, 2001, the Board of Adjustment Panel A took the following actions: 1) denied without prejudice a request for a parking special exception of 2 spaces; 2) granted a request for a variance to the front yard (urban form) setback regulations of 9’ (subject to compliance with the submitted site plan and elevations); and 3) granted a request for a variance to the side yard (tower spacing) setback regulations (subject to compliance with the submitted site plan and elevation). The case report stated that these requests were made in conjunction with constructing/maintaining a four-story, 60’ high apartment building (Park Fountain Apartments).</p> |
| <p>2. BDA 078-071, Property located at 10011 N. Central Expressway (the subject site)</p> | <p>On May 20, 2008, the Board of Adjustment Panel A granted a request for a variance to the front yard (urban form) setback regulations of 17’ and imposed the submitted</p> |

- site plan and elevation as conditions to the request. The case report stated that these requests were made in conjunction with constructing and maintaining a 60' high multifamily residential structure (Parc Fountains Apartments) on a site that is undeveloped.
3. BDA 089-075, Property located at 10011 N. Central Expressway (the subject site)

On June 16, 2009, the Board of Adjustment Panel A granted a request for a variance to the front yard (urban form) setback regulations of 17' and imposed the submitted site plan and elevation as conditions to the request. The case report stated that this request was made in conjunction with constructing and maintaining an approximately 54' high multifamily residential structure (The Fountains Apartments) on a site that is undeveloped.
 4. BDA 112-095, Property located at 10011 N. Central Expressway (the subject site)

On October 16, 2012, the Board of Adjustment Panel A granted a request for a variance to the front yard (urban form) setback regulations of 17' and imposed the submitted site plan and elevation as conditions to the request. The case report stated that this request was made in conjunction with constructing and maintaining an approximately 54' high multifamily residential structure (The Fountains Apartments) on a site that is undeveloped.
 5. BDA 990-289, 10001 N. Central Expressway (the lot immediately south of the subject site)

On June 19, 2000, 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 to this request. The case report stated that the request was made in conjunction with constructing and maintaining a hotel on the site and not fully meeting the landscape regulations, specifically not providing required trees within 30' from curb given water, sewer, and drainage easements that preclude the trees from being placed in their required location.

Timeline:

October 25, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

November 7, 2012: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

November 7, 2012: The applicant chose to have this application heard by Panel A (the panel that had heard previous front yard variance requests on the subject site) as opposed to be assigned to the only panel that met in December that being Panel C.

December 11, 2012: 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 December 19th deadline to submit additional evidence for staff to factor into their analysis; and the January 4th 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.

December 21, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Board Administrator, the Building Inspection Senior Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

December 31, 2012: The applicant forwarded additional information beyond what was submitted with the original application (see Attachment A).

January 4, 2013: The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment B).

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining a multifamily residential structure on an undeveloped site, and not fully meeting the landscape regulations.
- The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot is increased by more than 2,000 square feet, or when an application is made for a building permit for construction work that: (1) increases the number of stories in a building on the lot; or (2) 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 applicant has submitted a revised alternate landscape plan and related elevation that, according to the City of Dallas Chief Arborist, does not comply with site tree, street tree, and design standard requirements of Article X: The Landscape Regulations.

- The City of Dallas Chief Arborist submitted a memo to the Board Administrator regarding the applicant's request (see Attachment B). The memo states how this request is triggered by new construction on the site and how the alternate revised site plan proposes to provide 3 of 8 site trees, 2 of 3 street trees, and 1 of 2 design standards.
- The Chief Arborist supports the request (with the applicant making a minor modification to the submitted revised landscape plan dated 12-21-12 from "highrise" live oak" to "large canopy tree") in that the lot has underground and overhead utilities, and utility easements that place limitations on the applicant being able to fully comply with Article X: The Landscape Regulations.
- 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 revised elevation and a revised alternate landscape plan with the notation of "highrise" live oak replaced with "large canopy tree" as conditions, the site would be provided exception from full compliance with the site tree, street tree, and design standard requirements of Article X: The Landscape Regulations.

BOARD OF ADJUSTMENT ACTION: JANUARY 15, 2013

APPEARING IN FAVOR: Ed Simons, 900 Jackson St., #660, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Jackson**

I move that the Board of Adjustment, in Appeal No. **BDA 112-122**, on application of Ed Simons, grant the special exception to the landscape regulations in the Dallas Development Code because our evaluation of the property and the testimony shows that strict compliance with the requirements will unreasonably burden the use of the property and the special exception will not adversely affect neighboring property. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the revised landscape plan submitted at the January 15, 2013 hearing is required.

SECONDED: **Hounsel**

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 123-003

BUILDING OFFICIAL'S REPORT:

Application of Thomas and Dane Taylor for a special exception to the single family zoning use regulations at 4516 Bluffview Boulevard. This property is more fully described as the northeast half of Lot 2, Block O/4984 and is zoned PD-455. The applicant proposes to construct and maintain an additional dwelling unit, which will require a special exception to the single family zoning use regulations.

LOCATION: 4516 Bluffview Boulevard

APPLICANT: Thomas and Dane Taylor

REQUEST:

A special exception to the single family use development standard regulations is requested in conjunction with constructing and maintaining a one-story additional dwelling unit structure on a site currently being additionally developed with a one-story dwelling unit/single family home structure and a one-story accessory structure.

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

The board may grant a special exception to the single family use development standards regulations of the Dallas Development Code to authorize an additional dwelling unit on a lot when, in the opinion of the board, the special exception 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.

In granting a 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.

Zoning:

Site: PD 455 (Planned Development)
North: PD 455 (Planned Development)
South: R-10(A) (Single family district 10,000 square feet)
East: PD 455 (Planned Development)
West: PD 455 (Planned Development)

Land Use:

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

Zoning/BDA History:

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

Timeline:

November 6, 2012: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

December 6, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

December 11, 2012: 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 December 19th deadline to submit additional evidence for staff to factor into their analysis; and the January 4th 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.

December 14, 2012: The applicant forwarded additional information beyond what was submitted with the original application (see Attachment A).

December 21, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Board Administrator, the Building Inspection Senior Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining a one-story additional dwelling unit structure on a site currently being additionally developed with a one-story dwelling unit/single family home structure and a one-story accessory structure.
- The single family use regulations of the Dallas Development Code state 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 site is zoned PD 455 where the Dallas Development Code permits one dwelling unit per lot.
- A site plan has been submitted denoting the locations of three building footprints, the largest of the three being the main structure/dwelling unit on the site with two smaller detached structures one of which has been deemed by Building Inspection as an additional dwelling unit. The site plan represents the sizes and locations of the three building footprints relative to the entire lot/property.
- Elevations have been submitted of all of the structures proposed on the subject site. All of the structures are represented to be one-story in height.
- Floor plans have been submitted of all of the structures proposed on the subject site. Two of the three structures have been deemed by Building Inspection to be dwelling units. The main/largest structure shown on the site plan would be the single dwelling unit permitted on the site. The other two smaller structures shown on the site plan are accompanied with floor plans. The floor plan of one of the two smaller structures shows a bedroom, a bath, a closet, and a storage room. The floor plan of the other of the two smaller structures shows a sitting room, a bathroom, a closet, a bedroom, and a kitchenette space which has been described in a memo submitted by the applicant as a “compact kitchen unit in the hall closet of my daughters quarters.”
- DCAD records indicate that the property at 4516 Bluffview has the following improvements:
 - “main improvement:” a structure built in 1950 with 1,643 square feet of living area; and
 - “additional improvement:” 210 square foot attached garage.
- Building Inspection staff has reviewed the submitted floor plans of the structures and deemed two of them to be dwelling units: one of which is permitted by right – the largest structure of the three; and one of which – one of the remaining two smaller structures – is an additional “dwelling unit” that requires a special exception from the board- 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 appears to center on the function of what is proposed to be located inside the one of the two proposed accessory structures on the site. If the board were to deny this request, it appears that this structure could be constructed and maintained with merely modifications to the function/use inside it (or to the floor plan) since the proposed structure appears (and is represented by the applicant) to

comply with the applicable zoning code development standards (i.e. no application has been made for variance to setbacks or any other zoning code provision).

- The applicant has stated that if the special exception were denied, the structure would be completed in accordance with the code governing accessory structure provisions by not adding the kitchen unit... and that to the best of my knowledge we are in compliance with all single family use provisions in Chapter 51A and we are not requested a variance to setbacks, fencing, or other zoning code provisions.”
- It appears that if the compact kitchen unit in the proposed structure was removed, it would not be considered a dwelling unit, and the structure then could be built by right as shown on the submitted site plan; and that once this kitchen unit is added, the city considers the structure a dwelling unit and a Board of Adjustment hearing is required.
- As of January 7, 2012, no letters had been submitted to staff in support or in opposition to the application.
- 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 the request for a special exception to the single family regulations, the Board may want to impose a condition that the applicant comply with the submitted site plan, floor plan, and/or elevation to ensure that the special exception will not adversely affect neighboring properties. Note that 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 including but not limited to setback and coverage 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.

BOARD OF ADJUSTMENT ACTION: JANUARY 15, 2013

APPEARING IN FAVOR: Thomas Taylor, 4516 Bluffview, Dallas, TX

APPEARING IN OPPOSITION: Kathleen Munoz, 4710 Cherokee Trl, Dallas, TX
Pat White, 4714 Wildwood Rd., Dallas, TX
Peggy Carr, 4824 Shadywood Lane, Dallas, TX
Nancy Kenty, 8723 Canyon Dr., Dallas, TX

MOTION: Nolen

I move that the Board of Adjustment, in Appeal No. **BDA 123-003**, on application of Thomas and Dane Taylor, **deny** the special exception to the single family use regulations to maintain an additional dwelling unit **without prejudice**, because our evaluation of the property and the testimony shows that an additional dwelling unit on the site will be used as rental accommodations or adversely affect neighboring properties.

SECONDED: Hounsel

AYES: 3 – Moore, Nolen, Jackson
NAYS: 2 – Hounsel, Schweitzer
MOTION PASSED: 3– 2

FILE NUMBER: BDA 123-002

BUILDING OFFICIAL’S REPORT:

Application of Dagoberto Batres for variances to the front yard setback regulations and off-street parking regulations at 6626 Forney Road. This property is more fully described as Lot 19A, Block 1/6132 and is zoned R-7.5(A), which requires (1) a front yard setback of 25 feet and (2) that a parking space be at least 20 feet from the right-of-way line adjacent to a street if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street. The applicant proposes to maintain a structure and provide (1) a 0 foot front yard setback, which will require a variance of 25 feet to the front yard setback regulations; and (2) enclosed parking spaces with a setback of 0 feet, which will require a variance of 20 feet to the off-street parking regulations.

LOCATION: 6626 Forney Road

APPLICANT: Dagoberto Batres

REQUESTS:

The following appeals have been made on a site that is currently developed with a single family home and detached garage/accessory structure:

1. a variance to the front yard setback regulations of 25’ is requested in conjunction with maintaining an existing approximately 740 square foot detached garage/accessory structure located on the front property line or 25’ into the required 25’ front yard setback; and
2. a variance to the off-street parking regulations of 20’ is requested in conjunction with maintaining enclosed parking spaces in the existing detached garage/accessory structure located on the Forney Road right-of-way line or 20’ into the required 20’ distance from the street right-of-way line.

STANDARD FOR A VARIANCE:

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

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

developed in a manner commensurate with the development upon other parcels of land with the same zoning; and

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

STAFF RECOMMENDATION (front yard setback variance):

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The slope and restrictive area of the site preclude its development in a manner commensurate with other developments found on similarly-zoned R-7.5(A) lots which in this case is retention of a reasonably-sized single family home and a detached accessory structure that provides cover for two vehicles.
- In this case, there appears to be no other location on this site for a structure that would provide cover for vehicles on the site given: 1) the location of the existing single family home on the property that according to DCAD was constructed in 1947; 2) the slope on the property; and 3) that there is no alley to the rear of the site to allow access to a covered parking structure/garage that could be located/maintained behind the exiting single family home on the property.

STAFF RECOMMENDATION (off-street parking variance):

Denial

Rationale:

- Regarding the request for a 0 foot setback from the right-of-way line adjacent to a street if the space is located in an enclosed structure, although the subject site has slope and has limited area in which to locate a structure to provide cover for vehicles, the applicant has not substantiated how granting this variance would not be contrary to the public interest. The Sustainable Development and Construction Department Engineering Division Assistant Director recommends denial of this request commenting that “A vehicle parked in front of the garage obstructs the clear and safe use of the public right-of-way. It also obstructs safe mail delivery.”

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5 (A) (Single family district 7,500 square feet)
North: R-7.5 (A) (SUP 1510) (Single family district 7,500 square feet, Specific Use Permit)
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 and detached garage. The areas to the north, east, south, and west are developed with single family uses.

Zoning/BDA History:

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

Timeline:

October 23, 2012: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

December 6, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

December 11, 2012: 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 December 19th deadline to submit additional evidence for staff to factor into their analysis; and the January 4th 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.

December 21, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Board Administrator, the Building Inspection Senior Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

January 4, 2013: The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked “Recommends that this be denied” commenting “A vehicle parked in front of the garage obstructs the clear and safe use of the public right-of-way. It also obstructs safe mail delivery.”

GENERAL FACTS/STAFF ANALYSIS (front yard variance):

- This request focuses on maintaining an existing approximately 740 square foot detached garage/accessory structure, part of which is located in the site's 25' front yard setback.
- A 25' front yard setback is required for properties zoned R-7.5(A) Single Family.
- A site plan has been submitted denoting that the existing detached garage structure is located on the site's front property line or 25' into the 25' front yard setback.
- Approximately 63 percent (or approximately 460 square feet) of the approximately 740 square foot building footprint is to be located in the site's 25' front yard setback. See the submitted site plan.
- DCAD records indicate that the property at 6626 Forney Road has the following improvements:
 - "main improvement:" a structure built in 1947 with 1,179 square feet of living area, and 1,179 square feet of total area with "no additional improvements".
- The subject site is sloped, slightly irregular in shape (approximately 57' on the north, approximately 75' on the south; approximately 219' on the east; and approximately 179' on the west) and according to the application, is 0.25 acres (or 10,890 square feet) in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- 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 is a detached accessory structure that provides coverage for two vehicles located on the site's front property line (or 25' into the 25' front yard setback).

GENERAL FACTS/STAFF ANALYSIS (parking variance):

- This request focuses on maintaining enclosed parking spaces in an existing detached garage located on the Forney Road right-of-way line or 20' into the required 20' distance from the street right-of-way line.
- The Dallas Development Code states that a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in enclosed structure and if the space faces upon or can be entered directly from a street or alley.

- The submitted site plan denotes the location of enclosed parking spaces in the existing garage structure on the street right-of-way line or 25.25' from the Forney Road projected pavement line.
- According to the submitted site plan/section/elevation document and field observations of the property made by the Board Administrator in December of 2012, the parking spaces in the accessory structure are enclosed with "iron gates" as opposed to a garage door.
- DCAD records indicate that the property at 6626 Forney Road has the following improvements:
 - "main improvement:" a structure built in 1947 with 1,179 square feet of living area, and 1,179 square feet of total area with "no additional improvements".
- The subject site is sloped, slightly irregular in shape (approximately 57' on the north, approximately 75' on the south; approximately 219' on the east; and approximately 179' on the west) and according to the application, is 0.25 acres (or 10,890 square feet) in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked "Recommends that this be denied" commenting "A vehicle parked in front of the garage obstructs the clear and safe use of the public right-of-way. It also obstructs safe mail delivery."
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the parking regulations of 20' 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 the parking regulations of 20' 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 to the parking regulations of 20' requested 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.
- Staff suggests that if the Board were to grant this type of variance request, that they consider imposing the following conditions:
 1. Compliance with the submitted site plan is required.
 2. An automatic garage door must be installed and maintained in working order at all times.
 3. At no time may the areas in front of the garage be utilized for parking of vehicles.
 4. All applicable permits must be obtained.

(These conditions are imposed to help assure that the variance will not be contrary to public interest). But in this particular case, the applicant's request is to maintain the existing garage "as is" with manually-operated open iron swing gates as opposed to modifying it with the installation and maintenance of an automatic garage door.
- If the Board were to grant the front yard variance request but deny this off-street parking variance request, the structure could remain in its current location without

enclosure of the parking spaces (i.e. with the removal of the existing manually-operated open iron swing gates).

BOARD OF ADJUSTMENT ACTION: JANUARY 15, 2013

APPEARING IN FAVOR: Dagoberto Batres, 6626 Forney Rd., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Schweitzer

I move that the Board of Adjustment, in Appeal No. **BDA 123-002**, on application of Dagoberto Batres, grant the variance to the front yard setback regulations because our evaluation of the property and the testimony shows that 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.

SECONDED: Hounsel

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION #2: Schweitzer

I move that the Board of Adjustment, in Appeal No. **BDA 123-002**, on application of Dagoberto Batres, grant the 20 foot variance to the off-street parking regulations requiring that an enclosed parking space be at least 20 feet from a right-of-way line, because our evaluation of the property and the testimony shows that 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.
- At no time may the areas in front of the garage be used for parking of vehicles
- All applicable permits must be obtained.

SECONDED: Jackson

AYES: 2 –Schweitzer, Jackson

NAYS: 3 – Moore, Nolen, Hounsel

MOTION FAILED: 2– 3

MOTION #3: Schweitzer

I move that the Board of Adjustment, in Appeal No. **BDA 123-002**, on application of Dagoberto Batres, **deny** the variance to the off-street parking regulations **without prejudice**, because our evaluation of the property and the testimony shows that physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: **Hounsel**

AYES: 4 – Moore, Nolen, Hounsel, Jackson

NAYS: 3 – Schweitzer

MOTION PASSED: 4-1

MOTION: **Hounsel**

I move to adjourn this meeting.

SECONDED: **Nolen**

AYES: 5– Moore, Schweitzer, Hounsel, Nolen, Jackson

NAYS: 0 -

MOTION PASSED 5– 0 (unanimously)

2:24 P. M. - Board Meeting adjourned for **January 15, 2013.**

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.