

BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM
TUESDAY, FEBRUARY 19, 2013

MEMBERS PRESENT AT BRIEFING:

Robert Moore, Vice Chair, Jordan Schweitzer, regular member, Clint Nolen, regular member, Danny Alan Scott, alternate member and Scott Jackson, alternate member

MEMBERS ABSENT FROM BRIEFING:

Scott Hounsel, regular member

STAFF PRESENT AT BRIEFING:

Steve Long, Board Administrator, Tammy Palomino, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Lloyd Denman, Asst. Director, Phil Erwin, Chief Arborist and Trena Law, Board Secretary

MEMBERS PRESENT AT HEARING:

Robert Moore, Vice Chair, Jordan Schweitzer, regular member, Clint Nolen, regular member, Danny Alan Scott, alternate member and Scott Jackson, alternate member

MEMBERS ABSENT FROM HEARING:

Scott Hounsel, regular member

STAFF PRESENT AT HEARING:

Steve Long, Board Administrator, Tammy Palomino, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Lloyd Denman, Asst. Director, 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 **February 19, 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 **January 15, 2013** public hearing minutes as amended.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 19, 2013

MOTION: Schweitzer

I move **approval** of the Tuesday, **January 15, 2012** public hearing minutes.

SECONDED: Scott

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 123-006

BUILDING OFFICIAL'S REPORT:

Application of William Wright, Jr., represented by Tommy Mann, for a variance to the front yard setback regulations, a variance to the side yard setback regulations, and a variance to the off-street parking regulations at 3515 Throckmorton Street. This property is more fully described as Lot 20, Block D/1056, and is zoned PD-193 (MF-2), which requires a front yard setback of 20 feet, a side yard setback of 5 feet, 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 an enclosed structure and if the space faces upon or can be entered directly from the street or alley. The applicant proposes to construct and maintain a structure and provide an 8 foot 6 inch front yard setback, which will require a variance to the front yard setback regulations an 11 foot 6 inches; a 0 foot side yard setback, which will require a variance to the side yard setback regulations of 5 feet; and to enclose parking spaces with a setback of 10 feet, which will require a variance to the off-street parking regulations of 10 feet.

LOCATION: 3515 Throckmorton Street

APPLICANT: William Wright, Jr.
Represented by Tommy Mann

February 19, 2013 Public Hearing Notes:

- The Board Administrator circulated an amended Building Official's report and additional information submitted by the applicant's representative to the board members at the briefing (see Attachments B and C). These materials included information establishing that while the applicant's site plan and proposed 0' side yard setback had not changed, it had been determined that the applicant's side yard variance need was for 10' as opposed to 5'.

REQUESTS:

The following appeals have been made in conjunction with constructing and maintaining a single family home structure on a site that is currently undeveloped:

1. a variance to the front yard setback regulations of 11' 6" is requested to locate the proposed home 8' 6" from the front property line or 11' 6" into the required 20' front yard setback;
2. a variance to the side yard setback regulations of 5' is requested to locate the proposed home (roof eave) on the site's southwestern side property line or 5' into this required 5' side yard setback; and
3. a variance to the off-street parking regulations of 10' is requested as the proposed home would have parking spaces enclosed in the proposed garage that would be located 10' from the Throckmorton Street property/right-of-way line or as much as 10' 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 and side yard setback variances):

Approval, subject to the following condition:

- Compliance with the submitted revised site plan is required.

Rationale:

- The lot is of restrictive area (only approximately 2,500 square feet) that precludes its development in a manner commensurate with other developments found on similarly-zoned PD 193 (MF-2 Subdistrict) lots. In this case, according to the applicant's submittals, the subject site is unique in that it is the only residential use on the blockface that has a required front yard setback (the townhomes to the north are platted as a single lot, and as such, Throckmorton is a side yard for each of them) whereby the proposed home on the site will align with the pattern of residential development on the blockface. In addition, the requested side yard variance is requested for a roof eave/overhang where the proposed encroachment is

adjacent to an alley that is adjacent to a commercial use and thus is not contrary to the public interest.

STAFF RECOMMENDATION (off-street parking variance):

Approval, subject to the following conditions:

1. Compliance with the submitted revised 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 used for parking of vehicles.
4. All applicable permits must be obtained.

Rationale:

- The lot is of restrictive area (only approximately 2,500 square feet) that precludes its development in a manner commensurate with other developments found on similarly-zoned PD 193 (MF-2 Subdistrict) lots.
- Granting this request is not contrary to the public interest in that the Sustainable Development and Construction Department Engineering Division Assistant Director has no objections to this request with the condition imposed that no parking in front of the garage is allowed so that the public sidewalk remains clear and unobstructed.

BACKGROUND INFORMATION:

Zoning:

Site: PD 193 (MF-2) (Planned Development, Multifamily)
North: PD 193 (MF-2) (Planned Development, Multifamily)
South: PD 193 (GR) (Planned Development, General Retail)
East: PD 193 (MF-2) (Planned Development, Multifamily)
West: PD 193 (GR) (Planned Development, General Retail)

Land Use:

The subject site is undeveloped. The areas to the north and east are developed with single family uses; and the areas to the south and west are developed with retail uses.

Zoning/BDA History:

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

Timeline:

December 12, 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.

- January 14, 2013: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- January 14, 2013: 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 January 30th deadline to submit additional evidence for staff to factor into their analysis; and the February 8th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- January 22, 2013: The Board Administrator emailed the applicant's representative the following questions:
- To look at the attached side yard setback provision and table from PD 193, and the attached BO report and plot plan in the application materials, and provide understanding why his application and BO report states that he needs a 5' side yard variance when it appears that his plot plan shows 5' and 1' 6" side yard setbacks.
 - To look at his application and the attached plot plan in the application materials and provide understanding why he needs an 11' 6' front yard variance when it appears that his plot plan shows a 10' front yard setback.
- January 28, 2013: The applicant and applicant's representative submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).
- February 5, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- February 8, 2013: The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked "Has no objections if certain conditions are met" commenting "No parking in front of garage so that the public sidewalk remains clear and unobstructed."

GENERAL FACTS/STAFF ANALYSIS (front yard variance):

- This request focuses on constructing and maintaining a two-story single family home on an undeveloped site, part of which is proposed to be located in the site's 20' front yard setback.
- Single family structures on lots zoned PD 193 (MF-2 Subdistrict) are required to provide a minimum front yard setback of 20'.
- A revised site plan has been submitted denoting a portion of the proposed single family home to be located 8' 6" from the site's front property line (or 11' 6" into the 20' front yard setback).
- It appears from the submitted revised site plan that approximately 1/4 (or approximately 400 square feet) of the proposed approximately 1,400 square foot building footprint is to be located in the site's 20' front yard setback.
- DCAD records indicate "no main improvements" for the property at 3515 Throckmorton Street.
- The subject site is rectangular in shape (50' x 50') and according to the application, is 0.057 acres (or 2,483 square feet) in area. The site is zoned PD 193 (MF-2 Subdistrict).
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD 193 (MF-2 Subdistrict) zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD 193 (MF-2 Subdistrict) zoning classification.
- If the Board were to grant the variance request and impose the submitted revised site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document— which is a structure to be located 8' 6" from the site's front property line (or 11' 6" into this 20' front yard setback).

GENERAL FACTS/STAFF ANALYSIS (side yard variance):

- This request focuses on constructing and maintaining a two-story single family home on an undeveloped site, part of which (a roof eave) is proposed to be located in one of the site's two 5' side yard setbacks.
- General side yard setback provisions in PD 193 include a provision stating that "roof eaves may not project more than three feet into the required side yard."
- Single family structures on lots zoned PD 193 (MF-2 Subdistrict) are required to provide a minimum side yard setback of 5' if certain conditions are not provided.
- A revised site plan has been submitted denoting a portion of the proposed single family home (a roof eave) located on the site's southwestern side property line or 5' into this 5' side yard setback.

- It appears from the submitted revised site plan that approximately 8 percent (or approximately 110 square feet) of the proposed approximately 1,400 square foot building footprint is located in the site's southwestern 5' side yard setback.
- DCAD records indicate "no main improvements" for the property at 3515 Throckmorton Street.
- The subject site is rectangular in shape (50' x 50') and according to the application, is 0.057 acres (or 2,483 square feet) in area. The site is zoned PD 193 (MF-2 Subdistrict).
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the side yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD 193 (MF-2 Subdistrict) zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD 193 (MF-2 Subdistrict) zoning classification.
- If the Board were to grant the variance request and impose the submitted revised site plan as a condition, the structure in the side yard setback would be limited to what is shown on this document— which is a structure (roof eave) to be located on the site's southwestern side property line or 5' into this required 5' side yard setback.

GENERAL FACTS/STAFF ANALYSIS (parking variance):

- This request focuses on enclosing parking spaces with a garage door in the proposed garage attached to the proposed single family home, where the parking spaces entered from Throckmorton Street would be located less than 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 revised site plan denotes the location of enclosed parking spaces in the proposed structure 10' from the street right-of-way line or 20' from the projected pavement line.
- DCAD records indicate "no main improvements" for the property at 3515 Throckmorton Street.
- The subject site is rectangular in shape (50' x 50') and according to the application, is 0.057 acres (or 2,483 square feet) in area. The site is zoned PD 193 (MF-2 Subdistrict).
- The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked "Has no objections if

certain conditions are met" commenting "No parking in front of garage so that the public sidewalk remains clear and unobstructed."

- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the 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 193 (MF-2 Subdistrict) zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD 193 (MF-2 Subdistrict) zoning classification.
- If the Board were to grant the variance request of 20', staff recommends imposing the following conditions:
 1. Compliance with the submitted revised 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 the public interest).

BOARD OF ADJUSTMENT ACTION: FEBRUARY 19, 2013

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Jackson**

I move that the Board of Adjustment grant application **BDA 123-006** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the revised site plan is required.
- An automatic garage door must be installed and maintained in working order at all times.
- At no time may the area in front of the garage be used for parking of vehicles.
- All applicable permits must be obtained.

SECONDED: **Nolen**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 123-013

BUILDING OFFICIAL'S REPORT:

Application of Jonathan Vinson for a special exception to the single family zoning use regulations at 7107 Brookshire Circle. This property is more fully described as Lot 22 and part of Lot 21, Block 5/6586, and is zoned R-16(A), which limits the number of dwelling units to one. The applicant proposes to maintain an additional dwelling unit, which will require a special exception to the single family zoning use regulations.

LOCATION: 7107 Brookshire Circle

APPLICANT: Jonathan Vinson

REQUEST:

A special exception to the single family use development standard regulations is requested according to the application “to permit construction and maintenance of the existing accessory structure which is the subject of this appeal (additional dwelling unit)” on a site currently developed with a dwelling unit/single family home 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: R-16(A) (Single family district 16,000 square feet)
North: R-16(A) (Single family district 16,000 square feet)
South: R-13 (A) (Single family district 13,000 square feet)
East: R-16(A) (Single family district 16,000 square feet)
West: R-16(A) (Single family district 16,000 square feet)

Land Use:

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

Zoning/BDA History:

1. BDA 045-194, Property at 7107 Brookshire Circle (the subject site)
2. BDA 056-041, Property at 7107 Brookshire Circle (the subject site)

On May 17, 2005, the Board of Adjustment Panel A granted a request for a special exception to allow an additional dwelling unit on the property. The board imposed the following conditions: compliance with the submitted site plan and elevation is required; and the applicant must deed restrict the property to prohibit the additional dwelling unit on the site as rental accommodations.

The case report stated that the request was made in conjunction with constructing and an additional "dwelling unit" on a site developed with a single family home; and that the proposed additional "dwelling unit" was a 1-story studio/home office structure.

On December 13, 2005, the Board of Adjustment Panel A denied a request for a special exception to allow an additional dwelling unit on the property without prejudice.

The case report stated that the request was made in conjunction with constructing and an additional "dwelling unit" on a site developed with a single family home; and that the proposed additional "dwelling unit" was a 2-story studio/home office structure.

Timeline:

December 21, 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.

- January 13, 2013: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B. 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."
- January 14, 2013: 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 January 30th deadline to submit additional evidence for staff to factor into their analysis; and the February 8th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- January 29, 2013: The applicant forwarded additional information beyond what was submitted with the original application for staff review.
- February 5, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- No additional review comment sheets with comments were submitted in conjunction with this application.
- February 8, 2013: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

GENERAL FACTS/STAFF ANALYSIS:

- This request is made (according to what is stated on the application) "to permit construction and maintenance of the existing accessory structure which is the subject of this appeal (additional dwelling unit)" on a site that is currently developed with a dwelling unit/single family home 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 R-16(A) 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 footprints is labeled “existing one story residence.” The second largest of the three footprints is labeled “addition” which has been deemed by Building Inspection as an additional dwelling unit given the floor plan that has been submitted of this structure. The third and smallest of the three footprints is labeled “one-story brick garage.” The site plan represents the sizes and locations of the three building footprints relative to the entire lot/property.
- Floor plans have been submitted of structure labeled “addition” on the site plan. The floor plan this structure shows what appears to be storage spaces and a bathroom on the basement floor plan, and a studio, kitchen, and what appears to be bathroom on the first floor.
- DCAD records indicate that the property at 7107 Brookshire Circle has the following improvements:
 - “main improvement:” a structure built in 1957 with 4,417 square feet of living area and 4,417 square feet of total area; and
 - “additional improvements:” a 784 square foot detached garage, a pool, and a 576 square foot detached servants quarters.
- Building Inspection staff has reviewed the submitted floor plan of the “addition” structure to be a dwelling unit, in this case, 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 centers on the function of what is located inside the existing accessory structure/dwelling unit on the site. If the board were to deny this request, the applicant has stated in a January 29th email to the Board Administrator that this structure could be maintained with merely modifications to the function/use inside it (or to the floor plan) since the existing structure complies with the all other applicable zoning code development standards other than its single family use provisions.
- The applicant has also represented in a January 29th email to the Board Administrator that if the board were to deny this request, that the existing structure could be “cured by removing the enclosure around the bottom portion” therefore complying with the previous elevation that was imposed by the board in conjunction with BDA 045-194 in 2005.
- The applicant has also represented in a January 29th email to the Board Administrator that a building permit was filed for the additional dwelling unit/structure within 180 days from the board’s favorable action on the special exception on May 17, 2005.
- As of February 11, 2013, three letters had been submitted to staff in support of the request, and no letters had been submitted in opposition.

- 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.
- 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: FEBRUARY 19, 2013

APPEARING IN FAVOR: Jonathan Vinson, 901 Main Street, Ste 6000, Dallas, TX

APPEARING IN OPPOSITION: Beth Mazziotta, 7114 Royal Lane, Dallas, TX
Leslie Schultz, 7141 Brookshire Drive, Dallas, TX

MOTION #1: Schweitzer

I move that the Board of Adjustment **suspend** the rules and accept the documentary evidence that is being presented to us today.

SECONDED: Nolen

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

NAYS: 0 -

MOTION PASSED: 5– 0(unanimously)

MOTION #2: Scott

I move that the Board of Adjustment, in Appeal No. **BDA 123-013**, on application of Jonathan Vinson, **grant** the special exception to the single family use regulations to maintain an additional dwelling unit, because our evaluation of the property and the testimony shows that the additional dwelling unit will not be used as rental accommodations or 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 property must be deed-restricted to prohibit the additional dwelling unit from being used as rental accommodations.

SECONDED: Nolen

AYES: 4 – Moore, Nolen, Scott, Jackson

NAYS: 1 - Schweitzer

MOTION PASSED: 4– 1

FILE NUMBER: BDA 123-016

BUILDING OFFICIAL'S REPORT:

Application of Leon Backes, represented by Gladys Bowens of Masterplan Consultants, for a special exception to the tree preservation regulations at 9701 N. Central Expressway. This property is more fully described as part of Lot 1, Block S/5455 and is zoned PD-750, which requires mandatory landscaping and tree mitigation. The applicant proposes to provide an alternate plan for tree mitigation, which will require a special exception to the tree preservation regulations.

LOCATION: 9701 N. Central Expressway

APPLICANT: Leon Backes,
Represented by Gladys Bowens of Masterplan Consultants

REQUEST:

A special exception to the tree preservation regulations is requested in conjunction with the removal of trees on an undeveloped site, and not fully complying with the Chapter X: Tree Preservation Regulations of the Dallas Development Code.

STANDARD FOR A SPECIAL EXCEPTION TO THE TREE PRESERVATION REGULATIONS:

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

STAFF RECOMMENDATION:

Approval, subject to the following conditions:

1. The time period in which the applicant has to fully mitigate protected trees removed on the site is 60 months from the February 19, 2013.
2. A letter of credit or performance bond must be provided to the building official within 90 days from February 19, 2013. The letter of credit must be for the total cost of purchasing and planting replacement trees for mitigation remaining on the date the letter of credit or performance bond is provided. The letter of credit or

performance bond may not expire until 60 days after the end of the 60 month time period in which to complete mitigation. The expiration date may be amended if mitigation is completed earlier in the 60 month time period to complete mitigation.

Rationale:

- The applicant has substantiated:
 - How strict compliance with the requirements of the Tree Preservation Regulations of the Dallas Development Code (specifically related to the additional time to complete tree mitigation of protected trees removed on the site) will unreasonably burden the use of the property; and
 - That the special exception will not adversely affect neighboring property.
- The City's Chief Arborist recommends approval of the request with the conditions imposed noted in this case report.

BACKGROUND INFORMATION:

Zoning:

Site: PD 750 (Planned Development)
North: MF-2(A), MU-3, & GO(A) (Multifamily residential, mixed use, and general office)
South: PD 121 (Planned Development)
East: MU-1 (Mixed Use)
West: R-7.5(A) (Single family residential 7,500 square feet)

Land Use:

The subject site is undeveloped. The areas to the north and south are developed with a mix of residential and nonresidential uses; the area to the east is the North Central Expressway; and the area to the west is developed with single family uses.

Zoning/BDA History:

1. BDA 123-025, Property at 9701N. Central Expressway (the subject site)
On February 19, 2013, the Board of Adjustment Panel A will consider an appeal has been made requesting that the Board of Adjustment reverse/overtake the Administrative Official's (David Cossom, Assistant Director of Sustainable Development and Construction Current Planning Division) January 25, 2013 decision to refuse to submit a development plan to the City Plan Commission submitted by the applicant for Tract E-1 of Planned Development No. 750

Timeline:

- November 30, 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.
- January 14, 2013: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- January 14, 2013: 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 January 30th deadline to submit additional evidence for staff to factor into their analysis; and the February 8th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- February 5, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- February 8, 2013: The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment A).

GENERAL FACTS/STAFF ANALYSIS:

- The request focuses on obtaining additional time to mitigate protected trees removed on this site beyond the 6 - 18 month Article X timeframe from when a tree removal permit was issued on this site in September of 2007.
- An application has been made “for extension of time to complete mitigation pertaining to 10.134.5 – a 60-month extension beginning after board approval” on a property that is undeveloped.
- The Dallas Development Code requires full compliance with the Tree Preservation Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet.
- The property owner can comply with tree preservation regulations by mitigating the removed trees in any of the alternative methods provided for in Article X: planting within one mile of the Property, donating trees to the Park Department, forming a

conservation easement on property within city limits, and/or paying into the Reforestation Fund.

- The City of Dallas Chief Arborist submitted a memo regarding this request to the Board Administrator (see Attachment A). The memo stated among other things that the site has changed ownership since the time of tree removal, that a portion of the site is in review for development, and how the tree removal permit issued on the property in 2007 was for the removal of over 400 protected trees.
- The City of Dallas Chief Arborist recommends approval of the applicant's request in which to fully mitigate the protected trees removed on the site within 60 months from the board's February 19th hearing date with the following additional condition being imposed:
 - A letter of credit or performance bond must be provided to the building official within 90 days after board of adjustment approval of the requested extension of time in which to mitigate. The letter of credit must be for the total cost of purchasing and planting replacement trees for mitigation remaining on the date the letter of credit or performance bond is provided. The letter of credit or performance bond may not expire until 60 days after the end of the 60 month time period in which to complete mitigation. The expiration date may be amended if mitigation is completed earlier in the 60 month time period to complete mitigation.
- The applicant has the burden of proof in establishing the following:
 - Strict compliance with the requirements of the Tree Preservation Regulations of the Dallas Development Code (i.e. mitigating all protected trees removed on the site within 30 days – 18 months from removal) will unreasonably burden the use of the property.
 - The special exception (allowing for an extension of the time period in which to fully mitigate protected trees removed on the site in 2007) will not adversely affect neighboring property.
- If the Board chooses to grant this request with the suggested conditions imposed, the applicant's only exception to the Tree Preservation Regulations would be that of timing in which to fully mitigate protected trees removed on the site.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 19, 2013

APPEARING IN FAVOR: Willie Cothrum, 900 Jackson St., Dallas, TX

APPEARING IN OPPOSITION: Linda Neel, 9241 LBJ, Dallas, TX

MOTION: **Nolen**

I move that the Board of Adjustment, in Appeal No. **BDA 123-016**, on application of Leon Backes, **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:

- The time period in which the applicant has to fully mitigate protected trees removed from the site is 60 months from February 19, 2013.
- A letter of credit or performance bond must be provided to the building official within 90 days from February 19, 2013. The letter of credit must be for the total cost of purchasing and planting replacement trees for mitigation remaining on the date the letter of credit or performance bond is provided. The letter of credit or performance bond may not expire until 60 days after the end of the 60-month time period in which to complete mitigation. The expiration date may be amended if mitigation is completed earlier in the 60-month time period to complete mitigation.
- All dead trees must be removed from the property within 60 days from February 19, 2013.

SECONDED: **Jackson**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

Break:

FILE NUMBER: BDA 123-017

BUILDING OFFICIAL'S REPORT:

Application of Julianne McGee of Pink Consultants for a special exception to the off-street parking regulations at 5403 Ross Avenue. This property is more fully described as Tract 26, Block 1472, and is zoned CR, which requires parking to be provided. The applicant proposes to construct and/or maintain a structure for a restaurant with drive-in or drive-through service use and provide 47 of the required 61 parking spaces, which will require a special exception to the off-street parking regulations of 14 spaces.

LOCATION: 5403 Ross Avenue

APPLICANT: Julianne McGee of Pink Consultants

REQUEST:

- A special exception to the off-street parking regulations of 14 parking spaces (or a 23 percent reduction of the 61 off-street parking spaces that are required) is requested in conjunction with maintaining an approximately 6,100 square foot structure/restaurant with drive-in for drive-through use (McDonald's). The applicant proposes to provide 47 (or 77 percent) of the required 61 off-street parking spaces in conjunction with maintaining this use with this square footage within the existing structure. (The applicant has stated that this request is prompted by adding second drive-through lane along with some “minor building modifications”, which reduces the amount of existing off-street parking on the site).

STANDARD FOR A SPECIAL EXCEPTION TO THE OFF-STREET PARKING REGULATIONS:

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
 - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
 - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
 - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
 - (E) The availability of public transit and the likelihood of its use.
 - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
 - (A) Establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
 - (B) Impose restrictions on access to or from the subject property; or
 - (C) Impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
 - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
 - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The special exception of 14 spaces shall automatically and immediately terminate if and when the restaurant with drive-in or drive-through service use is changed or discontinued.

Rationale:

- The applicant has substantiated how the parking demand generated by the proposed restaurant with drive-in or drive-through service use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- The Sustainable Development and Construction Department Engineering Division Assistant Director has indicated that he has no objections to this request.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail)
North: CR (Community Retail)
South: CR (Community Retail)
East: CR (Community Retail)
West: PD 462 (Planned Development)

Land Use:

The subject site is currently developed with restaurant with drive-in or drive-through service use (McDonald's). The areas to the north, east, and south are developed with retail uses; and the area to the west is developed with a mix of residential and nonresidential 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:

- January 4, 2013: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- January 14, 2013: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

January 14, 2013: 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 January 30th deadline to submit additional evidence for staff to factor into their analysis; and the February 8th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

February 5, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

February 8, 2013: The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked "Has no objections."

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on the applicant's plan for a small expansion and the addition of another drive-through lane on a site developed with an approximately 6,100 square foot structure/restaurant with drive-in for drive-through use (McDonald's) where 47 (or 77 percent) of the required 61 off-street parking spaces are proposed to be provided. (The minor building modifications and addition of the drive-through lane would eliminate some of the existing off-street parking spaces on the site).
- The Dallas Development Code requires the following off-street parking requirement:
 - Restaurant with drive-in or drive-through service use: 1 space per 100 square feet of floor area.The applicant proposes to provide 47 (or 77 percent) of the required 61 off-street parking spaces in conjunction with the site being leased/maintained with the use mentioned above.
- The applicant submitted a parking study prepared in August of 2012 indicating that the maximum number of parked vehicles during peak hours of operation on the site was found to be 25 spaces. (The applicant is requesting to provide 47 spaces on the site after building modifications are made and the new drive-through lane is added).
- The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections."
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the restaurant with drive-in or drive through use on the site does not warrant the number of off-street parking spaces required, and

- The special exception of 14 spaces (or a 23 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, and impose the condition that the special exception of 14 spaces shall automatically and immediately terminate if and when the restaurant with drive-in or drive-through service use is changed or discontinued, the applicant would be allowed to lease/maintain the site with this specific use and provide only 47 of the 61 code required off-street parking spaces.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 19, 2013

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Jackson**

I move that the Board of Adjustment grant application **BDA 123-017** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- The special exception of 14 spaces shall automatically and immediately terminate if and when the restaurant with drive-in or drive-through service use is changed or discontinued.

SECONDED: **Nolen**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 123-025

BUILDING OFFICIAL'S REPORT:

Application of Dallas Cothrum to appeal the decision of the administrative official at 9701 N. Central Expressway. This property is more fully described as part of Lot 1, Block S/5455, and is zoned PD-750. The applicant is appealing the decision of an administrative official refusing to submit a development plan to the City Plan Commission.

LOCATION: 9701 N. Central Expressway

APPLICANT: Dallas Cothrum

REQUEST:

An appeal has been made requesting that the Board of Adjustment reverse/overtake the Administrative Official's (David Cossom, Assistant Director of Sustainable Development and Construction Current Planning Division) January 25, 2013 decision to refuse to submit a development plan to the City Plan Commission submitted by the applicant for Tract E-1 of Planned Development No. 750.

STANDARD FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:

Dallas Development Code Sections 51A-3.102(d)(1) and 51A-4.703(a)(2) state that any aggrieved person may appeal a decision of an administrative official when that decision concerns issues within the jurisdiction of the Board of Adjustment.

The Board of Adjustment may hear and decide an appeal that alleges error in a decision made by an administrative official. Tex. Local Gov't Code Section 211.009(a)(1).

Administrative official means that person within a city department having the final decision-making authority within the department relative to the zoning enforcement issue. Dallas Development Code Section 51A-4.703(a)(2).

Zoning:

Site: PD 750 (Planned Development)
North: MF-2(A), MU-3, & GO(A) (Multifamily residential, mixed use, and general office)
South: PD 121 (Planned Development)
East: MU-1 (Mixed Use)
West: R-7.5(A) (Single family residential 7,500 square feet)

Land Use:

The subject site is undeveloped. The areas to the north and south are developed with a mix of residential and nonresidential uses; the area to the east is the North Central Expressway; and the area to the west is developed with single family uses.

Zoning/BDA History:

1. BDA 123-016, Property at 9701N. Central Expressway (the subject site) On February 19, 2013, the Board of Adjustment Panel A will consider a request for a special exception to the tree preservation regulations.

Timeline:

January 22, 2013: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

February 7, 2013: This case was assigned to Board of Adjustment Panel A.

February 7, 2013: 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 February 8th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the outline of procedure for appeals from decisions of the building official to the board of adjustment; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

February 8, 2013: The applicant forwarded information on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

GENERAL FACTS/STAFF ANALYSIS:

- A copy of the Administrative Official's (David Cossom, Assistant Director of Sustainable Development and Construction Current Planning Division) January 25, 2013 decision letter to the applicant is included in this case report.

The board shall have all the powers of the administrative official on the action appealed from. The board may in whole or in part affirm, reverse, or amend the decision of the official.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 19, 2013

APPEARING IN FAVOR: Willie Cothrum, 900 Jackson St., Ste 640, Dallas, TX
Leon Backus, 5400 LBJ Freeway, Dallas, TX

APPEARING IN OPPOSITION: No one

APPEARING FOR THE CITY: David Cossom, Asst. Dir., 1500 Marilla, Dallas, TX

MOTION: **Schweitzer**

In Appeal No. **BDA 123-025** on Application of Dallas Cothrum, after having fully reviewed the decision of the administrative official, and having evaluated the evidence and heard all of the testimony and facts, I move that the Board of Adjustment **affirm** the decision of the administrative official and **deny** the relief requested by the applicant **without prejudice**.

SECONDED: **Scott**

AYES: 4 – Moore, Schweitzer, Nolen, Scott,

NAYS: 1 - Jackson

MOTION PASSED: 4– 1

MOTION: Schweitzer

I move to adjourn this meeting.

SECONDED: Jackson

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

NAYS: 0 –

MOTION PASSED 5– 0 (unanimously)

3:12 P. M. - Board Meeting adjourned for February 19, 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.