

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, 6ES
TUESDAY, MARCH 19, 2013**

MEMBERS PRESENT AT BRIEFING: Robert Moore, Vice Chair, Jordan Schweitzer, Scott Hounsel, regular member, Jim Gaspard, alternate member

MEMBERS ABSENT FROM BRIEFING: Clint Nolen, 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, Scott Hounsel, regular member, Jim Gaspard, alternate member

MEMBERS ABSENT FROM HEARING: Clint Nolen, 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

11:02 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **March 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 **February 19, 2013** public hearing minutes as amended.

BOARD OF ADJUSTMENT ACTION: MARCH 19, 2013

MOTION: Schweitzer

I move **approval** of the Tuesday, **February 19, 2013** public hearing minutes.

SECONDED: Moore

AYES: 4 – Moore, Schweitzer, Hounsel, Gaspard

NAYS: 0 -

MOTION PASSED: 4– 0 (unanimously)

FILE NUMBER: BDA 123-021

BUILDING OFFICIAL’S REPORT: Application of Leonel Moreno for a special exception to the fence height regulations at 8200 Barbaree Boulevard. This property is more fully described as Lot 17 in City Block B/7040 and is zoned R-1/2ac(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain a 6-foot-high fence in a required front yard, which will require a special exception to the fence height regulations of 2 feet.

LOCATION: 8200 Barbaree Boulevard

APPLICANT: Leonel Moreno

REQUEST:

A special exception to the fence height regulations of 2’ is requested in conjunction with constructing and maintaining a 5’ high open metal fence with a 5’ - 6’ high arched open metal gate on a site that is currently developed with a single family home.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to the fence height regulations since the basis for this type of appeal is *when in the opinion of the board*, the special exception will not adversely affect neighboring property.

BACKGROUND INFORMATION:

Zoning:

- Site: R-1/2ac(A) (Single family district ½ acre)
North: R-1/2ac(A) (Single family district ½ acre)
South: PD 34 (Planned Development)
East: R-1/2ac(A) (Single family district ½ acre)
West: R-1/2ac(A) (Single family district ½ acre)

Land Use:

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

Zoning/BDA History:

1. BDA 078-025, Property at 8176 Barbaree Boulevard (the lot immediately southwest of subject site) On February 13, 2008, the Board of Adjustment Panel B granted a request to construct and maintain a 6’ 4’ high fence on the property. The board imposed the following condition: compliance with the submitted site plan, landscape plan, and elevation is required. The case report stated that the request was made for a fence to be constructed of cedar posts and galvanized steel wires, and that the fence was to stand at 6’ 4” and the gate was to stand at 5’ 6” high.

Timeline:

- January 24, 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 13, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- February 19, 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 29th deadline to submit additional evidence for staff to factor into their analysis; and the March 9th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the requests; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

March 5, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March 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 Planner, 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.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining a 5' open metal fence with a 5' - 6' high arched open metal gate on a site that is currently developed with a single family home.
- The Dallas Development Code states that a person shall not erect or maintain a fence in a required yard more than 9' above grade, and additionally states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The applicant has submitted a site plan and partial fence and gate elevations of the proposal in the front yard setback that reaches a maximum height of 6'.
- The following additional information was gleaned from the submitted site plan:
 - The proposal located in the required front yard setback over 4' in height is represented on the site plan as being approximately 100' in length parallel to the street and approximately 26' perpendicular to the street on the north side of the site in the front yard setback.
 - The fence and gate are shown to be located approximately 14' from the site's front property line or approximately 52' from the pavement line.
- One single family home "fronts" to the existing fence on the subject site, a home with no fence in its front yard.
- The Board Administrator conducted a field visit of the site and surrounding area and noted one fence in a front yard setback. This noted fence was immediately southwest of the subject site and is approximately 5.5 feet high. This fence appears to be the result of a request for a fence height special exception granted by the Board of Adjustment Panel B in February of 2008: BDA 078-025.
- As of March 11, 2012, no letters have been submitted in support or opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 2' will not adversely affect neighboring property.
- Granting this special exception of 2' with a condition imposed that the applicant complies with the submitted site plan and partial elevations would require the proposal exceeding 4' in height in the front yard setback to be constructed and maintained in the location and of the heights and materials as shown on these documents.

BOARD OF ADJUSTMENT ACTION: MARCH 19, 2013

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Schweitzer**

I move that the Board of Adjustment grant application **BDA 123-021** 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 submitted site plan and partial elevations is required.

SECONDED: **Hounsel**

AYES: 4 – Moore, Schweitzer, Hounsel, Gaspard

NAYS: 0 -

MOTION PASSED: 4– 0 (unanimously)

FILE NUMBER: BDA 123-024

BUILDING OFFICIAL’S REPORT: Application of Robert Baldwin for a special exception to the landscape regulations at 4103 Maple Avenue. This property is more fully described as Lot 1B in City Block A/1007 and is zoned PD 193(GR) and PD 262, which requires mandatory landscaping. The applicant proposes to construct and maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 4103 Maple Avenue

APPLICANT: Robert Baldwin

REQUEST:

A special exception to the landscape regulations is requested in conjunction with completing and maintaining all three phases of a mixed use development under development on the 12.5 acre subject site, and not fully meeting the required landscaping requirements of PD 193 on the portion of the site zoned PD 193.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS IN OAK LAWN:

Section 26(a)(4) of Ordinance No. 21859, which establishes PD 193, specifies that the board may grant a special exception to the landscaping requirements of this section if,

in the opinion of the Board, the special exception will not compromise the spirit and intent of this section. When feasible, the Board shall require that the applicant submit and that the property comply with a landscape plan as a condition to granting the special exception.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted landscape plan is required.

Rationale:

- The City’s Chief Arborist recommends approval of this request whereby, if the submitted landscape plan is imposed as a condition, the special exception would not compromise the spirit and intent of the landscaping requirements of PD 193.
- The applicant only seeks exception to the PD 193 landscaping requirements time for completion, which would allow Phase II to be completed under the current approved plan, and Phase III to be completed under a separate future landscape plan. All aspects of the PD 193 landscaping requirements would be required.

BACKGROUND INFORMATION:

Zoning:

- Site: PD 193 (GR) & PD 262 (Planned Development District, General Retail)
- North: PD 193 (GR) (Planned Development District, General Retail)
- South: PD 193 (I-2) (Planned Development District, Industrial)
- East: PD 518 (Planned Development District)
- West: PD 193 (I-2) (Planned Development District, Industrial)

Land Use:

The subject site is under development as a mixed use development. The areas to the north, south, and east are developed with a mix of office and retail uses; and the area to the west is the North Dallas Tollway.

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 25, 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 13, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

- February 13, 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 29th deadline to submit additional evidence for staff to factor into their analysis; and the March 9th 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 26, 2013: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).
- February 27, 2013: The Sustainable Development and Construction Department Historic Senior Planner emailed the Board Administrator the following comments: "portions of PD 262 also include historic overlays for Old Parkland Hospital and the Nurse's Building" with "no other concerns."
- March 5, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March 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 Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- March 11, 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 completing and maintaining all three phases of a mixed use development under development on the subject site, and not fully meeting the required landscaping requirements of PD 193 on the portion of the site zoned PD 193.
- PD 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind.

- Section 126(b)(8) of the Oak Lawn Special Purpose District states that if a landscape plan is required under this section, all landscaping must be completed in accordance with the approved landscape plan before the final inspection of any structure on the lot or, if no final inspection is required, within 120 days of the date of issuance of the landscape permit.
- On March 11, 2013 the City of Dallas Chief Arborist submitted a memo to the Board Administrator (see Attachment B). The memo states among other things how the property on a single lot is currently under construction with permit; that the approved landscape plan demonstrates the site can currently comply with all PD 193 landscape regulations for the entire property but that a portion of the property (Phase III) will not be ready for development completion when another part of the site is ready for final inspections (Phase II).
- The Chief Arborist recommends approval of the request in that the only aspect of the landscape requirements that the applicant can not meet is the timing aspect of having all landscaping completed in accordance with an approved landscape plan before any structure on the lot within 120 days of the issuance of the landscape permit. In this particular case, the special exception to this provision of the landscape requirements can be approved/granted by the Board since development of this 12.5 acre site will be completed in three phases. The applicant only seeks exception to allow for Phase III of the development to be completed under a separate future landscape plan that will comply with PD 193, allowing Phase II to be completed and inspected under the applicable construction area on the current approved plan.
- The applicant has the burden of proof in establishing the following:
 - The special exception (where an alternate landscape plan has been submitted that is deficient in meeting the landscape completion timing aspect of the requirements of the PD 193 landscape regulations) will not compromise the spirit and intent of the section of the ordinance (Section 26: Landscape, streetscape, screening, and fencing standards).
- If the Board were to grant this request and impose the submitted alternate landscape plan as a condition, the site would be granted exception from the landscape completion timing aspect of the requirements of the Oak Lawn PD landscape ordinance.

BOARD OF ADJUSTMENT ACTION: MARCH 19, 2013

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Schweitzer**

I move that the Board of Adjustment grant application **BDA 123-024** 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 submitted alternate landscape plan is required.

SECONDED: Hounsel

AYES: 4 – Moore, Schweitzer, Hounsel, Gaspard

NAYS: 0 -

MOTION PASSED: 4– 0 (unanimously)

FILE NUMBER: BDA 123-019

BUILDING OFFICIAL'S REPORT: Application of Jon Cannon, represented by Henry Quigg, for a special exception to the landscape regulations at 3905 Oak Lawn Avenue. This property is more fully described as part of Lot 1 & 2 in City Block 4/1509 and is zoned PD-193 (GR), which requires mandatory landscaping. The applicant proposes to construct and maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 3905 Oak Lawn Avenue

APPLICANT: Application of Jon Cannon
Represented by Henry Quigg

March 19, 2013 Public Hearing Notes:

- The applicant submitted a revised site plan to the Board at the public hearing (see Attachment B).

REQUEST:

A special exception to the landscape regulations is requested in conjunction with constructing and maintaining an approximately 60 square foot elevator structure on a site developed with a two-story approximately 9,400 square foot office/retail use/structure (FedEx), and not fully providing required landscaping.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS IN OAK LAWN:

Section 26(a)(4) of Ordinance No. 21859, which establishes PD 193, specifies that the board may grant a special exception to the landscaping requirements of this section if, in the opinion of the Board, the special exception will not compromise the spirit and intent of this section. When feasible, the Board shall require that the applicant submit and that the property comply with a landscape plan as a condition to granting the special exception.

STAFF RECOMMENDATION:

Denial

Rationale:

- The applicant has not substantiated how granting this request would not compromise the spirit and intent of the landscaping requirements of PD 193.
- The City’s Chief Arborist recommends that this request be denied because, while he recognizes how certain practical factors with limited construction and utility conflicts may restrict certain landscape improvements, a direct assessment could not be made between the culmination of minor improvements identified on the submitted alternate landscape plan and the purpose of the ordinance “to promote landscape/streetscape quality and appearance.”

BACKGROUND INFORMATION:

Zoning:

Site: PD 193 (GR) (Planned Development District, General Retail)
North: PD 193 (GR) (Planned Development District, General Retail)
South: PD 193 (GR) (Planned Development District, General Retail)
East: PD 193 (GR) (Planned Development District, General Retail)
West: PD 193 (O-2) (Planned Development District, Office)

Land Use:

The subject site is developed with an approximately 9,400 square foot office/retail use/structure (FedEx) that according to DCAD was constructed in 1983. The areas to the north, south, east, and west are developed with a mix of office and 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 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.

February 13, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

February 13, 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 29th deadline to submit additional evidence for staff to factor into their analysis; and the March 9th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the requests; and

- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

March 5, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March 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 Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

March 11, 2013: The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment A).

GENERAL FACTS/ STAFF ANALYSIS:

- This request focuses on constructing and maintaining an approximately 60 square foot elevator structure on a site developed with an early 80's, two-story approximately 9,400 square foot office/retail use/structure (FedEx), and not fully complying with the landscaping requirements of PD 193.
- PD 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind.
- On March 11, 2013, the City of Dallas Chief Arborist submitted a memo to the Board Administrator regarding the submitted landscape plan/special exception request (see Attachment A).
- The Chief Arborist's memo stated among other things how the request is triggered by new construction of a new external elevator to the rear of the structure that will increase the floor area on the property, and how the applicant seeks exception from the from the general requirements for landscaping area for: 1) the tree planting zone (2.5' – 5' from back of curb); 2) sidewalks (location and width); 3) screening of off-street parking requirements; 4) garbage storage area landscaping; and 5) landscape site area/general planting area requirements.
- The Chief Arborists listed several factors for consideration on this request: the fact the property was developed prior to the initiation of PD 193 regulations; how some existing landscape areas along Irving Avenue are in the parkway and/or not identified; how the landscape area at the corner of Oak Lawn Avenue and Irving Avenue is being increased; how a large live oak tree at the street corner is proposed for removal; how a stand of three large live oaks along Irving Avenue provide substantial landscape site area; how overhead utility lines exist over the Oak Lawn Avenue sidewalk and tree planting zone; and how locating trees in the tree planting

zone along Irving Avenue would put conflict with the canopies of mature live oak trees, and be near overhead power lines.

- The Chief Arborist recommends denial of request. The arborist states that while he recognizes certain practical factors with limited construction and utility conflicts may restrict certain landscape improvements, a direct assessment could not be made between the culmination of minor improvements identified on the submitted plan and the purpose of the ordinance “to promote landscape/streetscape quality and appearance.” The arborist stated that he could not make a favorable recommendation on this request given the multiple deficiencies with limited mitigating landscape additions.
- The Chief Arborist recommends that if the Board supports the applicant’s request, that they impose not only the submitted alternate landscape plan as a condition, but also that “the garbage storage enclosure must be provided doors and landscaping in accordance with Section 51P-193.126(b)(11).”
- The applicant has the burden of proof in establishing the following:
 - The special exception (where an alternate landscape plan has been submitted that is deficient in meeting the tree planning zone, sidewalks, screening of off-street parking requirements, garbage storage area landscaping, and landscape site area/general planting area requirements of the PD 193 landscape regulations) will not compromise the spirit and intent of the section of the ordinance (Section 26: Landscape, streetscape, screening, and fencing standards).
- If the Board were to grant this request and impose the submitted landscape plan as a condition, the site would be granted exception from full compliance to the tree planning zone, sidewalks, screening of off-street parking requirements, garbage storage area landscaping, and landscape site area/general planting area requirements of the Oak Lawn PD 193 landscape ordinance.

BOARD OF ADJUSTMENT ACTION: MARCH 19, 2013

APPEARING IN FAVOR: Henry Quigg, 12200 Stemmons, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Hounsel**

I move that the Board of Adjustment in Appeal No. **BDA 123-019**, hold this matter under advisement until **April 16, 2013**.

SECONDED: **Gaspard**

AYES: 4 – Moore, Schweitzer, Hounsel, Gaspard

NAYS: 0 -

MOTION PASSED: 4– 0 (unanimously)

FILE NUMBER: BDA 123-028

BUILDING OFFICIAL'S REPORT: Application of Herbert B. Story, Jr., represented by Michael R. Coker, for variances to the front yard setback and off-street parking regulations, and a special exception to the landscape regulations at 2701 McKinney Avenue. This property is more fully described as Lot 3A, Block 2/955 and is zoned PD-193 (LC), which requires (1) a front yard setback of 10 feet, (2) off-street parking, and (3) mandatory landscaping. The applicant proposes to construct and maintain a restaurant without drive-in or drive-through service use and provide (1) a 0 foot front yard setback, which will require a 10 foot variance to the front yard setback regulations; (2) 41 of the required 54 parking spaces, which will require a variance to the off-street parking regulations of 13 spaces; and (3) an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 2701 McKinney Avenue

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

REQUESTS:

The following appeals have been made on a site that is currently developed with a restaurant use (S & D Oyster House):

1. A variance to the front yard setback regulations of 10' is made in conjunction with constructing and maintaining an addition structure (freezer/cooler room and stairwell) with an approximately 1,900 square foot building footprint, part of which is to be located in on the Boll Street front property line, or as much as 10' into this 10' front yard setback along Boll Street.
2. Variances to the front yard setback regulations of 10' are made in conjunction with remedying/addressing the nonconforming aspect of the existing nonconforming structure that is located in the site's two 10' front yard setbacks along McKinney Avenue and Boll Street
3. A variance to the off-street parking regulations of 13 spaces (or a 24 percent reduction of the 54 off-street parking spaces that are required) is requested in conjunction with constructing and maintaining existing/proposed development with a total of approximately 5,400 square feet of restaurant use (where the applicant proposes to provide 41 (or 76 percent) of the required 54 required off-street parking.
4. A special exception to the PD 193 landscape regulations in conjunction with the proposed new construction, and not fully complying with the landscaping requirements of PD 193.

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.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS IN OAK LAWN:

Section 26(a)(4) of Ordinance No. 21859, which establishes PD 193, specifies that the board may grant a special exception to the landscaping requirements of this section if, in the opinion of the Board, the special exception will not compromise the spirit and intent of this section. When feasible, the Board shall require that the applicant submit and that the property comply with a landscape plan as a condition to granting the special exception.

STAFF RECOMMENDATIONS (variances and special exception):

Hold under advisement until April 16, 2013

Rationale:

- Staff recommends that the applicant’s requests for variances to the front yard setback and off-street parking, and a special exception to the landscape regulations be held under advisement until April 16, 2013 for the City Plan Commission to consider the applicant’s plat application on this site on April 4, 2013.
- Staff is concerned that if the board of adjustment were to grant the requested variances/special exception and impose the submitted plans as conditions, the board of adjustment imposed conditions may not be in agreement with the re-plat that City Plan Commission may approve on April 4, 2013.
- The applicant’s representative is aware that if the City Plan Commission approves a re-plat past March 19th that is not in agreement with plans imposed by the board of adjustment, he would have to re-file a new board of adjustment application.

BACKGROUND INFORMATION:

Zoning:

Site: PD 193 (LC) (Planned Development District, Light commercial)
North: PD 193 (LC) (Planned Development District, Light commercial)
South: PD 193 (LC) (Planned Development District, Light commercial)
East: PD 193 (LC) (Planned Development District, Light commercial)
West: PD 193 (LC) (Planned Development District, Light commercial)

Land Use:

The subject site is developed with a restaurant use (S & D Oyster House). The areas to the north, east, south, and west are a mix of office and retail uses.

Zoning/BDA History:

1. BDA 112-040, Property at 2612 Boll Street (the western portion of the subject site)

On May 15, 2012, the Board of Adjustment Panel A granted a request for a variance to the front yard setback regulations of 10 feet and a special exception to the landscape requirements. The Board imposed the following condition: Compliance with the submitted revised site plan dated 5-15-12 is required.

The case report stated that the requests were made in conjunction with constructing and maintaining what appeared to be from the submitted site plan a “raised planting bed” structure, a staircase structure, and the westernmost wall of a “proposed two story brick addition” structure (with an approximately 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 – a separate parcel of land developed with an existing one story structure/restaurant use immediately east (S & D Oyster House) and the subject site of an application made by the same applicant for variance to the front yard setback regulations and special exception to the landscape regulations that was heard by Panel A on May 15, 2012: BDA 112-058).

On January 18, 2013 the Board of Adjustment Panel A waived 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.

2. BDA 112-058, Property at 2701 McKinney Avenue (the eastern portion of the subject site)

On May 15, 2012, the Board of Adjustment Panel A granted a request for a special exception to the landscape requirements and a request for variance to the front yard setback regulations along Boll Street. The Board imposed the following condition to

these granted requests: compliance with the submitted landscape plan dated 5-15-12 is required. The Board denied the request for a variance to the front yard setback along McKinney Avenue with prejudice.

The case report stated that these requests for variances to the front yard setback regulations of 10' and a special exception to the landscape regulations were made in conjunction with constructing and maintaining a "proposed two story brick addition" structure with an approximately 600 square foot building footprint (with the exception of its westernmost wall that is proposed to be located on the lot immediately to the adjacent property to the west of the subject site – a separate parcel of land developed with an office structure use that the applicant intended to demolish and the subject site of an application made by the same applicant for variance to the front yard setback regulations and special exception to the landscape regulations that was heard by Panel A on May 15, 2012: BDA 112-040) that were to be located in the site's 10' front yard setback along Boll Street; and addressing and remedying the nonconforming aspect of the existing nonconforming structure on this site that is located in the site's two front yard setbacks along McKinney Avenue and Boll Street.

On January 18, 2013 the Board of Adjustment Panel A waived 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.

Timeline:

January 25, 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 13, 2013: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. 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."

February 13, 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 February 29th deadline to submit additional evidence for staff to factor into their analysis; and the March 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

February 27, 2013: The Sustainable Development and Construction Department Historic Senior Planner emailed the Board Administrator the following comments: "proposed work is located next to H116 (Ahab Bowen House" with "no other concerns."

February 27, 2013: The applicant's representative submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

March 5, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March 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 Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

- Staff would be recommending that the board hold his requests under advisement until their April 16th public hearing in order for CPC to consider his plat on April 4th.
- Staff was concerned of the potential problem that may occur for his client's development if the board of adjustment were to grant his requested variances/special exception on March 19th with his submitted plans imposed as conditions, and where these board-imposed conditional plans would not be in agreement with a re-plat that the City Plan Commission may approve at some time after the March 19th board of adjustment hearing.

March 8, 2013: The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet regarding the applicant's request for a variance to the off-street parking regulations marked "Has no objections."

March 11, 2013: The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request for a special exception to the landscape regulations (see Attachment B).

GENERAL FACTS/ANALYSIS (front yard variances):

- Part of the variance request focuses on constructing/maintaining an addition structure (freezer/cooler room and stairwell) with an approximately 1,900 square foot building footprint, part of which is to be located in on the Boll Street front property line, or as much as 10' into this 10' front yard setback along Boll Street.
- Part of the variance request focuses on remedying/addressing 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. The existing nonconforming structure is located on the Boll Street front property line or 10' into this 10' front yard setback, and 3' from the McKinney Avenue front property line or 7' into this 10' front yard setback.
- The minimum front yard setback on a PD 193 (LC) zoned lot is 10 feet.
- A revised site plan (see Attachment A) has been submitted showing a proposed/existing structure as close as on the Boll Street front property line and an existing structure as close as 3' from the McKinney Avenue front property line.
- According to information submitted by the applicant, approximately 500 square feet of the approximately 1,900 square foot proposed addition building footprint is located in the Boll Street front yard setback.
- According to calculations taken from the submitted revised site plan by the Board Administrator, approximately 500 square feet of the approximately 2,500 square foot existing building footprint is located in the Boll Street front yard setback and approximately 350 square feet of the approximately 2,500 square foot existing building footprint is located in the McKinney Avenue front yard setback.
- DCAD records indicate that the improvements at 2701 McKinney are a "restaurant" with 2,450 square feet built in 1927.
- The site is flat, irregular in shape, and according to the application, is 0.185 acres (or approximately 8,000 square feet) in area. The site is zoned PD 193 (LC). The corner property with two street frontages has two front yard setbacks as any corner property with two street frontages would that is not zoned agricultural, single family, or duplex.
- The applicant has the burden of proof in establishing the following:
 - That granting the variances to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variances are necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with

the development upon other parcels of land in districts with the same PD 193 (LC) zoning classification.

- The variances would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the PD 193 (LC) zoning classification.
- If the Board were to grant this front yard variance request, imposing a condition whereby the applicant must comply with the submitted revised site plan, the proposed and/or existing structures in one or both front yard setbacks would be limited to what is shown on this plan.

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

- This request focuses on constructing and maintaining existing/proposed development with a total of approximately 5,400 square feet of restaurant use (where the applicant proposes to provide 41 (or 76 percent) of the required 54 required off-street parking spaces in conjunction with constructing and maintaining this use with this square footage on a site developed with a restaurant use.
- The subject site is zoned PD 193 (LC). PD 193 states that the parking requirement for “restaurant” use to be one space per 100 square feet of floor area.
- Dallas Development Code Section 51A-4.311(a)(1) states that 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; and that 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.
- However, Dallas Development Code Section 51A-311(a)(6) states that the Board of Adjustment *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.
- Therefore, because PD 193 does not make references to the existing off-street parking regulations in Chapter 51 or Chapter 51(A), the applicant may only apply for a *variance* and only the variance standard applies on this request to reduce the off-street parking regulations for restaurant use in PD 193 even though the reduction request is 24 percent of the required off-street parking.
- DCAD records indicate that the improvements at 2701 McKinney are a “restaurant” with 2,450 square feet built in 1927.
- The site is flat, irregular in shape, and according to the application, is 0.185 acres (or approximately 8,000 square feet) in area. The site is zoned PD 193 (LC). The

corner property with two street frontages has two front yard setbacks as any corner property with two street frontages would that is not zoned agricultural, single family, or duplex.

- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the off-street parking regulations of 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 (LC) 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 PD 193 (LC) zoning classification.
- The Sustainable Development and Construction Department Engineering Division Assistant Director has submitted a review comment sheet marked “Has no objections.”

GENERAL FACTS/STAFF ANALYSIS (landscape special exception):

- This request focuses on proposed new construction on the site, and not fully complying with the landscaping requirements of PD 193.
- PD 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind.
- On March 11, 2013, the City of Dallas Chief Arborist submitted a memo to the Board Administrator regarding the submitted revised landscape plan/landscape special exception request (see Attachment B).
- The Chief Arborist’s memo stated among other things how the request is triggered by new floor area on a new platted lot, and how the applicant seeks exception from the tree planting zone, sidewalk, and landscape site area/general planting area/special planting area of PD 193 landscaping requirements. More specifically, the site maintains an existing structure about 7’ off of Boll Street that restricts the property from compliance with sidewalk standards, and the applicant proposes an addition along Boll Street whereby there are deficiencies to the sidewalk location and width for the rest of the site along Boll Street, and on the general code requirements for landscape site area, general planting areas, and special planting areas within the front yard.
- The Chief Arborists listed several factors for consideration: the location of the existing structure and how it affects compliance with required sidewalk location; the continuance of a future 70’ length of wall in alignment with the existing structure and

how this proposed location affects compliance with the required sidewalk location; how the proposed sidewalk provides continuity with the sidewalk currently in place along the existing structure; and the property's compliance with the screening requirements for the one parking spaces and with required street trees.

- The Chief Arborist recommends denial of the proposed landscape plan because it compromises the spirit and intent of the PD 193 landscaping requirements in that the extended sidewalk spacing, combined with the lack of landscape site area in the front yard, are significant deviations from the requirements.
- The applicant has the burden of proof in establishing the following:
 - The special exception (where an alternate landscape plan has been submitted that is deficient in meeting tree planting zone, sidewalk, and landscape site area/general planting area/special planting area of PD 193 landscaping requirements) will not compromise the spirit and intent of the section of the ordinance (Section 26: Landscape, streetscape, screening, and fencing standards).
- If the Board were to grant this request, imposing the revised alternate landscape plan as a condition, the site would be provided exception to the tree planting zone, sidewalk, and landscape site area/general planting area/special planting area requirements of the Oak Lawn PD 193 landscape ordinance.

BOARD OF ADJUSTMENT ACTION: MARCH 19, 2013

APPEARING IN FAVOR: Mike Coker, 2700 Swiss Ave., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Moore**

I move that the Board of Adjustment in Appeal No. **BDA 123-028**, hold this matter under advisement until **April 16, 2013**.

SECONDED: **Schweitzer**

AYES: 4 – Moore, Schweitzer, Hounsel, Gaspard

NAYS: 0 -

MOTION PASSED: 4– 0 (unanimously)

MOTION: **Hounsel**

I move to adjourn this meeting.

SECONDED: **Gaspard**

AYES: 4– Moore, Schweitzer, Hounsel, Gaspard

NAYS: 0 -

MOTION PASSED: 4– 0 (unanimously)

1:23 P. M. - Board Meeting adjourned for **March 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.