

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, 6ES
TUESDAY, APRIL 16, 2013**

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

MEMBERS ABSENT FROM BRIEFING: No one

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

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

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Tammy Palomino, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Lloyd Denman, Chief Engineer, 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 **April 16, 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 **March 19, 2013** public hearing minutes as amended.

BOARD OF ADJUSTMENT ACTION: APRIL 16, 2013

MOTION: Hounsel

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

SECONDED: Schweitzer

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 123-032

BUILDING OFFICIAL’S REPORT: Application of Jay Smith, represented by Robert Reeves, for a special exception to the off-street parking regulations at 4728 W. Lovers Lane. This property is more fully described as Lot 7, Block A/4822 and is zoned PD-326 (Area D), which requires off-street parking. The applicant proposes to construct and maintain a structure for a personal service use and provide 7 of the required 9 parking spaces, which will require a special exception to the off-street parking regulations of 2 spaces.

LOCATION: 4728 W. Lovers Lane

APPLICANT: Jay Smith
Represented by Robert Reeves

April 16, 2013 Public Hearing Notes:

- The applicant submitted additional written documentation to the Board at the public hearing.

REQUEST:

A special exception to the off-street parking regulations of 2 parking spaces (or a 22 percent reduction of the 9 required off-street parking spaces) is requested in conjunction with constructing and maintaining an approximately 1,900 square foot structure/personal service/“handcrafted art work studio” use on a site that is currently undeveloped. The applicant proposes to provide 7 (or 78 percent) of the required 9 off-street parking spaces in conjunction with constructing and maintaining a structure of this size with this “handcrafted art work studio” use.

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 2 spaces shall automatically and immediately terminate if and when the personal service use limited to a handcrafted art work studio use is changed or discontinued.

Rationale:

- The applicant has substantiated how the parking demand generated by the proposed personal service use limited to a handcrafted art work studio 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 with no objections to this request if certain conditions are met – that being that the personal service use be limited in this case to a “handcrafted art work studio” use.

BACKGROUND INFORMATION:

Zoning:

Site: PD 326 (Subdistrict D) (Planned Development)
North: PD 326 (Subdistrict D) (Planned Development)
South: MF-2(A) (Multifamily)
East: MF-2(A) (Multifamily)
West: PD 326 (Subdistrict D) (Planned Development)

Land Use:

The subject site is currently undeveloped. The areas to the north and west are developed with office and retail uses; and the areas to the east and south are developed with multifamily 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:

February 20, 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.

- March 19, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- March 19, 2013: The Board Administrator contacted the applicant's representative and shared the following information via email:
- an attachment that provided the public hearing date and panel that will consider the application; the March 27th deadline to submit additional evidence for staff to factor into their analysis; and the April 5th 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."
- April 2, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April 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.
- April 5, 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 "personal service use limited to handcrafted art work studio."

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining an approximately 1,900 square foot structure/personal service use on a site that is currently undeveloped and providing 7 (or 78 percent) of the required 9 off-street parking spaces.
- The Dallas Development Code requires the following off-street parking requirement:
 - Personal service use: 1 space per 200 square feet of floor area. (The applicant's proposed handcrafted art work studio use is one of 56 uses listed in a category of "retail and personal service uses" all of which share the 1 space per 200 square feet of floor area parking requirement).

The applicant has submitted a site plan that represents a "proposed new artist studio" that is 1,899 square feet in area where 9 spaces are required and where 7 spaces will be provided.
- The applicant states that the owner of the building will not conduct any retail sales at the building, will not be open to the general public, will be used for the creation of studio artwork, and will only have a limited number of employees working in the building.

- 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 “personal service use limited to handcrafted art work studio.”
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the personal service use limited to a handcrafted art work studio use on the site does not warrant the number of off-street parking spaces required, and
 - The special exception of 2 spaces (or a 22 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 2 spaces shall automatically and immediately terminate if and when the personal service use limited to a handcrafted art work studio use is changed or discontinued, the applicant would be allowed to construct/maintain the approximately 1,900 square foot personal service use limited to a handcrafted art work studio use/structure on the undeveloped site and provide 7 of the 9 code required off-street parking spaces.

BOARD OF ADJUSTMENT ACTION: APRIL 16, 2013

APPEARING IN FAVOR: Robert Reeves, 900 Jackson St., Suite 160, Dallas, TX
Catherine McMahon, 8214 Westchester #550, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Jackson

I move that the Board of Adjustment, in Appeal No. **BDA 123-032**, on application of Jay Smith, grant the requested special exception of 2 spaces to the off-street parking regulations, because our evaluation of the property and the testimony shows 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. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception of 2 spaces shall automatically and immediately terminate if and when the personal service use limited to a handcrafted art work studio use is changed or discontinued.

SECONDED: Hounsel

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 123-033

BUILDING OFFICIAL'S REPORT: Application of Nancy Rodriguez for special exceptions to the fence height and visual obstruction regulations at 5833 Woodland Drive. This property is more fully described as a 1.44 acre tract in Block 5615 and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct a 7 foot 6 inch high fence, which will require a special exception to the fence height regulations of 3 feet, 6 inches, and to locate and maintain items in required visibility triangles, which will require special exceptions to the visual obstruction regulations

LOCATION: 5833 Woodland Drive

APPLICANT: Nancy Rodriguez

April 16, 2013 Public Hearing Notes:

- The applicant submitted landscape elevations to the Board at the public hearing.

REQUESTS:

The following appeals have been made on a site that is currently being developed with a single family home:

1. A special exception to the fence height regulations of 3' 6" is requested in conjunction with constructing and maintaining a 6' 6" high open metal fence with 7' 6" high masonry columns, two 4' 6" – 6' 6" high gates with flanking approximately 20' long, 6' 6" high solid masonry wing walls in the front yard setback.
2. Special exceptions to the visual obstruction regulations are requested in conjunction with locating and maintaining four 6' 6" high solid limestone columns in the 20' visibility triangles on either side of the two driveways into the site from Woodland Drive.

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.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

The Board shall grant a special exception to the requirements of the visual obstruction regulations when, in the opinion of the Board, the item will not constitute a traffic hazard.

STAFF RECOMMENDATION (fence height special exception):

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.

STAFF RECOMMENDATION (visual obstruction special exceptions):

Approval of the requests, subject to the following condition:

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

Rationale:

- The Sustainable Development and Construction Department Project Engineer has no objections to these requests.
- The applicant has substantiated how the location of the items (four 6' 6" high solid limestone columns in the 20' visibility triangles on either side of the two driveways into the site from Woodland Drive) does not constitute a traffic hazard.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is being 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 056-024, Property 5833
Woodland Drive (the subject site)

On December 13, 2005, the Board of Adjustment Panel A granted a special exception to the fence height regulations to construct a 9 foot high fence on the property. The Board imposed the following condition to the request: Compliance with the submitted site plan/elevation dated 12/09/05 is required. The case report stated how a scaled site plan/elevation had been submitted that documented the height of the proposed fence/wall (8'), columns (8' 4"), entry gates and entry gate columns (11'). The site plan/elevation also documented the building materials of the fence/wall (stone and wrought iron).

2. BDA 86-197, 9006 Douglas Avenue (the lot immediately west of the subject site)

On September 9, 1986, the Board of Adjustment granted a request to the fence height special regulations of 3' 10". The board imposed the following conditions with the request: compliance with notations on a site plan marked "Exhibit A" is required and "that the landscape submitted the Board be used." The case report discussed in its "Staff Comments" section that the fence along Woodland Drive to be setback 8' from the property line to allow for landscaping which would reduce the impact of the solid fence on the street" with the remainder of the fence along Woodland Drive and Douglas Avenue "should be wrought iron to reduce the "solidness" of the fence."

Timeline:

- February 19, 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.
- March 19, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- March 19, 2013: The Board Administrator contacted the applicant's representative and shared the following information via email:
- an attachment that provided the public hearing date and panel that will consider the application; the March 27th deadline to submit additional evidence for staff to factor into their analysis; and the April 5th 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."
- April 2, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April 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.

April 5, 2013: The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet regarding the applicant's request for special exceptions to the visual obstruction regulations marked "Has no objections."

GENERAL FACTS/STAFF ANALYSIS (fence height special exception):

- This request focuses on constructing and maintaining a 6' 6" high open metal fence with 7' 6" high masonry columns, two 4' 6" – 6' 6" high gates with flanking approximately 20' long, 6' 6" high solid masonry wing walls in the front yard setback on a site being developed with a single family home.
- The Dallas Development Code 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/elevation of the proposal in the front yard setback that reaches a maximum height of 7' 6".
- The following additional information was gleaned from the submitted site plan:
 - The proposal to be located in the required front yard over 4' in height is represented on the site plan as being approximately 280 in length parallel to the street.
 - The proposed fence is shown to be located approximately 1.5' from the site's front property line or 12' from the pavement line.
 - The proposed gates are shown to be located approximately 9' from the site's front property line or 19' from the projected pavement line.
- The proposal would be located immediately across from two single family homes one of which does not have a fence in its front yard, the other which has a 4' high fence in its front yard.
- The Board Administrator conducted a field visit of the site and surrounding area and noted one other fence that appeared to be above 4' in height and located in a 40' front yard setback in this block of Woodland Drive from Douglas Avenue to Preston Road: an approximately 6.5 high open wrought fence and solid brick wall (located behind significant landscape materials) immediately west of the site (and what appears to be the result of board action made in conjunction with BDA 86-197).
- The site plan denotes "landscaping along both sides of fence, per landscape designer."
- As of April 8, 2013, 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 3' 6" will not adversely affect neighboring property.
- Granting this special exception of 3' 6" with a condition imposed that the applicant complies with the submitted site plan/elevation 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 this document.

GENERAL FACTS/STAFF ANALYSIS (visual obstruction special exceptions):

- These requests focus on locating and maintaining portions of the 6' 6" high solid masonry wing walls in the 20-foot visibility triangles on either side of the two driveways into the site from Woodland Drive.
- The Dallas Development Code states the following: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections, and 20 foot visibility triangles at drive approaches and at alleys on properties zoned single family); and
 - between two and a half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- A site plan/elevation has been submitted indicating four, approximately 16' lengths of the 6' 6" high solid masonry wing walls located in the 20-foot visibility triangles on either side of the two driveways into the site from Woodland Drive.
- 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 how granting the requests for special exceptions to the visual obstruction regulations to locate and maintain four 6' 6" high solid limestone columns in the 20' visibility triangles on either side of the two driveways into the site from Woodland Drive does not constitute a traffic hazard.
- Granting these requests with a condition imposed that the applicant complies with the submitted site plan/elevation would require that the items in the 20-foot visibility triangles on either side of the driveways into the site from Woodland Drive to be limited to the locations, heights and materials of those items as shown on this document.

BOARD OF ADJUSTMENT ACTION: APRIL 16, 2013

APPEARING IN FAVOR: Nancy Rodriguez, 5833 Woodland, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Schweitzer

I move that the Board of Adjustment, in Appeal No. **BDA 123-033**, on application of Nancy Rodriguez, grant the request to construct and maintain a 7 foot 6 inch high fence on the property as a special exception to the fence height requirements in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Nolen

AYES: 4– Moore, Schweitzer, Nolen, Jackson

NAYS: 1 - Hounsel

MOTION PASSED: 4– 1

MOTION #2: Schweitzer

I move that the Board of Adjustment, in Appeal No. **BDA 123-033**, on application of Nancy Rodriguez, grant the requests to maintain items in the visibility triangle as a special exception to the visual obstruction regulations in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Nolen

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

NAYS: 0 -

MOTION PASSED: 5– 0(unanimously)

FILE NUMBER: BDA 123-019

ORIGINAL 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.

UPDATED BUILDING OFFICIAL’S REPORT Application of Jon Cannon, represented by Henry Quigg, for a special exception to the landscape regulations and for variances to the off-street parking regulations at 3905 Oak Lawn Avenue. This property is more fully described as part of Lot 1 & 2, Block 4/1509 and is zoned PD-193 (GR), which requires mandatory landscaping, off-street parking, and parallel parking space access aisles to be a minimum 20 feet in width for two-way traffic. The applicant proposes to construct and/or maintain a structure and provide (1) an alternate landscape plan, which will require a special exception to the landscape regulations; (2) to maintain a structure for office and retail stores other than listed uses and provide 33 of the required 35 parking spaces, which will require a variance to the off-street parking regulations of 2 spaces; and to construct and/or maintain a structure with a parallel parking space access aisle of 19 feet in width, which will require a variance of to the off-street parking regulations of 1 foot.

LOCATION: 3905 Oak Lawn Avenue

APPLICANT: Application of Jon Cannon
Represented by Henry Quigg

ORIGINAL MARCH 19, 2013 REQUEST:

A special exception to the landscape regulations had 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.

UPDATED APRIL 16, 2013 REQUESTS:

The following appeals have been made 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):

1. A special exception to the landscape regulations is requested in conjunction with increasing the square footage on the site and not fully providing required landscaping.
2. A variance to the off-street parking regulations of 2 spaces (or a 6 percent reduction of the 35 off-street parking spaces that are required) is requested in conjunction with modifying and maintaining the existing development with a total of 4,500 square feet of "office" use and 4,750 square feet of "retail stores other than listed" use where the applicant proposes to provide 33 (or 94 percent) of the required 35 required off-street parking.
3. A variance to the off-street parking regulations (two-way access lane width) of 1' is requested in conjunction with maintaining a 19' wide two-way access lane (as opposed to the required 20' wide two-way access lane) along the western side of the subject site.

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.

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 (landscape special exception):

Approval, subject to the following condition:

- Compliance with the submitted revised landscape plan is required.

Rationale:

- The City’s Chief Arborist recommends approval of this amended request whereby, if the submitted revised landscape plan is imposed as a condition, the special exception would not compromise the spirit and intent of the landscaping requirements of PD 193.

STAFF RECOMMENDATION (off-street parking variances - reduction and lane width):

Approval of both requests

Rationale:

- The lot’s restrictive area and irregular shape precludes its development in a manner commensurate with other developments found on similarly-zoned PD 193 (GR) lots. In this case, the off-street parking variance requests related to a small reduction to the number of parking spaces required and small reduction to the parking lot lane-width are requested in conjunction with: 1) maintaining the site the way in which it was developed in the early 80’s with the exception of adding a relatively small structure (a 60 square foot exterior elevator structure); 2) modifying existing landscape materials (that in the opinion of staff do not compromise the spirit and intent of the landscape requirements); and 3) adhering to visual obstruction regulations.
- The Sustainable Development and Construction Department Engineering Division Assistant Director has indicated with no objections to these requests.

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 request; 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).

March 19, 2013: The Board of Adjustment Panel A conducted a public hearing on this application where the applicant submitted a revised site plan (see Attachment B). The Board held this application under advisement until April 16, 2013.

- March 26, 2013: Additional information was forwarded to the Board Administrator and the Building Inspection Senior Plans Examiner/Development Code Specialist (see Attachment C).
- March 27, 2013: The Board Administrator emailed the applicant the following information:
- an attachment that provided the March 27th deadline to submit additional evidence for staff to factor into their analysis; and the April 5th 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.
- April 2, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April 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.
- April 5, 2013: The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet regarding the applicant's request for variances to the off-street parking regulations marked "Has no objections."
- April 5, 2013: The City of Dallas Chief Arborist submitted an updated memo that provided his comments regarding the request for a special exception to the landscape regulations (see Attachment D).

GENERAL FACTS/ STAFF ANALYSIS (landscape special exception):

- 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 had recommend denial of request. The arborist stated that while he recognized 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 had recommended 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)."
- On April 5, 2013, the City of Dallas Chief Arborist submitted an updated memo to the Board Administrator regarding the submitted landscape plan/special exception request (see Attachment D).
- The Chief Arborist's updated memo stated the following conclusions:
 - The applicant has provided doors to the established masonry dumpster enclosure.
 - Screening shrubs and additional landscape materials has been placed along the Irving Avenue frontage.
 - Two landscape islands have been located in current parking spaces along Oak Lawn Avenue which will provide two additional large canopy trees.
 - The large live oak tree at the corner of Oak Lawn Avenue and Irving Avenue is shown to be removed, and a Texas ash (large canopy) tree will be placed in the vicinity. Other landscaping materials will be applied in the new landscape area converted from pavement beneath the pole sign.
- The Chief Arborist supports this amended request.
- 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 revised landscape plan as a condition, the site would be granted exception from full compliance to the requirements of the Oak Lawn PD 193 landscape ordinance.

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

- This request focuses on modifying and maintaining the existing development with a total of 4,500 square feet of “office” use and 4,750 square feet of “retail stores other than listed” use where the applicant proposes to provide 33 (or 94 percent) of the required 35 required off-street parking spaces in conjunction with these uses with these square footages on the site.
- The subject site is zoned PD 193 (LC). PD 193 states that the parking requirement for “office” use to be one space per 366 square feet of floor area; and for “retail stores other than listed” use to be one space per 220 square feet.
- Although the applicant is not proposing to increase the square footage of office and retail to the existing structure, the 2 space parking reduction request is made in conjunction with updating the originally submitted alternate landscape plan and adhering to visual obstruction regulations.
- 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 6 percent of the required off-street parking.

- DCAD records indicate that the “improvements” at 3905 Oak Lawn Avenue is a “free standing retail store” with 10,830 square feet built in 1983.
- The site is flat, irregular in shape, and according to the application, is 21,600 square feet in area. The site is zoned PD 193 (GR). 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 (GR) 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 (GR) 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 (off-street parking lane width variance):

- This request focuses on maintaining a 19’ wide two-way access lane (as opposed to the required 20’ wide two-way access lane) along the western side of the subject site.
- The Dallas Development Code states that that “a parking space parallel with the access lane must be 22 feet long and 8 feet wide. A one-way access lane must be at least 10 feet wide; a two-way access lane must be at least 20 feet wide.” The applicant has submitted a revised site/landscape plan (see Attachment C) that shows a 19’ wide access lane along the western side of the subject site- an access lane that is 1’ less in width than the required 20’ width.
- The applicant has stated the site appears to have had an access lane 1’ less in width than the code requirement since it was developed in the early 80’s.
- DCAD records indicate that the “improvements” at 3905 Oak Lawn Avenue is a “free standing retail store” with 10,830 square feet built in 1983.
- The site is flat, irregular in shape, and according to the application, is 21,600 square feet in area. The site is zoned PD 193 (GR). 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 (GR) 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 (GR) zoning classification.
- The Sustainable Development and Construction Department Engineering Division Assistant Director has submitted a review comment sheet marked “Has no objections.”

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)

BOARD OF ADJUSTMENT ACTION: APRIL 16, 2013

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

APPEARING IN OPPOSITION: No one

MOTION #1: **Nolen**

I move that the Board of Adjustment, in Appeal No. **BDA 123-019**, on application of Jon Cannon, grant the request to provide an alternate landscape plan as a special exception to the landscape requirements in PD 193, because our evaluation of the property and the testimony shows that this special exception will not compromise the spirit and intent of the Oak Lawn Ordinance. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised landscape plan is required.

SECONDED: Hounsel

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

NAYS: 0 -

MOTION PASSED: 5– 0(unanimously)

MOTION #2: Nolen

I move that the Board of Adjustment, in Appeal No. **BDA 123-019**, on application of Jon Cannon, grant the requested variances of 2 parking spaces to the off-street parking regulations and 1 foot to the access lane off-street parking requirement to construct/maintain a structure with a parallel parking space access aisle of 19 feet in width, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

SECONDED: Schweitzer

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

NAYS: 0 -

MOTION PASSED: 5– 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:

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

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 - front yard setbacks and off-street parking):

Approval of the requests, subject to the following condition:

- Compliance with the submitted revised site plan is required.

Rationale:

- The lot's restrictive area and irregular shape precludes its development in a manner commensurate with other developments found on similarly-zoned PD 193 (LC) lots.
- The Sustainable Development and Construction Department Engineering Division Assistant Director has indicated with no objections to the request for variance to the off-street parking regulations.

STAFF RECOMMENDATION (landscape special exception):

Denial

Rationale:

- 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 not substantiated how granting this request would not compromise the spirit and intent of the landscaping requirements of PD 193.

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 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 replat 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).

March 19, 2013: The Board of Adjustment Panel A conducted a public hearing on this application, and held the request under advisement until April 16, 2013.

April 2, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April 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.

April 4, 2013: The applicant's representative informed the Board Administrator that the City Plan Commission (CPC) approved his plat at their hearing on April 4, 2013.

April 5, 2013: The Sustainable Development and Construction Department Engineering Division Assistant Director and the Chief City of Dallas Chief Arborist conveyed to the Board Administrator that the comments that they registered in March have not changed since the application has not.

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 Dallas Development Code defines a nonconforming structure as a structure that does not conform to the regulations (other than the use regulations) of this chapter, but which was lawfully constructed under the regulations in force at the time of construction.
- The Dallas Development Code states that a person may renovate, remodel, repair, or enlarge a nonconforming structure if the work does not cause the structure to become more nonconforming as to the yard, lot, and space regulations; and that the right to rebuild a nonconforming structure ceases if the structure is destroyed by the intentional act of the owner or the owner's agent.
- 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 these front yard variance requests, 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)

BOARD OF ADJUSTMENT ACTION: APRIL 16, 2013

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

APPEARING IN OPPOSITION: No one

MOTION #1: Hounsel

I move that the Board of Adjustment, in Appeal No. **BDA 123-028**, on application of Herbert Story, Jr., **deny** the 10 foot variance to the minimum front yard setback regulations along McKinney Avenue **with prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: Schweitzer

AYES: 4–Schweitzer, Hounsel, Nolen, Jackson
NAYS: 1 - Moore
MOTION PASSED: 4– 1

MOTION #2: Hounsel

I move that the Board of Adjustment, in Appeal No. **BDA 123-028**, on application of Herbert Story, Jr., grant a 10 foot variance to the minimum front yard setback regulations along Boll Street, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: Schweitzer

AYES: 5– Moore, Schweitzer, Hounsel, Nolen, Jackson
NAYS: 0 -
MOTION PASSED: 5– 0 (unanimously)

MOTION #3: Hounsel

I move that the Board of Adjustment, in Appeal No. **BDA 123-028**, on application of Herbert Story, Jr., grant the requested variance of 13 parking spaces to the off-street parking regulations, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the

provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

SECONDED: Jackson

AYES: 2–, Hounsel, Jackson

NAYS: 3 - Moore, Schweitzer, Nolen

MOTION FAILED: 3– 2

MOTION #4: Schweitzer

I move that the Board of Adjustment, in Appeal No. **BDA 123-028**, on application of Herbert Story, Jr., **deny** the requested variance of 13 parking spaces to the off-street parking regulations **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: Nolen

AYES: 3– Moore, Schweitzer, Nolen,

NAYS: 3 - Hounsel, Jackson

MOTION PASSED: 3– 2

MOTION #5: Hounsel

I move that the Board of Adjustment, in Appeal No. **BDA 123-028**, on application of Herbert Story, Jr., grant the request to provide an alternate landscape plan as a special exception to the landscape requirements in PD 193, because our evaluation of the property and the testimony shows that this special exception will not compromise the spirit and intent of the Oak Lawn Ordinance. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised alternate landscape plan is required.

SECONDED: Schweitzer

AYES:4–Schweitzer, Hounsel, Nolen, Jackson

NAYS: 1 - Moore

MOTION PASSED: 4– 1

FILE NUMBER: BDA 123-029

BUILDING OFFICIAL’S REPORT: Application of Rob Baldwin for special exceptions to the fence height and visual obstruction regulations at 5859 Lakehurst Avenue. This property is more fully described as Lot 11C, Block B/5513 and is zoned R-10(A), which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct a 9 foot high fence, which will require a special exception to the fence height regulations of 5 feet; and to locate and maintain items in required visibility triangles, which will require special exceptions to the visual obstruction regulations.

LOCATION: 5859 Lakehurst Avenue

APPLICANT: Rob Baldwin

April 16, 2013 Public Hearing Notes:

- Citizens opposing this application submitted written documentation to the Board at the public hearing.

REQUESTS:

The following appeals have been made on a site that is currently developed with a single family home:

1. A special exception to the fence height regulations of 5' is requested in conjunction with constructing and maintaining 8' high open metal fence and gates with 9' high stone columns in the front yard setback.
2. Special exceptions to the visual obstruction regulations are requested in conjunction with locating and maintaining four 9' high stone columns in the 20' visibility triangles on either side of the two driveways into the site from Lakehurst Avenue.

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.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

The Board shall grant a special exception to the requirements of the visual obstruction regulations when, in the opinion of the Board, the item will not constitute a traffic hazard.

STAFF RECOMMENDATION (fence height special exception):

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.

STAFF RECOMMENDATION (visual obstruction special exceptions):

Approval of the requests, subject to the following condition:

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

Rationale:

- The Sustainable Development and Construction Department Project Engineer has no objections to these requests.

- The applicant has substantiated how the location of the items (four 9' high stone columns in the 20' visibility triangles on either side of the two driveways into the site from Lakehurst Avenue) does not constitute a traffic hazard.

BACKGROUND INFORMATION:

Zoning:

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

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:

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 30, 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.
- March 19, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- March 19, 2013: The Board Administrator contacted the applicant's representative and shared the following information via email:
- an attachment that provided the public hearing date and panel that will consider the application; the March 27th deadline to submit additional evidence for staff to factor into their analysis; and the April 5th 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."
- April 2, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April 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.

April 5, 2013: The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet regarding the applicant's request for special exceptions to the visual obstruction regulations marked "Has no objections."

GENERAL FACTS/STAFF ANALYSIS (fence height special exception):

- This request focuses on constructing and maintaining 8' high open metal fence and gates with 9' high stone columns in the front yard setback on a site developed with a single family home.
- The Dallas Development Code 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/elevation of the proposal in the front yard setback that reaches a maximum height of 9'.
- The following additional information was gleaned from the submitted site plan:
 - The proposal to be located in the required front yard over 4' in height is represented on the site plan as being approximately 110' in length parallel to the street and approximately 30' in length perpendicular to the street on the east and west sides of the site in the front yard setback.
 - The proposed fence and gates are shown to be located approximately on the site's front property line or 20' from the pavement line.
- The proposal would be located across from two single family homes neither of have fences in their front yards.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences that appeared to be above 4' in height and located in a front yard setback.
- As of April 8, 2013, no letters have been submitted in support of the request, and two letters have been submitted in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 5' will not adversely affect neighboring property.
- Granting this special exception of 5' with a condition imposed that the applicant complies with the submitted site plan/elevation 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 this document.

GENERAL FACTS/STAFF ANALYSIS (visual obstruction special exceptions):

- These requests focus on locating and maintaining 9’ high stone columns in the 20’ visibility triangles on either side of the two driveways into the site from Lakehurst Avenue.
- The Dallas Development Code states the following: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections, and 20 foot visibility triangles at drive approaches and at alleys on properties zoned single family); and
 - between two and a half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- A site plan/elevation has been submitted indicating four, 9’ high stone columns located in the 20-foot visibility triangles on either side of the two driveways into the site from Lakehurst Avenue.
- 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 how granting the requests for special exceptions to the visual obstruction regulations to locate and maintain four, 9’ high stone columns in the visibility triangles at the two drive approaches into the site from Lakehurst Avenue does not constitute a traffic hazard.
- Granting these requests with a condition imposed that the applicant complies with the submitted site plan/elevation would require that the items in the 20-foot visibility triangles on either side of the driveways into the site from Lakehurst Avenue to be limited to the locations, heights and materials of those items as shown on this document.

BOARD OF ADJUSTMENT ACTION: APRIL 16, 2013

APPEARING IN FAVOR: Robert Baldwin, 3904 Elm St., Ste. B, Dallas, TX

APPEARING IN OPPOSITION: Jonathan Vinson, 901 Main St., Dallas, TX
 Will Montgomery, 5867 Lakehurst, Dallas, TX
 June Blunk, 5924 Lakehurst, Dallas, TX
 Robert Langton, 5862 Lakehurst Ave., Dallas, TX
 Mary Lake Montgomery, 5867 Lakehurst, Dallas, TX

MOTION #1: Nolen

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

SECONDED: Schweitzer

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

NAYS: 0 -

MOTION PASSED: 5– 0(unanimously)

MOTION #2: Nolen

I move that the Board of Adjustment, in Appeal No. **BDA 123-029**, on application of Rob Baldwin, **deny** the fence height special exception requested **without prejudice**, because our evaluation of the property and the testimony shows that this special exception will adversely affect neighboring property.

SECONDED: Schweitzer

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

NAYS: 0 -

MOTION PASSED: 5– 0(unanimously)

MOTION #3: Nolen

I move that the Board of Adjustment, in Appeal No. **BDA 123-029**, on application of Rob Baldwin, **deny** the visual obstruction special exceptions requested **without prejudice**, because our evaluation of the property and the testimony shows that granting the application will constitute a traffic hazard.

SECONDED: Hounsel

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

NAYS: 0 -

MOTION PASSED: 5– 0(unanimously)

MOTION: Schweitzer

I move to adjourn this meeting.

SECONDED: Hounsel

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

NAYS: 0 -

MOTION PASSED: 5– 0(unanimously)

3:12 P. M. - Board Meeting adjourned for **April 16, 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.