

**BOARD OF ADJUSTMENT, PANEL A  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, 6ES  
TUESDAY, JUNE 18, 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, Asst. Director of Engineering, 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 and Robert Agnich, alternate member (for BDA 123-045))

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, Asst. Director of Engineering, Phil Erwin, Chief Arborist and Trena Law, Board Secretary

**11:04 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **June 18, 2013** docket.

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**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.

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel A **May 21, 2013** public hearing minutes as amended.

**BOARD OF ADJUSTMENT ACTION: JUNE 18, 2013**

**MOTION: Schweitzer**

I move **approval** of the Tuesday, **May 21, 2013** public hearing minutes as amended.

**SECONDED: Hounsel**

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

**NAYS: 0 -**

**MOTION PASSED: 5– 0 (unanimously)**

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**FILE NUMBER: BDA 123-064**

**BUILDING OFFICIAL’S REPORT:** Application of Robert V. Hunt for variances to the front and side yard setback regulations and to the maximum lot coverage regulations at 5414 Melrose Avenue. This property is more fully described as part of Lots 8 & 9, Block C/1978, and is zoned R-7.5(A), which requires a 25 foot front yard setback, a 5 foot side yard setback, and limits lot coverage to 45 percent. The applicant proposes to construct and maintain a structure and provide a 7 foot front yard setback, which will require a variance to the front yard setback regulations of 18 feet, 3 foot side yard setbacks, which will require variances to the side yard setback regulations of 2 feet, and exceed the maximum 45 percent lot coverage, which will require a variance to the maximum lot coverage regulations of 437 square feet.

**LOCATION: 5414 Melrose Avenue**

**APPLICANT: Robert V. Hunt**

**REQUESTS:**

The following appeals have been made in conjunction with constructing and maintaining a two-story single family home structure on a site that is currently developed with a one-story single family home structure that the applicant intends to demolish:

1. A variance to the front yard setback regulations of 18’ is requested as the proposed structure would be located 7’ from the front property line or 18’ into the required 25’ front yard setback.
2. Variances to the side yard setback regulations of 2’ are requested as the proposed structure would be located 3’ from the site’s two side property lines or 2’ into the required 5’ side yard setbacks.
3. A variance to the lot coverage regulations of 437 square feet is requested as (according to the applicant) this request would allow up to 2,404 square feet of

maximum lot coverage when 1,967 square feet is allowed now (or 45 percent) on the 4,372 square foot subject site.

**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, lot coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

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

**STAFF RECOMMENDATION:**

Approval of the front yard, side yard, and maximum lot coverage variances, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The subject site is unique and different from most lots zoned R-7.5(A) in that it is an irregularly-shaped lot with 4,372 square feet in area. Most lots zoned R-7.5(A) are regularly shaped with 7,500 square feet. The irregularly-shaped lot that is over 3,000 square feet smaller in area than that of most lots in the zoning district precludes the applicant from developing it in a manner commensurate with development on other similarly zoned properties - in this case, the development on the property being the replacement of an existing one-story single family home with a two-story home that according to the applicant would have between 2,500 – 2,900 square feet of air-conditioned space. (Note that while the submitted site plan does not depict the actual location of the garage on the subject site, staff has concluded that if at all possible, the applicant would consider locating the garage on the west side of the subject site given the location of the existing homes to the east and west).

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-7.5(A) (Single family district 7,500 square feet)  
North: TH-3 (A) (Townhouse)  
South: R-7.5(A) (Single family district 7,500 square feet)

East: R-7.5(A) (Single family district 7,500 square feet)  
West: R-7.5(A) (Single family district 7,500 square feet)

**Land Use:**

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

**Zoning/BDA History:**

1. BDA 067-169, Property at 2035 Cullen Avenue ( two lots east of the subject site) On December 10, 2007, the Board of Adjustment Panel C variance to the front yard setback regulations of 20'. The board imposed the following condition: compliance with the submitted site plan is required. The case report stated that the request was made in conjunction with constructing and maintaining a single family home in the site's Melrose Avenue 25' front yard setback on a site that was undeveloped.

**Timeline:**

- April 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.
- May 15, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- May 15, 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 May 29<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the June 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- June 4, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June 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 Sustainable Development and Construction Department Chief Planner, the Board Administrator, the Building

Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

**GENERAL FACTS/STAFF ANALYSIS (front yard variance):**

- This request focuses on constructing and maintaining a two-story single family structure, part of which would be located in the site's 25' front yard setback on a property developed with a one-story single family home structure that the applicant intends to demolish.
- Structures on lots zoned R-7.5(A) are required to provide a minimum front yard setback of 25'.
- The applicant has submitted a site plan that shows a structure (roof eave) located 7' from the front property line or 18' into the 25' required front yard setback.
- It appears from calculations made by the Board Administrator from the submitted site plan that approximately 400 square feet (or about 17 percent) of the proposed approximately 2,400 square foot building footprint is to be located in the site's 25' front yard setback.
- The subject site is irregular in shape and according to the application, is 0.10 acres (or 4,372 square feet) in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- DCAD records indicate the "main improvement" for property at 5414 Melrose Avenue being a structure built in 1926 with 1,546 square feet of living area and 1,546 square feet of total area; and no additional improvements.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.
  - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.
- If the Board were to grant the variance request, and impose the submitted site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document— which in this case is a structure to be located 7' from the front property line (roof eave) or 18' into the 25' front yard setback.

**GENERAL FACTS/STAFF ANALYSIS (side yard variances):**

- This request focuses on constructing and maintaining a single family structure, part of which would be located in the site's 5' side yard setbacks on a property developed with a single family home developed with a single family structure that the applicant intends to demolish.
- Structures on lots zoned R-7.5(A) are required to provide a minimum side yard setback of 5'.
- The applicant has submitted a site plan that shows a structure located 3' from the two side property lines or 2' into the 5' required side yard setbacks.
- It appears from calculations made by the Board Administrator from the submitted site plan that approximately 130 square feet (or about 5 percent) of the proposed approximately 2,400 square foot building footprint is to be located in the site's eastern 5' front yard setback; and that approximately 70 square feet (or about 2 percent) of the proposed approximately 2,400 square foot building footprint is to be located in the site's western 5' front yard setback.
- The subject site is irregular in shape and according to the application, is 0.10 acres (or 43,372 square feet) in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- DCAD records indicate the "main improvement" for property at 5414 Melrose Avenue being a structure built in 1926 with 1,546 square feet of living area and 1,546 square feet of total area; and no additional improvements.
- The applicant has the burden of proof in establishing the following:
  - That granting the variances to the side yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The 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 R-7.5(A) 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 same R-7.5(A) zoning classification.
- If the Board were to grant the variance requests, and impose the submitted site plan as a condition, the structure in the side yard setbacks would be limited to what is shown on this document— which in this case is a structure to be located 3' from the two side property lines or 2' into these 5' side yard setbacks.

**GENERAL FACTS/STAFF ANALYSIS (lot coverage variance):**

- This request focuses on constructing and maintaining a single family structure that would exceed the maximum 45 percent lot coverage allowed on a property developed with a single family home developed with a single family structure that the applicant intends to demolish.
- The maximum lot coverage for residential structures on lots zoned R-7.5(A) is 45 percent.

- The applicant has submitted a site plan and documentation stating that the lot coverage depicted on the site plan is 2,404 square feet, and that the maximum lot coverage allowed on this site is 1,967 square feet.
- The subject site is irregular in shape and according to the application, is 0.10 acres (or 4,372 square feet) in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- DCAD records indicate the “main improvement” for property at 5414 Melrose Avenue being a structure built in 1926 with 1,546 square feet of living area and 1,546 square feet of total area; and no additional improvements.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the maximum lot coverage regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.
  - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.
- If the Board were to grant the variance request, and impose the submitted site plan as a condition, the structure exceeding the maximum 45 percent lot coverage requirement would be limited to what is shown on this document– which in this case is a structure with 2,404 square feet or 437 square feet beyond the 1,967 square feet permitted on the 4,372 square foot subject site.

**BOARD OF ADJUSTMENT ACTION: JUNE 18, 2013**

APPEARING IN FAVOR: No One

APPEARING IN OPPOSITION: No One

MOTION: **Jackson**

I move that the Board of Adjustment grant application **BDA 123-064** 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 conditions 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)

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**FILE NUMBER:** BDA 123-066

**BUILDING OFFICIAL’S REPORT:** Application of Cole Evans to enlarge a nonconforming use at 4111 Athletic Club Drive (aka: 4111 La Prada Drive). This property is more fully described as a 310.19 acre tract of land, Tract 5, Block 8579, and is zoned A(A), which limits the legal uses in a zoning district. The applicant proposes to enlarge a nonconforming country club with private membership use, which will require a request to enlarge a nonconforming use.

**LOCATION:** 4111 Athletic Club Drive (aka: 4111 La Prada Drive)

**APPLICANT:** Cole Evans

**REQUEST:**

- A request is made to enlarge of a nonconforming “country club with private membership” use (Dallas Athletic Club), specifically constructing and maintaining an approximately 1,500 square foot hitting bay structure to be located in the virtual center of the approximately 310 acre subject site.

**STANDARD FOR ENLARGING A NONCONFORMING USE:**

The board may allow the enlargement of a nonconforming use when, in the opinion of the Board, the enlargement: 1) does not prolong the life of the nonconforming use; 2) would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and 3) will not have an adverse effect on the surrounding area.

**STAFF RECOMMENDATION:**

No staff recommendation is made on a request to enlarge a nonconforming use since the basis for this type of appeal is based on when, *in the opinion of the Board*, the enlargement: 1) does not prolong the life of the nonconforming use; 2) would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and 3) will not have an adverse effect on the surrounding area.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: A (A)  
North: MF-2 (A)



South: R-16 (A), R-7.5 (A), and City of Mesquite  
East: MF-2 (A), R-7.5 (A), and City of Mesquite  
West: R-16 (A) and R-10 (A)

**Land Use:**

The 310 acre subject site is developed as a “country club with private membership” use (Dallas Athletic Club). The nonconforming “country club with private membership” use contains an approximately 40,000 square foot clubhouse, two 18-hole golf courses, swimming pool, and 8 tennis courts. The areas to the north and east are developed with single family and multifamily uses; and the areas to the south and west are developed with single-family uses.

**Zoning/BDA History:**

1. BDA 034-101, Property at 4111 LaPrada Drive ( the subject site)

On December 9, 2003, the Board of Adjustment Panel A granted a request to enlarge a nonconforming “country club with private membership” use (Dallas Athletic Club). The board imposed the following conditions: Any and all investment in the nonconforming use and/or structure housing the nonconforming use shall not be taken into consideration if and when the nonconforming use is amortized; and compliance with the submitted site plan is required. The case report stated that the 316+ acre subject site was developed as approximately 40,000 square foot clubhouse, two 18-hole golf courses, swimming pool, and 8 tennis courts); and that the proposal involved only enlarging the clubhouse component of this non-conforming use, specifically with a 1,548 square foot (or 3.5% of the total building footprint) dining room expansion, and a 3,712 square foot (or 8.5% of the total building footprint) fitness room expansion.

**Timeline:**

May 10, 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.

May 15, 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."

May 15, 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 May 29<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the June 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the section from the Dallas Development Code pertaining to nonconforming uses and structures and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

June 4, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June 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 Sustainable Development and Construction Department Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

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

- This request focuses on the enlargement of a nonconforming "country club with private membership" use (Dallas Athletic Club) on the subject site, which in this particular case, involves the construction and maintenance of an approximately 1,500 square foot hitting bay structure to be located in the virtual center of the approximately 310 acre subject site.
- The subject site is zoned A(A) (Agricultural).
- A "country club with private membership" use is not permitted in A(A) Agricultural zoning districts with an SUP (Specific Use Permit).
- A "country club with private membership" use in an A (A) Agricultural zoning district is a *conforming* use once it has obtained an SUP (Specific Use Permit) from the City Council through a public hearing process.
- The Dallas Development Code defines a nonconforming use as "a use that does not conform to the use regulations of this chapter, but was lawfully established under

regulations in force at the beginning of operation and has been in regular use since that time.”

- The Dallas Development Code states that enlargement of a nonconforming use means any enlargement of the physical aspects of a nonconforming use, including any increase in height, floor area, number of dwelling units, or the area in which the nonconforming use operates.
- The applicant has submitted a site plan, a floor plan, and an elevation that depicts the location, size, function, and height of the proposed hitting bay structure within the 310 acre site that is technically the nonconforming use.
- This application is made to enlarge a nonconforming *use*. The application is *not* made to enlarge a nonconforming *structure*. The proposed hitting bay structure would be in compliance with development code standards such as setbacks, coverage requirements, height requirements, parking requirements, etc. Therefore, the proposed hitting bay structure would be a conforming structure as it relates to development code requirements, located within a broader land use classification (country club with private membership) that can only be deemed a conforming *use* once and if the zoning is changed/or an SUP is obtained.
- Records from Building Inspection Department indicate that the date in which the “country club with private membership” use became nonconforming was upon date of annexation (1954 or latter).
- A copy of a Certificate of Occupancy is included in the case file for Dallas Athletic Club (CO #9102141017) issued on October 28, 1991.
- The applicant has been informed of the Dallas Development Code provisions pertaining to “Nonconforming Uses and Structures,” and how nonconforming uses can be brought to the Board of Adjustment for amortization where if the board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for that nonconforming use - a compliance date that is provided under a plan whereby the owner’s actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.
- The applicant has the burden of proof to establish that the enlargement of the non-conforming use:
  1. does not prolong the life of the nonconforming use;
  2. would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and
  3. will not have an adverse effect on the surrounding area.
- If the Board were to grant this request, with a condition imposed that the applicant comply with the submitted site plan, the enlargement of the nonconforming use would be limited to what is shown on this document.

**BOARD OF ADJUSTMENT ACTION: JUNE 18, 2013**

**APPEARING IN FAVOR:** Tommy Mann, 500 Winstead Blvd., Dallas, TX

**APPEARING IN OPPOSITION:** No one

**MOTION:** Schweitzer

I move that the Board of Adjustment, in Appeal No. **BDA 123-066**, on application of Cole Evans, **grant** the enlargement of the nonconforming use, because our evaluation of the property and the testimony presented show that the enlargement of the nonconforming use does not prolong the life of the nonconforming use, would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and will not have adverse effect on the surrounding area. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

**SECONDED:** Hounsel

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

**NAYS:** 0 -

**MOTION PASSED:** 5– 0(unanimously)

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**FILE NUMBER:** BDA 123-045

**BUILDING OFFICIAL’S REPORT:** Application of Robert Reeves of Robert Reeves and Associates for a variance to the side yard setback regulations at 5810 Meadowcrest Drive. This property is more fully described as Lot 1, Block C/6384, and is zoned R-16(A), which requires a side yard setback of 10 feet. The applicant proposes to construct and/or maintain structures and provide a 3 foot 9 inch side yard setback, which will require a variance to the side yard setback regulations of 6 feet 3 inches.

**LOCATION:** 5810 Meadowcrest Drive

**APPLICANT:** Robert Reeves of Robert Reeves and Associates

**June 18, 2013 Public Hearing Notes:**

- The applicant submitted a revised site plan/elevation to the Board at the public hearing.

**REQUEST:**

A variance to the side yard setback regulations of 6’ 3” is requested in conjunction with maintaining an “open-air pavilion/covered patio area” and “fountain” structures on a site developed with a single family home, part and/or all of which is located in the site’s western 10’ side yard setback.

**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.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

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

Rationale:

- The lot's irregular shape precludes the applicant from developing it in a manner commensurate with other developments found on similarly-zoned R-16(A) lots that are regular in shape.
- Granting this variance with the revised site plan/elevation being imposed as a condition does not appear to be contrary to the public interest since the variance would only allow about 1/3 (or approximately 150 square feet) of an approximately 480 square foot "open-air pavilion/covered patio area" building footprint, and three, 4 square foot, 4' high "fountain" structures in the site's 10' side yard setback on the west side of the property.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-16 (A) (Single family district 16,000 square feet)  
North: R-16 (A) (Single family district 16,000 square feet)  
South: R-16 (A) (Single family district 16,000 square feet)  
East: R-16 (A) (Single family district 16,000 square feet)  
West: R-16 (A) (Single family district 16,000 square feet)

**Land Use:**

The subject site is developed with a single family home. The areas to the north, south, east, 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:**

- March 21, 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.
- April 16, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- April 17, 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 May 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the May 10th 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.
- May 1, 2013: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).
- May 7, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May 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 Sustainable Development and Construction Department Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- May 21, 2013: The Board of Adjustment Panel C conducted a public hearing on this application. The Board held the request under advisement until June 18, 2013 in order for staff to attempt to obtain a five member panel that could hear the application on this date.

May 24, 2013: The Board Administrator sent a letter to the applicant's representative noting the May 21<sup>st</sup> action of the Board, the May 29<sup>th</sup> deadline to submit any new information for staff review, and the June 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials.

June 10, 2013: The applicant sent an email to the Board Administrator that stated how he decided at the beginning to make the board of adjustment variance application first, primarily because he thought it would be the more difficult process and the client did not want to spend the significant amount of money for the plat until he knew he had board approval, and that his intent was to immediately proceed with preparing and filing the re-plat once (and if) he got approval from the board of adjustment. The applicant stated if the Board grants the variance, he will only make a re-plat application to amend the building line and wrap it around the area where the violation occurs instead of removing the entire 20' building line along Jamestown, as he had successfully done for other clients in the past.

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

- This request focuses on an "open-air pavilion/covered patio area" and "fountain" structures on a site developed with a single family home, part and/or all of which is located in the site's western 10' side yard setback.
- Structures on lots zoned R-16(A) are required to provide a minimum side yard setback of 10'. (Note that this site has a 20 foot platted building line along Jamestown Road that the applicant is requesting the City Plan Commission to remove hence the request for a variance to the 10' side yard setback required on this property zoned R-16(A)).
- A revised site plan/elevation document has been submitted denoting a portion of the approximately 480 square foot "open-air pavilion/covered patio area" and all three of the approximately 4 square foot, 4 foot high "fountain" structures located in the 10' side yard setback on the west side/Jamestown Road side of the subject site. The nearest of these structures is located as close as 3.8' from the site's side property line or as much as 6.2' into the 10' side yard setback.
- It appears from calculations taken from the submitted revised site plan/elevation document by the Board Administrator that approximately 1/3 (or approximately 150 square feet) of the approximately 480 square foot "open-air pavilion/covered patio area" building footprint, and each of the approximately 4 square foot, 4' high "fountain" structures are located in the site's 10' side yard setback on the west side of the property.
- According to DCAD records, the "main improvements" at 5810 Meadowcrest Drive is a structure built in 2007 with 6,588 square feet of living area and 6,588 square feet of total area. According to DCAD records, the "additional improvements" at 5810 Meadowcrest Drive is an 894 square foot attached garage and a pool.
- The subject site is irregular in shape (approximately 137' on the north; approximately 42' on the south; approximately 181' on the east; and approximately 206' on the

west), flat, and according to the application, is 19,282 square feet in area. The site is zoned R-16(A) where lots are typically 16,000 square feet in area.

- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the side yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-16(A) zoning classification.
  - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-16(A) zoning classification.
- If the Board were to grant the variance request and impose the submitted revised site plan/elevation as a condition, the structures in the side yard setback would be limited to what is shown on this document– which are structures located as close as 3’ 9” from the site’s western side property line (or as much as 6’ 3” into the 10’ side yard setback).

**\*Member Nolen recused himself and did not hear or vote on this matter.**

**BOARD OF ADJUSTMENT ACTION: MAY 21, 2013**

APPEARING IN FAVOR: Robert Reeves, 900 Jackson St., Ste 160, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Hounsel**

I move that the Board of Adjustment, in Appeal No. **BDA 123-045**, hold this matter under advisement until **June 18, 2013**.

SECONDED: **Gaspard**

AYES: 4– Moore, Schweitzer, Hounsel, Gaspard

NAYS: 0 -

MOTION PASSED: 4– 0(unanimously)

**\*Member Nolen recused himself and did not hear or vote on this matter and member Robert Agnich heard this case.**

**BOARD OF ADJUSTMENT ACTION: JUNE 18, 2013**

APPEARING IN FAVOR: Robert Reeves, 900 Jackson St., Ste 160, Dallas, TX



Lorraine Keed, 5807 Meadowcrest Dr., Dallas, TX

APPEARING IN OPPOSITION: Tom Jones, 5815 Meadowcrest, Dallas, TX  
Fred Shiver, 5823 Meadowcrest, Dallas, TX

MOTION #1: **Schweitzer**

I move to suspend the rules and accept the evidence that is being presented to us today.

SECONDED: **Hounsel**

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

NAYS: 0 -

MOTION PASSED: 5– 0(unanimously)

MOTION #2: **Hounsel**

I move that the Board of Adjustment, in Appeal No. **BDA 123-045**, on application of Robert Reeves of Robert Reeves and Associates, **grant** a 6 foot, 3 inch variance to the side yard setback 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. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan/elevation is required.
- The open-air pavilion/covered patio must remain open at all times.

SECONDED: **Moore**

AYES: 4 – Moore, Schweitzer, Hounsel, Jackson

NAYS: 1 - Agnich

MOTION PASSED: 4– 1

\*\*\*\*\*

FILE NUMBER: BDA 123-046

**BUILDING OFFICIAL’S REPORT:** Application of Keena Hilliard for special exceptions to the fence height and visual obstruction regulations at 1143 Newport Avenue. This property is more fully described as Lot 12, Block 7/4268, and is zoned R-7.5(A), which limits the height of a fence in the front yard to 4 feet and requires a 45 foot visibility triangle at street intersections, and 20 foot visibility triangles at drive approaches and at alley and street intersections. The applicant proposes to construct and/or maintain a 6 foot high fence, which will require a special exception to the fence height regulations of 2 feet, and to locate and maintain items in required visibility triangles, which will require special exceptions to the visual obstruction regulations.

LOCATION: 1143 Newport Avenue

APPLICANT: Keena Hilliard

## **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 2' is requested in conjunction with maintaining a 6' high cedar board-on-board fence in the site's front yard setback on Newport Avenue.
2. Special exceptions to the visual obstruction regulations are requested in conjunction with maintaining:
  - a 6' high cedar board-on-board fence in the 45' visibility triangle at the intersection of Newport Avenue and Clinton Avenue;
  - a 6' high cedar board-on-board fence in the 20' visibility triangle on the southern side of the southern driveway into the site from Clinton Avenue,
  - a 4' high open chain link fence in the 20' visibility triangle on the northern side of the southern driveway into the site from Clinton Avenue;
  - a 4' high open chain link fence in the 20' visibility triangle on the southern side of the northern driveway into the site from Clinton Avenue; and
  - a portion of a garage structure in the 20' visibility triangle at the intersection of the alley at Clinton Avenue.

(Note that the requests for special exceptions to the visual obstruction regulations only involve maintaining the fences/garage that the Board Administrator photographed on the property several weeks ago and that have been represented on the applicant's submitted site plan and elevation. These requests do not include any other item such as landscape materials that may have been photographed and/or may be located in a visibility triangle on the subject site).

## **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):**

- (1) Denial of the requests for visual obstruction special exceptions at the street intersection and the drive approaches

Rationale:

- The applicant has not substantiated how the location of the items (an existing 6' high cedar board-on-board fence and/or an existing 4' high open chain link fence) located in the intersection and/or drive approach visibility triangles does not constitute a traffic hazard.
- The Sustainable Development and Construction Department Project Engineer has recommended denial of these requests.

- (2) Approval of the request for a visual obstruction special exception at the alley/street intersection, subject to the following condition:

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

Rationale:

- The applicant has substantiated how the location of the existing garage in the 20' visibility triangle at the intersection of the alley at Clinton Avenue does not constitute a traffic hazard.
- The Sustainable Development and Construction Department Project Engineer has no objections to this request.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-7.5(A) (Single family district 7,500 square feet)  
North: R-7.5(A) (Single family district 7,500 square feet)  
South: R-7.5(A) (Single family district 7,500 square feet)  
East: R-7.5(A) (Single family district 7,500 square feet)  
West: R-7.5(A) (Single family district 7,500 square feet)

**Land Use:**

The subject site is developed with a single family home. The areas to the north, 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:**

March 27, 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.

April 16, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

- April 17, 2013: The Board Administrator shared the following information to the applicant via email:
- an attachment that provided the public hearing date and panel that will consider the application; the May 1st deadline to submit additional evidence for staff to factor into their analysis; and the May 10<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the requests; and
  - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- April 24, 2013: The Board Administrator emailed the applicant a record of their phone conversation establishing that her requests to the board involved maintaining the fences/garage that he photographed on the property a couple of weeks earlier, and that as they had discussed with regard to her visual obstruction special exception requests, the board would only be considering the items in the triangles as noted on her plans (board fence, chain link fence, and garage) – and that if she were wanting the Board to consider other "items" in the triangles such as landscape materials, that she should add the location and heights of any such item on her site plan. (Note that no amended site plan or elevation had been submitted as of June 10<sup>th</sup>).
- April 29, 2013: The Board Administrator postponed this application from Board of Adjustment Panel A's May 21<sup>st</sup> hearing to Panel A's June 18<sup>th</sup> hearing per the applicant's request.
- May 15, 2013: The Board Administrator shared the following information to the applicant via email:
- an attachment that provided the public hearing date and panel that will consider the application; the May 29<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the June 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the requests; and
  - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- June 4, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June 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 Sustainable Development and Construction Department Chief Planner, the Board Administrator, the Building

Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

June 10, 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 "Recommends that this be denied" commenting "fences are obstructing the view of the pedestrian way near a school; the garage corner is OK."

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

- This request focuses on maintaining 6' high board-on-board fence 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 subject site is located at the northeast corner of Newport Avenue and Clinton Avenue. The site has only one front yard setback along Newport Avenue even though it is located at the corner of Newport Avenue and Clinton Avenue. The site's longer frontage is Clinton Avenue and there is no continuity of an established front yard setback to maintain along Clinton Avenue, hence it is a side yard where a fence can be constructed and maintained 9' in height).
- The applicant has submitted a site plan/elevation of the proposal in the front yard setback that reaches a maximum height of 72" or 6'.
- The following additional information was gleaned from the submitted site plan:
  - The existing fence located in the front yard setback over 4' in height is represented on the site plan as being approximately 50' in length parallel to the street and 25' in length perpendicular to the street on the east and west sides of the site in the front yard setback.
  - The existing fence located in the front yard setback is shown to be located on the front property line or approximately 10' from the pavement line.
- The existing fence is located across from one single family home, which does not have a fence in its front yard higher than 4'.
- 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 June 10, 2013, no letters have been submitted in support of or in 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 elevation would require the proposal exceeding 4' in height in the front yard setback to be maintained in the location and of the heights and materials as shown on these documents.

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

- These requests focus maintaining the following on the subject site:
  - a 6' high cedar board-on-board fence in the 45' visibility triangle at the intersection of Newport Avenue and Clinton Avenue;
  - a 6' high cedar board on board fence in the 20' visibility triangle on the southern side of the southern driveway into the site from Clinton Avenue,
  - a 4' high open chain link fence in the 20' visibility triangle on the northern side of the southern driveway into the site from Clinton Avenue;
  - a 4' high open chain link fence in the 20' visibility triangle on the southern side of the northern driveway into the site from Clinton Avenue; and
  - a portion of a garage structure in the 20' visibility triangle at the intersection of the alley at Clinton 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 and an elevation have been submitted indicating the aforementioned items in the aforementioned visibility triangles.
- The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet regarding the applicant's request for special exceptions to the visual obstruction regulations marked "Recommends that this be denied" commenting "fences are obstructing the view of the pedestrian way near a school; the garage corner is OK."
- The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulations do not constitute a traffic hazard.
- Granting these requests with a condition imposed that the applicant complies with the submitted site plan and elevation would require the items in the visibility triangles to be limited to the locations, heights and materials of those items as shown on these documents.

**BOARD OF ADJUSTMENT ACTION: JUNE 18, 2013**

APPEARING IN FAVOR: Keena Hilliard, 1143 Newport Ave., Dallas, TX

APPEARING IN OPPOSITION: Ofelia Delgadill, 1139 Newport Ave., Dallas, TX

**MOTION #1: Jackson**

I move that the Board of Adjustment, in Appeal No. **BDA 123-046**, on application of Keena Hilliard, **deny** the special exception to the fence height regulations **without prejudice**, because our evaluation of the property and the testimony shows that this special exception will adversely affect neighboring property.

**SECONDED: Nolen**

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

MOTION #2: **Jackson**

I move that the Board of Adjustment, in Appeal No. **BDA 123-046**, on application of Keena Hilliard, **deny** the visual obstruction special exception requests to maintain fences/items in the visibility triangles at the street intersection and at the drive approaches on the property **without prejudice**, because our evaluation of the property and the testimony shows that granting these requests will constitute a traffic hazard.

SECONDED: **Nolen**  
AYES: 4 – Moore, Housel, Nolen, Jackson  
NAYS: 1 - Schweitzer  
MOTION PASSED: 4– 1

MOTION #3: **Jackson**

I move that the Board of Adjustment, in Appeal No. **BDA 123-046**, on application of Keena Hilliard, **grant** the visual obstruction special exception request to maintain a portion of the garage structure in the visibility triangle at the intersection of the alley at Clinton Avenue, 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 condition be imposed to further the purpose and intent of the Dallas Development Code:

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

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

\*\*\*\*\*

FILE NUMBER: BDA 123-060

**BUILDING OFFICIAL’S REPORT**: Application of Ed Simons for a variance to the front yard setback regulations and a special exception to the landscape regulations at 2523 McKinney Avenue. This property is more fully described as a .20 acre parcel in Block 2/954 and is zoned PD-193 (LC), which requires a front yard setback of 10 feet and requires mandatory landscaping. The applicant proposes to construct and/or maintain a structure and provide a 0 foot front yard setback, which will require a variance to the front yard setback regulations of 10 feet, and to provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 2523 McKinney Avenue

APPLICANT: Ed Simons

## **June 18, 2013 Public Hearing Notes:**

- The applicant submitted a revised site /landscape plan to the Board at the public hearing – a plan that the City of Dallas Chief Arborist indicated that he did support as it related to the request for a special exception to the landscape regulations.

## **REQUESTS:**

The following appeals have been made on a site that is currently developed with a mixed use structure part of which is vacant:

1. A variance to the front yard setback regulations of 10' is made in conjunction with modifying and maintaining an "existing patio" structure with an approximately 1,000 square foot building footprint, part of which is located on the McKinney Avenue front property line (and part of which is located in but to be removed out of the public right-of-way), or 10' into the 10' front yard setback.
2. A special exception to the PD 193 landscape regulations in conjunction with the increasing nonpermeable coverage of the lot, 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 RECOMMENDATION (variance):**



Denial

Rationale:

- Staff was unable to conclude how the parcel/subject site differs from other parcels of land by being of such restrictive area, shape, or slope that it 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 size, shape, and slope of the flat, somewhat irregular in shape, approximately 8,700 square foot subject site does not preclude the applicant/owner from developing it with a structure/use without a patio structure in the required front yard setback.

**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.
- 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 9 (Planned Development District)  
West: PD 193 (PDS 73) (Planned Development District, Planned Development District)

**Land Use:**

The subject site is developed with a mixed use structure. The areas to the north and east are undeveloped; the area to the south is developed with office use; and the area to the west is developed with a mix of retail, office, and residential 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:**

April 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.

- June 4, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- June 4, 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 June 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- June 4, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June 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 Sustainable Development and Construction Department Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- June 7, 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 A).

**GENERAL FACTS/ANALYSIS (front yard variance):**

- This request focuses on modifying/maintaining an "existing patio" structure with an approximately 1,000 square foot building footprint, part of which is located on the McKinney Avenue front property line (and part of which is located in but to be removed out of the public right-of-way), or 10' into the 10' front yard setback on a site developed with a mixed use part of which is vacant.
- The minimum front yard setback on a PD 193 (LC) zoned lot is 10 feet.
- A site plan and a partial landscape/patio/site plan have been submitted showing a "patio" structure on the McKinney Avenue front property line.
- According to calculations taken from the submitted site plan by the Board Administrator, approximately 500 square feet of the approximately 1,000 square foot existing patio/building footprint is located in the front yard setback.
- DCAD records indicate that the improvements at 2523 McKinney are a "free standing retail store" with 5,393 square feet built in 1953.
- The site is flat, somewhat irregular in shape (175' on the north, 181' on the south, 50' on the east, and 50' on the west), and according to the application, is 0.20 acres (or approximately 8,700 square feet) in area. The site is zoned PD 193 (LC).
- The applicant has the burden of proof in establishing the following:

- That granting the variance to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
- The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD 193 (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.
- If the Board were to grant this request, imposing a condition whereby the applicant must comply with the submitted site plan and a partial landscape/patio/site plan, the structure in front yard setback would be limited to what is shown on these plans which in this case is a structure labeled as “patio” that is located on the front property line or 10’ into the 10’ required front yard setback.

**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.
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator regarding the submitted landscape special exception request (see Attachment A).
- The Chief Arborist’s memo stated among other things how the request is made for a special exception to the southern property of a larger building site for required front yard landscape site area, general planting area, and special planting area. The request is triggered by new construction with an increase of nonpermeable coverage on the lot and how the application is only for the southern 9015 square feet of a greater building site.
- The Chief Arborist notes that the applicant’s submitted plan does not comply with; 1) the front yard landscape site area for the minimum of 60 percent of the front yard; 2) general planting area; and 3) special planting area requirements for PD 193 (LC) zoning.
- The Chief Arborists listed several factors for consideration:
  - the property area identified on the landscape plan is a portion (9015 square feet) of a larger building site as identified in existing building permit applications. The landscape site area and other landscape elements for the larger building site are not identified.

- The proposed landscape plan, for the request area only, complies with the minimum tree planting zone requirement, screening of off-street parking, and sidewalk requirements of the PD 193 ordinance. The plan identifies an overall, fragmented, landscape site area (LSA) of 11 percent where a minimum of 10 percent of the lot is required. Compliance factors for the greater building site are undetermined.
- The Chief Arborist recommends denial of the proposed landscape plan because it compromises the spirit and intent of the PD 193 ordinance for properties in the LC district.
- 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 front yard landscape site area, general planting area, and special planting area requirements of PD 193) 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 alternate landscape plan as a condition, the site would be provided exception to the front yard landscape site area, general planting area, and special planting area requirements of the Oak Lawn PD 193 landscape ordinance.

**BOARD OF ADJUSTMENT ACTION: JUNE 18, 2013**

APPEARING IN FAVOR: Karl Crawley, 900 Jackson St., Dallas, TX  
 Dean Dekker, 6722 Northport, Dallas, TX  
 James Ingram, 7722 Yamini Dr., Dallas, TX  
 Paul Cheng, 17232 Lechcade, Dallas, TX

APPEARING IN OPPOSITION: No one

**MOTION#1: Schweitzer**

I move that we suspend the rules and accept the evidence that is being presented to us today.

**SECONDED: Gaspard**

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

NAYS: 0 -

MOTION PASSED: 5– 0(unanimously)

**Break: 3:08 P.M.**

**Resumed: 3:15 P.M**

**MOTION#2: Nolen**

I move that the Board of Adjustment, in Appeal No. **BDA 123-060**, on application of Ed Simons, **grant** a 10 foot variance to the minimum front yard setback 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. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan/landscape plan is required.

SECONDED: Hounsel

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 123-060**, on application of Ed Simons, **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 conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan/landscape plan is required.

SECONDED: Hounsel

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

NAYS: 0 -

MOTION PASSED: 5– 0(unanimously)

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MOTION: Schweitzer

I move to adjourn this meeting.

SECONDED: Jackson

AYES: 5– Moore, Schweitzer, Hounsel,

NAYS: 0 -

MOTION PASSED: 5– 0(unanimously)

**3:36 P. M.** - Board Meeting adjourned for **June 18, 2013.**

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CHAIRPERSON

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BOARD ADMINISTRATOR

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BOARD SECRETARY

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