

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, 6ES
TUESDAY, AUGUST 20, 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, Laura Morrison, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Lloyd Denman, Asst. Director of Engineering, Neva Dean, Interim Asst. Director 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, Laura Morrison, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Lloyd Denman, Asst. Director of Engineering, and Trena Law, Board Secretary

11:08 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **August 20, 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 **June 18, 2013** public hearing minutes.

BOARD OF ADJUSTMENT ACTION: AUGUST 20, 2013

MOTION: Hounsel

I move **approval** of the Tuesday, **June 18, 2013** public hearing minutes as amended.

SECONDED: Nolen

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 123-068

BUILDING OFFICIAL’S REPORT: Application of Robert Baldwin for a variance to the off-street parking regulations at 3302 Swiss Circle (aka: 3302 Floyd Street). This property is more fully described as Tract 2, an unplatted 0.10 acre tract of land in Block 750 and is zoned PD-298 (Subarea 12), which requires off-street parking to be provided. The applicant proposes to maintain a structure for a restaurant without drive-in or drive-through service use and provide 23 of the required 46 parking spaces, which will require a 23 space variance (50% reduction) to the off-street parking regulations.

LOCATION: 3302 Swiss Circle (aka: 3302 Floyd Street)

APPLICANT: Robert Baldwin

REQUEST:

A variance to the off-street parking regulations of 23 spaces is requested in conjunction with leasing and maintaining a vacant approximately 4,600 square foot structure with a restaurant use where the applicant proposes to provide 23 (or 50 percent) of the required 46 required off-street parking spaces.

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:

Approval

Rationale:

- The lot’s irregular shape and restrictive area of 0.10 acres (or approximately 4,300 square feet) that is developed with an approximately 4,600 square foot structure built in the 20’s preclude the applicant from developing it in a manner commensurate with other developments found on similarly-zoned PD 298 (Subarea 12) lots.
- The applicant states that his research has revealed that the only use that can be put back on the site and meet the parking requirements is a church use.
- Granting this variance does not appear to be contrary to public interest since the Sustainable Development and Construction Department Engineering Division Assistant Director has indicated with no objections to the request.

BACKGROUND INFORMATION:

Zoning:

Site: PD 298 (Subarea 12) (Planned Development District)
North: PD 298 (Subarea 12) (Planned Development District)
South: PD 298 (Subarea 12A) (Planned Development District)
East: PD 298 (Subarea 12) (Planned Development District)
West: PD 298 (Subarea 12) (Planned Development District)

Land Use:

The subject site is developed with vacant structure. The area to the north is developed with office uses; the area to the east is developed as a private parking garage; the area to the south is developed with a surface parking lot; and the area to the west is developed a vacant structure.

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:

- May 15, 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.
- July 3, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 5, 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 July 31st deadline to submit additional evidence for staff to factor into their analysis; and the August 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.
- July 29, 2013: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).
- August 6, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Interim 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.
- August 7, 2013: The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked "Has no objections."
- August 9, 2013: The applicant sent an email to the Board Administrator that stated (among other things) that his research has revealed that the only use that can be put back on the site and meet the parking requirements is a church use.

GENERAL FACTS/ STAFF ANALYSIS:

- This request focuses on leasing and maintaining a vacant approximately 4,600 square foot structure with a restaurant use where the applicant proposes to provide 23 (or 50 percent) of the required 46 required off-street parking spaces.

- The subject site is zoned PD 298 (Subarea 12). The parking requirements state that the parking provisions of Chapter 51A apply in the Bryan Area SPD except as modified in the ordinance. While the ordinance makes certain modifications to off-street parking required for large scale mixed use developments, and certain other specific uses in subareas other than Subarea 12, no specific off-street parking requirement is made for a restaurant use on properties in Subarea 12. Therefore the off-street parking requirement for “restaurant” use is 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.
- Therefore, because the applicant’s off-street parking reduction request for the proposed restaurant use is more than 25 percent, 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.
- The submitted application and related documents state that the request is for a parking variance of 23 parking spaces which is 50 percent of the total amount required.
- The site is flat, irregular in shape, and according to the application, is 0.10 acres (or approximately 4,300 square feet) in area. The site is zoned PD 298 (Subarea 12). The property with two street frontages has two front yard setbacks as any property with two street frontages would that is not zoned agricultural, single family, or duplex.
- DCAD records indicate that the improvements at 3302 Floyd Street are a “retail strip” with 5,064 square feet built in 1920.
- 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 298 (Subarea 12) 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 298 (Subarea 12) zoning classification.
- The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked “Has no objections.”

BOARD OF ADJUSTMENT ACTION: AUGUST 20, 2013

APPEARING IN FAVOR: No One

APPEARING IN OPPOSITION: No One

MOTION: **Nolen**

I move that the Board of Adjustment grant application **BDA 123-068** 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.

SECONDED: **Jackson**

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

NAYS: 0 -

MOTION PASSED: 5– 0(unanimously)

FILE NUMBER: BDA 123-072

BUILDING OFFICIAL’S REPORT: Application of Robert V. Hunt for a variance to the front yard setback regulations at 2235 Madera Street. This property is more fully described as Lot 2, Block D/1979 and is zoned R-7.5(A), which requires a front yard setback of 25 feet. The applicant proposes to construct a structure and provide a 14 foot front yard setback, which will require an 11 foot variance to the front yard setback regulations.

LOCATION: 2235 Madera Street

APPLICANT: Robert V. Hunt

REQUEST:

A variance to the front yard setback regulations of 11’ is made in conjunction with replacing an existing approximately 1,100 square foot, one-story single family home built in (according to DCAD) 1922 with a two-story single family home with about a 3,100 square foot building footprint, part of which would be located in the site’s Madera Avenue 25’ front yard setback on the northeast side of the subject site. (No part of the proposed single family home is represented to be located in the site’s Glencoe Avenue 25’ front yard setback on the southwest).

STANDARD FOR A VARIANCE:

The Dallas Development Code Section 51A-3.102(d)(10) 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:

Approval, subject to compliance with the submitted site plan

Rationale:

- The lot's restrictive area (encumbered by a lot size that is about 500 square feet less than other R-7.5(A) zoned lots and with two 25' front yard setbacks) and irregular shape preclude its development in a manner commensurate with other developments found on similarly-zoned R-7.5(A) lots – which in this case, according to the applicant's submittals, is a single family home that would have between 3,000 – 3,500 square feet of air-conditioned space. The length of development on this irregular shaped property once two 25' front yard setbacks are accounted for ranges from about 65' – 110' in depth.
- Granting the variance does not appear to be contrary to the public interest. The applicant has submitted data and photographs showing the home on the site that he intends to replace provides a 14.5' setback, and the homes adjacent to/across the street from the subject site provide setbacks ranging from approximately 8.5' – 16'.

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: PD 462 (Planned Development)
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, and west appear to be developed with residential uses; and the area to the south is undeveloped.

Zoning/BDA History:

1. BDA 112-060, Property at 2237 Madera Avenue (the lot immediately northwest of the subject site)

On June 20, 2012, the Board of Adjustment Panel B granted requests for variances to the front yard setback regulations of up to 18 feet and imposed to the submitted site plan as a condition to the request.

The case report stated that the requests were made in conjunction with in conjunction with replacing (according to DCAD) an existing approximately 1,500 square foot, one-story single family home with a two-story single family home that will have (according to the applicant) about 2,800 square foot of air-conditioned space, part of which would be located in the site's Madera Avenue 25' front yard setback on the northeast and the site's Glencoe Avenue 25' front yard setback on the southwest.

2. BDA 056-245, Property at 2237 Madera Avenue (the lot immediately northwest of the subject site)

On November 15, 2006, the Board of Adjustment Panel B granted requests for variances to the front yard setback regulations of up to 17 feet and imposed to the submitted site plan as a condition to the request.

The case report stated that the requests were made in conjunction with either tearing down the existing one story structure and building a two story single family home, a stairwell in the Madera Street front yard setback and a garage in the Glencoe Street front yard setback; or reconstructing the existing home and adding a second floor over the footprint with two small additions: a stairwell in the Madera Street front yard setback and a garage in the Glencoe Street front yard setback.

Timeline:

June 13, 2103: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

July 3, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

- July 5, 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 July 31st deadline to submit additional evidence for staff to factor into their analysis; and the August 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.
- July 29, 2013: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).
- August 6, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Interim 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 additional review comment sheets with comments were submitted in conjunction with this application.

GENERAL FACTS /STAFF ANALYSIS:

- This request focuses on replacing an existing one-story single family home with a two-story single family home, part of which will be located in one of the site's two 25' front yard setbacks (Madera Street) on a site that is a full "block-deep." (No part of the proposed single family home is represented to be located in the site's Glencoe Avenue 25' front yard setback on the southwest).
- A 25' front yard setback is required for properties zoned R-7.5(A).
- This site is deemed to have two front yard setbacks because the Dallas Development Code states the following with regard to front yard provisions for residential district:
 - If a lot runs from one street to another and has double frontage, a required front yard must be provided on both streets. If access is prohibited on one frontage by plat or by the city, the following structures in the yard along that frontage are governed by the rear yard regulations: swimming pool, game courts, fences, garages, accessory storage buildings."
- The site is a full "block-deep" and since Building Inspection has interpreted that access to the site along Glencoe is NOT prohibited by plat or the city, the site has two 25' front yard setbacks.

- A site plan has been submitted indicating a structure/building footprint (roof eave) is as close as 14' from the Madera Street front property line (or 11' into the 25' front yard setback along Madera Street). No structure is proposed to be located in the Glencoe Street 25' front yard setback.
- According to calculations taken from the site plan by the Board Administrator approximately 240 square feet (or about 7 percent) of the proposed structure's approximately 3,100 square foot building footprint is to be located in the site's Madera Avenue front yard setback, and the length of development on this irregular shaped property once two 25' front yard setbacks are accounted for ranges from about 65' – 110' in depth.
- The site is flat, irregular in shape, and according to the application is 6,982 square feet in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area. The site has two 25' front yard setbacks. Most lots in R-7.5(A) zoning have one front yard setback.
- According to DCAD records, the "main improvement" at 2235 Madera Street is a structure built in 1922 with 1,068 square feet of living area; with no "additional improvements."
- According to the applicant, the existing structure/house that he intends to replace provides a 14.5' setback. (The proposed structure/house is have a 14' setback).
- 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 to front yard setback regulations 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 variance to front yard setback regulations 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 front yard variance request, imposing a condition whereby the applicant must comply with the submitted site plan, the structure in the front yard setback would be limited to that what is shown on the submitted plan – a structure that could be located close as 14' from the Madera Street front property line or 11' into this 25' front yard setback along Madera Street.

BOARD OF ADJUSTMENT ACTION: AUGUST 20, 2013

APPEARING IN FAVOR: Robert Hunt, 5811 Gaston Ave., Dallas, TX

APPEARING IN OPPOSITION: No One

MOTION: Schweitzer

I move that the Board of Adjustment, in Appeal No. **BDA 123-072**, on application of Robert V. Hunt, **grant** the 11 foot variance to the 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 condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: Jackson

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

NAYS: 0 -

MOTION PASSED: 5– 0(unanimously)

FILE NUMBER: BDA 123-075

BUILDING OFFICIAL’S REPORT: Application of Mary Ann Caruth for a special exception for the handicapped to the side yard setback regulations at 2736 Southwood Drive. This property is more fully described as Lot 35, Block B/6038 and is zoned R-10(A), which requires a 6 foot side yard setback. The applicant proposes to construct and maintain an accessory structure for a handicapped person and provide a 3 foot side yard setback, which will require a 3 foot special exception to the side yard setback regulations necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.

LOCATION: 2736 Southwood Drive

APPLICANT: Mary Ann Caruth

REQUEST:

A special exception for the handicapped of 3’ is requested in conjunction with constructing and maintaining an approximately 360 square foot carport addition to align with an existing approximately 400 square foot “work room” accessory structure, part of which would be located in the site’s required 6’ western side yard setback on a site developed with a single family home.

STANDARD FOR A SPECIAL EXCEPTION FOR THE HANDICAPPED: Section 51A-1.107.(b)(1) states that the Board of Adjustment shall grant a special exception to any regulation in this chapter, if, after a public hearing, the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling. The term “handicapped person,” means a person with a “handicap,” as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception for the handicapped since the basis for this type of appeal is when the board finds that the

exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.

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:

- June 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.
- July 3, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 5, 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 July 31st deadline to submit additional evidence for staff to factor into their analysis; and the August 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.
- August 5, 2013: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).

August 6, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Interim 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 additional review comment sheets with comments were submitted in conjunction with this application.

August 12, 2013: A review comment sheet dated 7-12-13 from the Building Inspection Senior Plans Examiner/Development Code Specialist was forwarded to the Board Administrator. The review comment sheet was marked "Has no objections if certain conditions are met" commenting "Building code/Fire code requires that a 1 hour fire-rated wall be constructed on the west side of the carport since it is within 5 feet of the adjoining next door property."

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining an approximately 360 square foot carport addition to align with an existing approximately 400 square foot "work room" accessory structure, part of which would be located in the site's required 6' western side yard setback on a site developed with a single family home.
- The minimum side yard for structures on properties zoned R-10(A) is 6'.
- A site plan has been submitted that denotes that the proposed carport addition is 3' from the site's western side property line or 3' into the required 6' side yard setback and in alignment with an existing accessory structure that does not need to provide a side yard setback given that it is located in the rear 30 percent of the lot and does not exceed 15 feet in height.
- According to calculations taken from the site plan by the Board Administrator approximately 54 square feet (or about 15 percent) of the proposed approximately 360 square foot carport is to be located in the site's western 6' side yard setback.
- Section 51A-1.107(b)(1) states that the Board of Adjustment shall grant a special exception to any regulation in this chapter, if, after a public hearing, the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling. The term "handicapped person," means a person with a "handicap," as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended.

A copy of the "handicap" definition from this act was provided to the Board Administrator by the City Attorney's Office. Section 3602 of this act states the following:

"(h) "Handicap" means, with respect to a person -

1. a physical or mental impairment which substantially limits one or more of such person's major life activities,
 2. a record of having such an impairment, or
 3. being regarded as having such an impairment,
- but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 802 of Title 21)."
- Unlike most requests where the board is considering a structure that encroaches into a setback via a variance (where property hardship must be demonstrated), or where the board is considering a carport structure that encroaches into the side yard setback (where no detrimental impact on surrounding properties must be demonstrated), the board is to consider this special exception for the handicapped request solely on whether they conclude that the special exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.
 - The applicant has stated that because of the bend in the driveway, it would be difficult to park all the way to the east edge of the driveway, and that it would take excessive maneuvering to get closer than 2 feet to the eastern edge.
 - The applicant states that her request is made to allow her room to maneuver between cars with her wheelchair.
 - The applicant has the burden of proof in establishing the following:
 - The special exception (which in this case is requested to construct and maintain a carport in the western side yard setback) is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling; and
 - there is a person with a "handicap" (as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended) who resides and/or will reside on the site.

If the Board were to grant the request, and impose conditions that compliance with the submitted site plan is required, and that the special exception expires when a handicapped person no longer resides on the property, the carport would be required to be constructed and maintained in the location shown on the submitted site plan for as long as the applicant or any other handicapped person resides on the site.

BOARD OF ADJUSTMENT ACTION: AUGUST 20, 2013

APPEARING IN FAVOR: No One

APPEARING IN OPPOSITION: No One

MOTION: Nolen

I move that the Board of Adjustment grant application **BDA 123-075** 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.

- The special exception expires when a handicapped person no longer resides on the property.

SECONDED: Jackson

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

NAYS: 0 -

MOTION PASSED: 5– 0(unanimously)

FILE NUMBER: BDA 123-079

BUILDING OFFICIAL’S REPORT: Application of Peter Anastopulos for a variance to the rear yard setback regulations at 6858 Burwood Lane. This property is more fully described as Lot 12, Block C/2806 and is zoned R-10(A), which requires a 6 foot rear yard setback. The applicant proposes to construct and maintain a structure and provide a 0 foot rear yard setback, which will require a 6 foot variance to the rear yard setback regulations.

LOCATION: 6858 Burwood Lane

APPLICANT: Peter Anastopulos

REQUEST:

A variance to the rear yard setback regulations of 6’ is made in conjunction with constructing and maintaining an addition to an existing one-story home that would align eastward and vertically/upward from the existing home structure, part of which would be located in the 6’ rear 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 site plan is required.

Rationale:

- The lot's irregular shape and restrictive area (caused by the lot being about 1,300 square feet less in area than most lots in the same R-10(A) zoning classification) preclude the applicant from developing it in a manner commensurate with other developments found on similarly-zoned R-10(A) lots.
- The applicant has provided information showing that the existing home would be smaller after the proposed addition (at about 3,600 square feet) than the average of 7 other homes/properties (at about 4,200 square feet) that are similarly-zoned R-10(A).
- Granting this request does not appear to be contrary to public interest given that the proposal involves merely a vertical and 12' long addition to an existing nonconforming structure – a structure in the rear yard setback separated from the properties to the south by a 10' wide unimproved alley easement.

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 structure that appears to be nonconforming as to the rear yard setback regulations. The areas to the north, south, east, and west are developed with single family uses.

Zoning/BDA History:

1. BDA 023-076, 6863 Burwood Lane (the property immediately north of the subject site) On May 19, 2003, the Board of Adjustment Panel C granted requests for variances to the side yard setback regulations of 6' and to the off-street parking regulations of 10.5'. The board imposed the following conditions to the side yard variance request: compliance with the submitted site plan is required; and that the existing curb cut is rebuilt/removed along Pickens Street; and the following conditions to the off-street parking regulations: compliance with the submitted site plan is required; an automatic garage door must be maintained in working order at all time; at no time may the area in

front of the garage be utilized for parking of vehicles; the 20' visibility triangle at the alley turnout to Pickens Street is kept clear of any visual obstruction such as parked vehicle, fence, landscaping, earth berm, or any structure; and all applicable permits must be obtained. The case report stated that the requests were made in conjunction with an addition to be constructed and maintained on a site developed with a single family home.

Timeline:

June 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.

July 3, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

July 5, 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 July 31st deadline to submit additional evidence for staff to factor into their analysis; and the August 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.

July 10, 2013: The Board Administrator emailed the applicant the following information:

- code provisions related to nonconforming structures.

August 6, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Interim 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 additional review comment sheets with comments were submitted in conjunction with this application.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining an addition to an existing one-story single family home that appears to be nonconforming as to the rear yard setback regulations because of the fact that (according to DCAD) it was built in 1961. The proposed structure/addition is to be added atop the existing structure in the rear yard setback, and lengthened from the existing structure in the rear yard setback approximately 12'.
- The subject site is located at the southeast corner of Burwood Lane and Pickens Street. Regardless of how the existing single-family structure is oriented to front northward to Burwood Lane, the subject site has only one 30' front yard setback along Burwood Lane, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in a single-family zoning district. The subject site has a 6' side yard setback on the east side of the site; a 6' side yard setback along the west (or Pickens Street) side of the site since there is no continuity of an established front yard setback to be maintained south of the site since the lot immediately to the south fronts southward to Lorna Lane, and a 6' rear yard setback on the south side of the site.
- Structures on lots zoned R-10(A) are required to provide a minimum rear yard setback of 6'.
- A site plan has been submitted denoting a portion of the existing structure and proposed addition located as close as 1' away from the rear property line or 5' into the 6' rear yard setback.
- The subject site is separated from the property immediately to its rear/south by a 10' wide unimproved alley easement.
- The applicant has chosen to only seek variance to the rear yard setback regulations for the new construction/addition to the existing structure on the site, and to not seek variance to remedy/address the nonconforming aspect of the existing nonconforming structure that is located in the site's rear yard setback.
- The code defines nonconforming structure as a structure that does not conform to the regulations of the code, but which was lawfully constructed under the regulations in force at the time of construction.
- According to DCAD records, the "main improvements" at 6858 Burwood is a structure built in 1961 with 2,894 square feet of living area and 2,894 square feet of total area. According to DCAD records, the "additional improvements" at 6858 Burwood is a basement, and a 502 square foot attached garage.
- The code states 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.
- It appears from calculations taken from the submitted site plan by the Board Administrator that approximately 50 square feet (or 20 percent) of the approximately 240 square foot addition building footprint is located in the site's 6' rear yard setback.
- It appears from calculations taken from the submitted site plan by the Board Administrator that approximately 100 square feet (or approximately 15 percent) of the approximately 660 square foot 2nd floor addition building footprint is located in the site's 6' rear yard setback.

- The subject site is slightly sloped, irregular in shape, and according to the application, is approximately 8,700 square feet in area. The site is zoned R-10(A) where lots are typically 10,000 square feet.
- The subject site is separated from the property to the rear (or south) of it by a 10' alley/easement.
- The applicant has provided information showing that the existing home (currently with about 2,900 square feet of living area) would be smaller after the proposed addition (at about 3,600 square feet) than the average of 7 other homes/properties (at about 4,200 square feet) that are similarly-zoned R-10(A).
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the rear 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-10(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-10(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 rear yard setback would be limited to what is shown on this document– which is a structure to be located on the rear property line or 6' into the 6' rear yard setback.

BOARD OF ADJUSTMENT ACTION: AUGUST 20, 2013

APPEARING IN FAVOR: No One

APPEARING IN OPPOSITION: No One

MOTION: **Nolen**

I move that the Board of Adjustment grant application **BDA 123-079** 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: **Jackson**

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

NAYS: 0 -

MOTION PASSED: 5– 0(unanimously)

FILE NUMBER: BDA 123-076

BUILDING OFFICIAL’S REPORT: Application of Bryan Hull for a variance to the front yard setback regulations at 4932 Cedar Springs Road. This property is more fully described as Lot 1B, Block A/2343 and is zoned PD-193 (MF-2), which requires a front yard setback of 15 feet. The applicant proposes to construct a structure and provide a 10 foot front yard setback, which will require a 5 foot variance to the front yard setback regulations.

LOCATION: 4932 Cedar Springs Road

APPLICANT: Bryan Hull

August 20, 2013 Public Hearing Notes:

- The applicant submitted additional documentation to the Board at the public hearing that included a “landscape planting plan” of the subject site and the two lots southeast of the site – neighboring lots the applicant represented that he was developing along with the subject site.

REQUEST:

A variance to the front yard setback regulations of 5’ is made in conjunction with constructing and maintaining a five-unit multifamily development structure, part of which would be located in the site’s Mahanna Street 15’ front yard setback on a site that is currently undeveloped. (No part of the proposed multifamily development structure is represented to be located in the site’s Cedar Springs Road 15’ front 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:

- (G) 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;
- (H) 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
- (I) 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:

Denial

Rationale:

- Even though the subject site is unique to most lots zoned PD 193 (MF-2) in that it has two front yard setbacks, the applicant has not substantiated how this feature precludes him from developing it in a manner commensurate with the development upon other parcels of land in the same zoning district.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is undeveloped. The areas to the north, east, south, and west are developed mostly as multifamily 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:

- June 14, 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.
- July 5, 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 July 31st deadline to submit additional evidence for staff to factor into their analysis; and the August 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.

August 6, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Interim 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 additional review comment sheets with comments were submitted in conjunction with this application.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining a 3-story, 5-unit, multifamily structure on an undeveloped site that would be located 10' from the Mahanna Street front property line or 5' into the required 15' front yard setback. No part of the proposed multifamily development structure is represented to be located in the site's Cedar Springs Road 15' front yard setback).
- Multiple family structures on lots zoned PD 193 (MF-1) are required to provide a minimum front yard setback of 15'.
- The subject site is located at the northeast corner of Cedar Springs Road and Mahanna Street. Regardless of how the proposed multifamily structure is to be oriented, the subject site has two 15' front yard setbacks along both streets. The site has a 15' front yard setback along Cedar Springs Road, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in a single-family, duplex, or multiple-family zoning district. The site also has a 15' front yard setback along Mahanna Street, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where depending on the height of the structure, a 0 - 10' setback is required. But the site's Mahanna Street frontage is deemed a front yard setback nonetheless to maintain the continuity of the established front yard setback established by the lots northeast of the site that have front yard setbacks along Mahanna Street.
- A site plan has been submitted denoting a portion of the proposed structure to be located 10' from the site's Mahanna Street front property line or 5' into the 15' front yard setback. (No structure is shown located in the site's Cedar Springs Road front yard setback).
- It appears from calculations made by the Board Administrator from the submitted site plan that approximately 500 square feet (or about 16 percent) of the proposed approximately 3,200 square foot building footprint is to be located in the site's Mahanna Street 15' front yard setback.
- DCAD records indicate "no main improvement" for property at 4924 Cedar Springs Road.
- The subject site is slightly irregular in shape (approximately 77' on the north, approximately 53' on the south; approximately 132' on the east; and approximately 138' on the west) and according to the application, is 0.10 acres (or approximately

4,300 square feet) in area. The site is zoned PD 193 (MF-2). The site has two front yard setbacks; most lots in this zoning district have one front yard setback.

- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD 193 (MF-2) zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD 193 (MF-2) zoning classification.
- If the Board were to grant the variance request and impose the submitted site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document– which is a structure to be located 10’ from the site’s Mahanna Street front property line (or 5’ into this 15’ front yard setback).

BOARD OF ADJUSTMENT ACTION: AUGUST 20, 2013

APPEARING IN FAVOR: Bryan Hull, 600 Wentworth, Richardson, TX

APPEARING IN OPPOSITION: Thomas Brock, 4837 Cedar Springs, Dallas, TX

MOTION: **Hounsel**

I move that the Board of Adjustment, in Appeal No. **BDA 123-076**, on application of Bryan Hull, hold this matter under advisement until **September 17, 2013**.

SECONDED: **Schweitzer**

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

NAYS: 0 -

MOTION PASSED: 5– 0(unanimously)

MOTION: **Schweitzer**

I move to adjourn this meeting.

SECONDED: **Jackson**

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

NAYS: 0 -

MOTION PASSED: 5– 0(unanimously)

1:41 P. M. - Board Meeting adjourned for **August 20, 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.