

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, 6ES
TUESDAY, SEPTEMBER 16, 2014**

MEMBERS PRESENT AT BRIEFING: Clint Nolen, Vice Chair, Larry French, regular member, Mark Rieves, regular member, Hector Leija, regular member, and Lorlee Bartos, alternate member

MEMBERS ABSENT FROM BRIEFING: Lindsey Williams, regular member

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator
Jamilah Way, Asst. City Attorney,
Donna Moorman, Chief Planner, Todd Duerksen, Development Code Specialist, Neva Dean, Interim Asst. Director, Phil Erwin, Chief, Arborist and Trena Law, Board Secretary

MEMBERS PRESENT AT HEARING: Clint Nolen, Vice Chair, Larry French, regular member, Mark Rieves, regular member, Hector Leija, regular member, and Lorlee Bartos, alternate member

MEMBERS ABSENT FROM HEARING: Lindsey Williams, regular member

STAFF PRESENT AT HEARING: Steve Long, Board Administrator
Jamilah Way, Asst. City Attorney,
Donna Moorman, Chief Planner, Todd Duerksen, Development Code Specialist, Neva Dean, Interim Asst. Director, Phil Erwin, Chief, Arborist and Trena Law, Board Secretary

11:38 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **September 16, 2014** docket.

1:01 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 24, 2014 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 17, 2014

MOTION: None

The minutes were approved without a formal vote.

FILE NUMBER: BDA 134-078

BUILDING OFFICIAL’S REPORT: Application of Tim Bonner for a special exception to the landscape regulations at 4700 S. Buckner Boulevard. This property is more fully described as Lot 2, Block X/6127, and is zoned MC-1, which requires mandatory landscaping. The applicant proposes to construct and maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 4700 S. Buckner Boulevard

APPLICANT: Tim Bonner

REQUEST:

A request for a special exception to the landscape regulations is made to construct and maintain a church structure/use (Ebenezer Memorial Missionary Baptist Church) on an undeveloped site, and not fully meet the landscape regulations.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

The board may grant a special exception to the landscape regulations of this article upon making a special finding from the evidence presented that:

- (1) strict compliance with the requirements of this article will unreasonably burden the use of the property;
- (2) the special exception will not adversely affect neighboring property; and
- (3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

In determining whether to grant a special exception, the Board shall consider the following factors:

- the extent to which there is residential adjacency;
- the topography of the site;
- the extent to which landscaping exists for which no credit is given under this article; and
- the extent to which other existing or proposed amenities will compensate for the reduction of landscaping.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan is required.

Rationale:

- The City’s Chief Arborist recommends approval of the applicant’s request in that:
 - 1) strict compliance with the landscape regulations will unreasonably burden the use of the property given the fact number of underground utility easements are located within the front 50 feet of the property which restricts the planting of trees in the location required by Article X: The Landscape Regulations; and
 - 2) the special exception will not adversely affect neighboring property given that the features shown on the alternate landscape plan fully comply with all Article X requirements with the exceptions of street tree location and the provision of only one full design standard where two are required – in this case, only a portion of a design standards is provided at the southern edge of the property.

BACKGROUND INFORMATION:

Zoning:

Site: MC 1 (Multiple commercial)
North: MC 1 (Multiple commercial)
South: MC 1 (Multiple commercial)
East: LI (Light industrial)
West: MC 1 (Multiple commercial)

Land Use:

The site is currently undeveloped. The area to the north is developed with a medical office use; the area to the east is developed with office uses; and the areas to the south and west are undeveloped.

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.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining a church structure/use (Ebenezer Memorial Missionary Baptist Church) on an undeveloped site, and not fully meeting the landscape regulations. More specifically, according to the City of Dallas Chief Arborist, the site does not comply with the landscape regulations in that: 1) five street trees are not located within 30 feet of the street curb; and 2) the site does not fully provide the required two design standards (a small area of off-street parking screening is not provided).
- The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period.
- The City of Dallas Chief Arborist submitted a memo regarding the applicant's request (see Attachment A). The memo states how this request is triggered by new construction of a church.
- The Chief Arborist's memo lists the following factors for consideration:
 1. The plan will fully comply with all Article X requirements except for street trees and a portion of a design standard at the southern edge of the property. A number of underground utility easements are placed within the front 50 feet of the property which restricts the planting of trees. Five large canopy trees have been placed in close proximity to the easements as near as possible to the front property line. A row of screening shrubs are provided to help screen the majority of the front parking lot.
 2. Foundation planting shrubs and cypress trees also provide front yard buffering. An alternative design standard of street buffer would be available except for not providing large trees along the 10 foot wide street buffer due to utility easements.
- The City of Dallas Chief Arborist recommends approval of this request because strict compliance with the requirements of Article X would unreasonably burden the use of the property, and the plan would not adversely affect neighboring property.
- The applicant has the burden of proof in establishing the following:
 - Strict compliance with the requirements of the landscape regulations of the Dallas Development Code will unreasonably burden the use of the property; and the special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose the submitted alternate landscape plan as a condition to the request, the site would be provided exception from full compliance with the street tree and design standard requirements of Article X: The Landscape Regulations.

Timeline:

June 25, 2014: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

August 14, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

August 15, 2014: 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 August 27th deadline to submit additional evidence for staff to factor into their analysis; and the September 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

September 2, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Sustainable Development and Construction Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, and the Assistant City Attorney to the Board.

September 3, 2014: The City of Dallas Chief Arborist submitted a memo regarding the request (see Attachment A).

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 17, 2014

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: French

I move that the Board of Adjustment grant application **BDA 134-078** 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 alternate landscape plan is required.

SECONDED: Nolen

AYES: 5 – Nolen, French, Rieves, Leija, Bartos

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 134-086

BUILDING OFFICIAL'S REPORT: Application of Thomas Persch, represented by Michael Kendall, Kendall Landscape Architecture, for a special exception to the landscape regulations at 1919 McKinney Avenue. This property is more fully described as Lot 1A, Block A/358, and is zoned PD193 (HC), which requires mandatory landscaping. The applicant proposes to construct and maintain a structure and/or increase paving and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 1919 McKinney Avenue

APPLICANT: Thomas Persch
Represented by Michael Kendall, Kendall Landscape Architecture

REQUEST:

A request for a special exception to the landscape regulations is made to construct and maintain a surface parking lot on site developed with an office structure/use (HKS) - a structure that according to the application was developed prior to the landscape ordinance adopted in the mid 80's.

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

Section 51P-193-126(a)(4) of the Dallas City Code specifies that the board may grant a special exception to the landscaping requirements of this section if, in the opinion of the Board, the special exception will not compromise the spirit and intent of this section. When feasible, the Board shall require that the applicant submit and that the property comply with a landscape plan as a condition to granting the special exception.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan is required.

Rationale:

- The City of Dallas Chief Arborist supports the applicant's request in that the submitted revised alternate landscape proposal meets the spirit and intent of the PD 193 landscape requirements. In this case, the parking lot that is a portion of a larger developed site that triggers full compliance with the landscape requirements for the entire property is proposed to comply with the PD 193 regulations for trees, sidewalks, and screening, and that noncompliant features on the remaining portion of the property were approved with the prior development on the subject site.

BACKGROUND INFORMATION:

Site: PD 193 (HC) (Planned Development, Heavy Commercial)
North: PD 193 (PDS 50) (Planned Development, Planned Development)
South: PD 193 (PDS 24) (Planned Development, Planned Development)
East: PD 193 (PDS 66) (Planned Development, Planned Development)
West: PD 193 (HC) (Planned Development, Heavy Commercial)

Land Use:

The subject site is developed with an office structure/use (HKS). The areas to the north, east, south, and west are developed with a mix of land uses.

Zoning/BDA History:

1. BDA 967-300, Property at 1907 McKinney Avenue (a portion of the subject site) On October 28, 1997, the Board of Adjustment Panel A was informed that the originally submitted request for a special exception to the landscape regulations was removed from the docket since it had been determined by staff that the request originally heard on September 23, 1997 was not required.

GENERAL FACTS/ STAFF ANALYSIS:

- This request focuses on constructing and maintaining an approximately 1,400 square foot surface parking lot on an approximately 1.6 acre site that is developed with an office structure/use (HKS), and not fully providing required landscaping. More specifically, according to the City of Dallas Chief Arborist, the mostly developed site does not conform to PD 193 landscape regulation standards for trees and sidewalk location and width.
- 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 regarding the applicant's request (see Attachment A). The memo states how this request is triggered by new construction of a parking lot on a portion of the property.
- The Chief Arborist's memo lists the following factors for consideration:
 1. PD 193 (CH) standards are primarily for parkway trees, sidewalks, and screening of off-street parking. (There is no garage to buffer).

2. The parking lot corner landscape plan is designed to comply with the PD 193 regulations for trees, sidewalks, and screening. The new parking lot is the only exterior site improvement on the property. Other existing trees and a parking lot screening wall are provided along McKinney Avenue approved with prior development.
- The City of Dallas Chief Arborist recommends approval of this request because it does not compromise the spirit and intent of the PD 193 landscape regulations.
 - The applicant has the burden of proof in establishing the following:
 - The special exception (where an alternate landscape plan has been submitted that is deficient in meeting the tree and sidewalk location and width requirements of the PD 193 landscape regulations) will not compromise the spirit and intent of Section 51P-193-126: Landscape, streetscape, screening, and fencing standards”.
 - If the Board were to grant this request and impose the submitted alternate landscape plan as a condition, the site would be granted exception from full compliance to tree and sidewalk location and width requirements of the Oak Lawn PD 193 landscape ordinance.

Timeline:

- July 7, 2014: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- August 14, 2014: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- August 15, 2014: 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 August 27th deadline to submit additional evidence for staff to factor into their analysis; and the September 5th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- September 2, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Sustainable Development and Construction Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, and the Assistant City Attorney to the Board.

September 4, 2014: The City of Dallas Chief Arborist submitted a memo regarding this application (see Attachment A).

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 17, 2014

APPEARING IN FAVOR: Michael Kendall, 6976 Santa Barbara
Tom Persch, 1701 N. Market St., Ste 220, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Nolen

I move that the Board of Adjustment, in request No. **BDA 134-086**, on application of Thomas Persch, **grant** the request to provide an alternate landscape plan as a special exception to the landscape regulations in PD193 (HC) code because our evaluation of the property and the testimony shows that the 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 Oak Lawn Ordinance:

- Compliance with the submitted alternate landscape plan is required.

SECONDED: Rieves

AYES: 5 – Nolen, French, Rieves, Leija, Bartos

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 134-087

BUILDING OFFICIAL’S REPORT: Application of Andy Rivas for a variance to the front yard setback regulations and a special exception to the fence height regulations at 7218 La Vista Drive. This property is more fully described as Lot 23, Block C/2729, and is zoned R-7.5(A), which requires a front yard setback of 25 feet and limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain a structure and provide a 4 foot 6 inch front yard setback, which will require a 20 foot 6 inch variance to the front yard setback regulations, and to construct and maintain a 7 foot 6 inch high fence, which will require a 3 foot 6 inch special exception to the fence height regulations.

LOCATION: 7218 La Vista Drive

APPLICANT: Andy Rivas

REQUESTS:

The following requests have been made on a site that is currently under development:

1. A request for a variance to the front yard setback regulations of 20’ 6” is made to construct and maintain a single family home structure with a building footprint of approximately 3,100 square feet, part of which is proposed to be located in one of the site’s two 25’ front yard setbacks (Tucker Street).

2. A request for a special exception to the fence height regulations of 3' 6" is made to construct and maintain generally a 6' high solid wood fence (that reaches 7' 6" in height given grade changes) in one of the site two 25' front yard setbacks (Tucker Street).

(No request has been made in this application to construct/maintain any structure or fence higher than 4' in the site's La Vista Drive 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:

- (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 FENCE HEIGHT REGULATIONS:

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

STAFF RECOMMENDATION (variance):

Approval, subject to the following condition:

- Compliance with the submitted site plan is required

Rationale:

- The subject site is unique and different from most lots in the R-7.5(A) zoning district in that it is a corner lot with a restrictive area due to its two front yard setbacks. The atypical two front yard setbacks on the lot preclude the applicant from developing it in a manner commensurate with development on other similarly zoned properties with one front yard setback. Documentation submitted by the applicant shows that his proposal with 4,171 square feet is near the 4,175 square foot average of 7 other properties he identified zoned R-7.5(A).

- The corner lot subject site has an approximately 25' width for development once a 25' front yard and a 5' side yard setback is accounted for on the approximately 55' wide subject site. Other lots of this width in this zoning district with one front yard, two side yards, and one rear yard of the same width would have a 45' width for development.
- Other than for the fact a decorative brick atop a chimney is proposed to be located 4' 6" from the site's Tucker Street front property line, the construction/maintenance of the proposed single family home would require no variance if the lot's Tucker Street frontage were a side yard where only a 5' side yard setback is required in the R-7.5(A) zoning district.

STAFF RECOMMENDATION (fence 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.

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 being developed with a single family home structure. The area 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.

GENERAL FACTS/STAFF ANALYSIS (variance):

- This request focuses on constructing and maintaining a single family home structure with a building footprint of approximately 3,100 square feet, part of which is proposed to be located in one of the site's two 25' front yard setbacks (Tucker Street).
- Structures on lots zoned R-7.5(A) are required to provide a minimum front yard setback of 25'.

- The site is located on the west corner of La Vista Drive and Tucker Street. The site has two 25' front yard setbacks. The site has a 25' front yard setback along La Vista Drive because it is 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 site also has a 25' front yard setback along Tucker Street, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where only a 5' setback is required but is a side yard treated as a front yard setback nonetheless to maintain the continuity of the established front yard setback established by the lots developed with single family homes southwest of the site zoned R-7.5(A) that front/are oriented southeastward towards Tucker Street.
- Regardless of how the proposed home is to be oriented to front onto La Vista Drive (and "side" to Tucker Street), the site has two 25' front yard setbacks where the focus of the applicant's request in this application is only to construct and maintain the single family home structure in the site's front yard setback on Tucker Street. (No part of the application is made to construct/maintain a structure in the site's La Vista Road front yard setback).
- The submitted site plan denotes that the single family home structure located as close as 5' from the site's Tucker Street front property line or 20' into this 25' front yard setback. However the Building Official's report states that a 4' 6" front yard setback is provided (measured at the decorative brick atop a chimney) where the structure is 20' 6" into the Tucker Street front yard setback.
- According to the applicant, about 700 square feet (or approximately 22 percent) of the approximately 3,200 square foot building footprint) is proposed to be located in the site's Tucker Street 25' front yard setback.
- The applicant has submitted a document showing that the his proposal with 4,171 square feet is near the 4,175 square foot average of 7 other properties he found zoned R-7.5(A).
- According to DCAD records, the "main improvement" at 7218 La Vista Drive is a structure with 4,227 square feet of living/total area built in 2104. (No additional improvements are noted at this address).
- The subject site is somewhat sloped, rectangular in shape (150' x 55'), and according to the applicant's representative, is 0.189 acres (or approximately 8,250 square feet) in area. The site is zoned R-7.5(A) where lots typically are 7,500 square feet in area.
- The site has two, 25' front yard setbacks; and two 5' side yard setbacks; most R-7.5(A) residentially-zoned lots have one 25' front yard setback, two 5' side yard setbacks, and one 5' rear yard setback.
- The site has an approximately 25' width for development once a 25' front yard and a 5' side yard setback is accounted for on the approximately 55' wide subject site. Other lots of this width in this zoning district with one front yard, two side yards, and one rear yard of the same width would have a 45' width for development.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the Tucker Street 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 required to be constructed and maintained to what is shown on this document– which in this case is a structure located as close as 4’ 6” from the site’s Tucker Street front property line (or 20’ 6” into this 25’ front yard setback).

GENERAL FACTS/STAFF ANALYSIS (fence special exception):

- This request focuses on constructing and maintaining generally a 6’ high solid wood fence (that reaches 7’ 6” in height given grade changes) in the one of the site two 25’ front yard setbacks (Tucker Street) 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 site is located on the west corner of La Vista Drive and Tucker Street. The site has two 25’ front yard setbacks. The site has a 25’ front yard setback along La Vista Drive because it is 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 site also has a 25’ front yard setback along Tucker Street, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where only a 5’ setback is required but is a side yard treated as a front yard setback nonetheless to maintain the continuity of the established front yard setback established by the lots developed with single family homes southwest of the site zoned R-7.5(A) that front/are oriented southeastward towards Tucker Street.
- Regardless of how the proposed home is to be oriented to front onto La Vista Drive (and “side” to Tucker Street), the site has two 25’ front yard setbacks where the focus of the applicant’s request in this application is only to construct and maintain a fence higher than 4’ in the site’s front yard setback on Tucker Street. (No part of the application is made to construct/maintain a fence higher than 4’ in height in the site’s La Vista Road front yard setback).
- The applicant has submitted a partial site plan/elevation of the proposal in the Tucker Street front yard setback with notations indicating that the fence reaches a maximum height of 7’ 6”.
- The following additional information was gleaned from the submitted site plan:
 - The proposed fence in Tucker Street front yard setback is represented as being approximately 80’ in length parallel to the street; and approximately 7’ and 25’ in length perpendicular to the street on the lot’s northeast and southwest sides of the site in the Tucker Street front yard setback.

- The proposal is represented as being located approximately on the front property line. (No representation is made on the partial site plan of the Tucker Street pavement line).
- The proposal is located across from one single family home with an approximately 5' high open metal fence.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences other than the one mentioned above directly southeast of the site that appeared to be above 4' in height and located in a front yard setback.
- As of September 8, 2014, 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 3' 6" will not adversely affect neighboring property.
- Granting this special exception of 3' 6" with a condition imposed that the applicant complies with the submitted partial site plan/elevation would require the proposal exceeding 4' in height in the front yard setback to be constructed and maintained in the location and of the heights and materials as shown on this document.

Timeline:

- July 18, 2014: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- August 14, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- August 15, 2014: 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 August 27th deadline to submit additional evidence for staff to factor into their analysis; and the September 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the requests; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- September 2, 2014: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).
- September 2, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Sustainable Development and Construction Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the City of Dallas Chief Arborist, the Sustainable Development and

Construction Department Current Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 17, 2014

APPEARING IN FAVOR: Bryan Reid, 550 S. Hwy S., Fairview, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Rieves

I move that the Board of Adjustment, in request No. **BDA 134-087**, on application of Andy Rivas, **deny** the front yard setback variance requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: Bartos

AYES: 1 – Rieves

NAYS: 4 – Nolen, French, Leija, Bartos

MOTION FAILED: 1 – 4

MOTION #2: Nolen

I move that the Board of Adjustment, in request No. **BDA 134-087**, on application of Andy Rivas, **grant** a 20 foot 6 inch variance to the front-yard setback regulations because our evaluation of the property and 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: Leija

AYES: 4 – Nolen, French, Leija, Bartos

NAYS: 1 – Rieves

MOTION PASSED: 4 – 1

MOTION #3: Rieves

I move that the Board of Adjustment, in request No. **BDA 134-087**, on application of Andy Rivas, **grant** the request to construct and maintain a 7 foot 6 inch high fence in the property's front-yard as a special exception to the fence height requirements in the Dallas Development Code, because our evaluation of the property and the testimony

shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Nolen

AYES: 5 – Nolen, French, Rieves Leija, Bartos

NAYS: 0 –

MOTION PASSED: 5 – 0(unanimously)

MOTION: Bartos

I move to adjourn this meeting.

SECONDED: French

AYES: 5 – Nolen, French, Rieves, Leija, Bartos

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

1:31 P. M.: - Board Meeting adjourned for **September 17, 2014.**

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.