

**BOARD OF ADJUSTMENT, PANEL A  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, 6ES  
TUESDAY, OCTOBER 21, 2014**

MEMBERS PRESENT AT BRIEFING: Clint Nolen, Vice Chair, Larry French, regular member, Lindsey Williams, regular member, Mark Rieves, regular member and Hector Leija, regular member

MEMBERS ABSENT FROM BRIEFING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator  
Jamilah Way, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Danielle Jimenez, Planner, Ali Hatefi, Engineer, Phil Erwin, Chief, Arborist

MEMBERS PRESENT AT HEARING: Clint Nolen, Vice Chair, Larry French, regular member, Lindsey Williams, regular member, Mark Rieves, regular member and Hector Leija, regular member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT HEARING: Steve Long, Board Administrator  
Jamilah Way, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Danielle Jimenez, Planner, Ali Hatefi, Engineer, Phil Erwin, Chief, Arborist, Donna Moorman, Chief Planner

**11:30 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **October 21, 2014** docket.

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**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.

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel A September 16, 2014 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: October 21, 2014, 2014**

**MOTION:** None

The minutes were approved without a formal vote.

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**MISCELLANEOUS ITEM NO. 2**

**BOARD OF ADJUSTMENT ACTION: October 21, 2014**

**MOTION: Nolen**

I move approval of Panel A’s 2015 Public Hearing Calendar.

**SECONDED: Rieves**

**AYES: 5 – Nolen, French, Williams, Rieves, Leija**

**NAYS: 0 -**

**MOTION PASSED: 5 – 0 (unanimously)**

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**FILE NUMBER: BDA 134-092**

**BUILDING OFFICIAL’S REPORT:** Application of Laura Hoffman, Winstead, PC, for a special exception to the landscape regulations at 4338 (AKA 4320) Congress Avenue. This property is more fully described as Lot 16A, Block 7/1616, and is zoned PD193 (MF-2), 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: 4338 (AKA 4320) Congress Avenue**

**APPLICANT: Laura Hoffman, Winstead, PC**

**REQUEST:**

A special exception to the landscape regulations is made to maintain a multifamily development (Aura Wycliff, Phase 2), and not fully provide required landscaping.

(Note that this application is adjacent to a property to the south across Congress Avenue where the same applicant seeks a similar landscape special exception from Board of Adjustment Panel A on October 21<sup>st</sup>: BDA 134-109).

**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 landscape plan is required.

Rationale:

- The applicant has substantiated how granting this request would not compromise the spirit and intent of the landscaping requirements of PD 193.
- The City of Dallas Chief Arborist supports the request because the applicant has demonstrated the features shown on the submitted landscape plan meet with the spirit and intent of PD 193 regulations. The applicant’s request for leniency to locating 8 street trees in their required locations can be supported since the applicant is avoiding aerial canopy conflicts between the larger canopy trees and nearby street trees along Congress Avenue.

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: PD 193 (MF-2) (Planned Development, Multifamily)
- North: PD 193 (MF-2) (Planned Development, Multifamily)
- South: PD 193 (PDS 80) (Planned Development, Planned Development)
- East: PD 193 (MF-2) (Planned Development, Multifamily)
- West: PD 193 (MF-2) (Planned Development, Multifamily)

## **Land Use:**

The subject site is developed with a multifamily development. The areas to the north, south, east, and west appear to be developed mostly with residential uses.

## **Zoning/BDA History:**

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| 1. BDA 134-109, Property at 4343 Congress Avenue (the lot immediately south of subject site) | On October 21, 2014, the Board of Adjustment Panel A will consider a request for a special exception to the landscape regulations requested in conjunction with maintaining a multifamily development on the site, and not fully providing required landscaping. |
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## **GENERAL FACTS/ STAFF ANALYSIS:**

- This request focuses on maintaining a multifamily development, and not fully providing required landscaping. More specifically, according to the City of Dallas Chief Arborist, the site does not conform to PD 193 landscape regulation standards related to street tree requirements.
- 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 states in a memo (see Attachment A) that the request in this case is triggered by new construction of multifamily development.
- The Chief Arborist notes that the site is deficient in meeting the landscape requirements in that only 6 of 8 required trees are proposed to be planted in the locations that meet the ordinance provisions.
- The Chief Arborist states that the developer made an effort to retain three large trees in the front yard of the property during the project, and that in order to avoid aerial canopy conflicts between larger canopy trees and nearby street trees, the applicant is requesting to reduce the number of street trees in their required locations.
- The Chief Arborist states that all other landscape standards for PD 193 are being met.
- The Chief Arborist supports the request because the applicant has demonstrated that the proposed landscaping does not compromise the spirit and intent of the PD 193 regulations.
- The applicant has the burden of proof in establishing the following:
  - The special exception (where a site plan has been submitted that is deficient in providing all required street trees in their required locations) 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 landscape plan as a condition, the site would be granted exception from full compliance to the street tree requirements of the Oak Lawn PD 193 landscape ordinance.

**Timeline:**

July 24, 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.

September 9, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

September 10, 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 September 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the October 10<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence”.

October 7, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment 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.

October 9, 2014: The City of Dallas Chief Arborist submitted a memo regarding this application (see Attachment A).

**BOARD OF ADJUSTMENT ACTION: OCTOBER 21, 2014**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

**MOTION: Williams**

I move that the Board of Adjustment grant application **BDA 134-092** 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, Williams, Rieves, Leija,

**NAYS:** 0 -

**MOTION PASSED:** 5 – 0 (unanimously)

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**FILE NUMBER:** BDA 134-098

**BUILDING OFFICIAL’S REPORT:** Application of Christopher Gay for a special exception to the landscape regulations at 2425 Cedar Springs Road. This property is more fully described as Lots 10, 11, & 12, Block 5/944, and is zoned PD-193 (GR), which requires mandatory landscaping. The applicant proposes to construct and maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

**LOCATION:** 2425 Cedar Springs Road

**APPLICANT:** Christopher Gay

**REQUEST:**

A request for a special exception to the landscape regulations is made to maintain a recently added patio terrace structure on a site developed with an office use (MBD Capital), and not fully provide required landscaping.

**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 alternate landscape proposal does not compromise the spirit and intent of the PD 193 landscape requirements.
- In this case, the Chief Arborist notes how:
  1. the site complies with all PD 193 landscape requirements except for off-street parking screening;
  2. the site has undergone significant site renovation including a new decorative drive surface, an expanded sidewalk, and retention of existing canopy trees;
  3. the site benefits from surrounding landscape improvements that help buffer its interaction with the public thoroughfare; and
  4. the combined on-site landscaping and paving, off-site street improvements, and functioning hours of the office use on the site helps mitigate for headlights directed south and any negative impacts of the parking area.

## **BACKGROUND INFORMATION:**

<u>Site:</u>	PD 193 (GR) (Planned Development, General Retail)
<u>North:</u>	PD 193 (GR) (Planned Development, General Retail)
<u>South:</u>	PD 193 (LC) (Planned Development, Light Commercial)
<u>East:</u>	PD 193 (GR) (Planned Development, General Retail)
<u>West:</u>	PD 193 (GR) (Planned Development, General Retail)

## **Land Use:**

The subject site is developed with an office use (MBD Capital). The areas to the north, south, east, and west are developed with a mix of office and retail uses.

## **Zoning/BDA History:**

There has not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site.

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

- This request focuses on maintaining a recently added patio terrace structure on a site developed with an office use (MBD Capital), and not fully providing required landscaping. More specifically, according to the City of Dallas Chief Arborist, the site does not conform to PD 193 landscape regulation standards related to the screening of off-street parking for the site's Cedar Springs Road frontage.

- 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 the increased impervious surface on the property with renovations.
- The Chief Arborist has stated that the site complies with all PD 193 (GR) requirements except for screening of off-street parking for the Cedar Springs Road frontage.
- The Chief Arborist's memo lists the following factors for consideration:
  1. The site has undergone significant site renovation including a new decorative drive surface, an expanded sidewalk, and retention of existing canopy trees.
  2. The site benefits from surrounding landscape improvements that help buffer its interaction with the public thoroughfare. The combined on-site landscaping and paving, off-site street improvements, and functioning hours of the office use helps mitigate for headlights directed south and any negative impacts of the parking area. The metal fence and gate (not considered a part of landscaping) provides some level of visual reduction of the parking lot.
  3. The site is restricted by size and shape but has been efficiently adapted for the use and related vehicular parking and maneuvering while provided the required landscape site area.
- The City of Dallas Chief Arborist recommends approval of this request because the proposed alternate landscape plan 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 off-street parking screening requirement) 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 off-street parking screening requirement of the Oak Lawn PD 193 landscape ordinance.
- Note that the applicant's request for a special exception to the landscape regulations would not provide any relief to any existing or proposed item that is or is proposed to be located in any required visibility triangle.

**Timeline:**

July 22, 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.



September 9, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

September 10, 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 September 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the October 10<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

October 7, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment 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.

Staff discussed how certain items observed in the Board Administrator's photos of the subject site may be in noncompliance with visual obstruction regulations but that the applicant had not made any request for special exception to locate/maintain items in any visibility triangle. The Building Inspection Senior Plans Examiners/Development Code Specialist stated that he would contact the applicant and make him aware of this observation, and the fact that the applicant's request for a special exception to the landscape regulations would not provide any relief to any existing or proposed item that is or is proposed to be located in any required visibility triangle.

October 10, 2014: The City of Dallas Chief Arborist submitted a memo regarding this application (see Attachment A).

**BOARD OF ADJUSTMENT ACTION: OCTOBER 21, 2014**

APPEARING IN FAVOR: Christopher Gay

APPEARING IN OPPOSITION: Frank Stich

**MOTION #1: Leija**

I move that the Board of Adjustment, in request No. **BDA 134-098**, on application of **Christopher Gay**, **grant** the request to provide an alternate landscape plan as a special exception to the landscape regulations in PD193 (GR) 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: Williams**

**AYES:** 3 – Nolen, Williams, Leija

**NAYS:** 2 - French, Rieves

**MOTION FAILED:** 3 – 2

**MOTION #2: Nolen**

I move that the Board of Adjustment, in request No. **BDA 134-098**, on application of **Christopher Gay**, **deny** the request special exception to the landscape regulations **without prejudice**, because our evaluation of the property and the testimony shows that granting the special exception will compromise the spirit and intent of the Oak Lawn Ordinance.

**SECONDED: French**

**AYES:** 3 – Nolen, French, Rieves

**NAYS:** 2 - Williams, Leija

**MOTION PASSED:** 3 – 2

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**FILE NUMBER:** BDA 134-099

**BUILDING OFFICIAL’S REPORT:** Application of Robert Reeves, Robert Reeves and Associates, for a special exception to the off-street parking regulations at 3417 Gaston Avenue. This property is more fully described as Lot 3A, Block 760, and is zoned PD-298 (Subarea 12 & 12A), which requires off-street parking to be provided. The applicant proposes to construct and maintain structures for hospital, medical clinic or ambulatory surgical center, hotel or motel, financial institution without drive-in window, general merchandise or food store 3500 square feet or less, and restaurant without drive-in or drive-through service uses, and provide 959 of the required 1,236 parking spaces, which will require a 277 space special exception to the off-street parking regulations

**LOCATION:** 3417 Gaston Avenue

**APPLICANT:** Robert Reeves, Robert Reeves and Associates

**October 21, 2014 Public Hearing Notes:**

- The Board Administrator circulated additional written documentation to the Board at the briefing (see Attachments D and E).

**REQUEST:**

A request for a special exception to the off-street parking regulations of 277 spaces is made to construct and/or maintain hospital, medical clinic or ambulatory surgical center, hotel or motel, financial institution without drive-in window, general merchandise or food store 3,500 square feet or less, and restaurant without drive-in or drive-through service uses on the site, and provide 959 (or 78 percent) of the 1,236 required off-street parking spaces. The site is currently developed with utility and medical clinic uses that are to be retained on the site, and that will continue to provide code-required off-street parking. The applicant seeks the parking reduction request to construct and maintain a 199,000 square foot medical office tower and a 120 room hotel with ground floor commercial uses.

**STANDARD FOR A SPECIAL EXCEPTION TO THE OFF-STREET PARKING REGULATIONS:**

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(A). For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 75 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). For the office use, the maximum reduction authorized by this section is 35 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). Applicants may seek a special exception to the parking requirements under this section and an administrative parking reduction under Section 51A-4.313. The greater reduction will apply, but the reduction may not be combined.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
  - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
  - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.

- (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
  - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
  - (E) The availability of public transit and the likelihood of its use.
  - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
  - 4) In granting a special exception, the board may:
    - (A) Establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
    - (B) Impose restrictions on access to or from the subject property; or
    - (C) Impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
  - 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
  - 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
    - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
    - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- The special exception of 277 spaces shall automatically and immediately terminate if and when the mix of hospital, medical clinic or ambulatory surgical center, hotel or motel, financial institution without drive-in window, general merchandise or food store 3,500 square feet or less, and restaurant without drive-in or drive-through service uses that would normally need no more than 1,236 required parking spaces is changed or discontinued.

Rationale:

- The Sustainable Development and Construction Department Project Engineer has indicated that he has no objections to the applicant's request.
- The applicant has substantiated how the parking demand generated by the mix of hospital, medical clinic or ambulatory surgical center, hotel or motel, financial institution without drive-in window, general merchandise or food store 3,500 square feet or less, and restaurant without drive-in or drive-through service uses does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- The applicant has submitted a study which shows that the projected peak parking need for the main uses proposed to be added to the site will be at least 34 percent less than the number of spaces required by code. (The applicant's parking reduction request is for a 22 percent reduction from what is required by code).

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 298 (Subarea 12A) (Planned Development)  
North: PD 298 (Subarea 12) (Planned Development)  
South: PD 749 and MU-3 (Planned Development and Mixed Use)  
East: PD 749 and MU-3 (Planned Development and Mixed Use)  
West: PD 298 (Subarea 12) (Planned Development)

**Land Use:**

The subject site is developed with utility and medical clinic uses that the applicant intends to retain on the site and that will continue to provide code-required off-street parking. Other land uses on the site include surface parking lots which the applicant intends to replace with the proposed uses and parking garages. The areas to the north, south, east, and west are developed with a mix of mostly medical and office uses and surface parking lots.

**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/or maintaining hospital, medical clinic or ambulatory surgical center, hotel or motel, financial institution without drive-in window, general merchandise or food store 3,500 square feet or less, and restaurant without drive-in or drive-through service uses on the site, and providing 959 (or 78 percent) of the 1,236 required off-street parking spaces.

- The site is currently developed with utility and medical clinic uses that are to be retained on the site, and that will continue to provide code-required off-street parking. The applicant seeks the parking reduction request to construct and maintain a 199,000 square foot medical office tower and a 120 room hotel with ground floor commercial uses.
- The Dallas Development Code requires the following off-street parking requirement:
  - Hospital use: 1 space for each patient bed.
  - Medical clinic or ambulatory surgical center use: 1 space per 200 square feet of floor area.
  - Financial institution without drive-in window use: 1 space per 333 square feet of floor area.
  - General merchandise or food store 3,500 square feet or less use: 1 space for 200 square feet of floor area.
  - Restaurant without drive-in service use: as a main use: 1 space per 100 square feet of floor area; as a limited or accessory use: 1 space per 200 square feet of floor area
- The applicant proposes to provide 959 (or 78 percent) of the required 1,236 off-street parking spaces in conjunction with the site being developed with and/or maintained with a combination of the uses mentioned above.
- The applicant has submitted a study which shows that the projected peak parking need for the main uses proposed to be added to the site will be at least 34 percent less than the number of spaces required by code. (The applicant's parking reduction request is for a 22 percent reduction from what is required by code).
- The Sustainable Development Department Project Engineer has indicated that he has no objections to the applicant's request.
- The applicant has the burden of proof in establishing the following:
  - The parking demand generated by the hospital, medical clinic or ambulatory surgical center, hotel or motel, financial institution without drive-in window, general merchandise or food store 3,500 square feet or less, and restaurant without drive-in or drive-through service uses on the site does not warrant the number of off-street parking spaces required, and
  - The special exception of 277 spaces (or a 22 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, and impose the condition that the special exception of 277 spaces shall automatically and immediately terminate if and when the hospital, medical clinic or ambulatory surgical center, hotel or motel, financial institution without drive-in window, general merchandise or food store 3,500 square feet or less, and restaurant without drive-in or drive-through service uses are changed or discontinued, the applicant would be allowed to develop and maintain the site with these specific uses with the specified square footages, and provide 858 of the 1,144 code required off-street parking spaces.

**Timeline:**

July 26, 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.

September 9, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

September 10, 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 September 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the October 10<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

October 3, 2014: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachments A and C).

October 3, 2014: The Building Inspection Senior Plans Examiners/Development Code Specialist forwarded a revised Building Official's report to the Board Administrator (see Attachment B).

October 7, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment 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.

October 9, 2014: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections."

**BOARD OF ADJUSTMENT ACTION: OCTOBER 21, 2014**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

**MOTION: Williams**

I move that the Board of Adjustment grant application **BDA 134-099** 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:

- The special exception of **277** spaces shall automatically and immediately terminate if and when the mix of hospital, medical clinic or ambulatory surgical center, hotel or motel, financial institution, without drive-in window, general merchandise or food store 3,500 square feet or less, and restaurant without drive-in or drive through services uses that would normally need no more than 1248 required parking spaces is changed or discontinued.

**SECONDED: Nolen**

**AYES:** 5 – Nolen, French, Williams, Rieves, Leija,

**NAYS:** 0 -

**MOTION PASSED:** 5 – 0 (unanimously)

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**FILE NUMBER:** BDA 134-109

**BUILDING OFFICIAL’S REPORT:** Application of Laura Hoffman, Winstead, PC, for a special exception to the landscape regulations at 4343 (AKA 4321) Congress Avenue. This property is more fully described as Lot 1A, Block 6/1616, and is zoned PD193 (PDS 80), 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:** 4343 (AKA 4321) Congress Avenue

**APPLICANT:** Laura Hoffman, Winstead, PC

**REQUEST:**

A special exception to the landscape regulations is made to maintain a multifamily development (Aura Wycliff, Phase 1), and not fully provide required landscaping.

(Note that this application is adjacent to a property to the north across Congress Avenue where the same applicant seeks a similar landscape special exception from Board of Adjustment Panel A on October 21<sup>st</sup>: BDA 134-092).



**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 landscape plan is required.

Rationale:

- The applicant has substantiated how granting this request would not compromise the spirit and intent of the landscaping requirements of PD 193.
- The City of Dallas Chief Arborist supports the request because the applicant has demonstrated the features shown on the submitted landscape plan do not compromise the spirit and intent of PD 193 regulations. In this case, the applicant has met all landscape standards required by ordinance with the exception of garage landscaping and screening requirements.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 193 (PDS 80) (Planned Development, Planned Development)  
North: PD 193 (MF-2) (Planned Development, Multifamily)  
South: PD 193 (GR) (Planned Development, General Retail)  
East: PD 193 (MF-2) (Planned Development, Multifamily)  
West: PD 193 (MF-2) (Planned Development, Multifamily)

**Land Use:**

The subject site is developed with a multifamily development. The areas to the north, south, east, and west appear to be developed mostly with residential uses.

**Zoning/BDA History:**

1. BDA 134-092, Property at 4338 Congress Avenue (the lot immediately north of subject site) On October 21, 2014, the Board of Adjustment Panel A will consider a request for a special exception to the landscape regulations requested in conjunction with maintaining a multifamily development on the site, and not fully providing required landscaping.

2. M134-048, Property at 4343 Congress Avenue (the subject site)

On October 23, 2014, the City Plan Commission will consider a request for an amendment to the development plan on this property zoned PD 193 (PDS 80).

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

- This request focuses on maintaining a multifamily development, and not fully providing required landscaping. More specifically, according to the City of Dallas Chief Arborist, the site does not conform to PD 193 landscape regulation standards related to garage landscaping and screening requirements.
- 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 states in a memo (see Attachment A) that the request in this case is triggered by new construction of multifamily development.
- The Chief Arborist notes that the site is deficient in meeting the landscape requirements in that the site does not provide the garage landscaping and screening provision stating that any aboveground parking structure must have a 10' landscaping buffer on any side facing a public street, residential district, residential subdistrict, or residential use, and must contain one tree for every 25 feet of frontage and evergreen shrubs planted three feet on center.
- The Chief Arborist states the following factors for consideration:
  - 1) For multifamily uses, development and use of the property must comply with a development plan. If there is conflict between the text of the ordinance and the development plan, the text of the ordinance controls. The ordinance requires compliance with PD 193 Part 1 landscape regulations which includes the garage landscaping and screening provisions. An amendment to the development plan did not adequately address this requirement in the site design.
  - 2) An off-street loading bay was created in the location that would otherwise be used for landscaping. A masonry wall was constructed to screen the off-street loading bay as is required by the same ordinance. A row of plants was placed along the foundation in a narrow bed along the garage structure.
  - 3) All other landscape standards are met on the site.
- The Chief Arborist supports the request because the applicant has demonstrated that the proposed landscaping does not compromise the spirit and intent of the PD 193 regulations.
- The applicant has the burden of proof in establishing the following:
  - The special exception (where a site plan has been submitted that is deficient in meeting the garage landscaping and screening 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 landscape plan as a condition, the site would be granted exception from full compliance to garage landscaping and screening requirements of the Oak Lawn PD 193 landscape ordinance.

**Timeline:**

September 3, 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.

September 11, 2014: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

September 11, 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 September 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the October 10<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence”.

October 7, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment 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.

October 9, 2014: The City of Dallas Chief Arborist submitted a memo regarding this application (see Attachment A).

**BOARD OF ADJUSTMENT ACTION: OCTOBER 21, 2014**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

**MOTION: Williams**

I move that the Board of Adjustment grant application **BDA 134-109** 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, Williams, Rieves, Leija,

**NAYS:** 0 -

**MOTION PASSED:** 5 – 0 (unanimously)

\*\*\*\*\*

**FILE NUMBER:** BDA 134-082

**BUILDING OFFICIAL’S REPORT:** Application of Jerry Stark, represented by Audra Buckley, for variances to the front and side yard setback regulations, and special exceptions to the visual obstruction and landscape regulations at 3506 Cedar Springs Road. This property is more fully described as a 0.41 acre tract in Block 992, and is zoned PD193 (O-2), which requires a front yard setback of 20 feet, a side yard setback of 10 feet, a 45 foot visibility triangle at street intersections and a 20 foot visibility triangle at driveway approaches that intersect with a street, and mandatory landscaping. The applicant proposes to construct and maintain a structure and provide a 6 inch front yard setback, which will require a 19 foot 6 inch variance to the front yard setback regulations, a 0 foot side yard setback, which will require a 10 foot variance to the side yard setback regulations; to locate and maintain items in required visibility triangles, which will require special exceptions to the visual obstruction regulations; and to provide an alternate landscape plan, which will require a special exception to the landscape regulations.

**LOCATION:** 3506 Cedar Springs Road

**APPLICANT:** Jerry Stark  
Represented by Audra Buckley

**REQUESTS:**

The following appeals have been made to maintain a carport structure on a site developed with an office use/structure (Swift Property Company / The Shingle Style House), part of which is located in one of the site’s two front yard setbacks (Sale Street), and in one of the site’s two side yard setbacks, and to maintain certain items in the 45’ visibility triangle at the intersection of Cedar Springs and Sale Street, and in the 20’ visibility triangle at the drive approach into the site from Sale Street, and to not fully provide required landscaping triggered in conjunction with the recently added carport structure on the site:

1. a variance to the front yard setback regulations of 19' 6" is made to maintain an approximately 1,800 square foot carport structure located 6' from the front property line along Sale Street or 19' 6" into this required 20' front yard setback;
2. a variance to the side yard setback regulations of 10' is made to maintain an approximately 1,800 square foot carport structure located on the northeastern side property line or 10' into this required 10' side yard setback;
3. special exceptions to the visual obstruction regulations are made to maintain vertical supports of the carport structure and shrubs in the 45' visibility triangle at the intersection of Cedar Springs and Sale Street, and in the 20' visibility triangle at the driveway into the site from Sale Street; and
4. a special exception to the landscape regulations is made to maintain the recently constructed carport structure on the site, and not fully provide required landscaping.

**STANDARD FOR A VARIANCE:**

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

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

**STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:**

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

**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 (front and side yard setback variances):**

Denial

Rationale:

- The applicant has not substantiated how the features of this somewhat sloped, virtually rectangular shaped, approximately 17,400 square foot site warrants variance to the front and side yard setback in order for it to be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD 193 (O-2) zoning classification.
- The physical features of the subject site have allowed it to be developed with an office use/structure with an area for surface parking that has been in compliance with setbacks for decades.

**STAFF RECOMMENDATION (visual obstruction special exceptions):**

Approval, subject to the following conditions:

1. Compliance with the submitted site plan and revised elevation is required.
2. No vegetation is permitted in 20' visibility triangle at the driveway into the site from Sale Street.

Rationale:

- The applicant has substantiated how granting these requests to maintain vertical supports of the carport structure and shrubs in the 45' visibility triangle at the intersection of Cedar Springs and Sale Street, and in the 20' visibility triangle at the driveway into the site from Sale Street would not constitute a traffic hazard.
- The Sustainable Development and Construction Department Project Engineer supports the requests on the condition that vegetation is cleared at the 20' visibility triangle at the driveway into the site from Sale Street.

**STAFF RECOMMENDATION (landscape special exception):**

Approval, subject to the following condition:

- Compliance with the submitted landscape plan is required.

Rationale:

- The applicant has substantiated how granting this request would not compromise the spirit and intent of the landscaping requirements of PD 193.
- The City of Dallas Chief Arborist supports the request because while the site is non-compliant to the PD 193 landscape requirements, it nonetheless promotes landscape and street quality, and enhances the beautification of the neighborhood.

## **BACKGROUND INFORMATION:**

### **Zoning:**

<u>Site:</u>	PD 193 (O-2)/H-12 (Planned Development District, Office, Historic)
<u>North:</u>	PD 193 (O-2) (Planned Development District, Office)
<u>South:</u>	PD 193 (O-2) (Planned Development District, Office)
<u>East:</u>	PD 193 (O-2) (Planned Development District, Office)
<u>West:</u>	PD 193 (O-2) (Planned Development District, Office)

### **Land Use:**

The subject site is developed with an office use/structure/City historic structure – The Shingle Style House. The areas to the north, south, east and west are developed with a mix of residential and office uses.

### **Zoning/BDA History:**

1. BDA 80-141, Property at 3506 Cedar Springs Road (the subject site)

On March 11, 1980, the Board of Adjustment followed the staff recommendation and granted a request for a variance to the parking regulations, and imposed the following conditions: 1) granted 3 parking space variance; 2) granted 1 sub-standard parking space (#20); and 3) granted permission to use gravel for parking area for a period of one (1) year. After this one year period, the applicant or owner of property must construct the parking surface to standards as required by zoning ordinance. The minutes stated that the request was made to convert a single family dwelling into general office use.
2. BDA 978-226, Property at 3225 Turtle Creek Blvd. (the property southeast of the subject site)

On September 15, 1998, the Board of Adjustment Panel B followed the staff recommendation and granted a request for a special exception to the landscape regulations (subject to compliance with the submitted landscape plan) needed in conjunction with constructing and maintaining a 603-unit, multifamily high-rise structure.

3. BDA 001-290, Property at 3225 Turtle Creek Blvd. (the property southeast of the subject site)

On November 13, 2001, the Board of Adjustment Panel B followed the staff recommendation and denied a request for a special exception to the landscape regulations without prejudice needed in conjunction with maintaining a 603-unit, multifamily high-rise structure.

4. BDA 012-130, Property at 3225 Turtle Creek Blvd. (the property southeast of the subject site)

On November 13, 2001, the Board of Adjustment Panel B followed the staff recommendation and granted a request for a special exception to the landscape regulations in conjunction with maintaining a multifamily high-rise structure. The board imposed the submitted landscape plan as a condition to this request.

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

- This request focuses on maintaining a portion of a carport structure that is located in the one of the site's two 20' front yard setbacks (Sale Street).
- Structures other than for single family structures on lots zoned PD 193 (O-2) are required to provide a minimum front yard setback of 20'.
- A site plan has been submitted denoting that the carport structure is located 6" from the site's Sale Street front property line or 19' 6" into the 20' front yard setback.
- All of the approximately 1,800 square foot, 18' wide carport is located in the 20' Sale Street front yard setback.
- According to DCAD records, the "improvements" at 3506 Cedar Springs Road is a "converted residence" with 4,526 square feet in area built in 1905.
- The subject site is somewhat sloped, virtually rectangular in shape, and approximately 0.4 acres or 17,400 square feet in area. The site is zoned PD 193 (O-2).
- The corner property with two street frontages has two front yard setbacks as any corner property with two street frontages would that is not zoned agricultural, single family, or duplex.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the 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 (O-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 (O-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 located 6” from the site’s Sale Street front property line (or 19’ 6” into this 20’ front yard setback).

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

- This request focuses on maintaining on maintaining a portion of a carport structure in the one of the site’s two 10’ side yard setbacks on the northeastern side of the property.
- Structures other than single family structures on lots zoned PD 193 (O-2) are required to provide a minimum side yard setback of 10’.
- A site plan has been submitted denoting that the carport structure is located on the site’s northeastern side property line or 10’ into the 10’ side yard setback.
- It appears from calculations made by the Board Administrator from the submitted site plan that approximately 360 square feet (or approximately 20 percent) of the approximately 1,800 square foot carport structure is located in the site’s 10’ northeastern side yard setback.
- According to DCAD records, the “improvements” at 3506 Cedar Springs Road is a “converted residence” with 4,526 square feet in area built in 1905.
- The subject site is somewhat sloped, virtually rectangular in shape, and approximately 0.4 acres or 17,400 square feet in area. The site is zoned PD 193 (O-2).
- The corner property with two street frontages has two front yard setbacks as any corner property with two street frontages would that is not zoned agricultural, single family, or duplex.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the side yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD 193 (O-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 (O-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 side yard setback would be limited to what is shown on this document– which is a structure located on the site’s northeastern side property line (or 10’ into this 10’ side yard setback).

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

- These requests focus on maintaining vertical supports of the carport structure and shrubs in the 45’ visibility triangle at the intersection of Cedar Springs and Sale Street and in the 20’ visibility triangle at the driveway into the site from Sale Street.
- The Dallas Development Code states the following: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
  - in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections, and 20 foot visibility triangles at drive approaches and at alleys on properties zoned single family); and
  - between two and a half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- PD 193 defines “visibility triangle” as
  1. where a street designated on the city’s thoroughfare plan intersects another street, the portion of a corner lot within a triangular area formed by connecting together the point of intersection of adjacent curb lines (or, if there are no street curbs, what would be the normal street curb lines) and points on each of the street curb lines 45 feet from the intersection;
  2. where two streets not designated on the city’s thoroughfare plan intersect, the portion of a corner lot within a triangular area formed by connecting together the point of intersection of adjacent curb lines (or, if there are no street curbs, what would be the normal street curb lines) and points on each of the street curb lines 30 feet from the intersection;
  3. where an alley or driveway intersects with a street, the portion of a lot within a triangular area formed by connecting together the point of intersection of the edge of a driveway or alley and adjacent street curb line (or, if there are no street curbs, what would be the normal street curb line) and points on the driveway or alley edge and the street curb line 20 feet from the intersection.
- A site/landscape plan and a revised elevation has been submitted indicating vertical supports of the carport structures and 2’ 8” high shrubs in the 45’ visibility triangle at the intersection of Cedar Springs and Sale Street, and in the 20’ visibility triangle at the driveway into the site from Sale Street.
- The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet regarding the applicant’s request for special exceptions to the visual obstruction regulations marked “Has no objections if certain conditions are met” commenting “visibility triangle at southeast corner must be cleared of any vegetation.”
- The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulations to maintain vertical supports of the carport structure and shrubs in the 45’ visibility triangle at the intersection of

Cedar Springs and Sale Street, and in the 20' visibility triangle at the driveway into the site from Sale Street do not constitute a traffic hazard.

- Granting these requests with a condition imposed that the applicant complies with the submitted site plan and revised elevation would limit the items located in 45' visibility triangle at the intersection of Cedar Springs and Sale Street, and in the 20' visibility triangle at the driveway into the site from Sale Street to that what is shown on these documents - vertical supports of the carport structure and shrubs.

### **GENERAL FACTS/ STAFF ANALYSIS (landscape special exception):**

- This request focuses on maintaining the recently constructed carport structure on the site, and not fully providing required landscaping. More specifically, according to the City of Dallas Chief Arborist, the site does not conform to PD 193 landscape regulation standards related to sidewalks, trees, and off-street parking and screening.
- 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 states in a memo (see Attachment B) that the request in this case is triggered by the owner applying to add to the nonpermeable coverage of the lot with the construction of a carport over a permeable parking surface.
- The Chief Arborist notes that the submitted landscape plan is deficient in the following ways:
  - 1) Sidewalks: Both sidewalks on the site are non-compliant with the ordinance requirement of a 6' width and a distance between 5' – 12' from back of curb.
  - 2) Trees: Trees on the site are non-compliant with the ordinance requirement that one tree per 25' of frontage in a location that is between 2.5' – 5' from back of curb. (The site is however highly restricted to meet the ordinance provisions given the existing slope, retaining walls, and parking areas).
  - 3) Off-street parking and screening: The site is non-compliant with the ordinance requirement that all surface parking is to be screened from the street with screening at a minimum of 3.5' in height along Cedar Springs Road, and partially noncompliant along Sale Street.
- The Chief Arborist listed several factors for consideration:
  1. The site appears to comply with all other requirements of PD 193 including landscape site area and general planting requirements.
  2. The site has been maintained for years with mature post oak trees retained with careful landscape maintenance and site design. The parking surface has been kept as a permeable element that was important in the retention of highly sensitive tree roots. The overall landscaping is in a well maintained condition that combines younger plants with very old canopy tree structures.

3. The retaining wall along Sale Street was approved and installed prior to the formation of the PD 193 ordinance. The sidewalk cannot be adjusted in this location. The existing slope prohibits significant adjustments to the sidewalk and planting zones along Cedar Springs Road without adjusting from the slope and probable use of retaining walls.
  4. The site contains an important structure to the community with significant towering landscape features that likely far precedes the age of the building. The site promotes landscape and street quality and appearance and enhances the beautification of the neighborhood.
- The Chief Arborist supports the request because the applicant has demonstrated the existing landscaping does not compromise with the spirit and intent of PD 193 (O-2) regulations.
  - The applicant has the burden of proof in establishing the following:
    - The special exception (where a site plan has been submitted that is deficient in meeting the sidewalk, tree, and off-street parking and screening requirements) 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, the site would be granted exception from full compliance to sidewalk, tree, and off-street parking and screening requirements of the Oak Lawn PD 193 landscape ordinance.

**Timeline:**

June 16, 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.

September 9, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

September 10, 2014: The Board Administrator emailed the applicant’s representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the September 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the October 10<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

September 30, 2014: The applicant’s representative submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).

September 30, 2014: The Sustainable Development and Construction Historic Preservation Senior Planner emailed the Board Administrator the following comment: “The Shingle Style House- Applicant is in

contact with Preservation Staff in regards to Landmark Commission process after BDA decision.”

October 7, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment 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.

October 9, 2014: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet regarding the visual obstruction special exception requests marked “Has no objections if certain conditions are met” commenting “visibility triangle at southeast corner must be cleared of any vegetation.”

October 9, 2014: The City of Dallas Chief Arborist submitted a memo regarding the landscape special exception request (see Attachment B).

**BOARD OF ADJUSTMENT ACTION: OCTOBER 21, 2014**

**APPEARING IN FAVOR:** Audra Buckley, 416 S. Ervay St., Dallas, TX  
Jacob Steiner, 6630 Highgate Lane, Dallas, TX

**APPEARING IN OPPOSITION:** Frank Stich, 4228 N. Hall St., Dallas, TX

**MOTION #1: Nolen**

I move that the Board of Adjustment, in Appeal No. **BDA 134-082**, on application of Jerry Stark, represented by Audra Buckley, **grant** the request to provide an alternate landscape plan as a special exception to the landscape regulations in PD 193(O-2) in the Dallas Development 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, but removal of the shrubs at the visibility triangle must be removed.

**SECONDED: French**

**AYES:** 5 – Nolen, French, Williams, Leija , Rieves

**NAYS:** 0 -

**MOTION PASSED:** 5– 0 (unanimously)

**MOTION #2: Nolen**

I move that the Board of Adjustment grant application **BDA 134-082**, on application of Jerry Stark, represented by Audra Buckley, **grant** the request to maintain items in the visibility triangle as special exception to the visual obstruction regulations in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard. I further move that the following conditions be imposed to further the purpose and intent of the Oak Lawn Ordinance:

- Compliance with submitted site plan and revised elevation is required
- No vegetation is permitted in the 20 foot visibility triangle at the driveway into the site from Sale Street.

**SECONDED: Leija**

**AYES:** 5 – Nolen, French, Williams, Leija , Rieves

**NAYS:** 0 -

**MOTION PASSED:** 5– 0 (unanimously)

**MOTION #3: Nolen**

I move that the Board of Adjustment grant application **BDA 134-082**, on application of Jerry Stark, represented by Audra Buckley, **deny** the request for a variance to the front yard setback regulations **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas development Code, as amended, would not result in unnecessary hardship to this applicant.

**SECONDED: French**

**AYES:** 5 – Nolen, French, Williams, Leija , Rieves

**NAYS:** 0 -

**MOTION PASSED:** 5– 0 (unanimously)

**MOTION #4: Nolen**

I move that the Board of Adjustment grant application **BDA 134-082**, on application of Jerry Stark, represented by Audra Buckley, **deny** the request for a variance to the side yard setback regulations **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas development Code, as amended, would not result in unnecessary hardship to this applicant.

**SECONDED: Leija**

**AYES:** 5 – Nolen, French, Williams, Leija, Rieves

**NAYS:** 0 -

**MOTION PASSED:** 5– 0 (unanimously)

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**FILE NUMBER:** BDA 134-096

**BUILDING OFFICIAL'S REPORT:** Application of Ed Simons, Masterplan, for a special exception to the landscape regulations at 4801 (AKA 4811) Lemmon Avenue. This property is more fully described as Lot 1B, Block 2/2453, and is zoned PD-193 (LC), 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:** 4801 (AKA 4811) Lemmon Avenue

**APPLICANT:** Ed Simons, Masterplan

**October 21, 2014 Public Hearing Notes:**

- The Board Administrator circulated additional written documentation to the Board at the briefing (see Attachment B). The documentation was a revised alternate landscape plan submitted by the applicant that the City of Dallas Chief Arborist supported.

**REQUEST:**

A request for a special exception to the landscape regulations is made to construct and maintain a car wash structure on a site developed with a vehicle display, sales, or service use (Acura of Dallas), and not fully provide required landscaping.

**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:**

Denial

Rationale:

- The City of Dallas Chief Arborist recommends denial of this request because the submitted alternate landscape plan does compromise with the spirit and intent of PD 193 (LC) regulations, specifically as it relates to the lack of landscaping along

Waldrup Street/the southern perimeter of the commercial property where current and future residences do and will exist on adjacent property.

### **BACKGROUND INFORMATION:**

Site: PD 193 (LC) (Planned Development, Light Commercial)  
North: Town of Highland Park  
South: PD 193 (PDS 4) (Planned Development, Planned Development)  
East: PD 193 (MF-2) (Planned Development, Multifamily)  
West: PD 193 (LC) (Planned Development, Light Commercial)

### **Land Use:**

The subject site is developed with a vehicle display, sales, or service use (Acura of Dallas). The area to the north in the Town of Highland Park is developed with office use; the area to the east is the Dallas North Tollway; the area to the south is developed with multifamily use; and the area to the west is developed with commercial/retail uses.

### **Zoning/BDA History:**

There has not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site.

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

- This request focuses on constructing and maintaining a car wash structure on a site developed with a vehicle display, sales, or service use (Acura of Dallas) and not fully providing required landscaping. More specifically, according to the City of Dallas Chief Arborist, the site would not conform to PD 193 landscape regulation standards related to general maintenance and parkway landscape.
- 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 a proposal to increase the floor area ration on the property with a car wash for the existing vehicle sales use.
- The Chief Arborist notes that the submitted landscape plan is deficient in the following ways:
  - The site is not compliance with the general maintenance provisions where one tree remains on Waldrup Street in the parkway to the south of the lot from a row of trees that were identified during historical research of the property.



- The property fronts the Dallas North Tollway which is considered street frontage. The parkway landscape requirements for trees and sidewalks apply to this frontage. Although planted trees and shrubs do exist along the tollway, a functional sidewalk is not applicable.
- The Chief Arborist listed several factors for consideration:
  1. The original vehicle sales facility was built in 1995 under the PD 193 zoning regulations. An original landscape plan cannot be located in order to determine an actual baseline on how many trees and other types of vegetation may be missing, why the trees on Lemmon Avenue are placed behind the sidewalk outside the standard tree planting zone, or why no sidewalk exists along Waldrup Street.
  2. Based on his investigation, a row of trees existed in the parkway along Waldrup Street for a distance between 125' – 150' of frontage for a period extending up to 2011. All but one of the trees were removed with no clear explanation for the purpose of removal but the condition of the one remaining tree and the timing between tree removals since 2011 suggests a decline of health, reduced maintenance, and poor soil conditions for the trees could be a partial cause.
  3. Under general maintenance provisions, all required landscaping must be maintained in a healthy, growing condition at all times. A required tree that dies after its original planting must be replaced by another living tree having a minimum trunk caliper of four inches measured at a point of 12 inches above the root ball. This rule shall apply for all trees on this property after the hearing.
- While the Chief Arborist is supportive of approving the existing landscape conditions for most of the property, he recommends denial of the request because the plan does compromise with the spirit and intent of PD 193 (LC) regulations for the southern perimeter of the commercial property where current and future residences do and will exist on adjacent property.
- The Chief Arborist states that zoning regulations must account for landscape conditions for an extended time period and since there is a residential subdistrict to the south, and it is known that a row of buffering trees existed in this location in recent years, he suggests a reasonable measure of maintained landscape restoration along Waldrup Street to help buffer the residences from the vehicle storage and broad paved surface on the subject site.
- 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 general maintenance and parkway 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 general maintenance and parkway landscape requirements of the Oak Lawn PD 193 landscape ordinance.

**Timeline:**

August 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.

September 9, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

September 10, 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 September 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the October 10<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

October 7, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment 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.

October 10, 2014: The City of Dallas Chief Arborist submitted a memo regarding this application (see Attachment A).

**BOARD OF ADJUSTMENT ACTION: OCTOBER 21, 2014**

APPEARING IN FAVOR: Ed Simons, 901 Jackson St, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: French

I move that the Board of Adjustment, in request No. **BDA 134-096**, on application of **Ed Simons**, **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 revised alternate landscape plan is required.

SECONDED: Nolen

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

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

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MOTION: Nolen

I move to adjourn this meeting.

SECONDED: Rieves

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

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

**2:31 P. M.:** - Board Meeting adjourned for **October 21, 2014.**

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CHAIRPERSON

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BOARD ADMINISTRATOR

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BOARD SECRETARY

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