

NOTICE FOR POSTING
MEETING OF
BOARD OF ADJUSTMENT, PANEL B
WEDNESDAY, NOVEMBER 18, 2009

Briefing:	11:00 A.M.	L1FN CONFERENCE CENTER AUDITORIUM
Public Hearing:	1:00 P.M.	L1FN CONFERENCE CENTER AUDITORIUM

Purpose: To take action on the attached agenda, which contains the following:

- 1) Zoning Board of Adjustment appeals of cases the Building Official has denied.
- 2) And any other business that may come before this body and is listed on the agenda.

***All meeting rooms and chambers are located in Dallas City Hall, 1500 Marilla, Dallas, Texas 75201**

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11-18-2009

ZONING BOARD OF ADJUSTMENT, PANEL B
WEDNESDAY, NOVEMBER 18, 2009
AGENDA

BRIEFING	L1FN CONFERENCE CENTER AUDITORIUM	11:00 A.M.
PUBLIC HEARING	L1FN CONFERENCE CENTER AUDITORIUM	1:00 P.M.

Donnie Moore, Chief Planner
Steve Long, Board Administrator
Kyra Blackston, Senior Planner

MISCELLANEOUS ITEMS

	Approval of the Wednesday, October 18, 2009 Board of Adjustment Public Hearing Minutes	M1
	Consideration and adoption of Panel B's 2010 Public Hearing Schedule	M2
Unassigned	4402 N. Jim Miller Road REQUEST: Of Olga Molina to waive the filing fee to be submitted in conjunction with a potential board of adjustment appeal	M3

UNCONTESTED CASE

BDA 089-124	4341 Lemmon Avenue REQUEST: Application of Darlene Fluker of Interplan Southwest for a special exception to the landscape regulations and a request to enlarge a nonconforming use	1
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HOLDOVER CASE

BDA 089-112	1905 S. Beckley Avenue REQUEST: Application of David Martinez for a variance to the side yard setback regulations	2
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REGULAR CASE

BDA 089-122(K) 5633 Bent Tree Drive 3
REQUEST: Application of Neil Bletsch for a
variance to the side yard setback regulations

EXECUTIVE SESSION NOTICE

The Commission/Board may hold a closed executive session regarding any item on this agenda when:

1. seeking the advice of its attorney about pending or contemplated litigation, settlement offers, or any matter in which the duty of the attorney to the Commission/Board under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act. [Tex. Govt. Code §551.071]
2. deliberating the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.072]
3. deliberating a negotiated contract for a prospective gift or donation to the city if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.073]
4. deliberating the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or to hear a complaint or charge against an officer or employee unless the officer or employee who is the subject of the deliberation or hearing requests a public hearing. [Tex. Govt. Code §551.074]
5. deliberating the deployment, or specific occasions for implementation, of security personnel or devices.. [Tex. Govt. Code §551.076]
6. discussing or deliberating commercial or financial information that the city has received from a business prospect that the city seeks to have locate, stay, or expand in or near the city and with which the city is conducting economic development negotiations; or deliberating the offer of a financial or other incentive to a business prospect. [Tex. Govt. Code §551.086]

(Rev. 6-24-02)

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel B October 21, 2009 public hearing minutes.

MISCELLANEOUS ITEM NO. 2

To consider and adopt Board of Adjustment Panel B's 2010 public hearing schedule.

MISCELLANEOUS ITEM NO. 3

FILE NUMBER: Unassigned

REQUEST: To waive the \$600.00 filing fee to be submitted in conjunction with a potential Board of Adjustment appeal

LOCATION: 4402 N. Jim Miller Road

APPLICANT: Olga Molina

STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:

The Dallas Development Code states that the board may waive the filing fee for a board of adjustment application if the board finds that payment of the fee would result in substantial financial hardship to the applicant.

GENERAL FACTS:

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waivers/reimbursements:
 - The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.
 - The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board's miscellaneous docket for predetermination.
 - If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.
 - In making this determination, the board may require the production of financial documents.
- The applicant submitted a letter related to her request of the board to waive the \$600.00 filing fee to be submitted with a potential board of adjustment application (see Attachment A).

Timeline:

Oct. 6, 2009 The applicant submitted a letter requesting a waiver of the filing fee for a Board of Adjustment application that may be submitted/requested at the address referenced above (see Attachment A).

Oct. 7, 2009: The Board of Adjustment Secretary randomly assigned this request to Board of Adjustment Panel B.

Oct. 7, 2009: The Board Administrator wrote the applicant a letter that conveyed information about her request (see Attachment B).

FILE NUMBER: BDA 089-124

BUILDING OFFICIAL'S REPORT:

Application of Darlene Fluker of Interplan Southwest for a special exception to the landscape regulations and a request to enlarge a nonconforming use at 4341 Lemmon Avenue. This property is more fully described as part of Lot 8 and all of Lots 9, & 10 in City Block A/2053 and is zoned PD193 (GR) which requires mandatory landscaping and prohibits the enlargement of a nonconforming use. The applicant proposes to renovate, enlarge, and maintain a structure and provide an alternate landscape plan which will require a special exception to the landscape regulations, and to enlarge a nonconforming drive-through restaurant use which will require a request to enlarge a nonconforming use.

LOCATION: 4341 Lemmon Avenue

APPLICANT: Darlene Fluker of Interplan Southwest

REQUESTS:

- The following appeals have been made in this application on a site currently developed with a nonconforming drive-through restaurant use (Cactus Jacks) - a drive-through restaurant that is planned to be transitioned to a different franchise (Carl's Jr.):
 1. A special exception to the landscape regulations is requested in conjunction with plans for the existing structure to be "raised 3'-0" above the existing 17'-2 1/2" building height;" and
 2. A request is made to enlarge the aforementioned nonconforming "drive-through restaurant" use – an enlargement that (according to the application) is not to the building square footage/building footprint but to three "towers" raised 3'-0" above the existing 17' – 2 1/2" building height/parapet wall.

STAFF RECOMMENDATION (landscape special exception):

Approval, subject to the following condition:

- Compliance with the submitted revised alternate landscape plan is required.
- Plant materials indicated on this aforementioned plan provided to screen off-street parking shall be amended to a plant material to be recommended by/approved by the Chief Arborist.

Rationale:

- If the board were to grant this request with the staff suggested condition imposed, the site would be minimally "excepted" from compliance from the sidewalk, street tree, and required front yard "landscape site area" requirements of PD No. 193 while

- The City's Chief Arborist recommends approval of this request stating that in his opinion, the special exception would not compromise the spirit and intent of the Oak Lawn Special Purpose District Landscape Requirements, whereby the proposed building and site update/renovation will dramatically change the physical appearance of the currently sparse site landscape by adapting some existing landscape into a new comprehensive landscape plan.

STAFF RECOMMENDATION (nonconforming use enlargement):

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

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

Section 26(a)(4) of Ordinance No. 21859, which establishes PD No. 193, specifies that the board may grant a special exception to the landscaping requirements of this section if, in the opinion of the Board, the special exception will not compromise the spirit and intent of this section. When feasible, the Board shall require that the applicant submit and that the property comply with a landscape plan as a condition to granting the special exception.

STANDARD FOR ENLARGING A NONCONFORMING USE:

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

GENERAL FACTS (related to the landscape special exception):

- PD No. 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 applicant has submitted an alternate landscape plan where, according to the City of Dallas Chief Arborist, the applicant seeks relief from the sidewalk, street tree, and landscape site area requirements.

- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a narrative that provided additional details and information about the requests;
 - a document that included elevations of the proposal and the degree in which the structure is to be enlarged; and
 - a revised alternate landscape plan.
- The City of Dallas Chief Arborist has submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner pertaining to the special exception request (see Attachment B). The memo stated the following:
 - Trigger:

Renovation with an increase of the existing building height per 51P-193.126(a)(1).
 - Deficiencies:
 1. 8 street trees between 2.5- 5' from curb are required; 5 street trees between 10' – 20' are provided
 2. 6' sidewalk between 5' – 12' from back of curb is required; 6' and 4' sidewalk located variably is provided
 3. 3000 square feet of required front yard landscape site area is required; 1,180 square feet of required front yard landscape site area is provided
 - Factors:

The site renovation has increased the height of the structure by 3' with requires full compliance to PD 193 landscape standards. The existing structure is non-conforming and pre-dates PD 193. Existing landscaping and sidewalks do not conform to PD 193 regulation.

Some existing landscaping will be maintained at the rear of the property that will assist in buffering from the adjacent residential properties. Herschel Avenue does not have thru-traffic into the neighborhood.

The sidewalk is designed to align with neighboring properties along Lemmon Avenue. The intensive landscape plan provides for new street trees to be set behind the sidewalks with additional landscaping placed in the corner at Lemmon Avenue and Herschel Avenue. Multiple large canopy trees are provided in close proximity to the street frontages and over the parking lot. Most of the landscaping along Herschel Avenue is all in the parkway and therefore does not conform to "required front yard" landscaping guidelines. Screening shrubs are intended to conform to PD 193 screening requirements.
 - Recommendation:

Approval.

The Chief Arborist believes the significant landscape plan does not compromise the spirit and intent of the landscape provisions of the ordinance. The building and site update and renovation will dramatically change the physical appearance of the currently sparse site landscape by adapting some existing landscape into a new comprehensive landscape plan.

The selected plant material for screening of off-street parking should be amended to a plant recommended or approved by the Chief Arborist. Although the selected plant material will comply with the standards, the Chief

Arborist believes the plant selection should be modified to a more appropriate species for planting and long-term growth.

GENERAL FACTS (related to the nonconforming use enlargement):

- The Dallas Development Code defines a nonconforming use as “a use that does not conform to the use regulations of this chapter, but was lawfully established under regulations in force at the beginning of operation and has been in regular use since that time.”
- The Dallas Development Code states that enlargement of a nonconforming use means any enlargement of the physical aspects of a nonconforming use, including any increase in height, floor area, number of dwelling units, or the area in which the nonconforming use operates.
- The site is located in a GR Subdistrict of PD No. 193 that was established in 1985 which according to Building Inspection was most likely the time in which the existing drive-through restaurant use became nonconforming. A “drive-through restaurant” use is permitted by right in SC, central area, and industrial subdistricts; by SUP only in GR, LC, and HC subdistricts.
- The applicant has submitted a site plan that according to the applicant shows no increase in the building footprint. The applicant has submitted a document of elevations that according to the applicant increase the existing parapet wall height from 17’ 2 1/2” to 20’ 2 1/2”.
- The Building Inspection Development Code Specialist has stated that the site was zoned GR (General Retail) prior to its rezoning to PD No. 193 (GR Subdistrict) where the approximately 20’ high restaurant enlargement would have been permitted by right since the zoning district allowed 120’ in height.
- DCAD states that the site is developed with a “fast food restaurant” with 2,509 square feet built in 1979.
- Given provisions set forth in PD No. 193, the existing “drive-through restaurant” use on the site can obtain “conforming use” status upon either:
 1. the applicant attaining an SUP (Specific Use Permit) on the site from the City Council; or
 2. the City Council amending ordinance language pertaining to GR Subdistricts of PD No. 193 whereby a “drive-through restaurant” use would be added as a permitted use on all lots located in this specific subdistrict.
- The applicant has been informed of the Dallas Development Code provisions pertaining to “Nonconforming Uses and Structures,” and how nonconforming uses can be brought to the Board of Adjustment for amortization where if the board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for that nonconforming use - a compliance date that is provided under a plan whereby the owner’s actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a narrative that provided additional details and information about the requests;

- a document that included elevations of the proposal and the degree in which the structure is to be enlarged; and
- a revised alternate landscape plan.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (GR Subdistrict) (Planned Development District, General Retail)
North: PD No. 193 (GR Subdistrict) (Planned Development District, General Retail)
South: CD No. 16 (Conservation District)
East: PD No. 193 (GR Subdistrict) (Planned Development District, General Retail)
West: PD No. 193 (GR Subdistrict) (Planned Development District, General Retail)

Land Use:

The subject site is developed with a nonconforming drive-through restaurant use (Cactus Jacks). The areas to the north, east, and west are developed with retail uses; and the area to the south is developed with residential uses.

Zoning/BDA History:

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

Timeline:

- Sept. 25, 2009: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- Oct. 22, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- Oct. 13 & 22, 2009: The Board Administrator emailed the applicant the following information:
- an attachment providing the public hearing date and panel that will consider the application; the November 2nd deadline to submit additional evidence for staff to factor into their analysis; the November 6th 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.”
- Nov. 2 & 6, 2009 The applicant submitted additional information to the Board Administrator (see Attachment A).

Nov. 3, 2009 The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the November public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Chief Arborist, the Sustainable Development Department Project Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

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

Nov. 9, 2009 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment B).

STAFF ANALYSIS (related to the landscape special exception):

- This request focuses on enlarging an existing drive-through restaurant use (Cactus Jacks) - a drive-through restaurant that is planned to be transitioned to a different franchise (Carl's Jr.) by raising the height of the existing structure in certain places by 3 feet – not to enlarge the building footprint, and not fully complying with landscape regulations.
- Approval of this landscape special exception request would allow the height of the existing structure (a structure that pre-dates the PD 193 ordinance established in the mid-80's) to be raised 3' in certain places while allowing the site to not fully comply with the landscape requirements of PD No. 193.
- The City of Dallas Chief Arborist supports the request largely given that in his opinion, the proposed building and site update and renovation will dramatically change the physical appearance of the currently sparse site landscape by adapting some existing landscape into a new comprehensive landscape plan.
- The applicant has the burden of proof in establishing the following:
 - The special exception will not compromise the spirit and intent of the section of the ordinance (Section 26: Landscape, streetscape, screening, and fencing standards).
- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted revised alternate landscape plan and plant materials indicated on the aforementioned plan provided to screen off-street parking shall be amended to a plant material to be recommended by/approved by the Chief Arborist , the site would be minimally “excepted” from compliance from the sidewalk, street tree, and required front yard “landscape site area” requirements of PD No. 193 while exceeding requirements related to required front yard general planting area, required front yard special planting area, and lot area landscape site area requirements of PD No. 193.

STAFF ANALYSIS (nonconforming use enlargement):

- This request focuses on enlarging an existing nonconforming drive-through restaurant use (Cactus Jacks) - a drive-through restaurant that is planned to be transitioned to a different franchise (Carl's Jr.), whereby the proposed enlargement is only to raise the height of the existing structure in certain places by 3 feet – not to enlarge the building footprint.
- The request site is zoned PD No. 193 (GR Subdistrict).
- The “drive-through restaurant” use is a permitted use in the GR Subdistrict of PD No. 193 zoning district by SUP only.
- An elevation document has been submitted indicating a maximum 20' 2 ½” high “enlarged”/“heightened” structure – a structure that is 3' higher than the existing 17' 2 ½” high structure and well under the 120' maximum permitted height in the GR Subdistrict of PD No. 193.
- It is the applicant's burden of proof to establish that the expansion of the non-conforming use enlargement:
 1. does not prolong the life of the nonconforming use;
 2. would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and
 3. will not have an adverse effect on the surrounding area.
- Granting this request, subject to compliance with the submitted site plan and elevation document, would allow the existing nonconforming “drive-through restaurant” use to be “enlarged” in height by 3' to reach a maximum height of 20' 2 ½”.

FILE NUMBER: BDA 089-112

BUILDING OFFICIAL'S REPORT:

Application of David Martinez for a variance to the side yard setback regulations at 1905 S. Beckley Avenue. This property is more fully described as Tract 29.2 in City Block C/4604, containing approximately .7712 acres of land, and is zoned CS which requires a 20 foot side yard setback. The applicant proposes to construct and maintain a structure and provide a 3 foot side yard setback which will require a variance of 17 feet.

LOCATION: 1905 S. Beckley Avenue

APPLICANT: David Martinez

REQUEST:

- A variance to the side yard setback regulations of 17' is requested in conjunction with completing and maintaining a 1,900 square foot (50' x 38') storage building/structure in the 20' side yard setback along the western side of the site which is developed with a commercial use (Discount Construction Materials).

STAFF RECOMMENDATION:

Denial

Rationale:

- There is no property hardship to the site or physical characteristic/feature of the site that warrants the requested side yard variance of 17' to complete/maintain another structure on the site currently developed as a commercial use - in this case a structure located only 3' away from the site's western side property line adjacent to single family zoning and single family uses. The CS-zoned site is flat, is generally rectangular in shape (approximately 330' x 85'), and is approximately 28,000 square feet in area.

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:

- (A) the variance is 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) the variance is 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) the variance is 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.

GENERAL FACTS:

- The subject site is located at the southwest corner of Beckley Avenue and Pelman Street and is zoned CS (Commercial Service). As a result, the subject site has two front yard setbacks (one along Pelman Street on its north, the other along Beckley Street on its east) and two side yard setbacks (one 0' side yard setback along its south where the site is adjacent to CS-zoned property, the other side yard setback of 20' along the its west where the site is adjacent to R-7.5(A)-zoned property).
- The minimum side yard setback on a CS (Commercial Service) zoned lot is 20 feet where adjacent to or directly across an alley from a single family, duplex, townhouse, or multifamily zoning district; or no minimum in all other cases. The subject site directly abuts to an R-7.5(A) (single family) zoning district to the west. The applicant has submitted a site plan indicating that the nearly completed approximately 1,900 square foot storage building/structure is located 3' from the site's western side property line, or 17' into the 20' side yard setback along the west side of the site.
- According to calculations taken by the Board Administrator from the submitted site plan, approximately 850 square feet (or nearly half – 44 percent) of the approximately 1,900 square foot structure is in the site's side yard setback on the west side of the lot.
- The site is flat, is generally rectangular in shape (approximately 330' x 85'), and is approximately 28,000 square feet in area. The site is zoned CS (Commercial Service) and because it is located on a corner with two street frontages, the site has two front yard setbacks which is a characteristic typical of any corner lot not zoned single family, duplex, or agricultural.
- According to DCAD records, the property is developed with an "automotive display" built in 1959 that is 200 square feet in area.
- The Board of Adjustment conducted a public hearing on this application on October 21, 2009, and moved to delay action on the matter until their November 18th hearing.
- As of November 10th, no additional information beyond what was submitted with the original application had been submitted to staff.

BACKGROUND INFORMATION:

Zoning:

Site: CS (Commercial Service)
North: CS (Commercial Service)

South: CS (Commercial Service)
East: CR (Community Retail)
West: R-7.5(A) (Single family district 7,500 square feet)

Land Use:

The subject site is developed with a commercial use (Discount Construction Materials). The areas to the north, east, and south are developed with commercial and retail uses; and the area to the west is developed with single family uses.

Zoning/BDA History:

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

Timeline:

- Sept. 1, 2009: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Sept. 17, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- Sept. 22, 2009: The Board Administrator sent with the applicant the following information:
- A letter that provided information about the public hearing date and panel that will consider the application; the October 9th deadline to submit additional evidence to be incorporated into the Board's docket materials, and the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence;" and
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
- October 6, 2009 The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the October public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Chief Arborist, the Sustainable Development Department Project Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.
- Although no review comment sheets with comments were submitted in conjunction with this application, the Building Inspection Development Code Specialist pointed out at the staff review team meeting that the features shown on submitted site plan

show noncompliance with landscape and visual obstruction regulations to which no application has been made.

- October 7, 2009 The Board Administrator contacted the applicant and confirmed that Building Inspection Development Code Specialist had made him aware of the fact when his application for a variance to the site yard setback regulations was submitted that the site was not in compliance with the Dallas Development Code's landscape and visual obstruction regulations, and that the applicant had intentionally only made application for a variance to the side yard setback regulations. The applicant informed the Board Administrator that he was aware that he would not be able to achieve a building permit for the structure near completion in the side yard setback with just approval of the side yard variance request – that if the board were to grant the variance to the side yard setback regulations, that he would be required to file a special exception to the landscape regulations and that if the board were to deny the variance request to the side yard setback regulations, the building would be required to be altered to a point and size that may no longer trigger the site to comply with the landscape regulations – in this case by increasing by more than 35 percent, the combined floor area of all buildings on the site within a 24-month period. The applicant would make a determination at a later time as to whether he would be making an application to the board for a special exception to the visual obstruction regulations to address the portions of a fence that appears to be located in intersection and drive approach visibility triangles.
- Oct. 21, 2009 The Board of Adjustment conducted a public hearing on this request and delayed action until their November 18th public hearing.
- Oct. 21, 2009: The Board Administrator failed at his attempts to contact the applicant and owner of the site by phone since neither were present at the October 21st public hearing.
- Oct. 28, 2009: The Board Administrator wrote the applicant a letter (and copied the owner of the site) a letter that conveyed the following information:
- the board's delay of action on the application until November 18th,
 - the November 2nd deadline to submit additional evidence for staff to factor into their analysis; and the November 6th deadline to submit additional evidence to be incorporated into the Board's docket materials; and
 - an explanation of the the Board of Adjustment Working Rules of Procedure pertaining to public hearings specifically that if a case is called for hearing in due order on the docket and the applicant or anyone in his behalf does not appear, the panel may continue the case to the following hearing at which time it will be called again. The panel may also approve a case or deny a case for

Nov. 2, 2009: The Board Administrator met with the owner of the site and his son, and provided additional details about the application including the criteria that the board must use in considering any request for a variance to a development code standard.

Nov. 3, 2009 The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the November public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Chief Arborist, the Sustainable Development Department Project Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The request focuses on completing and maintaining a 1,900 square foot (50' x 38') storage building/structure in the 20' side yard setback along the western side of the site which is developed with a commercial use.
- The submitted site plan indicates that the nearly completed approximately 1,900 square foot storage building/structure is located 3' from the site's western side property line, or 17' into the 20' side yard setback along the west side of the site.
- According to calculations taken by the Board Administrator from the submitted site plan, approximately 850 square feet (or nearly half – 44 percent) of the approximately 1,900 square foot structure is in the site's side yard setback on the west side of the lot.
- The site is flat, is generally rectangular in shape (approximately 330' x 85'), and is approximately 28,000 square feet in area. The site is zoned CS (Commercial Service) and because it is located on a corner with two street frontages, the site has two front yard setbacks which is a characteristic typical of any corner lot not zoned single family, duplex, or agricultural.
- The applicant is aware of the fact that the site is not in compliance with the Dallas Development Code's landscape and visual obstruction regulations. The applicant has intentionally only made application for a variance to the side yard setback regulations even though he is aware that the City will not be able to issue a final building permit for the structure near completion in the side yard setback with just approval of the side yard variance request since the location of this structure located 3' away from the side property line adjacent to residential zoning precludes him from being able to provide the 10'-wide landscape buffer strip if not other provisions set forth in Article X: The Landscape Regulations of the Dallas Development Code. The applicant is aware that if the board were to grant the variance to the side yard setback regulations, that he would be required to file a special exception to the landscape regulations, and that if the board were to deny the variance request to the

- The applicant has the burden of proof in establishing the following:
 - That granting the variances to the side yard setback regulations of 17' 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 CS (Commercial Service) 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 CS (Commercial Service) zoning classification.
- If the Board were to grant the variances to the side yard setback regulations, imposing a condition whereby the applicant must comply with the submitted site plan, the encroachment into this setback would be limited to what is shown on this plan which in this case is a structure that is located 3' from the western side property line or 17' into the 20' side yard setback.
- Granting the side yard setback variance request would not provide any relief from the applicant fully complying with the landscape and visual obstruction regulations provided in the Dallas Development Code.

BOARD OF ADJUSTMENT ACTION: OCTOBER 21, 2009

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Gillespie

I move that the Board of Adjustment, in Appeal No. **BDA 089-112**, hold this matter under advisement until **November 18, 2009**.

SECONDED: **Chernock**

AYES: 3– Gillespie, Chernock, Wilson

NAYS: 2 – Reynolds, Beikman

MOTION PASSED 3 – 2

FILE NUMBER: BDA 089-122(K)

BUILDING OFFICIAL'S REPORT:

Application of Neil Bletsch for a variance to the side yard setback regulations at 5633 Bent Tree Drive. This property is more fully described as Lot 28 in City Block 1/8209 and is zoned R-1/2ac(A), which requires a side yard setback of 10 feet. The applicant proposes to construct and maintain a single family residential structure and accessory structure and provide a 0 foot side yard setback which will require a variance of 10 feet.

LOCATION: 5633 Bent Tree Drive

APPLICANT: Neil Bletsch

REQUEST:

- To construct and maintain single family residential accessory structures and provide a 0 foot side yard setback, which will require a 10 foot variance to the side yard setback regulations.

STAFF RECOMMENDATION:

Denial

Rationale:

- Although the property has an irregular shape, the physical features of the site do not preclude it from being developed in a manner commensurate with other R-1/2ac(A) lots. The property is approximately 23,000 square feet. The width of the lot at the proposed development is approximately 130 feet with a depth of 189 feet.

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:

- (A) the variance is 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) the variance is 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) the variance is 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.

GENERAL FACTS:

- The site is developed with a 3,600 square foot home that was constructed in 1985 and is listed in good condition.
- Properties in the R ½ ac(A) zoning are required to provide a 10 foot side yard setback.

BACKGROUND INFORMATION:

Zoning:

Site: R ½ ac (A) (single family residential 0.5 acre)
North: R ½ ac (A) (single family residential 0.5 acre)
South: R ½ ac (A) (single family residential 0.5 acre)
East: R ½ ac (A) (single family residential 0.5 acre)
West: R ½ ac (A) (single family residential 0.5 acre)

Land Use:

The subject site is developed with a single family structure. The properties to the north, west and south are developed with single family structures. The property to the east is 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.

Timeline:

- Sept. 23, 2009: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- October 22, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- November 3, 2009: The Board Senior Planner contacted the applicant’s representative by email and the following information:
- the public hearing date and panel that will consider the application;

- the criteria and standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the November 6th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the November public hearing after considering the information, evidence and testimony presented to them by the applicant and all other interested parties.

November 3, 2009 The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the November public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Chief Arborist, the Sustainable Development Department Project Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

STAFF ANALYSIS:

- The subject site is developed with a single family structure and is zoned R ½ ac (A), that requires a side yard setback of 10 feet.
- The applicant is proposing to construct an enclosed attached garage and an accessory structure. The attached garage will provide a 0 foot side yard setback and the detached accessory structure will provide a 4 foot side yard setback.
- This site has an irregular shape and is approximately 24,000 square feet, with dimensions of 121' x189'.
- The applicant is requesting relief from the 10 foot side yard setback of the western side yard.
- Staff is recommending denial of this request. Although the property is irregular in shape, the shape does not preclude this site from being developed in a manner commensurate with other lots within the same R ½ ac(A) zoning,
- The plans illustrate the lot is approximately 130 feet wide where the proposed construction will occur.
- The applicant has the burden of proof in establishing that the 10 foot variance to the side yard setback is not contrary to the public interest; is 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 will 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 a

- If the Board were to grant the variances to the side yard setback regulations, staff recommends conditioning the variance to the submitted site plan.