

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM
WEDNESDAY, JANUARY 16, 2013**

MEMBERS PRESENT AT BRIEFING: Darlene Reynolds, Vice Chair, Sam Gillespie, Panel Vice Chair, Christian Chernock, regular member, David Wilson, regular member and Paula Leone, regular member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Darlene Reynolds, Vice Chair, Sam Gillespie, Panel Vice Chair, Christian Chernock, regular member, David Wilson, regular member and Paula Leone, regular member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Tammy Palomino, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Tammy Palomino, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist and Trena Law, Board Secretary

11:12 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **January 16, 2013 docket.**

1:03 P.M.
The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel B November 14, 2012 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: JANUARY 16, 2013

MOTION: Leone

I move approval of the **Wednesday, November 14, 2012** Board of Adjustment Public Hearing minutes.

SECONDED: Wilson

AYES: 5– Reynolds, Gillespie, Chernock, Wilson, Leone

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 123-001

BUILDING OFFICIAL’S REPORT:

Application of Robert Baldwin for special exceptions to the fence height regulations at 5404 Park Lane. This property is more fully described as an approximately 5.75 acre parcel of land to be platted as Lot 1E, Block 6/5596 and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain an 8 foot high fence, which will require special exceptions of 4 feet.

LOCATION: 5404 Park Lane

APPLICANT: Robert Baldwin

REQUEST:

Special exceptions to the fence height regulations of 4’ are requested in conjunction with constructing and maintaining an 8’ high wrought iron fence and gate in the site’s 40’ front yard setbacks along Alva Court on the west and Holloway Road on the east on a site developed with a single family home.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to the fence height regulations since the basis for this type of appeal is *when in the opinion of the board*, the special exception will not adversely affect neighboring property.

BACKGROUND INFORMATION:

Zoning:

Site: R-1 (A) (Single family district 1 acre)
North: R-1 (A) (Single family district 1 acre)
South: R-1 (A) (Single family district 1 acre)
East: R-1 (A) (Single family district 1 acre)
West: R-1 (A) (Single family district 1 acre)

Land Use:

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

Zoning/BDA History:

1. BDA 990-364, 5404 Park Lane (the subject site) On November 14, 2000, the Board of Adjustment Panel B granted requests for a special exception to the fence regulations of 7' 3" and a special exception to the single family dwelling unit regulations. The board imposed the following conditions: compliance with the submitted site plan and elevation is required; and the applicant must deed restrict the property to prohibit the additional dwelling unit on the site as rental accommodations.
The case report stated that the requests were made in conjunction with constructing and maintaining a fence consisting of an 11' 3" high wrought iron gate, a 9' 2" high fence and 10' 3' high brick columns within the 40' front yard setback along Park Lane, Holloway Road, and Alva Court; and to construct and maintain an additional dwelling unit to be used as guest quarters on the site. (The applicant has stated that the current application – BDA 123-001- does not amend any part of the fence height special exception granted by the board in 2000).

2. BDA 078-081, 5330 Park Lane (the lot immediately west of the subject site)

On June, 25, 2008, the Board of Adjustment Panel B granted a request for a special exception to the fence height regulations of 7' and imposed the submitted revised site plan/elevation document as a condition. The case report stated that the request was made in conjunction with constructing and maintaining 3 arched open decorative iron gates (one gate at 8' in height along Alva Court that includes 7' high columns, and two gates at 10' in height along Park Lane) in the site's 40' front yard setbacks along Park Lane and Alva Court on a site being developed with a single family home.
3. BDA 056-003, 9423 Alva Court (two lots southwest of the subject site)

On October 18, 2005, the Board of Adjustment Panel A granted requests for a special exception to the fence height regulations of 3' and for special exceptions to the visual obstruction regulations. The Board imposed the following condition: Compliance with the submitted revised site plan and revised fence elevation is required. The case report stated that the requests were made in conjunction with constructing and maintaining the following in the 40' Alva Court front yard setback: a 4' 8" high open metal fence (with an 18" brick base), 5' high brick columns, two 7' high arched entry gates with 6' high brick entry columns; and constructing and maintaining the fence and columns as described above in four, 20'-visibility triangles at the two drive approaches to the site on Alva Court.
4. BDA 967-297, 9434 Alva Court (the lot immediately south of the subject site)

On September 15, 1997, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 4' 6". The board imposed the following condition: compliance with the submitted site/landscape plan is required. The case report states that the request was made to construct an 8' high open steel fence with 8' 6" high stucco-finish columns and an 8' high open metal gate.

5. BDA 87-111, 9441 Hollow Way (the lot immediately south of the subject site) On January 13, 1987, the Board of Adjustment granted a request for a special exception to the fence height regulations of 2' and imposed the following conditions: 1) On existing fence constructed of wrought iron, all gates should be located 20 feet back from property line; and 2) applicant meet gate setback requirement within 180 days. The minutes stated that "the fence is constructed of six foot brick columns with wrought iron in between and the fence is in scale with dwelling unit at the site."
6. BDA 989-221, 5518 Kemper Court (the lot southeast of the subject site) On May 18, 1999, the Board of Adjustment Panel B granted a request for a special exception to the fence height regulations of 5' 11" and imposed the following condition: Compliance with the submitted site/elevation/landscape plan is required which shows a 6' 4" fence, 8' 4" high columns, and 9' 11" high entry gates. The case report stated that the request was made in conjunction with constructing and maintaining a maximum 6' 4" high fence and columns, and 8' 4" high entry wing walls, and 9' 11" high open metal entry gates along Kemper Court.

Timeline:

- October 31, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- November 5, 2012: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."
- December 11, 2012: 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 December 19th deadline to submit additional evidence for staff to factor into their analysis;

and the January 4th 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.

December 21, 2012: The applicant submitted additional information to the Board Administrator (see Attachment A).

December 21, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Board Administrator, the Building Inspection Senior Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

GENERAL FACTS/STAFF ANALYSIS:

- These requests focus on constructing and maintaining an 8' high wrought iron fence and gate in the site's 40' front yard setbacks along Alva Court on the west and Holloway Road on the east on a site developed with a single family home.
- The proposals in this application are extensions of existing fences on a recently expanded subject site – fences over 4' in height that were granted exception by the Board of Adjustment in 2000 (BDA 990-364).
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The subject site is bounded by Park Lane on the north, Holloway Road on the east, and Alva Court on the west. The site has three front yard setbacks along each street: Park Lane since it is the shortest of the three street frontages; and Holloway Road and Alva Court, which are longer street frontages that in most cases would be side yards but in this case front yards to maintain the continuity of the established setback of homes to the south of the site that front eastward onto Holloway Road and westward onto Alva Court.
- The applicant has submitted a revised scaled site plan/partial elevation (see Attachment A) that shows the proposal in the Alva Court and Holloway Road front yard setbacks reaching a maximum height of 8'.
- The following additional information was gleaned from the submitted revised site plan:
 - Approximately 135' in length parallel to Alva Court, approximately 10' from the front property line or approximately 15' from the pavement line;
 - Approximately 135' in length parallel to Holloway Road, approximately 10' from the front property line or approximately 20' from the pavement line.

- There are two single family homes that have direct frontage to the proposal along Alva Court neither with fences higher than 4' in their front yards.
- There is no single family home that has direct frontage to the proposal along Holloway Road since the homes to the east of the subject site front towards Kemper Court.
- The Board Administrator conducted a field visit of the site and surrounding area and noted one other fence higher than 4' high in a front yard setback *along Alva Court* – an approximately 8' high open wrought iron fence immediately south of the site that appears to be a result of an approved fence height special exception in 1997: BDA 967-297.
- The Board Administrator conducted a field visit of the site and surrounding area and noted one other fence higher than 4' high in a front yard setback *along Holloway Road* – an approximately 6' high open wrought iron fence immediately south of the site that appears to be a result of an approved fence height special exception in 1987: BDA 87-111. The Board Administrator noted another fence higher than 4' in height immediately east of the subject site but this fence appears to be in a side yard where fences can reach 9' in height by right.
- As of January 7, 2013, no letters have been submitted either in support or in opposition to the request.
- The applicant has the burden of proof in establishing that the requested special exceptions to the fence height regulations of 4' (whereby a proposal that would reach a maximum 8' in height) will not adversely affect neighboring property.
- Granting these special exceptions to the fence height regulations of 4' with a condition imposed that the applicant complies with the submitted revised site plan/elevation document would assure that the proposals would be constructed and maintained in the locations and of the heights and materials as shown on this document.

BOARD OF ADJUSTMENT ACTION: JANUARY 16, 2013

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Gillespie

I move that the Board of Adjustment grant application **BDA 123-001** 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 condition be imposed to further the purpose and intent of the Dallas Development Code.

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

SECONDED: Wilson

AYES: 5– Reynolds, Gillespie, Chernock, Wilson, Leone

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 123-005

BUILDING OFFICIAL’S REPORT:

Application of Bill Teel for a special exception to the sign regulations at 7642 Lyndon B. Johnson Freeway. This property is more fully described as Lot 2, Block C/7729 and is zoned MU-3, which allows only one detached sign for every 450 feet of frontage or fraction thereof on an expressway. The applicant proposes to construct and maintain an additional sign, which will require a special exception to the sign regulations.

LOCATION: 7642 Lyndon B. Johnson Freeway

APPLICANT: Bill Teel

REQUEST:

A special exception to the sign regulations is requested in conjunction with erecting and maintaining a detached “double-face pylon” sign along the site’s street frontage on a site limited (given its 249’) to one sign – a site currently with one detached sign (a billboard) along its street frontage. The subject site is developed with a hotel use (Marriott Residence Inn).

STANDARD FOR A SPECIAL EXCEPTION TO THE SIGN REGULATIONS FOR AN ADDITIONAL DETACHED SIGN:

The Board of Adjustment may, in specific cases and subject to appropriate conditions, authorize one additional detached sign on a premise in excess of the number permitted by the sign regulations as a special exception to these regulations when the board has made a special finding from the evidence presented that strict compliance with the requirement of the sign regulations will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.

STAFF RECOMMENDATION:

Approval

Rationale:

- Staff has concluded that the existing billboard on this site that is not affiliated with the business on the property creates inequity to the applicant. The one sign that is permitted on the subject site (the existing billboard) precludes the applicant/owner from having a detached premise sign identifying the business on the subject site – a type of sign typically found along the street frontages on other lots/other properties.
- Approval of this special exception would merely allow an additional sign on the property and not provide any other exception to the sign regulations pertaining to the additional sign’s setback, height, or effective area.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	MU-3 (Mixed use)
<u>North:</u>	MU-1 (Mixed use)
<u>South:</u>	PD 615 (Planned Development)
<u>East:</u>	MU-3 (Mixed use)
<u>West:</u>	MU-3 (Mixed use)

Land Use:

The site is currently developed with a hotel use (Marriott Residence Inn). The area to the north is the LBJ Freeway; and the areas to the east, west, and south are developed with 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.

Timeline:

November 6, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

December 6, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

December 11, 2012: 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 December 19th deadline to submit additional evidence for staff to factor into their analysis; and the January 4th 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.

December 21, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Board Administrator, the Building Inspection Senior Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction

Department Project Engineer, and the Assistant City Attorney to the Board.

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

January 3, 2013: The applicant submitted additional information to the Board Administrator beyond what was submitted in the original application (see Attachment A).

GENERAL FACTS/STAFF ANALYSIS:

- The request focuses on erecting and maintaining an additional sign on the subject site, more specifically a detached “double-face pylon” sign to be located near the west side on the subject site’s LBJ Freeway service road frontage that would serve to identify the existing hotel (Marriott Residence Inn) on the subject site. The subject site is limited (given its 249’ of street frontage) to one sign - the site already has one detached sign (a billboard) located near its east side on the LBJ Freeway service road.
- The Dallas Development Code states that only one detached sign is allowed per street frontage other than expressways, and that one expressway sign is allowed for every 450 feet of frontage or fraction thereof on an expressway. (The subject site’s frontage is an expressway).
- The applicant submitted a site plan indicating that the frontage of the site is 248.56 feet along with a “signage easement” on the east side of the site and a “new sign to be located with hatched area” on the west side of the site. A note on the submitted site plan denotes a 237’ distance from the existing billboard on the east to the new sign proposed location on the west.
- The applicant has also submitted a sign elevation denoting that the proposed sign at 20’ in height with a sign board that is 5’ 8” high and 9’ 0” wide. (The actual sign board is located atop a base that is approximately 14’ in height).
- The applicant states that the existing billboard on the site is on a sign easement which was in place prior to the lot being sold to the original developer of the hotel on the site; that the original developer and subsequent owners of the hotel could not obtain a permit for a freestanding sign solely because of the presence of the billboard; and that the owner of the hotel does not own the billboard or have any control of it whatsoever or receive any compensation from the billboard.
- The applicant has the burden of proof in establishing the following:
 - That strict compliance with the requirement of the sign regulations (where in this case, the site would be limited to having only one sign along the street frontage) will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.
- If the Board were to approve the request for a special exception to the sign regulations, the Board may consider imposing a condition that the applicant complies with the submitted site plan and elevation.

- Granting this special exception would not provide any relief to the sign regulations of the Dallas Development Code other than allowing an additional sign on the subject site.

BOARD OF ADJUSTMENT ACTION: JANUARY 16, 2013

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Gillespie**

I move that the Board of Adjustment grant application **BDA 123-005** 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 condition be imposed to further the purpose and intent of the Dallas Development Code.

SECONDED: **Wilson**

AYES: 5– Reynolds, Gillespie, Chernock, Wilson, Leone

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 112-082

BUILDING OFFICIAL’S REPORT:

Application of Jonathan Vinson of Jackson Walker for a variance to the off-street parking regulations at 601 Hawkins Street. This property is more fully described as a 0.394 acre parcel in City Block 317 and is zoned CA-2(A), which requires off-street parking. The applicant proposes to construct and maintain a structure for a mini-warehouse use and provide 6 of the required 28 parking spaces, which will require a variance of 22 spaces.

LOCATION: 601 Hawkins Street

APPLICANT: Jonathan Vinson of Jackson Walker

January 16, 2013 Public Hearing Notes:

- The Board Administrator circulated a January 9, 2013 letter submitted by the applicant to the board members at the briefing (see Attachment E). The applicant’s letter was his request for the board to deny his request without prejudice given that the applicant had elected to provide required parking in compliance with the Dallas Development Code.

REQUEST:

A variance to the off-street parking regulations of 22 parking spaces (or a 79 percent reduction of the 28 off-street parking spaces that are required) is requested in conjunction with constructing and maintaining an approximately 61,000 square foot mini-warehouse use (Public Storage) on an undeveloped property. The applicant proposes to provide 6 (or 21 percent) of the required 28 off-street parking.

STANDARD FOR A VARIANCE:

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

- (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.

STAFF RECOMMENDATION:

Denial

Rationale:

- The applicant has not substantiated how a literal enforcement of the code provisions would result in unnecessary hardship; how the variance is necessary to permit development of the subject site in that it is different from other parcels of land by its restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels with the same CA-2(A) zoning district; nor how the variance is not needed to relieve a self-created or personal hardship, nor for financial reasons only.
- Although the site is irregular in shape, the applicant has not substantiated how the requested variance to the off-street parking requirement is necessary to permit its development (even with its triangular shape) in a manner commensurate with the development upon other parcels of land with the same CA-2(A) zoning, or how with the physical features of the site preclude him from complying with off-street parking requirements for a mini-warehouse use with less square footage than what is proposed.
- In addition, the applicant has not substantiated how granting this variance to the number of required off-street parking spaces would not be contrary to the public interest. The Sustainable Development and Construction Department Engineering Division Assistant Director recommends denial of this request, commenting that the

“multi-story structure without drive aisles for loading and unloading will need more than 6 parking spaces.”

BACKGROUND INFORMATION:

Zoning:

Site: CA -2(A) (Central Area)
North: CA -2(A) (Central Area)
South: CA -2(A) (Central Area)
East: CA -2(A) (Central Area)
West: CA -2(A) (Central Area)

Land Use:

The subject site is currently undeveloped. The areas to the north and west are freeways, the area to the east is developed with residential uses; and the area to the south is developed with mini-warehouse use.

Zoning/BDA History:

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

Timeline:

- June 27, 2012: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- July 17, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- July 17, 2012: 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 July 25th deadline to submit additional evidence for staff to factor into their analysis; and the August 3rd deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the requests; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- July 19, 2012: The applicant submitted a revised site plan and the Building Inspection Senior Plans Examiner forwarded a revised Building Official’s Report on this application (see Attachment A).

- July 28, 2012: The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked "Recommends that this be denied" commenting "The submitted parking study does not support 0 spaces. On-street parking will be contrary to the public interest in this area."
- July 31, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, and the Assistant City Attorneys to the Board.
- August 1, 2012: The applicant requested postponement of the application until Panel B's September hearing.
- August 24, 2012: The applicant requested postponement of the application until Panel B's October hearing.
- September 27, 2012: The applicant amended his application and submitted a revised site plan (see Attachment B). The applicant also submitted information for staff review to be considered at the October 2nd staff review team meeting.
- October 2, 2012: 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 Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Building Inspection Senior Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- October 5, 2012: The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked "Recommends that this be denied" commenting "Multi-story structure without drive aisles for loading and unloading will need more than 6 parking spaces."
- October 5, 2012: The applicant forwarded additional information beyond what was submitted with the original application, and at the October 2nd staff review team meeting (see Attachment C).

- October 17, 2012: The Board of Adjustment Panel B conducted a hearing on this application and moved to hold the matter under advisement until January 16, 2013.
- December 20, 2012: The applicant also submitted information for staff review to be considered at the December 21st staff review team meeting.
- December 21, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Board Administrator, the Building Inspection Senior Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.
- January 4, 2013: The applicant forwarded additional information to be forwarded to the board beyond what was submitted with the original application, and beyond what was submitted at the October 17th hearing (see Attachment D).

GENERAL FACTS/ STAFF ANALYSIS:

- This request for a 22 space variance to the off-street parking regulations focuses on constructing and maintaining an approximately 61,000 square foot mini-warehouse use (Public Storage) on an undeveloped property zoned CA-2(A). The applicant proposes to provide 6 (or 21 percent) of the required 28 off-street parking.
- Prior to September 25, 2012, the off-street parking regulations of the Dallas Development Code required the following off-street parking for a mini-warehouse use in zoning districts other than in CA-2(A): 1 space per 3,000 square feet of floor area.
- On September 25, 2012, the City Council amended the off-street parking for a mini-warehouse use to the following: Six spaces are required. Spaces may not be used for outside storage, vehicle storage, or parking for vehicles for rent.
- Regardless of the recent off-street parking code amendments for mini-warehouse uses in most zoning districts, the off-street parking requirement in CA-2(A) zoning was not amended and remains the same for this site because it is zoned CA-2(A). The off-street parking requirements for this site are as follows: for all uses other except single family and duplex, off-street parking is only required for a new building or an addition to an existing building at a ratio of one parking space per each 2,000 square feet of floor area which exceeds 5,000 square feet. No off-street parking is required for a building with 5,000 square feet or less of floor area. The proposed 61,158 square foot mini-warehouse use is required to provide off-street parking for 56,158 square feet or 5,000 square feet less than the actual 61,158 square feet proposed on the site.
- Dallas Development Code Section 51A-4.311(a)(1) states that the Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces 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, the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets; and that the maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.

- Because the applicant is seeking a 79 percent reduction to the off-street parking requirement, the applicant may only apply for a *variance* and only the variance standard applies.
- The subject site is flat, triangular in shape, and according to the application, 0.3940 acres in area.
- DCAD records indicate “no improvements” for property at 601 Hawkins Street.
- The applicant has submitted additional documentation stating that the “request has not changed in any of its particulars since the October 17 Board hearing.”
- The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked “Recommends that this be denied” commenting “Multi-story structure without drive aisles for loading and unloading will need more than 6 parking spaces.”
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the off-street parking regulations of 22 spaces 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 CA-2(A) zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same CA-2(A) zoning classification.

BOARD OF ADJUSTMENT ACTION: OCTOBER 17, 2012

APPEARING IN FAVOR: Jonathan Vinson, 901 Main St., Dallas, TX
Jim Fitzpatrick, 701 Western Ave, Glendale, CA

APPEARING IN OPPOSITION: Ryan Rothermel, 2502 Live Oak St., #238, Dallas, TX
Jeffrey Langlitz, 2502 Live Oak St., #105, Dallas, TX
Jessie States, 2502 Live Oak, # 204, Dallas, TX

MOTION: Wilson

I move that the Board of Adjustment in Appeal No. **BDA 112-082**, hold this matter under advisement until **January 16, 2013**.

SECONDED: Chernock

AYES: 5– Reynolds, Chernock, Wilson, Leone, Gaspard

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: JANUARY 16, 2013

APPEARING IN FAVOR: Jonathan Vinson, 901 Main St., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Wilson**

I move that the Board of Adjustment, in Appeal No. **BDA 112-082**, on application of Jonathan Vinson and at the request of the applicant, **deny** the requested off-street parking variance **without prejudice**.

SECONDED: **Leone**

AYES: 5– Reynolds, Gillespie, Chernock, Wilson, Leone

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 112-107

BUILDING OFFICIAL’S REPORT:

Application of David Tayyari for a special exception to the landscape regulations at 19353 Preston Road. This property is more fully described as Lot 3 in City Block 22/8736 and is zoned CS, which requires mandatory landscaping. The applicant proposes to construct and/or maintain a structure and provide an alternate landscape plan, which will require a special exception.

LOCATION: 19353 Preston Road

APPLICANT: David Tayyari

January 16, 2013 Public Hearing Notes:

- The Board Administrator circulated a revised landscape plan dated 01-07-2013 submitted by the applicant to the board members at the briefing (see Attachment D).

REQUEST:

A special exception to the landscape regulations is requested in conjunction with maintaining a site developed with a “vehicle display, sales, and service” use (Silver Star Motor Cars), and not fully meeting the landscape regulations.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

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

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

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

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

STAFF RECOMMENDATION:

Denial

Rationale:

- The applicant has not substantiated how strict compliance with the requirements of the landscape regulations of the Dallas Development Code will unreasonably burden the use of the property, and that the special exception will not adversely affect neighboring property.
- The City's Chief Arborist recommends denial of the request, partly because , aside from the physical restrictions for planting large trees along the street frontages of the property, strict compliance with all other requirements of the landscape regulations of the Dallas Development Code will not unreasonably burden the use of the property.

BACKGROUND INFORMATION:

Zoning:

Site: CS (deed restricted*) (Commercial Service)
North: City of Plano
South: PD 170 (Planned Development)
East: CR & RR (deed restricted) (Community Retail and Regional Retail)
West: CS (deed restricted) (Commercial Service)

- * The deed restrictions on this property do not appear to be in conflict with what the applicant seeks in this application.

Land Use:

The site is currently developed with a “vehicle display, sales, and service” use (Silver Star Motor Cars). The area to the north is the President George Bush Turnpike and the City of Plano, the area to the east is developed with retail/commercial uses, the area to the south is developed with multifamily, and the area are undeveloped, the area to the south is developed as townhomes, and the area to the west is developed with hotel/motel use.

Zoning/BDA History:

1. BDA 989-108, Property at 19383 Preston Road (two lots immediately west of the subject site)

On October 20, 1998, the Board of Adjustment Panel B granted a request for a special exception to the landscape regulations and imposed the following condition: “that strict compliance with a revised landscape plan showing further landscaping enhancements and relocation of the fence on the southwestern corner reflect what is required by the deed restrictions on the property.” The case report that the request was made in conjunction with constructing and maintaining a mini-warehouse on the site. (The case report also references the following: “On August 7, 1995, deed restrictions were submitted and recorded on the land including the site and the area immediately east of the site to Preston Road. The deed restrictions included a specific list of uses permitted on the property, and landscape provisions requiring certain features to be placed on the land upon development. The Board Administrator, the Chief Arborist, and the Board of Adjustment Review Team Development Code Specialist have reviewed these deed restrictions and have indicated that there would be no breach of these restrictions if this special exception was granted.”

Timeline:

September 19, 2012: 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 10, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- October 10, 2012: 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 October 24th deadline to submit additional evidence for staff to factor into their analysis; and the November 2nd 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 23, 2012: The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).
- October 30, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- November 6, 2012: The City of Dallas Chief Arborist submitted a memo (with related plans) that provided his comments regarding the request (see Attachment B).
- November 14, 2012: The Board of Adjustment Panel B conducted a hearing on this application where the applicant submitted a revised landscape plan (which merely substituted the notation of "unknown" on the originally submitted plan to "Bradford Pear tree," and a copy of a 2002 Certificate of Occupancy for property located at 19353 Preston Road to the board at the public hearing (see Attachment C). The Board delayed action on this application until their next hearing scheduled for January 16, 2013.
- November 16, 2012: The Board Administrator wrote the applicant a letter stating the following:
- that the board delayed action on this application until January 16, 2013; and
 - that the deadline to submit any additional information for staff review purposes was December 26th, and the deadline to submit any additional information for the board's docket was January 4th.

December 21, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Board Administrator, the Building Inspection Senior Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

January 7, 2013: As of January 7, 2013, the applicant had not submitted any additional documentation since the November 14th hearing.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on maintaining a site developed with a “vehicle display, sales, and service” use (Silver Star Motor Cars), and not fully meeting the landscape regulations. More specifically, according to the City of Dallas Chief Arborist, the site is deficient: 1) the perimeter landscape buffer strip and required plant group; 2) street tree; 3) parking lot tree; and 4) two design standard requirements of the Landscape Regulations.
- The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period.
- The City of Dallas Chief Arborist submitted a memo (with related plans) to the Board Administrator regarding the applicant’s request (see Attachment B). The memo states how this request is triggered by new construction of a vehicle display, sales, and service use where three building permits issued in 2000 and 2004 have all expired, and where the new building permit was created on March 1, 2011 to finish work on all previous building permits. This permit with all site plan amendments has not been issued and is on hold pending a code compliant landscape plan approval for installation since December of 2011.
- The City of Dallas Chief Arborist stated in his November 6th memo that no landscape materials installed on the property have been inspected for approval. The initial landscape plans previously submitted by the owner, and approved for permit identified a minimum 10’ landscape buffer along the south side of the property, and multiple trees species were identified on tables of the submitted plans. The proposed landscape plan does not identify species of trees but they are listed as “unknown.” (Note that since the Chief Arborist’s November 6th memo was written, the applicant submitted an amended plan at the November 14th hearing and identifying what had been labeled as “unknown” trees as “Bradford Pear trees.”) Multiple paved slots are placed in the mandatory perimeter landscape buffer strip and cross onto the adjacent property. Vehicles are stored on these slots in the buffer where the lengths of these slots are not of sufficient length to prevent the vehicle from encroaching into the adjacent fire lane. The existing plant material in the buffer is not in compliance with Article X requirements for large trees.
- The City of Dallas Chief Arborist recommends denial of this request.

- The applicant has the burden of proof in establishing the following:
 - Strict compliance with the requirements of the Landscape Regulations of the Dallas Development Code will unreasonably burden the use of the property; and
 - The special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose the submitted revised landscape plan as a condition to the request, the site would be provided exception from full compliance with the perimeter landscape buffer strip and required plant group, street tree, parking lot tree, and design standard requirements of Article X: The Landscape Regulations.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 14, 2012

APPEARING IN FAVOR: David Tayyari, 19353 Preston Rd., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Wilson**

I move that the Board of Adjustment in Appeal No. **BDA 112-107**, on application of David Tayyari hold this matter under advisement until **January, 16, 2013**.

SECONDED: **Leone**

AYES: 5– Reynolds, Gillespie, Wilson, Leone, Gaspard

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: JANUARY 16, 2013

APPEARING IN FAVOR: David Tayyari, 19353 Preston Rd., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Chernock**

I move that the Board of Adjustment, in Appeal No. **BDA 112-107**, on application of David Tayyari, **grant** the special exception to the landscape regulations in the Dallas Development Code because our evaluation of the property and the testimony shows that strict compliance with the requirements will unreasonably burden the use of the property and the special exception will not adversely affect neighboring property. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised alternate landscape plan is required.
- Any tree along the south perimeter of the property that dies must be replaced with an approved replacement tree listed in Article X.
- Except as required and performed by a public utility, the topping of trees is prohibited.

- All tress must be maintained under the best management practices recommended by the International Society of Arboriculture.

SECONDED: Wilson

AYES: 5– Reynolds, Gillespie, Chernock, Wilson, Leone

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

MOTION: Wilson

I move to adjourn this meeting.

SECONDED: Chernock

AYES: 5– Reynolds, Gillespie, Chernock, Wilson, Leone

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

1:14 P.M. Board Meeting adjourned for **January 16, 2013.**

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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