

**BOARD OF ADJUSTMENT, PANEL B  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM  
WEDNESDAY, JANUARY 18, 2012**

**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, Theresa O' Donnell, Director, David Cossom, Asst. Director, Todd Duerksen, Development Code Specialist, Jerry Svec, Project Engineer, and Trena Law, Board Secretary

**STAFF PRESENT AT HEARING:**

Steve Long, Board Administrator, Tammy Palomino, Asst. City Attorney, Theresa O' Donnell, Director, David Cossom, Asst. Director, Todd Duerksen, Development Code Specialist, Jerry Svec, Project Engineer, and Trena Law, Board Secretary

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**11:02 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **January 18, 2012 docket**.  
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**1:05 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 16, 2011 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION:** **JANUARY 18, 2012**

**MOTION:** **Wilson**

I move approval of the **Wednesday, November 16, 2011** Board of Adjustment Public Hearing minutes.

**SECONDED:** **Chernock**

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

**NAYS:** 0 –

**MOTION PASSED** 5 – 0 (unanimously)

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**FILE NUMBER:** **BDA 101-123**

**BUILDING OFFICIAL'S REPORT:**

Application of Angela McCall for a special exception to the side yard setback regulations at 9518 Tarleton Street. This property is more fully described as Lot 7 in City Block 15/5393 and is zoned R-7.5(A), which requires a side yard setback of 5 feet. The applicant proposes to construct/maintain a carport and provide a 6 inch side yard setback, which will require a special exception of 4 feet 6 inches.

**LOCATION:** **9518 Tarleton Street**

**APPLICANT:** **Angela McCall**

**January 18, 2012 Public Hearing Notes:**

- The Board Administrator circulated a revised elevation prepared by the applicant to the Board at the briefing. The Board Administrator also informed the Board that the contractor had established with him prior to the briefing that the applicant's request was made to modify and maintain the existing carport on the subject site.

**REQUEST:**

- A special exception to the side yard setback regulations of 4' 6" is requested in conjunction with locating and maintaining what is represented on the submitted site plan as an approximately 260 square foot carport attached to a single-family home, part of which is located in the site's 5' side yard setback on the southwest side of the property.

### **STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to the side yard setback regulations since the basis for this type of appeal is *when in the opinion of the board*, the carport will not have a detrimental impact on surrounding properties.

### **STANDARD FOR A SPECIAL EXCEPTION TO ALLOW A CARPORT IN THE SIDE YARD:**

The Board of Adjustment may grant a special exception to the minimum side yard requirements to allow a carport for a single-family or duplex use when, in the opinion of the Board, the carport will not have a detrimental impact on surrounding properties. In determining whether to grant a special exception, the Board shall consider the following:

(1) Whether the requested special exception is compatible with the character of the neighborhood.

(2) Whether the value of surrounding properties will be adversely affected.

(3) The suitability of the size and location of the carport.

(4) The materials to be used in construction of the carport.

(Storage of items other than motor vehicles is prohibited in a carport for which a special exception is granted in this section of the Code).

### **ORIGINAL GENERAL FACTS:**

- A 5' side yard setback is required in the R-7.5(A) zoning district.  
The applicant has submitted a site plan and elevations indicating the location of the "proposed carport" 6" away from the site's southwestern side property line or 4' 6" into the 5' side yard setback.
- The following information was gleaned from the submitted site plan:
  - The carport is represented to be 21'  $\frac{1}{2}$ " in length and 12' 6" in width (approximately 260 square feet in total area) of which approximately 95 square feet (or approximately 1/3) is located in the southwestern side yard setback.
- The following information was gleaned from the submitted elevations:
  - Represented to be approximately 11' in height, in with the cornice line of the house, with "galvanize R-panel" roofing and columns made of stone/cedar posts/columns. (As of January 9, 2012, the applicant had not clearly established whether the features/materials of the carport shown on these elevations are compliant with the Building Code).
- The subject site is approximately 135' x 60' (or 8,100 square feet) in area.
- According to DCAD, the property at 9518 Tarleton Street has the following:
  - "main improvement" - a structure in "average" condition built in 1938 with 1,258 square feet of living area,
  - "additional improvements" – "detached garage" with 320 square feet.
- The Dallas Development Code provides for the Board of Adjustment to consider special exceptions for carports in the side yard with a specific basis for this type of appeal. (Note that the Dallas Development Code does not provide a definition of

“carport” however Building Inspection interprets a “carport” to be a structure that would cover a vehicle and be open on at least one side. Building Inspection has recently been interpreting what would appear to a layperson to be a garage without a garage door as a “carport”).

- The Dallas Development Code provides for the Board of Adjustment to consider *variances for structures* in the side yard setback with a different basis for appeal than that of *special exceptions for carports* in the side yard setback.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: R-7.5(A) (Single family residential 7,500 square feet)  
North: R-7.5(A) (Single family residential 7,500 square feet)  
South: R-7.5(A) (Single family residential 7,500 square feet)  
East: R-7.5(A) (Single family residential 7,500 square feet)  
West: R-7.5(A) (Single family residential 7,500 square feet)

### **Land Use:**

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

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

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

### **Timeline:**

October 4, 2011: 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 9, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

December 9, 2011: 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 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the January 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

December 28, 2011: The Board Administrator emailed the applicant of the following concerns/facts: 1) that she is fully aware of the fact that her application to the board of adjustment is made merely for a special exception to the side yard setback regulations to locate/maintain a carport in the side yard setback, and that no part of her application to the board is made with regard to any existing or proposed structure located in the front yard setback; and 2) she may want to contact Todd Duerksen/Building Inspection to confirm that the materials shown on her submitted elevations are building code compliant, and if not, amend them accordingly since the board of adjustment will most likely impose the submitted site plan and elevations as conditions if they approve your request; and 3) his understanding is that the City would issue a final permit for her carport when she would get an approved special exception from the board to allow its location in a side yard setback at the public hearing on January 18<sup>th</sup>, AND provide documentation to the City's Building Inspection that the carport is building code compliant; and 4) that for the sake of her application to the board of adjustment that her submitted elevations or to be submitted *revised* elevations to city staff/the board members by her January 18<sup>th</sup> hearing can be represented as being Building Code compliant.

January 3, 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 Sustainable Development and Construction Department Current Planning Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

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

### **STAFF ANALYSIS:**

- This request focuses on locating and maintaining what is represented on submitted plans as an approximately 260 square foot carport attached to a single-family home, part of which is located in the site's 5' side yard setback on the southwest side of the property.
- The submitted site plan represents the "proposed carport" 6' away from the site's southwestern side property line or 4' 6" into the 5' side yard setback.
- The following information was gleaned from the submitted site plan:
  - The carport is represented to be 21' ½" in length and 12' 6" in width (approximately 260 square feet in total area) of which approximately 95 square feet (or approximately 1/3) is located in the southwestern side yard setback.
- The following information was gleaned from the submitted elevations:

- Represented to be approximately 11' in height, in with the cornice line of the house, with "galvanize R-panel" roofing and columns made of stone/cedar posts/columns. (As of January 9, 2012, the applicant had not clearly established whether the features/materials of the carport shown on these elevations are compliant with the Building Code).
- The applicant has the burden of proof in establishing the following:
  - That granting this special exception to the side yard setback regulations of 4' 6" will not have a detrimental impact on surrounding properties.
- As of January 9, 2012, no letters had been submitted in support or in opposition to the request.
- Typically, staff has suggested that the Board impose conditions with this type of appeal. The following conditions would restrict the location and size of the carport in the side yard setback; would require the carport in the side yard setback to be maintained (in this case) in a specific design with specific materials and in a specific configuration; and would require the applicant to mitigate any water drainage-related issues that the carport may cause on the lot immediately west:
  1. Compliance with the submitted site plan and elevations is required.
  2. The carport structure must remain open at all times.
  3. No lot-to-lot drainage is permitted in conjunction with this carport special exception.
  4. All applicable building permits must be obtained.
  5. No item (other than a motor vehicle) may be stored in the carport.
- If the Board chooses to grant this side yard special exception request, and impose the submitted site plan and elevations as a condition, the applicant would only be provided exception for what has been applied for, in this case, exception for the carport structure in the required side yard setback as represented/shown on these documents.
- Lastly, the applicant is aware that his request for a special exception to the side yard setback regulations for a carport will not provide relief to any existing or proposed noncompliant issues on the subject site pertaining to the City's front yard setback regulations.

**BOARD OF ADJUSTMENT ACTION: JANUARY 18, 2012**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Leone**

I move that the Board of Adjustment grant application **BDA 101-123** 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.

- The carport structure must remain open at all times.
- No lot-to-lot drainage is permitted with this carport special exception.

- All applicable building permits must be obtained.
- Compliance with the submitted site plan and revised elevation is required.
- No item (other than a motor vehicle) may be stored under the carport.

SECONDED: **Wilson**

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

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**FILE NUMBER:** BDA 112-003

**BUILDING OFFICIAL'S REPORT:**

Application of Julianne McGee for a special exception to the off-street parking regulations at 11749 Plano Road. This property is more fully described as Lot 2B in City Block D/8072 and is zoned IR, which requires off-street parking to be provided. The applicant proposes to construct/maintain a structure for a restaurant with drive-in or drive-through service use and provide 37 of the required 41 off-street parking spaces, which will require a special exception of 4 spaces.

**LOCATION:** 11749 Plano Road

**APPLICANT:** Julianne McGee

**REQUEST:**

- A special exception to the off-street parking regulations of 4 parking spaces (or a 10 percent reduction of the 41 off-street parking spaces that are required) is requested in conjunction with maintaining an approximately 4,100 square foot structure/restaurant with drive-in for drive-through use (McDonald's). The applicant proposes to provide 37 (or 90 percent) of the required 41 off-street parking spaces in conjunction with maintaining this use with this square footage within the existing structure. (The applicant has stated that this request is prompted by adding another drive-through lane which reduces the amount of existing off-street parking on the site).

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- The special exception shall automatically and immediately terminate if and when the restaurant with drive-in or drive-through service use is changed or discontinued.

Rationale:

- The applicant has substantiated how the parking demand generated by the proposed restaurant with drive-in or drive-through service use does not warrant the

- number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- The Sustainable Development and Construction Department Project Engineer has indicated that he has no objections to the applicant's request.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
  - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
  - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
  - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
  - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
  - (E) The availability of public transit and the likelihood of its use.
  - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
  - (A) Establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
  - (B) Impose restrictions on access to or from the subject property; or
  - (C) Impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance

establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:

- (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
- (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

### **GENERAL FACTS:**

- The Dallas Development Code requires the following off-street parking requirement:
  - Restaurant with drive-in or drive-through service use: 1 space per 100 square feet of floor area.The applicant proposes to provide 37 (or 90 percent) of the required 41 off-street parking spaces in conjunction with the site being leased/maintained with the use mentioned above.

### **BACKGROUND INFORMATION:**

#### **Zoning:**

Site: IR (Industrial Research)  
North: IR (Industrial Research)  
South: IR (Industrial Research)  
East: IR (Industrial Research)  
West: IR (Industrial Research)

#### **Land Use:**

The subject site is currently developed with restaurant with drive-in or drive-through service use (McDonald's). The areas to the north, east, south, and west are developed with retail and office 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:**

- October 27, 2011: 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 9, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

December 9, 2011: 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 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the January 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

January 3, 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 Sustainable Development and Construction Department Current Planning Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

January 6, 2012: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections."

#### **STAFF ANALYSIS:**

- This request focuses on the applicant's plan to add another drive-through lane on a site developed with an approximately 4,100 square foot structure/restaurant with drive-in for drive-through use (McDonald's) where 37 (or 90 percent) of the required 41 off-street parking spaces are proposed to be provided. (The addition of the drive-through lane would eliminate 4 existing off-street parking spaces on the site).
- The applicant has prepared a parking study indicating that the maximum number of parked vehicles during peak hours of operation on the site was found to be 22 spaces. (The applicant is requesting to provide 37 spaces on the site after the new drive-through lane is added).
- The Sustainable Development and Construction Department Project Engineer has submitted a review comment sheet marked "Has no objections."
- The applicant has the burden of proof in establishing the following:
  - The parking demand generated by the restaurant with drive-in or drive through use on the site does not warrant the number of off-street parking spaces required, and
  - The special exception of 4 spaces (or a 10 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, and impose the condition that the special exception of 4 spaces shall automatically and immediately terminate if and when the restaurant with drive-in or drive through service use is changed or discontinued, the applicant would be allowed to lease/maintain the site with this specific use and provide only 37 of the 41 code required off-street parking spaces.

**BOARD OF ADJUSTMENT ACTION: JANUARY 18, 2012**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

**MOTION: Leone**

I move that the Board of Adjustment grant application **BDA 101-003** 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.

- The special exception of 4 off-street parking spaces automatically and immediately terminates if and when the restaurant with drive-in or drive through service use is changed or discontinued.

**SECONDED: Wilson**

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

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**FILE NUMBER:** BDA 112-004

**BUILDING OFFICIAL'S REPORT:**

Application of Julianne McGee for a special exception to the off-street parking regulations at 8117 E. R. L. Thornton Freeway. This property is more fully described as Lot 2A in City Block 1/8472 and is zoned RR, which requires off-street parking to be provided. The applicant proposes to construct/maintain a structure for a restaurant with drive-in or drive-through service use and provide 60 of the required 64 off-street parking spaces, which will require a special exception of 4 spaces.

**LOCATION:** 8117 E. R. L. Thornton Freeway

**APPLICANT:** Julianne McGee

**January 18, 2012 Public Hearing Notes:**

- The applicant provided testimony at the public hearing that her request was prompted by a 2<sup>nd</sup> drive-through lane recently added on the subject site and an approximately 700 square foot storage room addition recently constructed on the subject site.

**REQUEST:**

- A special exception to the off-street parking regulations of 4 parking spaces (or a 6 percent reduction of the 64 off-street parking spaces that are required) is requested in conjunction with maintaining an approximately 6,400 square foot structure/restaurant with drive-in for drive-through use (McDonald's). The applicant proposes to provide 60 (or 94 percent) of the required 64 off-street parking spaces in conjunction with maintaining this use with this square footage within the existing structure. (The applicant has stated that this request is prompted by a combination of increasing the size of the existing structure, which requires additional off-street parking on the site and adding another drive-through lane, which reduces the amount of existing off-street parking on the site).

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- The special exception shall automatically and immediately terminate if and when the restaurant with drive-in or drive-through service use is changed or discontinued.

Rationale:

- The applicant has substantiated how the parking demand generated by the proposed restaurant with drive-in or drive-through service use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- The Sustainable Development and Construction Department Project Engineer has no objections to the applicant's request.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
  - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
  - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.

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

### **GENERAL FACTS:**

- The Dallas Development Code requires the following off-street parking requirement:
    - Restaurant with drive-in or drive-through service use: 1 space per 100 square feet of floor area.
- The applicant proposes to provide 60 (or 94 percent) of the required 64 off-street parking spaces in conjunction with the site being leased/maintained with the use mentioned above.

### **BACKGROUND INFORMATION:**

#### **Zoning:**

Site: RR (Regional Retail)  
North: R-7.5(A) (Single family residential)  
South: RR (Regional Retail)  
East: RR (Regional Retail)  
West: RR (Regional Retail)

### **Land Use:**

The subject site is currently developed with restaurant with drive-in or drive-through service use (McDonald's). The area to the north is developed with single family uses; the areas to the east and west are developed with retail uses; and the area to the south is developed as a freeway.

### **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:**

- October 27, 2011: 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 9, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- December 9, 2011: 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 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the January 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- January 3, 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 Sustainable Development and Construction Department Current Planning Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.
- January 6, 2012: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections."

### **STAFF ANALYSIS:**

- This request focuses on the applicant's plan for a small expansion and the addition of another drive-through lane on a site developed with an approximately 6,400 square foot structure/restaurant with drive-in for drive-through use (McDonald's) where 60 (or 94 percent) of the required 64 off-street parking spaces are proposed to be provided. (The small expansion and addition of the drive-through lane would eliminate 4 existing off-street parking spaces on the site).
- The applicant has prepared a parking study indicating that the maximum number of parked vehicles during peak hours of operation on the site was found to be 37 spaces. (The applicant is requesting to provide 60 spaces on the site after expansion and the new drive-through lane is added).
- The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections."
- The applicant has the burden of proof in establishing the following:
  - The parking demand generated by the restaurant with drive-in or drive through use on the site does not warrant the number of off-street parking spaces required, and
  - The special exception of 4 spaces (or a 6 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, and impose the condition that the special exception of 4 spaces shall automatically and immediately terminate if and when the restaurant with drive-in or drive through service use is changed or discontinued, the applicant would be allowed to lease/maintain the site with this specific use and provide only 60 of the 64 code required off-street parking spaces.

**BOARD OF ADJUSTMENT ACTION: JANUARY 18, 2012**

APPEARING IN FAVOR: Julianne McGee, 5929 Amons St., Halton City, TX  
 Lee Morris, 511 E. John Carpenter Frwy, Dallas, TX

APPEARING IN OPPOSITION: Hong XI, 5757 N Jim Miller Rd., Dallas, TX  
 Michelle Liang, 5757 N Jim Miller Rd, Dallas, TX

**MOTION: Wilson**

I move that the Board of Adjustment, in Appeal No. **BDA 112-004**, on application of Julianne McGee, **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development Code by 4 spaces, because our evaluation of the property and the testimony shows that the parking demand generated by the proposed use on the site does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard nor increase traffic congestion on adjacent and nearby streets. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception of 4 off-street parking spaces automatically and immediately terminates if and when the restaurant with drive-in or drive through service use is changed or discontinued.

**SECONDED:** Chernock

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

**NAYS:** 0 –

**MOTION PASSED** 5 – 0 (unanimously)

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**FILE NUMBER:** BDA 112-008

**BUILDING OFFICIAL'S REPORT:**

Application of Rob Baldwin for a special exception to the fence height regulations at 6512 Linden Lane. This property is more fully described as Lot 9 in City Block 10/7445 and is zoned R-16(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 6 foot high fence, which will require a special exception of 2 feet.

**LOCATION:** 6512 Linden Lane

**APPLICANT:** Rob Baldwin

**REQUESTS:**

- Special exceptions to the fence height regulations of 2' are requested in conjunction with constructing and maintaining primarily a 6' high open wrought iron fence with 6' high stucco columns and 6' high open wrought iron gates to be located in both of the site's two 30 front yard setbacks on a site developed with a single family home. (Note that a 6' high, approximately 33' long solid stucco "address wall" is proposed on the site at the intersection of Linden Lane at Preston Crest Lane).

**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.

**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.

**GENERAL FACTS:**

- The Dallas Development Code provides for front yard provisions for residential districts, specifically stating that if a corner lot in a single family zoning district has two street frontages of unequal distance, the shorter frontage is governed by the front yard regulations, and the longer frontage is governed by the side yard regulations. But the code continues to state that notwithstanding this provision, the continuity of the established setback along street frontage must be maintained.

- The subject site is a property zoned R-16(A) located at the southeast corner of Linden Lane and Preston Crest Lane. The property has street frontages of unequal distances – the property's frontage along Linden Lane is approximately 180'; the property's frontage along Preston Crest Lane is approximately 95'. This site has two front yard setbacks - a 30' front yard setback along its shorter frontage (Preston Crest Lane) and a 30' front yard setback along its longer frontage (Linden Lane). Regardless of Linden Lane being the longer of the two street frontages of the site which would be typically be deemed a side yard where a fence can be erected by right at 9' in height, it is a front yard nonetheless to maintain continuity of the required front yard setbacks established by the lots east of the site fronting northward onto Linden Lane.
- The Dallas Development Code states that a person shall not erect or maintain a fence in a required yard more than 9' above grade, and additionally 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 applicant has submitted a site plan/elevation document indicating that the proposal in the front yard setbacks reaches a maximum height of 6'.
- The following additional information was gleaned from the submitted site plan:
  - The proposal located in the Linden Lane front yard setback over 4' in height is approximately 160' in length parallel to the street and approximately 30' in length perpendicular to Linden Lane on the east side of the site in the front yard setback.
  - The proposal located in the Preston Crest Lane front yard setback over 4' in height is approximately 75' in length parallel to the street and approximately 30' in length perpendicular to Preston Crest Lane on the south side of the site in the front yard setback.
  - The fence is shown to be located on the site's front property lines or 12' from the curb lines; the gates are shown to be located 8' from the front property lines or 20' from the curb lines.
- One single family home is located directly north and west of the site – homes neither of which have fences in their front yards.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences above four feet high in a front yard setback.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: R-16(A) (Single family district 16,000 square feet)  
North: R-16(A) (Single family district 16,000 square feet)  
South: R-16(A) (Single family district 16,000 square feet)  
East: R-16(A) (Single family district 16,000 square feet)  
West: R-16(A) (Single family district 16,000 square feet)

### **Land Use:**

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

**Zoning/BDA History:**

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

**Timeline:**

November 8, 2011: 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 9, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

December 9, 2011: 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 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the January 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

January 3, 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 Sustainable Development and Construction Department Current Planning Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

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

**STAFF ANALYSIS:**

- These requests focus on constructing and maintaining primarily a 6’ high open wrought iron fence with 6’ high stucco columns and 6’ high open wrought iron gates to be located in both of the site’s two 30 front yard setbacks on a site developed with a single family home. (Note that a 6’ high, approximately 33’ long solid stucco “address wall” is proposed on the site at the intersection of Linden Lane at Preston Crest Lane).

- This site has two front yard setbacks - a 30' front yard setback along its shorter frontage (Preston Crest Lane) and a 30' front yard setback along its longer frontage (Linden Lane). Regardless of Linden Lane being the longer of the two street frontages of the site, which would be typically be deemed a side yard where a fence can be erected by right at 9' in height, it is a front yard nonetheless to maintain continuity of the required front yard setbacks established by the lots east of the site fronting northward onto Linden Lane.
- The submitted site plan/elevation indicates a proposal that reaches a maximum height of 6'. The site plan represents that the fence is about 160' in length parallel to and approximately 30' in length perpendicular to Linden Lane on the east side of the site in the front yard setback, and approximately 75' in length parallel to the street and approximately 30' in length perpendicular to Preston Crest Lane on the south side of the site in the front yard setback. The fence is shown to be located on the site's front property lines or 12' from the curb lines; the gates are shown to be located 8' from the front property lines or 20' from the curb lines.
- One single family home is located directly north and west of the site – homes neither of which have fences in their front yards.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences above four feet high in a front yard setback.
- As of January 9, 2012, no letters had been submitted to staff in support or in opposition to the application.
- The applicant has the burden of proof in establishing that the special exceptions to the fence height regulations (whereby the proposal that would reach 6' in height) do not adversely affect neighboring property.
- Granting these special exceptions of 2' with a condition imposed that the applicant complies with the submitted site plan/elevation document would assure that the proposal exceeding 4' in height in the front yard setbacks would be constructed and maintained in the locations and of the heights and materials as shown on this document.

**BOARD OF ADJUSTMENT ACTION: JANUARY 18, 2012**

APPEARING IN FAVOR: Robert Baldwin, 3904 Elm St., #B, Dallas, TX  
Arti Gupta, 6512 Linden LN, Dallas, TX

APPEARING IN OPPOSITION: No one

**MOTION: Chernock**

I move that the Board of Adjustment, in Appeal No. **BDA 112-008**, on application of Rob Baldwin, **deny** the special exception requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

**SECONDED: Gillespie**

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

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**FILE NUMBER:** BDA 112-009

## **BUILDING OFFICIAL'S REPORT:**

Application of Jonathan Vinson for a variance to the building height regulations at 2001 McKinney Avenue (AKA 2222 N. Harwood Street). This property is more fully described as Lot 18 and Tract 7 in City Block 948 and is zoned PD-193 (HC), which limits the maximum building height to 240 feet. The applicant proposes to construct a mixed use structure with a building height of 335 feet, which will require a variance of 95 feet.

**LOCATION:** 2001 McKinney Avenue (AKA 2222 N. Harwood Street)

**APPLICANT:** Jonathan Vinson

### **January 18, 2012 Public Hearing Notes:**

- The Board Administrator circulated a letter and revised conceptual height limit site plan diagram prepared by the applicant to the Board at the briefing.
- The applicant submitted a revised conceptual height limit site plan diagram to the Board at the public hearing.

### **REQUEST:**

- A variance to the height regulations of 95' is requested in conjunction with constructing and maintaining a structure (described by the applicant as a "mixed use project, primarily office but with retail and residential components"), part of which would exceed the 240' maximum height permitted for structures on properties zoned PD No. 193 (HC Subdistrict) on a site that is currently undeveloped.

### **STAFF RECOMMENDATION:**

Denial

#### Rationale:

- Staff was unable to conclude how the parcel differs from other parcels of land by being of such restrictive area, shape, or slope that it cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same zoning classification.

### **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 is:

(A) not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;

- (B) necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and
- (C) not granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

### **GENERAL FACTS:**

- The maximum height of structures other than single family structures or structures on residential development tracts in PD No. 193 (HC) is 240 feet.

The application and Building Official's report states that a variance is sought for 95' in height.

The applicant has submitted a "conceptual height limit site plan diagram" and a "conceptual height limit elevation diagram" that reference a maximum structure height of 335'.

The "conceptual height limit site plan diagram" makes the following notations:

- Other than additional height, all yard, lot, and space regulations will conform to applicable requirements of PD 193 and any other applicable ordinances.
- Development of the site will be subject to the height limits and percentages specified below:
  - 335 feet height limit not more than 30% of the site
  - 220 feet height limit not more than 20% of the site
  - 120 feet height limit not less than 50% of the site

The "conceptual height limit elevation diagram" makes the same notations described above so noted on the "conceptual height limit site plan diagram" along with the following notations:

- A line denoting 120' height limit (3)
- A line denoting 220' height limit (2)
- A line denoting 240' (as of right)
- A line denoting 295' height limit to top of occupied space (roof)
- A line denoting 335' required height limit to top of mechanical penthouse and/or architectural feature (1)
- The site is flat, somewhat irregular in shape (approximately 446' on the north; approximately 377' on the south, approximately 265' on the east, and approximately 354' on the west), and according to the application, 3.0968 acres (or approximately 135,000 square feet) in area. The site is zoned PD No. 193 (HC).
- DCAD records indicate that there are "no improvements" at 2001 McKinney Avenue.
- The applicant forwarded additional information to the staff beyond what was submitted with the original application.
- The applicant forwarded additional information to the Board Administrator to be forwarded to the Board members beyond what was submitted with the original application and to staff (see Attachment A).

### **Zoning:**

Site: PD No. 193 (HC) (Planned Development)  
North: PD No. 334 (Planned Development)  
South: PD No. 193 (PDS 50) (Planned Development)  
East: PD No. 193 (PDS 68) (Planned Development)  
West: PD No. 193 (HC) (Planned Development)

**Land Use:**

The subject site is currently undeveloped. The areas to the north, east, south, and west are developed with a mix of office, retail, and residential uses.

**Zoning/BDA History:**

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

**Timeline:**

November 9, 2011: 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 9, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

December 9, 2011: 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 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the January 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

December 28, 2011: The applicant submitted additional information to staff for staff review purposes beyond what was submitted with the original application.

January 3, 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 Sustainable Development and Construction Department Current Planning Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

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

January 6, 2012: The applicant submitted additional information to the Board Administrator to be forwarded to the Board members beyond what was submitted with the original application (see Attachment A).

**STAFF ANALYSIS:**

- This request focuses on constructing and maintaining a 335' high structure (described by the applicant as a "mixed use project, primarily office but with retail and residential components"), part of which would exceed the 240' maximum height permitted for structures on properties zoned PD 193 (HC Subdistrict) on a site that is currently undeveloped.
- The applicant has submitted a "conceptual height limit site plan diagram" and a "conceptual height limit elevation diagram" that reference a maximum structure height of 335'. Both conceptual plans note how development of the site will be subject to the height limits and percentages as follows:
  - a. 335 feet height limit not more than 30% of the site
  - b. 220 feet height limit not more than 20% of the site
  - c. 120 feet height limit not less than 50% of the site
- The site is flat, somewhat irregular in shape (approximately 446' on the north; approximately 377' on the south, approximately 265' on the east, and approximately 354' on the west), and according to the application, 3.0968 acres (or approximately 135,000 square feet) in area. The site is zoned PD No. 193 (HC).
- DCAD records indicate that there are "no improvements" at 2001 McKinney Avenue.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to height regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 193 (HC Subdistrict) zoning classification.
  - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD No. 193 (HC Subdistrict) zoning classification.
- If the Board were to grant the height variance request of 95', subject to the submitted "conceptual height limit site plan diagram" and "conceptual height limit elevation diagram," the structure would be allowed to reach 335' in height as shown on these submitted conceptual documents.

**BOARD OF ADJUSTMENT ACTION: JANUARY 18, 2012**

APPEARING IN FAVOR:

Jonathan Vinson, 901 Main St., Ste 6000, Dallas, TX  
Joseph Pitchfort, 200 Crescent Ct., Dallas, TX  
Greg Jones, 1056 Chaple St., Dallas, TX  
Frank Stich, 4224 N. Hall, Dallas, TX  
Dean Fearing, 4511 Pomona Rd., Dallas, TX  
Michael Gluckman, 3355 Blackburn, Dallas, TX  
James Reader, Dallas, TX  
Crickett Griffin, 1999 McKinney Ave, #1608, Dallas, TX  
Will Cureton, 1999 McKinney, Dallas, TX  
Jim Henry, Dallas, TX  
Bill Nabors, 4524 manning LN, Dallas, TX  
Sawako Miyama, 1909 Woodall Rodgers, Dallas, TX  
Katy Slade, 2650 Cedar Sprgs, Ste 800, Dallas, TX  
Spence Sonia, 2501 N Harwood, Ste 1400, Dallas, TX  
Susan Mead, 901 Main St., #6000, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Gillespie**

I move that the Board of Adjustment, in Appeal No. **BDA 112-009**, on application of Jonathan Vinson, **grant** the 95-foot variance to the height regulations, because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the revised conceptual height limit site plan diagram submitted at the 1-18-12 public hearing and the submitted conceptual height limit elevation is required.

SECONDED: **Leone**

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

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MOTION: **Wilson**

I move to adjourn this meeting.

SECONDED: **Chernock**

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

NAYS: 0 –

MOTION PASSED 4– 0 (unanimously)

**2:47 P.M. - Board Meeting adjourned for January 18, 2012.**

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CHAIRPERSON

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BOARD ADMINISTRATOR

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BOARD SECRETARY

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