

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1 AUDITORIUM
WEDNESDAY, JANUARY 22, 2014**

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, Laura Morrison, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Lloyd Denman, Asst. Director of Engineering, Ali Hatefi, Engineer and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Laura Morrison, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Lloyd Denman, Asst. Director of Engineering, Ali Hatefi, Engineer and Trena Law, Board Secretary

11:10 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **January 22, 2014 docket.**

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 20, 2013 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: **JANUARY 22, 2014**

MOTION: **Wilson**

I move approval of the **Wednesday, November 20, 2013** Board of Adjustment Public Hearing minutes.

SECONDED: **Chernock**

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 123-125

BUILDING OFFICIAL’S REPORT: Application of Lillie M. Peterson, represented by Mike Olscher, for a variance to the front yard setback regulations at 323 E. Woodin Boulevard. This property is more fully described as Lot 7, Block 18/3609, and is zoned R-7.5(A), which requires a front yard setback of 25 feet. The applicant proposes to construct and maintain a structure and provide a 15 foot front yard setback, which will require a 10 foot variance to the front yard setback regulations.

LOCATION: 323 E. Woodin Boulevard

**APPLICANT: Lillie M. Peterson
 Represented by Mike Olscher**

REQUEST:

A variance to the front yard setback regulations of 10’ is requested in conjunction with constructing and maintaining a one-story single family home structure, part of which would be located in one of the site’s two 25’ front yard setbacks (Alabama Avenue) on a site that is currently developed with a single family home that the applicant intends to demolish. (No request has been made in this application to construct/maintain any structure in the site’s E. Woodin Boulevard front yard setback).

STANDARD FOR A VARIANCE:

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

street parking or off-street loading, or landscape regulations provided that the variance is:

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

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The subject site is unique and different from most lots zoned R-7.5(A) in that it is a corner lot with a restrictive area due to its size/width and its two front yard setbacks. The atypical two front yard setbacks on the approximately 7,800 square foot lot preclude the applicant from developing it in a manner commensurate with development on other similarly zoned R-7.5(A) properties with one front yard setback.
- In this case, the proposed development on the property with an approximately 1,900 square foot building footprint appears to be of a size similar to the existing home on the site constructed in the 1940's that does not appear to provide a 25' Alabama Avenue front yard setback and to other homes in the zoning district. The site has a 22' width for development once a 25' front yard setback is accounted for on the east and a 5' side yard setback is accounted for on the west of the 52' wide subject site. If this R-7.5(A) zoned property were not a corner lot with two front yard setbacks, there would be a 42' width for development once two 5' side yard setbacks are accounted for.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5(A) (Single family district 7,500 square feet)
North: R-7.5(A) (Single family district 7,500 square feet)
South: R-7.5(A) (Single family district 7,500 square feet)
East: R-7.5(A) (Single family district 7,500 square feet)
West: R-10(A) (Single family district 10,000 square feet)

Land Use:

The subject site is developed with a single family home. The areas to the north, south, and west are developed with single family uses; and the area to the east is a park (Herndon Park).

Zoning/BDA History:

1. Miscellaneous Item #2, Property at 323 E. Woodin Boulevard (the subject site) On September 18, 2013, the Board of Adjustment Panel B granted a request for a waiver of the filing fee to be submitted in conjunction with this application.

Timeline:

October 22, 2013: 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 11, 2013: 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 any preliminary action is required on a case, including but not limited to a fee waiver or waiver of the two year waiting period, the case must be returned to the panel taking the preliminary action.”

December 12, 2013: 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 December 30th deadline to submit additional evidence for staff to factor into their analysis; and the January 10th 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.

January 7, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Interim Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director and Senior Engineer, the Assistant Building Officials, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the City of Dallas Chief Arborist, 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:

- This request focuses on constructing and maintaining a one-story single family structure, part of which would be located in one of the two 25' front yard setbacks (Alabama Avenue) on a site that is currently developed with a single family home that the applicant intends to demolish.
- Structures on lots zoned R-7.5(A) are required to provide a minimum front yard setback of 25'.
- The subject site is located at the northwest corner of E. Woodin Boulevard and Alabama Avenue. Regardless of how the proposed single-family structure appears to be oriented towards E. Woodin Boulevard, the subject site has two 25' front yard setbacks along both streets. The site has a 25' front yard setback along E. Woodin Boulevard, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in a single-family zoning district. The site also has a 25' front yard setback along Alabama Avenue, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where only a 5' setback is required. But the site's Alabama Avenue frontage is side yard treated as a front yard setback nonetheless to maintain the continuity of the established front yard setback established by the lots developed with single family homes north of the site that front/are oriented eastward towards Alabama Avenue.
- A scaled site plan has been submitted indicating that the proposed single family home would be located approximately 16' from the Alabama Avenue front property line or 9' into the 25' front yard setback. (No encroachment is proposed in the E. Woodin Boulevard 25' front yard setback).
- According to calculations taken by the Board Administrator from the submitted site plan, the area of the proposed home to be located in the site's Alabama Avenue 25' front yard setback is approximately 500 square feet in area or approximately 1/4 of the approximately 1,900 square foot building footprint.
- According to DCAD records, the "main improvement" at 323 E. Woodin Boulevard is a structure with 1,500 square feet of living/total area built in 1945. (No additional improvements are noted at this address).
- The subject site is flat, rectangular in shape, (150' x 52.5'), and approximately 7,800 square feet in area. The site has two 25' front yard setbacks; and two 5' side yard setbacks; most residentially-zoned lots have one front yard setback, two side yard setbacks, and one rear yard setback.
- The site has an approximately 22' width for development once a 25' front yard and a 5' side yard setback is accounted for on the approximately 52' wide subject site.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the Alabama Avenue front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope,

that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.

- The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.
- If the Board were to grant the variance request, and impose the submitted site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document– which in this case is a structure to be located 15’ from the Alabama Avenue front property line (or 10’ into this 25’ front yard setback).

BOARD OF ADJUSTMENT ACTION: JANUARY 22, 2014

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Gillespie

I move that the Board of Adjustment grant application **BDA 134-125** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: Chernock

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 134-004

BUILDING OFFICIAL’S REPORT: Application of Mary McLean for a special exception to the fence height regulations at 9919 Crestline Avenue. This property is more fully described as Lot 10, Block 5542, and is zoned R-10(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain a 6 foot high fence, which will require a 2 foot special exception to the fence height regulations.

LOCATION: 9919 Crestline Avenue

APPLICANT: Mary McLean

REQUEST:

A special exception to the fence height regulations of 2' is requested in conjunction with constructing and maintaining a 6' high solid pre-cast concrete and wood fence in the site's 30' front yard setback on Walnut Hill Lane on a site that is currently being 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-10(A) (Single family district 10,000 square feet)
North: R-16(A) (Single family district 16,000 square feet)
South: R-10(A) (Single family district 10,000 square feet)
East: R-1ac(A) (Single family district 1 acre)
West: R-10(A) (Single family district 10,000 square feet)

Land Use:

The subject site is being 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 123-099, Property at 4410 Walnut Hill Lane (the lot immediately east of subject site) On October 21, 2013, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 3.5 feet and imposed the submitted site plan and "plan and elevations" document as a condition to the request. The case report stated the application was made in conjunction completing and maintaining a stone fence/wall with columns in the site's Walnut Hill Lane 40' front yard setback on a

2. BDA 078-116, Property at 4421 Walnut Hill Lane (three lots northeast of subject site)

site that was developed with a single family home – a fence/wall with columns that according to the applicant’s submittal ranged in height given grade changes on the property from 5’ – 7’ 6”.

On October 14, 2008, the Board of Adjustment Panel A denied a request for a special exception to the fence height regulations of 4 feet without prejudice. The case report stated the application was made in conjunction with completing and maintaining an 8’ high solid cedar board-on-board fence/wall with two 7’ 6” high open wrought iron gates in the site’s 35’ front yard setback on a site developed with a single family home.

Timeline:

November 14, 2013: 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 11, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

December 12, 2013: 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 30th deadline to submit additional evidence for staff to factor into their analysis; and the January 10th 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.

January 7, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Interim Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director and Senior Engineer, the Assistant Building Officials, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

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

January 8 & 11,
2014:

The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachments A and B).

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining a 6' high solid pre-cast concrete and wood fence in the site's 30' front yard setback along Walnut Hill Lane on a site that is currently being developed with a single family home.
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The site is located at the southwest corner of Walnut Hill Lane and Crestline Avenue. The site has one 30' front yard setback along Walnut Hill Lane.
- The applicant has submitted a site plan and elevation of the proposal with notations indicating that the proposal in the front yard setback reaches a maximum height of 6'.
- The following additional information was gleaned from the submitted site plan:
 - The proposal in the Walnut Hill Road front yard setback is represented as being approximately 70' in length parallel to Walnut Hill Lane and approximately 30' in length perpendicular to Walnut Hill Lane on the east and west sides of the site in the Walnut Hill Lane front yard setback.
 - The proposal is represented as being located approximately on the front property line or about 12' from the pavement line.
- The following additional information was gleaned from the submitted elevation:
 - The proposed fence parallel to Walnut Hill Lane is to be of "pre-cast concrete;" the proposed fence perpendicular to Walnut Hill Lane on the west side in the front yard setback is shown to be "1 x 4 cedar SBS dog eared w/ galv posts"; and the proposed fence perpendicular to Walnut Hill Lane on the east side in the front yard setback is to be "2 x 6 horiz shadowbox fence."
- The proposal is located across from two single family 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 two other fences that appeared to be above 4' in height and located in a front yard setback. These two fences are both east of the subject site, the one immediately east being a 5' – 7.5' high solid stone fence that appears to be the result of a granted fence height special exception in October 2013 (BDA 123-116); the other fence being one lot further east- an approximately 8' high wood fence/7' high brick fence with no recorded BDA history.
- As of January 13, 2014, five letters/emails have been submitted in support of the request, and no letters/emails have been submitted in opposition to the request.

- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 2' will not adversely affect neighboring property.
- Granting this special exception of 2' with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding 4' in height in the front yard setback to be maintained in the location and of the heights and materials as shown on these documents.

BOARD OF ADJUSTMENT ACTION: JANUARY 22, 2014

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Gillespie

I move that the Board of Adjustment grant application **BDA 134-004** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Chernock

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 123-115

BUILDING OFFICIAL’S REPORT: Application of Robert Baldwin for a variance to the off-street parking regulations at 1899 McKinney Avenue. This property is more fully described as a 0.45 acre tract in Block 293 and is zoned PD-193(HC), which requires off-street parking to be provided. The applicant proposes to construct and/or maintain a structure for a restaurant without drive-in or drive-through use and provide 21 of the required 71 off-street parking spaces, which will require a 50 space variance to the off-street parking regulations.

LOCATION: 1899 McKinney Avenue

APPLICANT: Robert Baldwin

REQUEST:

A request for a variance to the off-street parking regulations of 50 spaces is made in conjunction with leasing a vacant approximately 7,100 square foot one-story structure

with a restaurant without drive-in or drive-through use, where the applicant proposes to provide 21 (or 30 percent) of the required 71 required off-street parking spaces.

STANDARD FOR A VARIANCE:

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

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

STAFF RECOMMENDATION:

Denial

Rationale:

- While the site is somewhat sloped, virtually rectangular in shape, and with three front yard setbacks, staff recommends denial of this request since the applicant has not provided documentation to show how any of these features preclude him from developing it in a manner commensurate with the development of other parcels of land in the same PD 193 (HC) zoning.
- The features of this site do not preclude the applicant from leasing the existing structure built in the 60's with a use permitted in the zoning district where an off-street parking reduction request would not be necessary.
- The applicant has not substantiated how this variance for specific uses (restaurant without drive-in or drive-through is not needed to relieve a self-created hardship.
- Granting the variance appears to be contrary to public interest since the Sustainable Development and Construction Department Engineering Division Assistant Director has recommended that this request be denied based on his conclusion that the proposal to provide only 30 percent of the required off-street parking is not sufficient for the use in a congested area.

BACKGROUND INFORMATION:

Site: PD 193 (HC) (Planned Development, Heavy Commercial)
North: PD 193 (HC) (Planned Development, Heavy Commercial)
South: PD 193 (HC) (Planned Development, Heavy Commercial)
East: PD 193 (HC) (Planned Development, Heavy Commercial)

West: PD 193 (HC) (Planned Development, Heavy Commercial)

Land Use:

The subject site is developed avacant structure. The areas to the north, east, south, and west is developed with a mix of uses, most of which appear to be office uses.

Zoning/BDA History:

1. BDA 101-106, Property at 1899 McKinney Avenue(the subject site)
On November 16, 2011, the Board of Adjustment Panel B granted a request for a variance to the off-street parking regulations of 71 spaces and imposed the following condition: 71 off-street parking spaces must be provided for the restaurant use within a walking distance of 600 feet from the subject site. The case report stated that the request for a variance to the off-street parking regulations of 36 parking spaces (or a 51 percent reduction of the 71 off-street parking spaces that are required) was requested in conjunction with maintaining an approximately 7,100 square foot structure as “restaurant without drive-in or drive through service” use (Glass at 1899).

2. BDA 001-155, Property at 1899 McKinney Avenue (the subject site)
On February 20, 2001, Board of Adjustment Panel B granted a request for a special exception to the landscape regulations and imposed the submitted revised landscape plan as a condition. The case report stated that the request was made in conjunction with renovating and expanding an existing office building on the site where the existing building footprint would remain intact and eight floors would be added atop that would include 19 residential units.

Timeline:

August 26, 2013: 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 11, 2013: 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 12, 2013: 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 30th deadline to submit additional evidence for staff to factor into their analysis; and the January 10th 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.

January 6, 2014: The newly designated applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).

January 7, 2014: The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded a revised Building Official's Report on this application to the Board Administrator (see Attachment B).

January 7, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Interim Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director and Senior Engineer, the Assistant Building Officials, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

January 9, 2014: The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked "Recommends that this be denied" commenting "The proposed parking is not sufficient for the use in a congested area."

GENERAL FACTS/ STAFF ANALYSIS:

- The request focuses on leasing a vacant approximately 7,100 square foot one-story structure with a restaurant without drive-in or drive-through use, where the applicant proposes to provide 21 (or 30 percent) of the required 71 required off-street parking spaces.

- The subject site is zoned PD 193 (HC) that requires the following off-street parking requirement:
 - Restaurant without drive-in or drive-through service: 1 space per 100 square feet of floor area
- The Sustainable Development and Construction Department Project Engineer has submitted a Review Comment Sheet marked “Recommends that this be denied” commenting “The proposed parking is not sufficient for the use in a congested area.”
- The site is somewhat sloped, virtually triangular in shape, and according to the application, 0.45 acres in area. The site is zoned PD 193 (HC). Given that the site is zoned PD 193 (HC) and has three street frontages, the subject site has three front yard setbacks as would any property with two street frontages not zoned agricultural, single family, or duplex.
- DCAD records indicate that the “improvements” at 1899 McKinney is an “office building” with 7,953 square feet built in 1966.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to off-street parking 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 PD193 (LC) zoning classification.
 - The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD 193 (LC) zoning classification.
- If the Board were to grant this request, the applicant would be required to provide only 21 (or 30 percent) of the 71 off-street parking spaces required to lease the vacant 7,100 square foot structure with restaurant without drive-in or drive-through use on the subject site.

BOARD OF ADJUSTMENT ACTION: JANUARY 22, 2014

APPEARING IN FAVOR: Rob Baldwin, 3904 Elm St., Dallas, TX

APPEARING IN OPPOSITION: James Reeder, 1925 Cedar Springs, Dallas, TX
 Dick Brink, 1999 McKinney #1207, Dallas, TX

MOTION: Leone

I move that the Board of Adjustment, in Appeal No. **BDA 123-115**, on application of Robert Baldwin, **deny** the requested off-street parking variance **without prejudice** 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 not result in unnecessary hardship to this applicant.

SECONDED: Gillespie

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 134-005

BUILDING OFFICIAL’S REPORT: Application of William Mark Moore for a special exception to the visual obstruction regulations at 5361 Livingston Avenue. This property is more fully described as Lot 16, Block B/2478, and is zoned R-7.5(A), which requires a 45 foot visibility triangle at street intersections. The applicant proposes to locate and maintain items in a required visibility triangle, which will require a special exception to the visual obstruction regulations.

LOCATION: 5361 Livingston Avenue

APPLICANT: William Mark Moore

REQUEST:

A special exception to the visual obstruction regulations is made in conjunction with maintaining an existing 7’ high hedge located in the 45’ visibility triangle at the intersection of Livingston Avenue and Westside Drive on a site developed with a single family home.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

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

STAFF RECOMMENDATION:

Denial

Rationale:

- The Sustainable Development and Construction Department Engineering Division Assistant Director recommends that this request be denied because the dense vegetation compromises visibility for public safety.
- The applicant has not substantiated how the 7’ high hedge located in the 45’ visibility triangle at the intersection of Livingston Avenue and Westside Drive does not constitute a traffic hazard.

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: Town of Highland Park
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 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:

September 5, 2013: 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 11, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

December 12, 2013: 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 30th deadline to submit additional evidence for staff to factor into their analysis; and the January 10th 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.

December 23 & 26,
And January 2, 2013:

The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachments A, B, and C).

January 7, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Interim Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director and Senior Engineer, the Assistant Building Officials, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

January 9, 2014: The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked "Recommends that this be denied" commenting "The dense vegetation compromises visibility for public safety."

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on maintaining an existing 7' high hedge located in the 45' visibility triangle at the intersection of Livingston Avenue and Westside Drive on a site developed with a single family home.
- The Dallas Development Code states the following: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections, and 20 foot visibility triangles at drive approaches and at alleys on properties zoned single family); and
 - between two and a half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- A revised site plan and elevation have been submitted indicating portions of a 7' high hedge in the 45' visibility triangle at the intersection of Livingston Avenue and Westside Drive.
- The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked "Recommends that this be denied" commenting "The dense vegetation compromises visibility for public safety."
- The applicant has the burden of proof in establishing how granting the request for special exception to the visual obstruction regulations to maintain portions of an existing 7' high hedge located in the 45' visibility triangle at the Livingston Avenue/Westside Drive intersection does not constitute a traffic hazard.
- Granting this request with a condition imposed that the applicant complies with the submitted revised site plan and elevation would limit the item located in the 45' visibility triangle at the Livingston Avenue/Westside Drive intersection to that what is shown on these documents - a 7' high hedge.

BOARD OF ADJUSTMENT ACTION: JANUARY 22, 2014

APPEARING IN FAVOR: William Marc Moore, 5361 Livingston Ave, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Chernock**

I move that the Board of Adjustment, in Appeal No. **BDA 134-005**, on application of William Mark Moore, **grant** the request to maintain items in the visibility triangle as special exception to the visual obstruction regulations in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

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)

1:40 P.M. Board Meeting adjourned for **January 22, 2014**

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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