

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
WEDNESDAY, MARCH 19, 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, Jamilah Way, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Ali Hatefi, Engineer, Phil Erwin, Chief Arborist, Neva Dean, Interim Asst. Director, Trena Law, Board Secretary, and Danielle Jeminez, Senior Planner
STAFF PRESENT AT HEARING:	Steve Long, Board Administrator, Laura Morrison, Asst. City Attorney, Jamilah Way, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Ali Hatefi, Engineer, Phil Erwin, Chief Arborist, Neva Dean, Interim Asst. Director, and Trena Law, Board Secretary

11:35 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **March 19, 2014 docket**.

1:03 P.M.

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

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel B February 19, 2014 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: MARCH 19, 2014

MOTION: Chernock

I move approval of the **Wednesday, February 19, 2014** Board of Adjustment Public Hearing minutes.

SECONDED: Leone

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 134-021

BUILDING OFFICIAL'S REPORT: Application of Maxwell Fisher for a special exception to the off-street parking regulations at 10501 N. Central Expressway. This property is more fully described as Lot 1A, Block 15/7289 and is zoned GO(A), which requires off-street parking to be provided. The applicant proposes to construct/maintain a structure for medical clinic or ambulatory surgical center use, office use, and financial institution with drive-in window use and provide 170 of the required 185 off-street parking spaces, which will require a 15 space special exception to the off-street parking regulations.

LOCATION: 10501 N. Central Expressway

APPLICANT: Maxwell Fisher

REQUEST:

A special exception to the off-street parking regulations of 15 spaces is requested to lease and maintain an existing approximately 48,400 square foot structure with a mix of office, medical clinic or ambulatory surgical center, and financial institution with drive-in window uses and providing 170 (or 92 percent) of the 185 off-street parking spaces required by code.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(A).
- 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.

STAFF RECOMMENDATION (off-street parking special exception):

Approval, subject to the following condition:

- The special exception of 15 spaces shall automatically and immediately terminate if and when the mix of office, medical clinic or ambulatory surgical center, and financial institution with drive-in window uses that would normally need no more than 185 required parking spaces is changed or discontinued.

Rationale:

- The Sustainable Development and Construction Department Senior Engineer has indicated that he has no objections to the applicant's request.
- The applicant has substantiate how the parking demand generated by the mix of office, medical clinic or ambulatory surgical center, and financial institution with drive-in window uses does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

BACKGROUND INFORMATION:

Zoning:

Site: GO(A) (General Office)
North: GO(A) (General Office)
South: RR (Regional Retail)
East: PD 895 (Planned Development)
West: GO(A) (General Office)

Land Use:

The subject site is developed with an approximately 48,400 square foot structure that according to the applicant is about 71 percent leased. The area immediately north is the developed with multifamily use; the area to the east is North Central Expressway; the area to the south is developed with retail uses; and the area to the west is developed with 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:

January 16, 2014: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

February 13, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

February 13, 2014: The Board Administrator shared the following information with the applicant via email:

- an attachment that provided the public hearing date and panel that will consider the application; the February 26th deadline to submit additional evidence for staff to factor into their analysis; and the March 7th 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.”

March 4, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Interim Assistant Director, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Senior Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

March 6, 2014: The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet marked “Has no objections” commenting “ITE 4th Edition actually recommends 175 spaces (8 more); however, we have no objections and believe adequate parking is provided.”

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on leasing and maintaining an existing approximately 48,400 square foot structure with a mix of office, medical clinic or ambulatory surgical center, and financial institution with drive-in window uses and providing 170 (or 92 percent) of the 185 off-street parking spaces required by code
- The Dallas Development Code requires the following off-street parking requirement:
 - Office: one space per 333 spaces of floor area.
 - Medical clinic or ambulatory surgical center: One space per 200 square feet of floor area.
 - Financial institution with drive-in window: One space per 333 square feet of floor area.
- The applicant has submitted a document stating that 170 of the 185 required off-street parking spaces are proposed to be provided.
- The applicant has provided a document stating that this request is prompted with the applicant's interest in converting square footage within the existing structure from general office and financial institution uses where the parking requirement is 1 space per 333 square feet to medical clinic use where the parking requirement is 1 space per 200 square feet.
- The applicant has conducted a parking demand analysis and found that the potential parking needs in the event that up to 20,000 square feet of floor area is devoted to medical uses, the parking generation at 167 spaces is likely a high projection, and that the actual parking demand at peak hour would likely be no higher than 150 spaces. (The applicant proposes to provide 170 off-street parking spaces).
- The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet marked “Has no objections” commenting “ITE 4th Edition actually recommends 175 spaces (8 more); however, we have no objections and believe adequate parking is provided.”

- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the proposed office, medical clinic or ambulatory surgical center, and financial institution with drive-in window uses does not warrant the number of off-street parking spaces required, and
 - The special exception of 15 spaces (or an 8 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 15 spaces shall automatically and immediately terminate if and when the office, medical clinic or ambulatory surgical center, and financial institution with drive-in window uses is changed or discontinued, the applicant would be allowed to lease and maintain the existing structure with these uses and provide 170 of the 185 code required off-street parking spaces.

BOARD OF ADJUSTMENT ACTION: MARCH 19, 2014

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Gillespie**

I move that the Board of Adjustment grant application **BDA 134-021** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception of 15 off-street parking spaces automatically and immediately terminates if and when the mix of office, medical clinic or ambulatory surgical center, and financial institution with drive-in window uses that would normally need no more than 185 required off-street parking spaces is changed or discontinued.

SECONDED: Chernock

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 134-022

BUILDING OFFICIAL'S REPORT: Application of Ed Simons for a variance to the landscape regulations at 1615 Market Center Boulevard. This property is more fully described as Lots 1 through 9 and Lots 11 through 16, Block 7/6837 and is zoned PD-621 (Subdistrict 1), which requires mandatory landscaping. The applicant proposes to construct/maintain a structure and provide an alternate landscape plan, which will require a variance to the landscape regulations.

LOCATION: 1615 Market Center Boulevard

APPLICANT: Ed Simons

REQUEST:

A variance to the landscape regulations is requested to construct and maintain a "building"/structure on a site currently developed with a number of commercial structure/uses, some of which the applicant intends to retain, others that he intends to demolish, and not fully meeting the landscape regulations.

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 alternate landscape plan is required.

Rationale:

- The subject site is unique and different from most lots in the PD 621 zoning district in that it is of a restrictive size and of an irregular/virtually triangular shape. The narrowness of the site and its irregular shape precludes the applicant from developing it in a manner commensurate with development on other similarly zoned properties that are wider and are not irregularly shaped.
- The City's Chief Arborist recommends approval of the applicant's request because, in his opinion, the applicant has demonstrated the physical site restrictions resulting from the narrow triangular shape of the property with the proposed use significantly limits the application of required landscape planting areas.

BACKGROUND INFORMATION:

Zoning:

Site: PD 621 (Planned Development, Subdistrict1)
North: PD 621 (Planned Development, Subdistrict1)
South: PD 621 (Planned Development, Subdistrict1)
East: PD 621 (Planned Development, Subdistrict1)
West: PD 621 (Planned Development, Subdistrict1)

Land Use:

The site is currently developed with a number of commercial structures/uses. The areas to the north, south, east, and west appear to be developed mostly with commercial/retail uses.

Zoning/BDA History:

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

Timeline:

January 17, 2014: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

February 13, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

February 13, 2014: The Board Administrator shared the following information with the applicant via email:

- an attachment that provided the public hearing date and panel that will consider the application; the February 26th deadline to submit additional evidence for staff to factor into their analysis; and the March 7th 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.”

February 4, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Interim Assistant Director, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Senior Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

March 6, 2014: The City of Dallas Chief Arborist submitted a memo regarding the request (see Attachment A).

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining a “building”/structure on a site currently developed with a number of commercial structure/uses, some of which the applicant intends to retain, others that he intends to demolish, and not fully meeting the landscape regulations. More specifically, according to the City of Dallas Chief Arborist, the proposal does not comply with street tree and parking lot buffer requirements of PD 621.
- The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period.
- Given specific provisions of the landscape provisions of PD No. 621, the applicant can only seek these leniencies from the board of adjustment by requesting a *variance* to the landscape regulations within this PD as opposed to the more typical *special exception* to the landscape regulations.
- The City of Dallas Chief Arborist submitted a memo regarding the applicant’s request (see Attachment A). The memo states new construction on this property zoned PD 621 requires application of landscape requirements not included on the Article X landscape .
- The Chief Arborist’s memo lists the following ways in which development of the site is deficient in meeting the landscape requirements of PD 621:
 1. Street trees: 1 tree per 25 linear feet of frontage is required; the applicant proposes to provide 25 of the required 50 trees.
 2. Parking lot buffer: A 5’ wide buffer along parking row with trees is required; the applicant proposes to not provide buffer or trees due to site restrictions.
- The Chief Arborist’s memo lists the following factors for consideration:
 1. The property is a triangle-shaped site and located at the intersection of Market Center Boulevard and Irving Boulevard. The completion of the building/structure, required off-street parking, sidewalks, and vehicle maneuvering areas within restricted areas will limit the ability to place adequate landscape beds for required landscaping. All sides of the property are surrounded with street frontages.
 2. On-street parking spaces adjacent to a building site are specifically accepted for required parking in PD 621. The rows of on-street parking, nearby off-street parking, and the necessary 5’ wide sidewalk located on private property restrict the planting of additional street trees.
 3. The proposed landscape plan complies with all other PD 621 landscape requirements (landscape points- lighting, seasonal color, and native plants) and applicable Article X requirements (site trees, parking lot trees).
- The City of Dallas Chief Arborist recommends approval of this request because in his opinion the applicant has demonstrated the physical site restrictions resulting

from the narrow triangular shape of this property (with the proposed use) significantly limits the application of required landscape planting areas).

- The site is flat, virtually triangular in shape, and is approximately 1.3 acres in area. The site is zoned PD 621 (Subarea 1). The site has three front yard setbacks along each street frontages which is typical of any lot that encompasses virtually an entire block not zoned agricultural, single family, or duplex.
- According to DCAD records, the “improvements” at 1615 Market Center Boulevard is a 7,425 square foot “cocktail lounge” built in 1951.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the landscape 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. 621 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 PD No. 621 zoning classification.
- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted landscape plan, the site would be “varied” from certain street tree and parking lot buffer requirements of PD No. 621 as shown on this submitted alternate landscape plan.

BOARD OF ADJUSTMENT ACTION: MARCH 19, 2014

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Gillespie

I move that the Board of Adjustment grant application **BDA 134-022** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted alternate landscape plan is required.

SECONDED: Chernock

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 134-029

BUILDING OFFICIAL'S REPORT: Application of Allison Waldie for a variance to the front yard setback regulations and a special exception to the fence height regulations at 6639 Joyce Way. This property is more fully described as Lot 14, Block 3/5478 and is zoned R-7.5(A), which requires a front yard setback of 25 feet and limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct/maintain a structure and provide a 9 foot 3 inch front yard setback (measured at the roof eave), which will require a 15 foot 9 inch variance to the front yard setback regulations, and to construct/maintain an 8 foot 6 inch high fence, which will require a 4 foot 6 inch special exception to the fence height regulations.

LOCATION: 6639 Joyce Way

APPLICANT: Allison Waldie

REQUESTS:

The following appeals have been made on a site that is currently developed with a single family home:

1. A variance to the front yard setback regulations of 15' 9" is requested to complete and maintain an addition to the existing single family structure, part of which is proposed to be located in one of the site's two 25' front yard setbacks (Thackery Street).
2. A special exception to the fence height regulations of 4' 6" is requested to maintain an 8' 6" high solid board-on-board wood fence in the one of the site two 25' front yard setbacks (Thackery Street).

(No request has been made in this application to construct/maintain any fence or structure in the site's Joyce Way 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:

- (D) 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;
- (E) 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
- (F) not granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

STANDARD FOR A SPECIAL EXCEPTION TO 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 (variance):

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 in the R-7.5(A) zoning district in that it is a corner lot with a restrictive area due to its two front yard setbacks. The atypical two front yard setbacks on the lot preclude the applicant from developing it in a manner commensurate with development on other similarly zoned properties with one front yard setback. Documentation submitted by the applicant shows that the existing development on the site including the addition has a total square footage of 4,358 square feet which is near/slightly below the total square footage average of 7 other homes in the area and of the same zoning at 4,494 square feet.
- Completion/maintenance of the addition to the single family home would require no variance if the lot's Thackery Road frontage were a side yard as many other corner lots in this zoning district since a 9' 3" front yard setback (measured at the roof eave) is provided and a 5' side yard setback is required in the R-7.5(A) zoning district.

STAFF RECOMMENDATION (fence special exception):

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:

<u>Site:</u>	R-7.5(A) (Single family district 7,500 square feet)
<u>North:</u>	R-7.5(A) (Single family district 7,500 square feet)
<u>South:</u>	R-7.5(A) (Single family district 7,500 square feet)
<u>East:</u>	R-7.5(A) (Single family district 7,500 square feet)
<u>West:</u>	R-7.5(A) (Single family district 7,500 square feet)

Land Use:

The subject site is developed with a single family home. The area 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:

February 10, 2014: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

February 20, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

February 21, 2014: The Board Administrator contacted the applicant and shared the following information via email:

- an attachment that provided the public hearing date and panel that will consider the application; the February 26th deadline to submit additional evidence for staff to factor into their analysis; and the March 7th 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.”

February 26, 2014: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).

March 4, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Interim Assistant Director, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Senior Engineer, 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 (variance):

- This request focuses on completing and maintaining an addition to the existing single family structure, part of which is proposed to be located in one of the site’s two 25’ front yard setbacks (Thackery Street). (No request has been made in this application to construct/maintain any structure in the site’s Joyce Way front yard setback).

- Structures on lots zoned R-7.5(A) are required to provide a minimum front yard setback of 25'.
- The site is located on the northwest corner of Joyce Way and Thackery Street. The site has two 25' front yard setbacks. The site has a 25' front yard setback along Thackery Street because: 1) it is the shorter of the two frontages at 113.5', which is always deemed the front yard setback on a corner lot in a single-family zoning district; and 2) the one lot north of the site at the southwest corner of Walnut Hill Lane and Thackery Street - a lot that technically "fronts" eastward to Thackery Street given that it is shorter in length than its Walnut Hill Lane frontage. The site also has a 25' front yard setback along Joyce Way, the longer of the two frontages of this corner lot at 115', which is typically regarded as a side yard where only a 5' setback is required. But the site's Joyce Way frontage is a 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 west of the site that front/are oriented southward towards Joyce Way.
- Regardless of how the existing home is oriented to front onto Joyce Way (and "side" to Thackery Street), the site has two 25' front yard setbacks where the focus of the applicant's request in this application is only to complete and maintain an addition in the site's front yard setback on Thackery Street. (No part of the application is made to construct/maintain a structure in the site's Joyce Way front yard setback).
- The submitted site plan denotes that the addition is located as close as 12' from the site's Thackery Street front property line or 13' into this 25' front yard setback. However the Building Official's report states that a 9' 3" front yard setback is provided (measured at the roof eave) whereby the structure (including the roof eave as shown on the applicant's submitted structure elevation) is 15' 9" into the Thackery Street front yard setback.
- According to calculations taken from the site plan, about 400 square feet (or approximately 70 percent) of the approximately 540 square addition (or approximately 12 percent of the total approximately 3,400 square foot building footprint) is located in the site's Thackery Street 25' front yard setback.
- The subject site is flat, rectangular in shape, and according to the applicant's representative, is 0.30 acres (or approximately 13,000 square feet) in area. The site is zoned R-7.5(A) where lots typically are 7,500 square feet in area.
- The site has two front 25' front yard setbacks; and two 5' side yard setbacks; most R-7.5(A) residentially-zoned lots have one 25' front yard setback, two 5' side yard setbacks, and one 5' rear yard setback. (Note that if this were a typical R-7.5(A) zoned lot with one front yard, two side yards, and one rear yard, the applicant would not be required to seek a variance to the side yard setback since the proposal is proposes 9' 3" from the Thackery Street property line, and a 5' side yard setback is required in this zoning district).
- According to DCAD records, there are "main improvements" at 6639 Joyce Way is a structure built in 1950 with 3,800 square feet of living area and 4,358 square feet of total area. The "additional improvements" at this address include a 546 square foot attached garage and a 558 square foot room addition.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the Thackery Street 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 (roof eave) located as close as 9' 3" from the site's Thackery Street front property line (or 15' 9" into this 25' front yard setback).

GENERAL FACTS/STAFF ANALYSIS (fence special exception):

- This request focuses on maintaining an 8' 6" high solid board-on-board wood fence in the one of the site two 25' front yard setbacks (Thackery Street) on a site 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 on the northwest corner of Joyce Way and Thackery Street. The site has two 25' front yard setbacks. The site has a 25' front yard setback along Thackery Street because: 1) it is the shorter of the two frontages at 113.5', which is always deemed the front yard setback on a corner lot in a single-family zoning district; and 2) the one lot north of the site at the southwest corner of Walnut Hill Lane and Thackery Street - a lot that technically "fronts" eastward to Thackery Street given that it is shorter in length than its Walnut Hill Lane frontage. The site also has a 25' front yard setback along Joyce Way, the longer of the two frontages of this corner lot at 115', which is typically regarded as a side yard where only a 5' setback is required. But the site's Joyce Way frontage is a 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 west of the site that front/are oriented southward towards Joyce Way.
- Regardless of how the existing home is oriented to front onto Joyce Way (and "side" to Thackery Street), the site has two 25' front yard setbacks where the focus of the applicant's request in this application is only to maintain a fence higher than 4' in the site's front yard setback on Thackery Street. (No part of the application is made to address any fence in the site's Joyce Way front yard setback).
- The applicant has submitted a site plan and an elevation of the proposal in the Thackery Street front yard setback with notations indicating that the fence reaches a maximum height of 8' 6".
- The following additional information was gleaned from the submitted site plan:

- The proposed fence in Thackery Street required front yard setback is represented as being approximately 75' in length parallel to the street; and approximately 25' and 12' in length perpendicular to the street on the lot's north and south sides of the site in the Thackery Street front yard setback.
- The proposal is represented as being located approximately on the front property line or approximately 8' from the pavement line.
- The proposal is located across from one single family home which does not have a fence in its side yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area and noted one other fence that appeared to be above 4' in height and located in a front yard setback – an approximately 8.5' high solid wood fence immediately north of the subject site- a fence with no recorded BDA history.
- The applicant states that the fence that is of issue in this request replaced a fence that had been on the property for over 10 years in the identical location - a fence that was about 8' tall.
- As of March 10, 2014, no letters have been submitted in support of or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' 6" will not adversely affect neighboring property.
- Granting this special exception of 4' 6" 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: MARCH 19, 2014

APPEARING IN FAVOR: Jason Waldie, 6639 Joyce Way, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Leone

I move that the Board of Adjustment, in Appeal No. **BDA 134-029**, on application of Allison Waldie, **grant** the request to construct and maintain an 8-foot-6-inch-high fence in the property's front yard as a special exception to the fence height requirements in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Wilson

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

MOTION #2: Leone

I move that the Board of Adjustment, in Appeal No. **BDA 134-029**, on application of Allison Waldie, **grant** a 15 foot 9 inch variance to the front yard setback 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 submitted site plan 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: Gillespie

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

1:14 P.M. Board Meeting adjourned for **March 19, 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.