

**BOARD OF ADJUSTMENT, PANEL B  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, 6ES  
WEDNESDAY, MAY 22, 2013**

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

MEMBERS ABSENT FROM BRIEFING: Paula Leone, regular member

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

MEMBERS ABSENT FROM HEARING: Paula Leone, regular member

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

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

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**11:03 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **May 22, 2013 docket.**

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**1:06 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.

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel B April 17, 2013 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION:    MAY 22, 2013**

**MOTION: Wilson**

I move approval of the **Wednesday, April 17, 2013** Board of Adjustment Public Hearing minutes.

**SECONDED: Chernock**

**AYES: 4– Reynolds, Gillespie, Chernock, Wilson**

**NAYS: 0 –**

**MOTION PASSED 4 – 0 (unanimously)**

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**FILE NUMBER:    BDA 123-040**

**BUILDING OFFICIAL’S REPORT:** Application of Karen J. Hutton, represented by Ben Berry, for a special exception to the off-street parking regulations at 3231 S. Lancaster Road. This property is more fully described as Lot 18A, Block 6/4058 and is zoned CR, which requires that parking be provided. The applicant proposes to construct and/or maintain a structure for a general merchandise or food store greater than 3,500 square feet use and provide 28 of the required 34 off-street parking spaces, which will require a special exception to the off-street parking regulations of 6 spaces.

**LOCATION:            3231 S. Lancaster Road**

**APPLICANT:        Karen J. Hutton  
                              Represented by Ben Berry**

**REQUEST:**

A special exception to the off-street parking regulations of 6 parking spaces (or an 18 percent reduction of the 34 off-street parking spaces that are required) is made in conjunction with constructing and maintaining an approximately 6,800 square foot “general merchandise or food store greater than 3,500 square feet” use (O’Reilly Auto Parts). The applicant proposes to provide 28 (or 82 percent) of the required 34 off-street parking spaces in conjunction with maintaining this use with this square footage on the property that is currently developed with a vacant restaurant use that the applicant intends to demolish.

**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). For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 75 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)(4)(A). For the office use, the maximum reduction authorized by this section is 35 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)(4)(A). Applicants may seek a special exception to the parking requirements under this section and an administrative parking reduction under Section 51A-4.313. The greater reduction will apply, but the reduction may not be combined.

- 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.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- The special exception of 6 spaces shall automatically and immediately terminate if and when the “general merchandise or food store greater than 3,500 square feet” use is changed or discontinued.

Rationale:

- The applicant has substantiated how the parking demand generated by the proposed “general merchandise or food store greater than 3,500 square feet” 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 Engineering Division Assistant Director has indicated that he has no objections to this request.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: CR (Community retail)  
North: CR (Community retail)  
South: CR (Community retail)  
East: PD 426 (Planned Development)  
West: CR (Community retail)

**Land Use:**

The subject site is currently developed with a vacant restaurant use/structure. The areas to the north, east, south, and west are developed mostly as commercial and retail uses.

**Zoning/BDA History:**

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

**Timeline:**

January 23, 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.

- April 16, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- April 16, 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 May 1st deadline to submit additional evidence for staff to factor into their analysis; and the May 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 request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- May 7, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Sustainable Development and Construction Department Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- May 10, 2013: The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked "Has no objections."

**GENERAL FACTS/STAFF ANALYSIS:**

- This request focuses on constructing and maintaining an approximately 6,800 square foot "general merchandise or food store use 3,500 square feet or less" use (O'Reilly Auto Parts) where 28 (or 82 percent) of the required 34 off-street parking spaces are proposed to be provided on a site currently developed with a vacant restaurant use that the applicant intends to demolish.
- The Dallas Development Code requires the following off-street parking requirement:
  - General merchandise or food store greater than 3,500 square feet use: 1 space per 200 square feet of floor area with uses less than 10,000 square feet of floor area.
- 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 general merchandise or food store greater than 3,500 square feet use on the site does not warrant the number of off-street parking spaces required, and
  - The special exception of 6 spaces (or a 18 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 6 spaces shall automatically and immediately terminate if and when the general merchandise or food store greater than 3,500 square feet use is changed or discontinued, the applicant would be allowed to construct/maintain the site with this specific use and size and provide only 28 of the 34 code required off-street parking spaces.

**BOARD OF ADJUSTMENT ACTION:    MAY 22, 2013**

APPEARING IN FAVOR:                    No one

APPEARING IN OPPOSITION:        No one

**MOTION: Wilson**

I move that the Board of Adjustment grant application **BDA 123-040** 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 6 parking spaces shall automatically and immediately terminate if and when the general merchandise or food store greater than 3,500 square feet uses is changed or discontinued.

**SECONDED: Gillespie**

AYES: 4– Reynolds, Gillespie, Chernock, Wilson

NAYS: 0 –

MOTION PASSED 4 – 0 (unanimously)

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**FILE NUMBER:**    BDA 123-049

**BUILDING OFFICIAL’S REPORT:** Application of Ed Simons of Masterplan for a special exception to the landscape regulations at 4525 McKinney Avenue. This property is more fully described as 25' of Lot 4, Lot 5, & 50' of Lot 6, Block K/1535, and is zoned PD-193(LC), which requires mandatory landscaping. The applicant proposes to construct and/or maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

**LOCATION:**                    4525 McKinney Avenue

**APPLICANT:**                Ed Simons of Masterplan

**REQUEST:**

A special exception to the landscape regulations is made in conjunction with increasing nonpermeable coverage of the lot on a site developed with a retail uses/structures (Jonathan Adler/Title Nine/Flor), and not fully providing required landscaping.

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

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

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan is required.

Rationale:

- The applicant has substantiated how granting this request would not compromise the spirit and intent of the landscaping requirements of PD 193.
- The City's Chief Arborist recommends that this request be approved because the owner has demonstrated an effort to meet the spirit and intent of the ordinance with the introduction of new trees in the wide planting area that will still be within the tree planting zone while also protecting the existing large tree, and maintaining a neat site appearance in the front and rear of the lot.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 193 (LC) (Planned Development District, Light commercial)  
North: PD 193 (LC) (Planned Development District, Light commercial)  
South: PD 193 (LC) (Planned Development District, Light commercial)  
East: PD 193 (LC) (Planned Development District, Light commercial)  
West: PD 193 (LC) (Planned Development District, Light commercial)

**Land Use:**

The subject site is developed with an approximately 9,800 square foot retail use/structure (Jonathan Adler/Title Nine/Flor). The areas to the north, south, east, and west are developed with a mix of office and retail uses.

**Zoning/BDA History:**

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

## **Timeline:**

- March 28, 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.
- April 16, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- April 17, 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 May 1st deadline to submit additional evidence for staff to factor into their analysis; and the May 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 request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- May 7, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Sustainable Development and Construction Department Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- May 10, 2013: The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment A).

## **GENERAL FACTS/ STAFF ANALYSIS:**

- This request focuses on increasing nonpermeable coverage of the lot on a site developed with a retail uses/structures (Jonathan Adler/Title Nine/Flor), and not fully providing required landscaping.
- PD 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind.
- The Chief Arborist's memo states, among other things, how the request is triggered by new addition of ramps and walkways to the front of the structure that increases



the nonpermeable coverage of the property, and how the applicant seeks exception from the from the surface parking screening, sidewalk width requirements of 6', and landscape site area requirements for the property.

- The Chief Arborist listed the following deficiencies: 1) the parking bay to the south of the structure cannot provide full screening with the addition of a new handicapped access ramp that replaced a landscape area; 2) historically, the property does not conform to the minimum site area requirements; and 3) the sidewalk is proposed at its current 4' wide configuration as opposed to the required 6'.
- The Chief Arborists listed several factors for consideration on this request: 1) the property was developed before the initiation of the Oak Lawn ordinance; the owner proposes to improve the rear yard landscape island in the parking lot; 2) the walkway improvements were installed for the purpose of creating an additional suite unit and the necessary public access to all doors; the center suite has not direct level access from the rear; 3) the 4' wide sidewalk is existing and places approximately 9' from the curb for the purpose of maintaining street sidewalk continuity and for protecting the integrity of an existing mature tree.
- The Chief Arborist recommends approval of request. The arborist states that although the property is restricted form compliance with PD 193 Part 1 requirements, the owner has demonstrated an effort to meet the spirit and intent of the ordinance with the introduction of new trees in the wide planting area that will still be within the tree planting zone while also protecting the existing large tree, and maintaining a neat site appearance in the front and rear of the lot.
- The applicant has the burden of proof in establishing the following:
  - The special exception (where an alternate landscape plan has been submitted that is deficient in meeting the surface parking screening, sidewalk width requirements of 6', and landscape site area requirements of the PD 193 landscape regulations) will not compromise the spirit and intent of the section of the ordinance (Section 26: Landscape, streetscape, screening, and fencing standards).

If the Board were to grant this request and impose the submitted alternate landscape plan as a condition, the site would be granted exception from full compliance to the surface parking screening, sidewalk width requirements of 6', and landscape site area requirements of the Oak Lawn PD 193 landscape ordinance.

**BOARD OF ADJUSTMENT ACTION:    MAY 22, 2013**

APPEARING IN FAVOR:                      No one

APPEARING IN OPPOSITION:            No one

**MOTION: Wilson**

I move that the Board of Adjustment grant application **BDA 123-049** 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: Gillespie**

**AYES: 4– Reynolds, Gillespie, Chernock, Wilson**

**NAYS: 0 –**

**MOTION PASSED 4 – 0 (unanimously)**

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**FILE NUMBER: BDA 123-051**

**BUILDING OFFICIAL’S REPORT:** Application of Cash McElroy for a variance to the front yard setback regulations at 7743 Goforth Circle. This property is more fully described as Lot 1, Block A/5446 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 12 foot 3 inch front yard setback, which will require a variance to the front yard setback regulations of 12 feet 9 inches.

**LOCATION: 7743 Goforth Circle**

**APPLICANT: Cash McElroy**

**REQUEST:**

A variance to the front yard setback regulations of 12’ 9” is made in conjunction with constructing and maintaining a two-story single family home structure, part of which would be located in one of the site’s three front yard setbacks (Goforth Road) on a site that is currently undeveloped. (No request has been made in this application to construct/maintain any structure in the site’s Goforth Circle front yard setbacks).

**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 lot with a restrictive area due to its three front yard setbacks. The atypical lot with three front yard setbacks precludes the applicant from developing it in a manner commensurate with development on other similarly zoned R-7.5(A) properties with the typical one front yard setback, two side yard setbacks, and one rear 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.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-7.5(A) (Single family district 7,500 square feet)  
North: R-7.5(A) (SUP 972) (Single family district 7,500 square feet)(Specific Use Permit)  
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-7.5(A) (Single family district 7,500 square feet)

**Land Use:**

The subject site is undeveloped. The area to the north is developed with an institutional/water utilities use; and the areas to the 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:**

- March 28, 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.
- April 16, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- April 17, 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 May 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the

May 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 request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

May 7, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Sustainable Development and Construction Department Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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 two-story single family structure, part of which would be located in one of the three front yard setbacks (Goforth Road).
- 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 east corner of Goforth Road and Goforth Circle. Regardless of how the proposed single-family structure appears to be oriented to Goforth Circle the site has three front yard setbacks since the code states that if a lot runs from one street to another and has double frontage, a required front yard must be provided on both streets.
- The subject site has two 30' required front yards along Goforth Circle created by a platted building line, and a 25' required front yard setback along Goforth Road per the Dallas Development Code.
- A scaled site plan has been submitted indicating that the proposed single family home would be located 12' 3" from the Goforth Road front property line or 12' 9" into the 25' front yard setback. (No encroachment is proposed in the Goforth Circle 30' required front yards).
- According to DCAD records, the "main improvements" at 7743 Goforth Circle is a structure built in 1958 with 1,817 square feet of living area and 1,817 square feet of total area. According to DCAD records, the "additional improvements" at 7743 Goforth Circle is a 480 square foot detached garage. (These structures are no longer on the subject site).
- The subject site is flat, somewhat irregular in shape, and according to the application is 0.263 acres (or approximately 11,500 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 three front yards (two 30' required front yards per a platted building line, one 25' front yard setback per the R-7.5(A) zoning district provision); and one 5' side

yard setback; most residentially-zoned lots have one front yard setback, two side yard setbacks, and one rear 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 Goforth Road 25' front yard setback is approximately 375 square feet in area or approximately 13 percent of the approximately 2,900 square foot 1<sup>st</sup> floor building footprint.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the Goforth Road 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 12' 3" from the Goforth Road front property line (or 12' 9" into this 25' front yard setback).

**BOARD OF ADJUSTMENT ACTION:    MAY 22, 2013**

APPEARING IN FAVOR:                      No one

APPEARING IN OPPOSITION:            No one

MOTION: **Wilson**

I move that the Board of Adjustment grant application **BDA 123-051** 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 site plan is required.

SECONDED: **Gillespie**

AYES: 4– Reynolds, Gillespie, Chernock, Wilson

NAYS: 0 –

MOTION PASSED 4 – 0 (unanimously)

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**FILE NUMBER:** BDA 123-035

**BUILDING OFFICIAL'S REPORT:** Application of Thomas Bowen Wright for a variance to the front yard setback regulations at 4429 Pomona Road (AKA 8305 Catawba). This property is more fully described as Lot 4, Block G/4977 and is zoned R-10(A), which requires a front yard setback of 30 feet. The applicant proposes to construct and/or maintain a structure and provide a 13 foot 6 inch front yard setback, which will require a variance to the front yard setback regulations of 16 feet 6 inches.

**LOCATION:** 4429 Pomona Road (AKA 8305 Catawba)

**APPLICANT:** Thomas Bowen Wright

**May 22, 2013 Public Hearing Notes:**

- The applicant and citizens in opposition to the application submitted additional written documentation to the Board at the public hearing.

**REQUEST:**

A variance to the front yard setback regulations of 16' 6" is made in conjunction with updating/maintaining a single family home structure located 13' 6" from the front property line or 16' 6" in the site's 30' 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/roof plan" is required.

Rationale:

- The lot's restrictive area of approximately 0.22 acres (or approximately 9,600 square feet) precludes the applicant from developing it in a manner commensurate with other developments found on similarly-zoned R-10(A) lots. In this particular case, the area of the structure in the site's front yard setback is of a similar size as to how much less the property is in relation to other R-10(A) zoned properties: approximately 400 square feet.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-10(A) (Single family district 10,000 square feet)  
North: R-10(A) (Single family district 10,000 square feet)  
South: R-10(A) (Single family district 10,000 square feet)  
East: PD 455 & R-10(A) (Planned Development & Single family district 16,000 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, 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 21, 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.
- March 19, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- March 19, 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 March 27th deadline to submit additional evidence for staff to factor into their analysis; and the April 5th 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."

April 2, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

April 17, 2013: The Board of Adjustment Panel B conducted a public hearing on this application and held it under advisement until their next hearing to be held on May 22, 2013.

April 24, 2013: The Board Administrator sent a letter to the applicant noting the April 17<sup>th</sup> action of the Board, the May 1<sup>st</sup> deadline to submit any new information for staff review, and the May 10<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials.

May 3, 2013: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application and beyond what was submitted to the Board at the April 17<sup>th</sup> public hearing (see Attachment A).

#### **GENERAL FACTS/STAFF ANALYSIS:**

- This request focuses on updating/maintaining a portion of an approximately 2,700 single-story single family home in the site's 30' front yard setback.
- Structures on lots zoned R-10(A) are required to provide a minimum front yard setback of 30'.
- The subject site is located at the west corner of Pomona Road and Catawba Road. Regardless of how the existing single family structure is oriented northeastward to Catawba Road, the subject site has a 6' side yard setback along Catawba Road and a 30' front yard setback on Pomona Road.
- A scaled site plan had been submitted indicating that part of the single family home structure is 13.5' from the site's front property line or 16.5' into the 30' front yard setback.
- A "site/roof plan" has been submitted that notes "existing garage (hatched area) within setback shall remain as is (no foundation or height change)." The applicant has represented that this plan submitted after the April public hearing does not change the footprint of the garage shown on the originally submitted site plan in any way, shape, or form.
- An "exterior elevations" document has been submitted that depict what the applicant has described as proposed "updates" to the garage in the front yard setback.





**MOTION #2: Gaspard**

I move that the Board of Adjustment, in Appeal No. **BDA 123-035** hold this matter under advisement until **May 22, 2013**.

**SECONDED: Gillespie**

**AYES:** 5– Reynolds, Gillespie, Leone, Agnich, Gaspard

**NAYS:** 0 –

**MOTION PASSED** 5 – 0 (unanimously)

**BOARD OF ADJUSTMENT ACTION: MAY 22, 2013**

**APPEARING IN FAVOR:** Kendall Coleman, 5522 Glenwick, Dallas, TX  
Stephanie Bowen Wright, 4429 Pomona Rd, Dallas, TX  
Tad Volthekr, Jr. 4427 Pomona Rd., Dallas, TX

**APPEARING IN OPPOSITION:** Pat White, 4714 Wildwood Rd., Dallas, TX  
Joe Werner, 4400 Bluffview, Dallas, TX  
Nancy Kenty, 8723 Canyon Dr., Dallas, TX

**MOTION: Gillespie**

I move that the Board of Adjustment, in Appeal No. **BDA 123-035**, on application of Thomas Bowen Wright, **grant** a 16 foot, 6 inch variance to the minimum front yard setback regulations, because our evaluation of the property and the 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/roof plan and elevation is required.

**SECONDED: Wilson**

**AYES:** 4– Reynolds, Gillespie, Chernock, Wilson

**NAYS:** 0 –

**MOTION PASSED** 4– 0 (unanimously)

\*\*\*\*\*

**FILE NUMBER:** BDA 123-052

**BUILDING OFFICIAL’S REPORT:** Application of Jonathan Vinson for a variance to the height regulations and a special exception to the landscape regulations at 2001 McKinney Avenue (AKA 2222 N. Harwood Street). This property is more fully described

as Lot 1, Block A/948, and is zoned PD-193 (HC), which limits the maximum building height to 240 feet and requires mandatory landscaping. The applicant proposes to construct and maintain a structure and provide (1) a building height of 335 feet, which will require a variance to the height regulations of 95 feet; and (2) an alternate landscape plan/proposal, which will require a special exception to the landscape regulations.

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

**APPLICANT:** Jonathan Vinson

**May 22, 2013 Public Hearing Notes:**

- The applicant submitted a revised “Conceptual Height Limit Site Plan Diagram” to the Board at the public hearing.

**REQUESTS:**

The following appeals have been made on a site that is currently undeveloped:

1. A variance to the height regulations of 95’ is made in conjunction with constructing and maintaining what is described by the applicant as a mixed use project (primarily office but with retail and restaurant components), part of which would exceed the 240’ maximum height permitted for structures on properties zoned PD No. 193 (HC Subdistrict); and
2. A special exception to the PD 193 landscape regulations is made in conjunction with the proposed new construction, and not fully complying with the landscaping requirements of PD 193.

**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.

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

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

**STAFF RECOMMENDATION (variance):**

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.

**STAFF RECOMMENDATION (landscape special exception):**

Approval, subject to the following conditions:

1. The owner must submit for approval a landscape plan in compliance with the minimum landscape requirements of PD 193, with the exception of the conditions of Notes 4 and 5 of the submitted May 10, 2013 conceptual landscape plan.
2. Trees to be planted in the designated “Street Tree Zone” must be configured and provided, as closely as practicable, as shown on the submitted conceptual landscape plan, subject to approval of the building official.

Rationale:

- The applicant has substantiated how granting this request would not compromise the spirit and intent of the landscaping requirements of PD 193.
- The City’s Chief Arborist recommends approval of this request whereby, if the conditions noted above are imposed, the special exception would not compromise the spirit and intent of the landscaping requirements of PD 193.

**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:**

1. BDA 112-009, Property at 2001 McKinney Street (the subject site)

On January 18, 2012, the Board of Adjustment Panel B granted a 95-foot variance to the height regulations. The Board imposed the following condition: 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.

The case report stated that the request was made 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.

On April 17, 2013 the Board of Adjustment Panel B waived the two year limitation on a request for a variance to the height regulations granted (with certain conditions imposed by Board of Adjustment Panel B on January 18, 2012.

## **Timeline:**

- March 29, 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.
- April 16, 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.”
- April 18, 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 May 1st deadline to submit additional evidence for staff to factor into their analysis; and the May 10<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 requests; and

- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

May 1, 2013: The applicant submitted additional documentation on this application to staff beyond what was submitted with the original application.

May 7, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Sustainable Development and Construction Department Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

May 10, 2013: The applicant submitted additional information to the Board Administrator to be forwarded to the Board members beyond what was submitted with the original application and beyond what was submitted for the May 7, 2013 staff review team meeting (see Attachment A).

May 13, 2013: The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request for a special exception to the landscape regulations (see Attachment B).

**GENERAL FACTS/ANALYSIS (height variance):**

- 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 restaurant 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 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 submitted a “Conceptual Height Limit Site Plan Diagram” dated May 1, 2013. This plan noted certain property lines, curb lines, setback lines, and street tree zones. This plan notes a specific area of the site (roughly the eastern “half” of the site located adjacent to McKinney Avenue) with the following: Tower Height Zone (Maximum of 30% of site with 335 feet maximum structure height will be located within this Zone.)”
- The Conceptual Height Limit Site Plan Diagram dated May 1, 2013 made the following notes:
  1. Other than the additional structure height and the setbacks identified on this Conceptual Height Site Plan Diagram, all yard, lot and space regulations will

- conform to applicable requirements of PD 193 and any other applicable ordinances.
2. 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
  3. Development of the site will be subject to the setbacks as shown on each of the height zones, to offset height and enhance pedestrian environment, and shall be calculated as an average setback along each street frontage, measured from front of curb line to face of permanent structure at grade.
  4. Ten foot landscaping buffer on any side of an above ground parking structure facing a public right-of-way, residential district, residential subdistrict, or residential use, otherwise required pursuant to Sec. 51P-193.126(b)(3)(D), is not required on this site.
  5. Street trees otherwise required to be planted within the “tree planting zone” specified in SEC.51P-193.126(b)(5)(A) may be planted outside of such “tree planting zone” so long as they are planted within the “Street Tree Zones” depicted and specified on this Conceptual Height Limit Site Plan Diagram. All other requirements of Sec. 51-193.126(b)(5) will continue to apply.
- On May, 10, 2013, the applicant submitted a “Conceptual Height Limit Site Plan Diagram” dated May 10, 2013. This plan noted certain property lines, curb lines, setback lines, and street tree zones with what appears to be street trees along Olive Street, McKinney Avenue, N. Harwood Street, and Cedar Springs Road. This May 10<sup>th</sup> plan notes a specific area of the site (roughly the eastern “half” of the site located adjacent to McKinney Avenue) with the following: Tower Height Zone (Maximum of 30% of site with 335 feet maximum structure height will be located within this Zone.)”
  - The Conceptual Height Limit Site Plan Diagram dated May 10, 2013 makes the following additional notes:
    1. Other than the additional structure height and the setbacks identified on this Conceptual Height Site Plan Diagram, all yard, lot and space regulations will conform to applicable requirements of PD 193 and any other applicable ordinances.
    2. Development of the site will be subject to the height limits and percentages as follows:
      - 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
    3. Development of the site, as identified on this Conceptual Height Limit Site Plan Diagram, will be subject to the setbacks as shown on each of the height zones, to offset height and enhance pedestrian environment, and shall be calculated as an average setback along each street frontage, measured from front of curb (sic) line to face of permanent structure at grade.
    4. Ten foot landscaping buffer on any side of an above ground parking structure facing a public right-of-way, residential district, residential subdistrict, or residential use, otherwise required pursuant to Sec. 51P-193.126(b)(3)(D), is not required on this site.

5. Street trees otherwise required to be planted within the “tree planting zone” specified in SEC.51P-193.126(b)(5)(A) may be planted outside of such “tree planting zone” so long as they are planted within the “Street Tree Zones” depicted and specified on this Conceptual Height Limit Site Plan Diagram. All other requirements of Sec. 51-193.126(b)(5) will continue to apply. The caliper of all street trees shall meet the requirements of PD 193.

Street Tree Calcs:

**Olive Street:**  $325\text{LF} / 25 = 13$  trees required

Minimum 13 trees provided (double row)

**McKinney Avenue:**  $207\text{LF} / 25 = 9$  trees required

Minimum 9 trees provided (partial double row)

**Harwood Street:**  $224\text{LF} / 25 = 9$  trees required

Minimum 9 trees provided

**Cedar Springs:**  $242\text{LF} / 25 = 11$  trees required

Minimum 11 trees provided

Minimum number of street trees to be provided are as per the Street Tree Calculations in the table above. Locations and sizes of trees and other features shown in plan view on this Conceptual Landscape Plan are illustrative and conceptual only. Street trees may vary as to specific location, spacing, and size so long as the minimum Street Tree Calculations are met and are otherwise in compliance with any other applicable regulations. Hardscape and other non-landscape features are illustrative and may or may not be provided at all or in the locations shown.

- The applicant has resubmitted a copy of the Board Administrator 1-19-12 stamped-approved “Conceptual Height Limit Elevation Diagram” that was imposed as one of two conditions to the previous height variance granted on this site (BDA 112-009). (The applicant has amended this document only by striking through the date of “August 17, 2011” and adding “May 10, 2013.”)

The “Conceptual Height Limit Elevation Diagram” makes the following note:

- “The potential building envelope depicted is property line to property line. Actual development of the site will be subject to height limits and percentages specified below. Other than actual height, all yard, lot, and space regulations will conform to applicable requirements of PD 193 and any other applicable ordinances: same notations described above so noted on the “conceptual height limit site plan diagram” along with the following notations:

- 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 diagram makes the following graphic representations:

- 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 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” dated May 10, 2013 and the resubmitted “Conceptual Height Limit Elevation Diagram” dated May 10, 2013, the structure would be allowed to reach 335' in height as shown on these submitted conceptual documents.

**GENERAL FACTS/STAFF ANALYSIS (landscape special exception):**

- This request focuses on proposed new construction on the site, and not fully complying with the landscaping requirements of PD 193.
- PD 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind.
- The applicant submitted a Conceptual Landscape Plan dated May 10, 2013. This plan makes the following notes that appear to be identical notes made on the applicant’s “Conceptual Height Limit Site Plan Diagram” dated May 10, 2013:
  1. Other than the additional structure height and the setbacks identified on this Conceptual Height Site Plan Diagram, all yard, lot and space regulations will conform to applicable requirements of PD 193 and any other applicable ordinances.
  2. Development of the site will be subject to the height limits and percentages as follows:
    - 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

3. Development of the site, as identified on this Conceptual Height Limit Site Plan Diagram, will be subject to the setbacks as shown on each of the height zones, to offset height and enhance pedestrian environment, and shall be calculated as an average setback along each street frontage, measured from front of curb (sic) line to face of permanent structure at grade.
4. Ten foot landscaping buffer on any side of an above ground parking structure facing a public right-of-way, residential district, residential subdistrict, or residential use, otherwise required pursuant to Sec. 51P-193.126(b)(3)(D), is not required on this site.
5. Street trees otherwise required to be planted within the “tree planting zone” specified in SEC.51P-193.126(b)(5)(A) may be planted outside of such “tree planting zone” so long as they are planted within the “Street Tree Zones” depicted and specified on this Conceptual Height Limit Site Plan Diagram. All other requirements of Sec. 51-193.126(b)(5) will continue to apply. The caliper of all street trees shall meet the requirements of PD 193.

Street Tree Calcs:

**Olive Street:**  $325LF / 25 = 13$  trees required

Minimum 13 trees provided (double row)

**McKinney Avenue:**  $207LF / 25 = 9$  trees required

Minimum 9 trees provided (partial double row)

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Minimum 9 trees provided

**Cedar Springs:**  $242LF / 25 = 11$  trees required

Minimum 11 trees provided

Minimum number of street trees to be provided are as per the Street Tree Calculations in the table above. Locations and sizes of trees and other features shown in plan view on this Conceptual Landscape Plan are illustrative and conceptual only. Street trees may vary as to specific location, spacing, and size so long as the minimum Street Tree Calculations are met and are otherwise in compliance with any other applicable regulations. Hardscape and other non-landscape features are illustrative and may or may not be provided at all or in the locations shown.

- On May 10, 2013, the City of Dallas Chief Arborist submitted a memo to the Board Administrator regarding the landscape special exception request (see Attachment B).
- The Chief Arborist’s memo stated among other things how the request is triggered by construction of a vacant property, and how the applicant seeks exception from the mandatory requirements for trees and for garage screening and landscaping of PD 193 landscaping requirements.
- The Chief Arborist states that the proposed conceptual landscape plan (not to scale) identifies two confirmed deficiencies:
  1. Trees (for tree planting zone requirements); and
  2. Garage screening and landscaping. (Staff believes the 8’ wide sidewalk would be within, and exceed, the required 5’ – 12’ zone back of curb).
- The Chief Arborists listed several factors for consideration:
  1. The “conceptual landscape plan” that is provided does not meet the minimum standards for submittal of a building permit. The final complement and placement of landscaping materials and hardscape on the plan is subject to possible site

design changes. The chief arborist has produced comments based only on the illustrations and narrative of the given conceptual plan, but has not concluded for the board if a complete landscape plan is feasible at this time.

2. The HC district had the following requirements: 3.5" caliper trees with a density of 1 tree per 25 feet of frontage within a tree planting zone between 2.5 and 5 feet from back of curb; a minimum of 6' wide sidewalks placed from 5 to 12 feet from back of curb; and off-street parking and screening requirements that include garage screening and landscaping.
  3. Designated landscape areas (landscape site area, general planting area, special planting area) are not required for the HC district.
  4. For Olive Street and a portion of McKinney Avenue, the applicant proposes to designate 20-foot wide tree planting zones along two rows, in a staggered formation on both sides of the street sidewalk. The zone would hold at least the required number of trees.
  5. The applicant proposes a minimum 8' sidewalk along the entire perimeter with much of the sidewalk on private property. A sidewalk easement will be required.
  6. The garage frontage for the property is identified only on Harwood, and about 25-30 percent of that frontage (excluding the entries) would require a landscape buffer by ordinance. A narrow planting strip is identified between the structure and the sidewalk for that distance. No plant selections are identified for the planting strip. There is no off-street surface parking identified on the conceptual landscape plan.
  7. The submitted conceptual plan is intended as an illustration of the general landscape design concept for the property to adjust to the given building profile. The illustrations of hardscape and landscapes, other than required sidewalks, tree planting zones and the garage landscaping, do not describe requirements of PD 193 (HC). If the Board approves their proposal, the requirements of PD 193 (HC) will apply to the property with the stated exceptions in Notes 4 and 5.
  8. The given landscape plan is not drawn to scale and does not otherwise meet the minimum requirements for a landscape plan for building permit. If the conditions of this plan are approved, a compliant landscape plan, subject to the decision of the Board, must be submitted for approval by the building official.
  9. The plan states "street trees may vary as to specific location, spacing, and size so long as the minimum Street Tree Calculations are met and are otherwise in compliance with any other applicable regulations." In addressing the matter of tree size, staff recognizes the plan also states "the caliper of all street trees shall meet the requirements of PD 193."
- The Chief Arborist recommends approval of the submitted conceptual landscape plan because, in his opinion, the proposed plan does not compromise the spirit and intent of the PD 193 ordinance. The following conditions are recommended:
    1. The owner must submit for approval a landscape plan for permit, in compliance with the minimum landscape requirements of PD 193, with the exception of the conditions of Notes 4 and 5 of the May 10, 2013 conceptual landscape plan.
    2. Trees to be planted in the designated "Street Tree Zone" of the conceptual landscape plan must be configured in the zone on the final approved plan to emulate, as closely as is practicable, the illustration of the approved conceptual landscape plan, subject to approval of the building official.
  - The applicant has the burden of proof in establishing the following:

- The special exception (where the proposed not-to-scale conceptual landscape plan that identifies two confirmed deficiencies related to trees for tree planting zone requirements; and garage screening and landscaping of PD 193 landscaping requirements) will not compromise the spirit and intent of the section of the ordinance (Section 26: Landscape, streetscape, screening, and fencing standards).
- If the Board were to grant this request, imposing the City Arborist's suggested conditions noted above, the site would be provided exception to the two confirmed deficiencies identified on the applicant's not-to-scale conceptual landscape plan related to trees for tree planting zone requirements and garage screening and landscaping of the Oak Lawn PD 193 landscape ordinance.

**BOARD OF ADJUSTMENT ACTION:    MAY 22, 2013**

APPEARING IN FAVOR:                    Jonathan Vinson, 901 Main St., Dallas, TX  
    Kevin Crum, 200 Crescent Ct., Dallas, TX  
    Frank Stitch, 4224 N. Hall St., Dallas, TX

APPEARING IN OPPOSITION:        No one

**MOTION #1: Chernock**

I move that the Board of Adjustment, in Appeal No. **BDA 123-052**, on application of Jonathan Vinson, **grant** the 95 foot variance to the height regulations, because our evaluation of the property and the 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 conceptual height limit site plan diagram dated 5-22-13 and conceptual height limit elevation diagram dated 5-10-13 is required.

**SECONDED: Wilson**

AYES: 4– Reynolds, Gillespie, Chernock, Wilson

NAYS: 0 –

**MOTION PASSED** 4 – 0 (unanimously)

**MOTION #2: Chernock**

I move that the Board of Adjustment, in Appeal No. **BDA 123-052**, on application of Jonathan Vinson, grant the request to provide an alternate landscape plan as a special exception to the landscape requirements in PD 193, because our evaluation of the property and the testimony shows that this special exception will not compromise the spirit and intent of the Oak Lawn Ordinance. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- A landscape plan submitted for a building permit must comply with the landscape requirements of PD 193 except as provided in Notes 4 and 5 of the May 10, 2013 conceptual landscape plan.
- Trees located in the designated Street Tree Zone, shown on the conceptual landscape plan, must match, as closely as practicable, the final approved landscape plan, subject to the approval of the building official.

**SECONDED: Wilson**

**AYES:** 4– Reynolds, Gillespie, Chernock, Wilson

**NAYS:** 0 –

**MOTION PASSED** 4 – 0 (unanimously)

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**MOTION: Wilson**

I move to adjourn this meeting.

**SECONDED: Chernock**

**AYES:** 4– Reynolds, Gillespie, Chernock, Wilson

**NAYS:** 0 –

**MOTION PASSED** 4 – 0 (unanimously)

**2:44 P.M.** Board Meeting adjourned for **May 22, 2013.**

\_\_\_\_\_  
CHAIRPERSON

\_\_\_\_\_  
BOARD ADMINISTRATOR

\_\_\_\_\_  
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.