

**BOARD OF ADJUSTMENT, PANEL B  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, L1 CONFERENCE CENTER AUDITORIUM  
WEDNESDAY, SEPTEMBER 18, 2013**

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

MEMBERS ABSENT FROM BRIEFING: No one

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

MEMBERS ABSENT FROM HEARING: No one

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

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Tammy Palomino, Asst. City Attorney, Bert Vandenberg, Asst. City Attorney, Laura Morrison, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, Lloyd Denman, Asst. Director of Engineering, Neva Dean, Interim Asst. Director, 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 **September 18, 2013 docket.**

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**1:05 P.M.**

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

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel B August 21, 2013 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION:    SEPTEMBER 18, 2013**

**MOTION: Wilson**

I move approval of the **Wednesday, August 21, 2013** Board of Adjustment Public Hearing minutes.

**SECONDED: Leone**

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

**NAYS: 0 –**

**MOTION PASSED 5 – 0 (unanimously)**

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**MISCELLANEOUS ITEM NO. 2**

**FILE NUMBER:**    Unassigned

**REQUEST:**        To waive the \$600.00 filing fee for a potential request for a variance to the front yard setback regulations

**LOCATION:**        323 E. Woodin Boulevard

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

**September 18, 2013 Public Hearing Notes:**

- The Board Administrator circulated original materials to the Board at the briefing that the applicant had submitted in conjunction with her request – materials that were inadvertently not included in the docket emailed to the Board the week of September 9th.

**STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:**

The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waivers/reimbursements:

- The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.
- The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board's miscellaneous docket for predetermination.
- If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.
- In making this determination, the board may require the production of financial documents.

**Timeline:**

August 21, 2013: The applicant's representative submitted the applicant's letter and related documents which have been included as part of this case report.

August 26, 2013: The Board of Adjustment Secretary randomly assigned this miscellaneous item request to Board of Adjustment Panel B.

August 26, 2013: The Board Administrator contacted the applicant's representative and shared the following information via email:

- an attachment that provided the public hearing date and panel that will consider the application; the August 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request, encouraging the applicant, to submit any documentation beyond what was originally submitted that shows how payment of the filing fee results in substantial financial hardship, (i.e. additional financial documents as in but not limited to copies of 1040's, W-4's, bank statements - all with account numbers redacted); and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

August 30, 2013: The applicant's representative submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original request (see Attachment A).

**BOARD OF ADJUSTMENT ACTION:    SEPTEMBER 18, 2013**

**APPEARING IN FAVOR:**            Mike Osher, 1500 Marilla, Dallas, TX

**APPEARING IN OPPOSITION:** No one

**MOTION: Gillespie**

I move to approve the request to waive the filing fee for a potential request for a variance to the front yard setback regulations.

**SECONDED: Wilson**

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

**NAYS:** 0 –

**MOTION PASSED** 5 – 0 (unanimously)

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**FILE NUMBER:** BDA 123-090

**BUILDING OFFICIAL’S REPORT:** Application of Elias Rodriguez for a special exception to the landscape regulations at 2614 Boll Street. This property is more fully described as Lot 3, Block 2/955 and is zoned PD-193 (LC) H/116, which requires mandatory landscaping. The applicant proposes to construct/maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

**LOCATION:** 2614 Boll Street

**APPLICANT:** Elias Rodriguez

**September 18, 2013 Public Hearing Notes:**

- The applicant submitted a revised alternate landscape plan to the Board at the public hearing.

**REQUEST:**

A special exception to the landscape regulations is made in conjunction with increasing nonpermeable coverage of the lot developed with an existing approximately 1,800 square foot structure (The Ahab Bowen House), and not fully complying with the landscaping requirements of PD 193.

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

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.
- While the submitted alternate landscape plan does not fully meet the sidewalk and tree planting zone requirements of the ordinance, this plan exceeds the landscape site area and required front yard requirements of the ordinance. The submitted alternate landscape plan maintains mature trees on the site, and demonstrates intent to plant new landscaping materials that minimize any effect on the historic property while not obscuring the view of the historic structure on the property from Boll and Howland Streets.
- The City’s Chief Arborist recommends approval of this request.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 193 (LC) (H/116)(Planned Development District, Light commercial, historic)  
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 (GR)(Planned Development District, General retail)

**Land Use:**

The subject site is developed with an existing vacant structure that is a City of Dallas designated historic site (The Ahab Bowen House). The areas to the north, east, and south are developed with mixed uses; and the area to the west is developed with a surface parking lot.

**Zoning/BDA History:**

1. BDA 123-028, Property at 2701 McKinney Avenue (the property immediately east of the subject site)
 

On April 16, 2013, the Board of Adjustment Panel A: 1) granted requests for variances to the front yard setback regulations to maintain an existing nonconforming structure and to construct/maintain an addition in the Boll Street front yard setback imposing the submitted site plan as a condition to these requests; 2) granted a request for a special exception to the landscape regulations, imposing the revised alternate landscape plan as conditions to this request; 3) denied a request for a variance to the front yard setback regulations to maintain an existing nonconforming structure in the McKinney Avenue front yard setback with prejudice; and

4) denied a request for a variance to the off-street parking regulations of 13 spaces without prejudice.

The case report stated that the following appeals were made on a site that is currently developed with a restaurant use (S & D Oyster House): a variance to the front yard setback regulations of 10' was made in conjunction with constructing and maintaining an addition structure (freezer/cooler room and stairwell) with an approximately 1,900 square foot building footprint, part of which is to be located in on the Boll Street front property line, or as much as 10' into this 10' front yard setback along Boll Street; variances to the front yard setback regulations of 10' were made in conjunction with remedying/addressing the nonconforming aspect of the existing nonconforming structure that is located in the site's two 10' front yard setbacks along McKinney Avenue and Boll Street; a variance to the off-street parking regulations of 13 spaces (or a 24 percent reduction of the 54 off-street parking spaces that are required) was requested in conjunction with constructing and maintaining existing/proposed development with a total of approximately 5,400 square feet of restaurant use where the applicant proposes to provide 41 (or 76 percent) of the required 54 required off-street parking; and a special exception to the PD 193 landscape regulations was made in conjunction with the proposed new construction, and not fully complying with the landscaping requirements of PD 193.

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**Timeline:**

- July 8, 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.
- August 20, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- August 20, 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 August 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

September 3, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Interim Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

September 5, 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 developed with an existing approximately 1,800 square foot structure (The Ahab Bowen House), 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 City of Dallas Chief Arborist submitted a memo regarding the applicant's request (see Attachment A). The memo states how this request is triggered by new increase of nonpermeable coverage of the lot for new parking and maneuvering.
- The arborist's memo lists the following ways in which the applicant's alternate landscape plan is deficient to the PD 193 Landscaping Requirements:
  1. Sidewalks: Sidewalks are required to be 6' wide and 5'- 12' from back of curb. The existing sidewalk matches the width and alignment of the existing sidewalk for the blockface. The proposed new sidewalk along Howland Street will be 5' wide and placed at back of curb.
  2. Tree planting zone: One tree for every 25' of frontage excluding driveways and visibility zone. The site should have a minimum of 5 street trees planted 2.5' – 5' from back of curb. The proposal has no new trees planted within the designated tree planting zone
- The arborist's memo lists the following factors for consideration:

1. The property is under Historic Overlay District 116 (Ahab Bowen) designation established in 2002. Trees are protected under Article X Tree Preservation Regulations.
  2. The property exceeds the landscape site area and required front yard landscape requirements. The site complies with screening of off-street parking requirements.
  3. The owner proposes to install a 5' wide sidewalk along Howland Street which will allow patrons who park off-site to walk safely to the facility. The existing sidewalk on Boll Street is intended to remain as installed. A refurbished retaining wall of about 6" in height is proposed adjacent to the new and existing sidewalks.
  4. Additional plantings are proposed alongside the dumpster at the rear of the property.
  5. Significant large trees are to be maintained on the property with the intent of fewer site changes to minimized damage to the mature tree root systems. Placing the sidewalk closer to the curb reduces the risk to the mature trees on the property.
  6. Along with seeking to demonstrate the intent of landscaping per PD 193 requirements, all new landscaping installation is designed to minimize negative impacts to the historic property and protected trees on the site, and not to obstruct the view of the historic structure.
- The City of Dallas Chief Arborist recommends approval of this request because the applicant has demonstrated that the alternate plan does not compromise the spirit and intent of the PD 193 landscape requirements.
  - 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 fully meeting the sidewalk and tree planting zone requirements of the 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 and impose the submitted alternate landscape plan as a condition, the site would be granted exception from full compliance to sidewalk and tree planting zone requirements of the Oak Lawn PD 193 landscape ordinance.

**BOARD OF ADJUSTMENT ACTION:    SEPTEMBER 18, 2013**

**APPEARING IN FAVOR:**                    Elias Rodriguez, 317 E. Jefferson, Dallas, TX  
     Micahel Milliken, 3532 Cedar Plaza lane, Dallas, TX  
     Michael Turner, 2626 Cole # 606, Dallas, TX

**APPEARING IN OPPOSITION:** Michael Coker, 7809 Glenneagle Dr., Dallas, TX

**MOTION: Gillespie**

I move that the Board of Adjustment, in Appeal No. **BDA 123-090**, on application of Elias Rodriguez, **grant** the request to provide an alternate landscape plan as a special exception to 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:

- Compliance with the alternate landscape plan that was submitted at today's public hearing is required.

**SECONDED: Wilson**

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

**NAYS:** 0 –

**MOTION PASSED** 5 – 0 (unanimously)

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**FILE NUMBER:** BDA 123-093

**BUILDING OFFICIAL'S REPORT:** Application of Ignacio P. Garcia for a special exception to the front yard setback regulation for a carport at 6932 Tayloe Street. This property is more fully described as Lot 19, Block 19/5818 and is zoned R-7.5(A), which requires a front yard setback of 25 feet. The applicant proposes to construct/maintain a carport structure and provide an 8 foot setback, which will require a 17 foot special exception to the front yard setback regulations.

**LOCATION:** 6932 Tayloe Street

**APPLICANT:** Ignacio P. Garcia

**REQUEST:**

A special exception to the front yard setback regulations for a carport of 17' is requested in conjunction with modifying/maintaining what is represented on the submitted site plan and elevation document as an approximately 570 square foot carport attached to a single-family home, part of which is located in the site's 25' front yard setback.

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

The Board of Adjustment may grant a special exception to the minimum front yard requirements to allow a carport for a single-family or duplex use when, in the opinion of the Board:

- (1) there is no adequate vehicular access to an area behind the required front building line that would accommodate a parking space; and
- (2) the carport will not have a detrimental impact on surrounding properties.

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

- (A) Whether the requested special exception is compatible with the character of the neighborhood.
- (B) Whether the value of surrounding properties will be adversely affected.
- (C) The suitability of the size and location of the carport.
- (D) The materials to be used in construction of the carport.

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

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to the front yard setback regulations since the basis for this type of appeal is *when in the opinion of the board*, there is no adequate vehicular access to an area behind the required front building line that would accommodate a parking space; and the carport will not have a detrimental impact on surrounding properties.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-7.5(A) (Single family residential 7,500 square feet)  
North: R-7.5(A) (Single family residential 7,500 square feet)  
South: CR (SUP 1863)(Community retail, specific use permit)  
East: R-7.5(A) (Single family residential 7,500 square feet)  
West: R-7.5(A) (Single family residential 7,500 square feet)

**Land Use:**

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

**Zoning/BDA History:**

1. BDA 123-065, Property at 6931 Tayloe Street (the subject site)

On June 19, 2013, the Board of Adjustment Panel B denied requests for special exceptions to the front yard setback regulations of 17' and to the visual obstruction regulations without prejudice. The case report stated that a special exception to the front yard setback regulations of 17' was requested in conjunction with maintaining what is represented on the submitted site plan as an approximately 570 square foot carport attached to a single-family home, part of which is located in the site's 25' front yard setback; and that special exceptions to the visual obstruction regulations were requested in conjunction with maintaining two metal posts of the aforementioned carport; and portions of a 4' high open metal picket fence in the two 20' visibility triangles

on either side of the driveway into the site from Tayloe Street..

2. BDA 023-037, Property at 6933 Tayloe Street (the lot immediately northwest of the subject site)

On December 10, 2002, the Board of Adjustment Panel A granted a request for a variance of 20' to the front yard setback regulations. The Board imposed the following conditions to this request: The carport must remain open at all times; all applicable building permits must be obtained; compliance with the submitted and amended site plan and elevation is required; storage of items other than motor vehicles is prohibited; and the applicant must submit to the Board Administrator within 180 days from this hearing, documentation from a doctor verifying that a "handicapped person" resides at this address, and that this "handicapped person" meets terminology of "handicap" as that term is defined in the Federal Fair Housing Amendment Act of 1988. The case report stated how the request was made in conjunction with maintaining an approximately 520 square foot (20' x 26'), two-vehicle, flat-roofed steel/metal carport on a site developed with a single family home where approximately 400 square feet of the existing carport is located in the front yard setback. The case report noted that the Dallas Development Code provides two methods in which the Board of Adjustment can consider allowing carports located in the front yard setback. One method is requesting a *variance* to the setback regulations; the other method is a *special exception* to the setback regulations. Each method has a separate standard or basis in which the board shall consider. In this particular case, the applicant had requested a *variance* to the setback regulations.

**Timeline:**

- July 26, 2013: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- August 20, 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."
- August 21, 2013: 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 August 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- August 27, 2013: The applicant submitted documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).
- September 3, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Interim Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, 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 were submitted in conjunction with this application.

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

- This request focuses on modifying/maintaining what is represented on the submitted site plan and elevation document as an approximately 570 square foot carport attached to a single-family home, part of which is located in the site's 25' front yard setback. (The existing carport as observed and photographed in an August field visit of the property by the Board Administrator was anchored by four metal posts whereby the submitted elevation document represents the modified carport has having two metal posts).
- A 25' front yard setback is required in the R-7.5(A) zoning district.

The applicant submitted a site plan and elevation indicating that the location of the existing carport is 8' from the site's front property line or 17' into the 25' front yard setback.

- The Dallas Development Code provides for the Board of Adjustment to consider special exceptions for *carports* in the front yard setback with a specific standard for this type of appeal. (Note that the Dallas Development Code does not provide a definition of "carport" however Building Inspection interprets a "carport" to be a structure that would cover a vehicle and be open on at least one side).
- The Dallas Development Code provides for the Board of Adjustment to consider *variances for structures* in the front yard setback with a different basis for appeal than that of *special exceptions for carports* in the front yard setback.
- The following information was gleaned from the submitted site plan:
  - The carport is represented to be approximately 24' in length and approximately 24' in width (approximately 570 square feet in total area) of which approximately 400 square feet (or approximately 3/4) is located in the front yard setback.
  - There is a 5' – 5.5' wide area between the existing house and the two side property lines of the subject site property – neither distance wide enough to allow a driveway.
- The following information was gleaned from the submitted elevation:
  - Corrugated metal roof
  - 4' x 4' metal posts
- The submitted plat map shows an alley on the south side of the subject site.
- The subject site is approximately 137' x 55' (or 7,500 square feet) in area.
- According to DCAD, the property at 6932 Tayloe has the following "main improvement" of a structure with 1,052 square feet built in 1949, and "additional improvements" of a 660 square foot detached garage.
- The applicant has the burden of proof in establishing the following:
  - there is no adequate vehicular access to an area behind the required front building line that would accommodate a parking space; and
  - the carport will not have a detrimental impact on surrounding properties.
- As of September 9, 2013, no letters had been submitted in support of or in opposition to the request.
- Typically, staff has suggested that if the Board concludes at their hearing that the applicant has established the necessary facts to warrant favorable action, that they impose certain conditions with this type of appeal. The following conditions would restrict the location and size of the carport in the front yard setback; would require the carport in the front yard setback to be maintained (in this case) in a specific design with specific materials and in a specific configuration; and would require the applicant to mitigate any water drainage-related issues that the carport may cause on the lot immediately west:
  1. Compliance with the submitted site plan and elevation is required.
  2. The carport structure must remain open at all times.
  3. No lot-to-lot drainage is permitted in conjunction with this carport special exception.
  4. All applicable building permits must be obtained.

No item (other than a motor vehicle) may be stored in the carport.

**BOARD OF ADJUSTMENT ACTION:    SEPTEMBER 18, 2013**

APPEARING IN FAVOR: Edmundo Trevizo, 6932 Tayloe Street, Dallas, TX  
Ignacio Garcia, 6932 Tayloe Street, Dallas, TX  
Celestina Granados, 6932 Tayloe Street, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Wilson

I move that the Board of Adjustment, in Appeal No. **BDA 123-093**, on application of Ignacio Garcia, **grant** the request for a special exception of 17 feet to the front yard setback requirements to construct/maintain a carport, because our evaluation of the property and the testimony shows that the carport will not have a detrimental impact on surrounding properties. 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.
- The carport structure must remain open at all times.
- No lot-to-lot drainage is permitted with this carport special exception
- All applicable building permits must be obtained
- No item (other than a motor vehicle) may be stored under the carport.

SECONDED: Chernock

AYES: 3–Gillespie, Chernock, Wilson,

NAYS: 2 – Reynolds, Leone

MOTION FAILED 3 – 2

MOTION #2: Wilson

I move that the Board of Adjustment, in Appeal No. **BDA 123-093**, on application of Ignacio Garcia, **deny** the special exception to the front yard setback regulations for a carport requested by these applicants **without prejudice**, because our evaluation of the property and the testimony shows that the carport will have a detrimental impact on surrounding properties.

SECONDED: Leone

AYES: 3– Reynolds Wilson, Leone

NAYS: 2 – Gillespie, Chernock

MOTION PASSED 3 – 2

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FILE NUMBER: BDA 123-081

**BUILDING OFFICIAL’S REPORT:** Application of Karl A. Crawley for a variance to the off-street parking regulations and a special exception to the landscape regulations at 2912 Maple Avenue. This property is more fully described as Lot 7 and part of Lots 5 and 9, Block 7/944 and is zoned PD-193 (LC), which requires off-street parking to be

provided and mandatory landscaping. The applicant proposes to maintain a structure for office use and provide 8 of the required 13 parking spaces, which will require a 5 space variance to the off-street parking regulations, and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

**LOCATION:** 2912 Maple Avenue

**APPLICANT:** Karl A. Crawley

**REQUESTS:**

The following appeals have been made on a site that is currently developed with a vacant structure:

1. A variance to the off-street parking regulations (according to the applicant's submittal at the August 21<sup>st</sup> hearing) of 4 spaces is requested in conjunction with leasing and maintaining the existing approximately 4,600 square foot structure with office use where the applicant proposes to provide 9 (or 69 percent) of the 13 required off-street parking spaces.
2. A special exception to the PD 193 landscape regulations is requested in conjunction with increasing nonpermeable coverage of the lot, 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:**

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 RECOMMENDATIONS (off-street parking variance):**

Denial

Rationale:

- While the Sustainable Development and Construction Department Engineering Division Assistant Director has indicated no objections to the request, meaning it may not be contrary to the public interest, staff is unable to conclude that there is an unnecessary hardship as the parcel/subject site does not differ 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 PD 193 (LC) zoning classification. The subject site is flat, rectangular in shape and according to the application, is 10,144 square feet in area. The features of this site do not preclude the applicant from leasing the existing structure with a number of uses permitted in the zoning district where an off-street parking variance reduction request would not be necessary.
- The applicant has not substantiated how this variance for a specific use (office) is needed to relieve a self created hardship.

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

Approval, subject to the following conditions:

1. Compliance with the revised alternate landscape plan submitted at the August 21<sup>st</sup> public hearing is required.
2. If an existing pecan tree is removed, it must be replaced with another tree of similar species under the size specifications in 51P-193.126(b)(9), General Maintenance. In addition, the tree removal must be fully mitigated per Article X of the Dallas Development Code.

Rationale:

- The Chief Arborist supports the request with the suggested conditions imposed since the request as submitted/amended will not compromise the spirit and intent of the landscaping requirements of PD 193.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 193 (LC) (Planned Development District, Light commercial)  
North: PD 193 (GR) (Planned Development District, General retail)  
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 a vacant structure. The areas to the north, east, south, and west are 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:**

- June 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.
- July 3, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- July 5, 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 July 31<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the August 9<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.
- July 30, 2013: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).
- August 6, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Interim 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.
- August 8, 2013: The applicant submitted additional documentation on this application beyond what was submitted with the original application and discussed at the August 6<sup>th</sup> staff review team meeting (see Attachment B).

- August 7, 2013: The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet regarding the applicant's request for a variance to the off-street parking regulations marked "Has no objections."
- August 9, 2013: The City of Dallas Chief Arborist submitted a memo (with attached photos) that provided his comments regarding the request for a special exception to the landscape regulations (see Attachment C).
- August 21, 2013: The Board of Adjustment Panel B conducted a public hearing on this application. The applicant submitted additional documentation to the Board at the public hearing that included a revised landscape plan (see Attachment D). The Board held the request under advisement until September 18, 2013.
- August 22, 2013: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date that the panel that will consider the application; the August 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials; and
  - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- September 3, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Interim Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- September 4, 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 E).

**GENERAL FACTS/ STAFF ANALYSIS (off-street parking variance):**

- This request focuses on leasing and maintaining the existing approximately 4,600 square foot structure with office use where the applicant proposes to provide 9 (or 69 percent) of the required 13 required off-street parking spaces.
- The subject site is zoned PD 193 (LC). PD 193 states that the parking requirement for "office" use to be one space per 366 square feet of floor area.
- Dallas Development Code Section 51A-311(a)(6) states that the Board of Adjustment *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.

- Therefore, because the applicant seeks a parking reduction request for office use beyond 25 percent and since PD 193 does not make references to the existing off-street parking regulations in Chapter 51 or Chapter 51(A), the applicant may only apply for a *variance* and only the variance standard applies on this request to reduce the off-street parking regulations.
- DCAD records indicate that the improvement at 2912 Maple Avenue is a “converted residence” with 6,440 square feet built in 1923.
- The site is flat, rectangular in shape, and according to the application, is 10,144 square feet in area. The site is zoned PD 193 (LC).
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the off-street parking regulations of 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 193 (LC) zoning classification.
  - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the PD 193 (LC) zoning classification.
- On August 7, 2012, the Sustainable Development and Construction Department Engineering Division Assistant Director had submitted a review comment sheet marked “Has no objections.”

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

- This request focuses on increasing nonpermeable coverage of the lot, 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.
- On August 9, 2013, the City of Dallas Chief Arborist had submitted a memo to the Board Administrator regarding the submitted revised landscape plan/landscape special exception request (see Attachment C) stating, among other things, how the

request is triggered by the new addition of nonpermeable coverage on the property without a landscape permit.

- The arborist's August memo had listed the following ways in which the applicant's alternate revised landscape plan is deficient to the PD 193 Landscaping Requirements:
  3. Designated landscape areas: The plan provides less than 10 percent of lot and less than 60 percent front yard with insufficient front yard general planting and special planting.
  4. Off-street parking and screening: The plan provides less than 42" tall screening material-the maximum the provided "dwarf harbor nandina" is 3 feet.
  5. Sidewalks: Sidewalks are currently provided at 4' wide - the district requires sidewalk to be a minimum 6' and between 5' -12' from back of curb.
  6. Trees: The plan provides two, 3.5" large canopy trees outside of the tree planting zoned but in the parkway – the district requires a tree planting zone between 2.5' – 5' from back of curb.
- The arborist's memo had listed the following factors for consideration:
  1. There is adequate space within the front yard to prepare protected allowable space for planting one or more trees in the property front yard and spaced further away from overhead utility lines.
  2. The plan indicates automatic irrigation will be provided for all new landscaping.
  3. Raised planting beds were constructed along the front and sides of the structure.
  4. Three new crepe myrtles are to be placed in tree wells in the side yard.
  5. Two existing large pecan trees are to be retained on the site with no long term prognosis determined, however, where both trees have been impacted to some degree by pavement work.
  6. According to recent publicly available images (which are part of Attachment C), trees were removed during, or prior to, the work to increase the nonpermeable coverage.
- The City of Dallas Chief Arborist had recommended denial of this request in August 2013 because the owner had not demonstrated "the special exception will not compromise the spirit and intent of this section." The arborist had suggested that if the board determines in favor of the request, that they impose the following condition:
  - "If an existing pecan tree is removed, it must be replaced with another tree of similar species under the size specifications in 51P-193.126(b)(9), General Maintenance. In addition, the tree removal must be fully mitigated per Article X of the Dallas Development Code."
- On August 21, 2013, the applicant submitted among other things, a revised site/landscape plan to the Board of Adjustment Panel B at the public hearing on this application (see Attachment D).
- On September 4, 2013, the City of Dallas Chief Arborist submitted a memo to the Board Administrator regarding the submitted *revised* landscape plan/landscape special exception request that the applicant had submitted to the Board at the August 21<sup>st</sup> public hearing (see Attachment E). The memo states, among other things, how the request is triggered by the new addition of nonpermeable coverage on the property without a landscape permit.

- The arborist's September memo lists the following ways in which the applicant's alternate revised landscape plan is deficient to the PD 193 Landscaping Requirements:
  1. Designated landscape areas: The plan provides less than 10 percent of lot and less than 60 percent front yard with insufficient front yard general planting and special planting.
  2. Off-street parking and screening: The plan provides less than 42" tall screening material-the maximum potential growing height for the proposed "dwarf harbor nandina" is 3 feet.
  3. Sidewalks: Sidewalks are currently provided at 4' wide with expanded area to curb around underground utilities - the district requires sidewalk to be a minimum 6' and between 5' -12' from back of curb.
- The arborist's September memo lists the following factors for consideration:
  1. Trees: The amended landscape plan now provides two, 3.5" large canopy trees within the required front yard.
  2. The plan indicates automatic irrigation will be provided for all new landscaping.
  3. Raised planting beds were constructed along the front and sides of the structure that are filled with dwarf Buford holly (sides) and an unspecified plant in front planter.
  4. Three new crepe myrtles are to be placed in tree wells in the side yards.
  5. Two existing large pecan trees are to be retained on the site in tree wells with he long-term prognosis for the health of the trees not determined.
  6. According to recent publicly available images, trees were removed during, or prior to, the work to increase the nonpermeable coverage.
- The City of Dallas Chief Arborist supports the amended request with the following condition to be applied by the Board:
  - "If an existing pecan tree is removed, it must be replaced with another tree of similar species under the size specifications in 51P-193.126(b)(9), General Maintenance. In addition, the tree removal must be fully mitigated per Article X of the Dallas Development Code."
- 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 designated landscape area, off-street parking and screening, sidewalk, and tree provisions 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 applicant's revised alternate landscape plan submitted at the August 21<sup>st</sup> public hearing and the provision that "if an existing pecan tree is removed, it must be replaced with another tree of similar species under the size specifications in 51P-193.126(b)(9), General Maintenance. In addition, the tree removal must be fully mitigated per Article X of the Dallas Development Code" as conditions to this request, the site would be provided exception to the designated landscape area, off-street parking and screening, and sidewalk, requirements of the Oak Lawn PD 193 landscape ordinance.

**BOARD OF ADJUSTMENT ACTION:    AUGUST 21, 2013**

**APPEARING IN FAVOR:                      Karl Crawley, 900 Jackson Street, #640 Dallas, TX**

APPEARING IN OPPOSITION: No one

MOTION: **Gaspard**

I move that the Board of Adjustment, in Appeal No. **BDA 123-081**, on application of Karl Crawley, hold this matter under advisement until **September 18, 2013**.

SECONDED: **Leone**

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

**BOARD OF ADJUSTMENT ACTION: SEPTEMBER 18, 2013**

APPEARING IN FAVOR: Karl Crawley, 900 Jackson St., #640, Dallas, TX  
Michael Milliken, 3532 Cedarplaza LN, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: **Chernock**

I move that the Board of Adjustment, in Appeal No. **BDA 123-081**, on application of Karl Crawley, **grant** the variance of 4 parking spaces to the off-street parking 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.

SECONDED: **Gillespie**

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

MOTION #2: **Chernock**

I move that the Board of Adjustment, in Appeal No. **BDA 123-081**, on application of Karl Crawley, **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 conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted alternate revised landscape plan is required.
- If an existing pecan tree is removed, it must be replaced with another tree of similar species in accordance with the size requirements in Section 51P-193.126(b)(9), "General Maintenance."

- Tree removal must be fully mitigated in accordance with Dallas Development Code Article X.

**SECONDED:** Leone

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

**NAYS:** 0 –

**MOTION PASSED** 5 – 0 (unanimously)

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**FILE NUMBER:** BDA 123-082

**BUILDING OFFICIAL’S REPORT:** Application of Carlos D. Goyne, Café Build, LLC for a special exception to the off-street parking regulations at 5629 SMU Boulevard. This property is more fully described as part of Lot 22, Lots 23 & 24, and part of Lot 25, Block B/5187 and is zoned MU-3, which requires off-street parking to be provided. The applicant proposes to construct and maintain a structure for restaurant without drive-in or drive-through service and alcoholic beverage establishment uses and provide 65 of the required 86 parking spaces, which will require a 21 space special exception to the off-street parking regulations.

**LOCATION:** 5629 SMU Boulevard

**APPLICANT:** Carlos D. Goyne, Café Build, LLC

**REQUEST:**

A special exception to the off-street parking regulations of 21 parking spaces (or a 24 percent reduction of the 65 off-street parking spaces that are required) is made in conjunction with leasing and maintaining two vacant structures on the site with a total square footage of about 8,600 square feet with restaurant and alcoholic beverage establishment uses. The applicant proposes to provide 65 (or 68 percent) of the required 86 off-street parking spaces in conjunction with leasing and maintaining these uses with these square footages on the property.

**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). 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:**

Denial

Rationale:

- The applicant has not substantiated how the parking demand generated by the restaurant and alcoholic beverage establishment uses does not warrant the number of off-street parking spaces required, nor how 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 recommends that this request be denied.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: MU-3 (Mixed use)  
North: MU-3 (Mixed use)  
South: PD 786 (Planned Development)  
East: MU-3 (Mixed use)  
West: MU-3 (Mixed use)

**Land Use:**

The subject site is currently developed with two vacant structures. The areas to the north, east, south, and west are developed with a mix of retail, commercial, and residential 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:**

- June 20, 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.
- August 20, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- August 21, 2013: 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 August 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”
- September 3, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Interim Assistant Director, the Sustainable

Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

September 5, 2013: The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked “recommends that this be denied” commenting “submitted parking analysis and layout is not feasible. Surrounding area is currently under-parked.”

**GENERAL FACTS/STAFF ANALYSIS:**

- This request focuses on leasing and maintaining two vacant structures on the site with a total square footage of about 8,600 square feet with restaurant and alcoholic beverage establishment uses. The applicant proposes to provide 65 (or 68 percent) of the required 86 off-street parking spaces in conjunction with leasing and maintaining these uses with these square footages on the property.
- The Dallas Development Code requires the following off-street parking requirement:
  - Restaurant without drive-in or drive-through service use: 1 space per 100 square feet of floor area.
  - Bar, lounge, or tavern use: 1 space per 100 square feet of floor area.
- The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “recommends that this be denied” commenting “submitted parking analysis and layout is not feasible. Surrounding area is currently under-parked.”
- The applicant has the burden of proof in establishing the following:
  - The parking demand generated by the proposed restaurant and alcoholic beverage establishment uses on the site does not warrant the number of off-street parking spaces required, and
  - The special exception of 21 spaces (or a 24 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 21 spaces shall automatically and immediately terminate if and when restaurant and alcoholic beverage establishment uses, or a combination of these uses, that would normally need no more than 86 required parking spaces, are changed or discontinued, the applicant would be allowed to lease/maintain the site with these specific uses and provide only 65 of the 86 code required off-street parking spaces.

**BOARD OF ADJUSTMENT ACTION: SEPTEMBER 18, 2013**

APPEARING IN FAVOR: Carlos Goyne, 1529 Dragon St., Dallas, TX

APPEARING IN OPPOSITION: Tommy Donohue, 5645 SMU Blvd., Dallas, TX

MOTION #1: Leone

I move that the Board of Adjustment, in Appeal No. **BDA 123-082**, on application of Carlos Goyne, Café' Build, LLC, **deny** the special exception to the off-street parking regulations requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that the parking demand generated by the use does warrants the number of off-street parking spaces required, and the special exception would create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

SECONDED: **Gillespie**

**\*No vote was called on this motion and an alternate motion was made.**

MOTION #2: **Chernock**

I move that the Board of Adjustment, in Appeal No. **BDA 123-082**, hold this matter under advisement until **November 20, 2013**.

SECONDED: **Gillespie**

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

**3:10 P.M.: Break**

**3:15 P.M.: Resumed**

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FILE NUMBER: BDA 123-089

**BUILDING OFFICIAL'S REPORT**: Application of Alfonso Solis, Jr. to appeal the decision of the administrative official at 5506 Miller Avenue. This property is more fully described as Lots 1, 2, & 3, Block 16/1929 and is zoned CD-15, which requires that the building official shall deny a Conservation District work review application if the building official determines that the proposed work does not meet the development standards and design requirements for the Conservation District. The applicant proposes to appeal the decision of an administrative official in denying a Conservation District work review.

LOCATION: 5506 Miller Avenue

APPLICANT: Alfonso Solis, Jr.

**September 18, 2013 Public Hearing Notes**:

- The applicant submitted additional written documentation to the Board at the public hearing.

**REQUEST**:

An appeal has been made requesting that the Board of Adjustment reverse/overturn the Building Official's July 16, 2013 decision to deny a permit for property at 5506 Miller Avenue to "Remove all windows and related trim on the first floor of the apartment. Install single hung vinyl windows."

**STANDARD FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:**

Dallas Development Code Sections 51A-3.102(d)(1) and 51A-4.703(a)(2) state that any aggrieved person may appeal a decision of an administrative official when that decision concerns issues within the jurisdiction of the Board of Adjustment.

The Board of Adjustment may hear and decide an appeal that alleges error in a decision made by an administrative official. Tex. Local Gov't Code Section 211.009(a)(1).

Administrative official means that person within a city department having the final decision-making authority within the department relative to the zoning enforcement issue. Dallas Development Code Section 51A-4.703(a)(2).

**BACKGROUND INFORMATION:**

**Zoning:**

Site: CD 15 (Conservation District)  
North: CD 15 (Conservation District)  
South: CD 15 (Conservation District)  
East: CD 15 (Conservation District)  
West: CD 15 (Conservation District)

**Land Use:**

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

**Zoning/BDA History:**

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

**Timeline:**

July 16, 3013: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

August 20, 2013: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.

August 21, 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 August 28th deadline to submit additional evidence for staff to factor into their analysis (with a notation that staff does not form a recommendation on this type of application); and the September 6th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the outline of procedure for appeals from decisions of the building official to the board of adjustment; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

September 3, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Interim Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, 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 were submitted in conjunction with this application.

September 5, 2013: The applicant forwarded additional information on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

September 6, 2013: The Assistant City Attorney assisting the Building Official forwarded additional information to the Board Administrator beyond what was submitted with the original application (see Attachment B).

**GENERAL FACTS/STAFF ANALYSIS:**

- A copy of the denied permit for property at 5506 Miller Avenue is included in this case report.
- The board shall have all the powers of the administrative official on the action appealed from. The board may in whole or in part affirm, reverse, or amend the decision of the official.

**BOARD OF ADJUSTMENT ACTION: SEPTEMBER 18, 2013**

**APPEARING IN FAVOR:** Alfonso Solis, 4175 Interurbon Rd, Dallas, TX  
Richard Farmer, 950 Boardwalk, #202, San Marlos, CA

**APPEARING IN OPPOSITION:** Justin Roy, 1500 Marilla St., Dallas, TX  
Rick Bentley, 5551 Vickery, Dallas, TX

APPEARING FOR THE CITY: Diana Lowrance, 320 E. Jefferson, Dallas, TX

MOTION #1: Gillespie

I move to suspend the rules and accept the evidence that is presented to us today.

SECONDED: **Chernock**

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

MOTION#2: Chernock

I move that the Board of Adjustment, in Appeal No. **BDA 123-089**, on application of Alfonso Solis, Jr., after having fully reviewed the decision of the administrative official, and having evaluated the evidence and heard all the testimony and facts, I move that the Board of Adjustment **affirm** the decision of the administrative official and **deny** the relief requested by the applicant.

SECONDED: **Leone**

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

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MOTION: **Wilson**

I move to adjourn this meeting.

SECONDED: **Chernock**

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

**4:24 P.M.** Board Meeting adjourned for **September 18, 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.