

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM
WEDNESDAY, OCTOBER 17, 2012**

MEMBERS PRESENT AT BRIEFING: Darlene Reynolds, Vice Chair, Christian Chernock, regular member, and David Wilson, regular member, Paula Leone, regular member and Jim Gaspard, alternate member

MEMBERS ABSENT FROM BRIEFING: Sam Gillespie, Panel Vice Chair

MEMBERS PRESENT AT HEARING: Darlene Reynolds, Vice Chair, Christian Chernock, regular member, and David Wilson, regular member, Paula Leone, regular member and Jim Gaspard, alternate member

MEMBERS ABSENT FROM HEARING: Sam Gillespie, Panel Vice Chair

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

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

11:00 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **October 17, 2012 docket.**

1:02 P.M.
The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel B September 19, 2012 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: OCTOBER 17, 2012

MOTION: Gaspard

I move approval of the **Wednesday, September 19, 2012** Board of Adjustment Public Hearing minutes.

SECONDED: Chernock

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: OCTOBER 17, 2012

MOTION: Chernock

I move approval of Panel B’s 2013 Public Hearing Schedule.

SECONDED: Wilson

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 112-099

BUILDING OFFICIAL’S REPORT:

Application of Willie E. Cothrum of Masterplan for special exceptions to the fence height and visual obstruction regulations at 10340 Gaywood Road. This property is more fully described as Lot 1 in City Block F/5517 and is zoned R-1ac(A), which (1) limits the height of a fence in the front yard to 4 feet; (2) requires a 20 foot visibility triangle at driveway approaches; and (3) requires a 45 foot visibility triangle at street intersections. The applicant proposes to (1) construct and maintain a 9 foot 6 inch high fence, which will require a special exception to the fence height regulations of 5 foot 6 inches, and (2) locate and maintain items in required visibility triangles, which will require special exceptions to the visual obstruction regulations.

LOCATION: 10340 Gaywood Road

APPLICANT: Willie E. Cothrum of Masterplan

REQUESTS:

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

1. special exceptions to the fence height regulations of 5' 6" are made in conjunction with constructing and maintaining 6' high "open face" gates with 6' high masonry entry gate columns at the two driveways into the site from Meaders Lane, and a 9' 6" high "open face" entry gate with 9' 6" high masonry columns at the driveway into the site from Gaywood Road to be located in the site's two 50' platted required front yards (Meaders Lane and Gaywood Road); and
2. special exceptions to the visual obstruction regulations are made in conjunction with locating and maintaining:
 - (a) certain landscape materials (Crepe Myrtles) in the two 20' visibility triangles on either side of the two driveways into the site from Meaders Road,
 - (b) entry gate columns and portions of a 6' high holly hedge in the two 20' visibility triangles on either side of the driveway into the site from Gaywood Drive; and
 - (c) certain landscape materials (small lengths of a 6' high holly hedge) in the 45' visibility triangle at the intersection of Meaders Road and Gaywood Drive .

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

Section 51A-4.602 of the Dallas Development Code states that the board may grant a special exception to the height requirement for fences when in the opinion of the board, the special exception will not adversely affect neighboring property.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

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

STAFF RECOMMENDATION (fence height special exceptions):

No staff recommendation is made on this or any request for a special exception to the fence height regulations since the basis for this type of appeal is *when in the opinion of the board*, the special exception will not adversely affect neighboring property.

STAFF RECOMMENDATION (visual obstruction special exceptions):

Approval, subject to the following condition:

- Compliance with the submitted revised site plan is required.

Rationale:

- The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked "Has no objections" to the requests.
- The applicant has substantiated how the location of certain landscape materials and columns in the drive approaches and intersection visibility triangles do not constitute traffic hazards.

BACKGROUND INFORMATION:

Zoning:

Site: R-1ac (A) (Single family district 1 acre)
North: R-1ac (A) (Single family district 1 acre)
South: R-1ac (A) (Single family district 1 acre)
East: R-1ac (A) (Single family district 1 acre)
West: R-1ac (A) (Single family district 1 acre)

Land Use:

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

Zoning/BDA History:

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

Timeline:

August 24, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

September 12, 2012: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.

September 18, 2012: 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 September 26th deadline to submit additional evidence for staff to factor into their analysis; and the October 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 requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

September 20, 2012: The Board Administrator emailed the applicant with concerns related to his request for special exceptions to the visual obstruction regulations, specifically, how the lack of detail on the submitted site plan and the lack of having a full scale planting plan allowed staff to make certain determinations as to what items were being requested to be in drive approach visibility triangles and whether any item was to be located in the 45' visibility triangle at the intersection of Meaders Road and Gaywood Lane.

- September 27, 2012: The applicant amended his application and submitted additional information beyond what was submitted with the original application. (See Attachment A for a copy the related amended application and amended Building Official's Report).
- October 2, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October 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 Building Inspection Senior Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- October 4, 2012: The applicant forwarded additional information beyond what was submitted with the original application, and at the October 2nd staff review team meeting (see Attachment B). This information included a revised site plan and revised elevations.
- October 5, 2012: The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked "Has no objections."

GENERAL FACTS /STAFF ANALYSIS (fence height special exceptions):

- These requests focus on constructing and maintaining 6' high "open face" gates with 6' high masonry entry gate columns at the two driveways into the site from Meaders Lane, and a 9' 6" high "open face" entry gate with 9' 6" high masonry columns at the driveway into the site from Gaywood Road.
- The subject site is a corner lot zoned R-1ac(A) with a single family structure and two street frontages of unequal distance. The site is located at the southeast corner of Meaders Lane and Gaywood Road.
- The site has a front yard setback along Meaders Lane as the shorter of the two frontages is always deemed the front yard setback on a corner lot of unequal frontage distance. The site's Gaywood Road frontage is deemed a front yard as well to maintain the continuity of the established front yard setbacks along this street because of the lots south that fronts Gaywood Road – a front yard that carries across the subject site along Gaywood Road to where it meets Meaders Lane; otherwise, this street frontage would be deemed a side yard where a 9' high fence can be constructed/maintained per code.
- The Dallas Development Code states that a person shall not erect or maintain a fence in a required yard more than 9' above grade, and additionally states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.

- The applicant had submitted a revised site plan and revised elevations indicating that the proposal in the Meaders Lane and Gaywood Road required front yards reaches a maximum height of approximately 9' 6".
- The following additional information was gleaned from the submitted revised site plan:
 - The three gates range from 16' – 18' in length, and are approximately 0' - 3' from the property lines or approximately 13' -16' from the pavement lines where one single family home on each street (neither with a fence higher than 4' in height) fronts the proposal.
- The Board Administrator conducted a field visit of the site and surrounding area and noted one other fences higher than 4' in the immediate area in what appears to be a front yard setback: an approximately 6' high open wrought iron fence with approximately 8' high masonry columns immediately south of the subject site no recorded BDA history.
- As of October 8, 2012, no letters had been submitted in support of the proposal or in opposition.
- The applicant has the burden of proof in establishing that the special exceptions to the fence height regulations of 5' 6" will not adversely affect neighboring property.
- Granting this special exception of 5' 6" with a condition imposed that the applicant complies with the submitted revised site plan and revised elevations would require the proposal exceeding 4' in height in the Gaywood Road and Meaders Lane front yard setbacks to be constructed and maintained in the location and of the heights and materials as shown on these documents.

GENERAL FACTS /STAFF ANALYSIS (visual obstruction special exceptions):

- These requests focus on locating and maintaining (1) certain landscape materials (Crepe Myrtles) in the two 20' visibility triangles on either side of the two driveways into the site from Meaders Road, (2) entry gate columns and portions of a 6' high holly hedge in the two 20' visibility triangles on either side of the driveway into the site from Gaywood Drive; and (3) certain landscape materials (small lengths of a 6' high holly hedge) in the 45' visibility triangle at the intersection of Meaders Road and Gaywood Drive.
- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at intersections and 20-foot visibility triangles at drive approaches); and
 - between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
 A revised site plan has been submitted showing the following items in the visibility triangles:
 1. In each of the four 20' visibility triangles at the two drive approaches into the site from Meaders Road: one Natchez White Crepe Myrtle 12' – 14' in height.
 2. In each of the two 20' visibility triangles at the drive approach into the site from Gaywood Drive: masonry columns and portions of a holly hedge 6' in height.

3. In the 45' visibility triangle at the intersection of Meaders Road and Gaywood Drive: portions of a holly hedge 6' in height.
- The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked "Has no objections."
 - The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulations to locate certain aforementioned landscape materials and columns in both drive approach and intersection visibility triangles on the site and as shown on the submitted revised site plan do not constitute traffic hazards.
 - Granting these requests with a condition imposed that the applicant complies with the submitted revised site plan would require that the items in the aforementioned visibility triangles be limited to the locations, heights, and materials of those items as shown on this document.

BOARD OF ADJUSTMENT ACTION: OCTOBER 17, 2012

APPEARING IN FAVOR: William Cothrum, 900 Jackson St., Dallas, TX

APPEARING IN OPPOSITION: Charles Teichmman, 5435 Meaders Lane, Dallas, TX

MOTION#1: **Leone**

I move that the Board of Adjustment, in Appeal No. **BDA 112-099**, on application of William Cothrum, **grant** the request of this applicant to construct and/or maintain a 9-foot, 6 inch high fence on the property as a special exception to the height requirement for fences in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan dated 10-4-12 and revised elevation document is required.

SECONDED: **Wilson**

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

MOTION#2: **Leone**

I move that the Board of Adjustment, in Appeal No. **BDA 112-099**, on application of William Cothrum, **grant** the request to maintain items in the visibility triangles as a special exception to the visual obstruction regulations in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan dated 10-4-12 and revised elevation document is required.

SECONDED: Chernock

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 112-102

BUILDING OFFICIAL’S REPORT:

Application of Rob Vadala for a special exception to the landscape regulations at 2118 Alamo Street. This property is more fully described as Tract 4 in City Block 298, a .2435 acre tract of land, zoned PD-193 (I-2), which requires mandatory landscaping. The applicant proposes to increase the nonpermeable coverage of the lot and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 2118 Alamo Street

APPLICANT: Rob Vadala

REQUEST:

A special exception to the landscape regulations is requested in conjunction with increasing/expanding the nonpermeable coverage of the lot/subject site that is currently developed as a surface parking lot, and not fully complying with the tree planting zone, sidewalk, and screening of off-street parking requirements of the Oak Lawn Special Purpose District Landscaping Requirements.

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 landscape plan is required.

Rationale:

- The City’s Chief Arborist recommends approval of this request whereby, if the submitted landscape plan is imposed as a condition, the special exception would not compromise the spirit and intent of the landscaping requirements of PD 193.
- The planting row and sidewalk shown on the landscape plan have been designed to be uniform with improvements to be made to an adjacent parking lot tract. The sidewalk shown on the landscape plan appears to be designed to align with the existing sidewalk configuration alongside the adjacent existing El Fenix restaurant sidewalk and structure.

BACKGROUND INFORMATION:

Zoning:

Site: PD 193 (I-2) (Planned Development District, Industrial)
North: PD 193 (I-2) (Planned Development District, Industrial)
South: PD 193 (I-2) (Planned Development District, Industrial)
East: PD 193 (I-2) (Planned Development District, Industrial)
West: PD 193 (I-2) (Planned Development District, Industrial)

Land Use:

The subject site is developed as a surface parking lot. The areas to the north, south, and west are developed with surface parking lots; and the area to the east is developed with a retail/restaurant use (El Fenix Restaurant).

Zoning/BDA History:

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. BDA 090-026, Property at 1610 Cedar Springs Road (two lots northwest of the subject site) | <p>On March 17, 2010, the Board of Adjustment Panel A granted a request for a special exception to the landscape regulations and imposed the submitted revised alternate landscape plan dated 3/9/2010 as a condition to the request. The case report stated that the request was made in constructing and maintaining a hotel structure (Hilton Garden Inn) on a site that appeared under development.</p> |
|---|---|

Timeline:

August 22, 2012: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

September 12, 2012: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.

September 19, 2012: 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 September 26th deadline to submit additional evidence for staff to factor into their analysis; and the October 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.

October 2, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October 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 Building Inspection Senior Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

October 5, 2012: 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/expanding the nonpermeable coverage of the lot/subject site that is currently developed as a surface parking lot, and not fully complying with the tree planting zone, sidewalk, and screening of off-street parking requirements of the Oak Lawn Special Purpose District Landscaping Requirements.
- This landscape special exception request is triggered by increasing the nonpermeable coverage on one of several tracts to be used by an adjacent use, El Fenix Restaurant.
- The applicant seeks exception from the landscaping requirements of PD 193, specifically the sidewalk, tree, and off-street parking screening requirements. 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.
- A landscape plan has been submitted that, according to the City of Dallas Chief Arborist, is deficient from the general requirements for landscaping area for the tree planning zone (2.5' – 5' from back of curb), sidewalks (location and width), and screening of off-street parking requirements of PD 193.

- The City of Dallas Chief Arborist supports the applicant's request.
- 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 sidewalk, tree, and off-street parking screening 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 landscape plan as a condition, the site would be granted exception from full compliance to the sidewalk, tree, and off-street parking/screening requirements of the Oak Lawn PD landscape ordinance.

BOARD OF ADJUSTMENT ACTION: OCTOBER 17, 2012

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Gaspard

I move that the Board of Adjustment grant application **BDA 112-102** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted landscape plan is required.

SECONDED: Leone

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 112-082

BUILDING OFFICIAL'S REPORT:

Application of Jonathan Vinson of Jackson Walker for a variance to the off-street parking regulations at 601 Hawkins Street. This property is more fully described as a 0.394 acre parcel in City Block 317 and is zoned CA-2(A), which requires off-street parking. The applicant proposes to construct and maintain a structure for a mini-warehouse use and provide 6 of the required 28 parking spaces, which will require a variance of 22 spaces.

LOCATION: 601 Hawkins Street

APPLICANT: Jonathan Vinson of Jackson Walker

REQUEST:

A variance to the off-street parking regulations of 22 parking spaces (or a 79 percent reduction of the 28 off-street parking spaces that are required) is requested in conjunction with constructing and maintaining an approximately 61,000 square foot mini-warehouse use (Public Storage) on an undeveloped property. The applicant proposes to provide 6 (or 21 percent) of the required 28 off-street parking.

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, lot 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:

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

STAFF RECOMMENDATION:

Denial

Rationale:

- The applicant has not substantiated how a literal enforcement of the code provisions would result in unnecessary hardship; how the variance is necessary to permit development of the subject site in that it is different from other parcels of land by its restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels with the same CA-2(A) zoning district; nor how the variance is not needed to relieve a self-created or personal hardship, nor for financial reasons only.
- Although the site is irregular in shape, the applicant has not substantiated how the requested variance to the off-street parking requirement is necessary to permit its development (even with its triangular shape) in a manner commensurate with the development upon other parcels of land with the same CA-2(A) zoning, or how with the physical features of the site preclude him from complying with off-street parking requirements for a mini-warehouse use with less square footage than what is proposed.
- In addition, the applicant has not substantiated how granting this variance to the number of required off-street parking spaces would not be contrary to the public interest. The Sustainable Development and Construction Department Engineering

Division Assistant Director recommends denial of this request, commenting that the “multi-story structure without drive aisles for loading and unloading will need more than 6 parking spaces.”

BACKGROUND INFORMATION:

Zoning:

Site: CA -2(A) (Central Area)
North: CA -2(A) (Central Area)
South: CA -2(A) (Central Area)
East: CA -2(A) (Central Area)
West: CA -2(A) (Central Area)

Land Use:

The subject site is currently undeveloped. The areas to the north and west are freeways, the area to the east is developed with residential uses; and the area to the south is developed with mini-warehouse use.

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 27, 2012: 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 17, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- July 17, 2012: 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 July 25th deadline to submit additional evidence for staff to factor into their analysis; and the August 3rd 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 19, 2012: The applicant submitted a revised site plan and the Building Inspection Senior Plans Examiner forwarded a revised Building Official's Report on this application (see Attachment A).
- July 28, 2012: The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked "Recommends that this be denied" commenting "The submitted parking study does not support 0 spaces. On-street parking will be contrary to the public interest in this area."
- July 31, 2012: 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 Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, and the Assistant City Attorneys to the Board.
- August 1, 2012: The applicant requested postponement of the application until Panel B's September hearing.
- August 24, 2012: The applicant requested postponement of the application until Panel B's October hearing.
- September 27, 2012: The applicant amended his application and submitted a revised site plan (see Attachment B). The applicant also submitted information for staff review to be considered at the October 2nd staff review team meeting.
- October 2, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October 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 Building Inspection Senior Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- October 5, 2012: The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked "Recommends that this be denied" commenting "Multi-story structure without drive aisles for loading and unloading will need more than 6 parking spaces."

October 5, 2012: The applicant forwarded additional information beyond what was submitted with the original application, and at the October 2nd staff review team meeting (see Attachment C).

GENERAL FACTS/ STAFF ANALYSIS:

- This request for a 22 space variance to the off-street parking regulations focuses on constructing and maintaining an approximately 61,000 square foot mini-warehouse use (Public Storage) on an undeveloped property. The applicant proposes to provide 6 (or 21 percent) of the required 28 off-street parking.
- The off-street parking regulations of the Dallas Development Code require the following off-street parking for a mini-warehouse use: 1 space per 3,000 square feet of floor area. However, because the site is zoned CA-2(A), the proposed 61,158 square foot mini-warehouse use is required to provide off-street parking for 56,158 square feet or 5,000 square feet less than the actual 61,158 square feet proposed on the site.
- Dallas Development Code Section 51A-4.311(a)(1) states that the Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces 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, the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets; and that the maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
- Because the applicant is seeking a 79 percent reduction to the off-street parking requirement, the applicant may only apply for a *variance* and only the variance standard applies.
- The subject site is flat, triangular in shape, and according to the application, 0.3940 acres in area.
- DCAD records indicate “no improvements” for property at 601 Hawkins Street.
- The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked “Recommends that this be denied” commenting “Multi-story structure without drive aisles for loading and unloading will need more than 6 parking spaces.”
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the off-street parking regulations of 22 spaces 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 CA-2(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 CA-2(A) zoning classification.

BOARD OF ADJUSTMENT ACTION: **OCTOBER 17, 2012**

APPEARING IN FAVOR: Jonathan Vinson, 901 Main St., Dallas, TX
Jim Fitzpatrick, 701 Western Ave, Glendale, CA

APPEARING IN OPPOSITION: Ryan Rothermel, 2502 Live Oak St., #238, Dallas, TX
Jeffrey Langlitz, 2502 Live Oak St., #105, Dallas, TX
Jessie States, 2502 Live Oak, # 204, Dallas, TX

MOTION: **Wilson**

I move that the Board of Adjustment in Appeal No. **BDA 112-082**, hold this matter under advisement until **January 16, 2013**.

SECONDED: **Chernock**

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 112-096

BUILDING OFFICIAL’S REPORT:

Application of Ed Simons for a variance to the front yard setback regulations at 2920 N. Henderson Avenue (AKA 2918 N. Henderson Avenue). This property is more fully described as Lots 4, 6, & 7 in City Block 9/1971, a 0.326 acre building site and is zoned PD-462, which requires a front yard setback of 15 feet. The applicant proposes to construct and maintain a structure and provide a 0 foot front yard setback, which will require a variance of 15 feet

LOCATION: 2920 N. Henderson Avenue (AKA 2918 N. Henderson Avenue)

APPLICANT: Ed Simons

October 16, 2012 Public Hearing Notes:

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

REQUEST:

A variance to the front yard setback regulations of 15’ is requested in conjunction with completing and maintaining (according to the submitted site plan) an approximately 950 square foot (approximately 50’ x 19.5’) “new patio” structure, most of which would be

located in the site's 15' Henderson Avenue front yard setback on a property developed with an alcoholic beverage establishments use (The Dram).

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:

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

STAFF RECOMMENDATION:

Denial

Rationale:

- The applicant has not substantiated how a literal enforcement of the code provisions would result in unnecessary hardship; how the variance is necessary to permit development of the subject site in that it is different from other parcels of land by its restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels with the same CA-2(A) zoning district; nor how the variance is not needed to relieve a self-created or personal hardship, nor for financial reasons only.
- Although the subject site is slightly irregular in shape with two front yard setbacks (typical of any lot in this zoning district with two street frontages), the applicant has not substantiated how these features of the approximately 14,000 square foot site preclude him from developing it in a manner commensurate with development on other similarly zoned PD 462 properties. The site is currently developed with an alcoholic beverage establishment use that appears to be comply with the setbacks without requiring any variance.
- The applicant has not provided information to show that, owing to special conditions, a literal enforcement of the regulations would result in an unnecessary hardship or that the requested variance is not to relieve self-created or personal hardship or for financial reasons only.

BACKGROUND INFORMATION:

Zoning:

Site: PD 462 (Planned Development)
North: CR (Community Retail)
South: PD 462 (Planned Development)
East: CS (Commercial Service)
West: PD 462 (Planned Development)

Land Use:

The subject site is developed with an alcoholic beverage establishment use (The Dram). The areas to the north, east, south, and west are developed with a combination of retail uses and surface parking lots.

Zoning/BDA History:

1. BDA 056-033, 2912 N. Henderson Avenue (the lot south of the subject site) On November 15, 2005, the Board of Adjustment Panel A granted a variance to the front yard setback regulations of 15' and imposed the submitted site plan and elevation as a condition. The case report states that the request was made in conjunction with constructing and maintaining an approximately 720 square foot porch addition.

2. BDA 989-187
2822 N Henderson Avenue (two lots southeast of the subject site) On April 20, 1999, the Board of Adjustment Panel B granted a variance to the front yard regulations, a variance to the off-street parking regulations for screening, special exceptions to the landscape regulations, special exceptions to the tree preservation regulations, and a special exception to the visibility regulations in conjunction with constructing an addition to a nonconforming structure and a parking structure.

3. BDA 967-267
2831 N. Henderson Avenue (two lots south of the subject site) On August 18, 1997 the Board of Adjustment granted a variance to the front yard setback regulations of 15 feet in conjunction with maintaining a dumpster for an existing retail use.

4. BDA 967-216
2847 N. Henderson Avenue (two lots south of the subject site) On April 22, 1997 the Board of Adjustment granted a variance to the front yard setback regulations of 15 feet and a special exception to the visibility regulations in conjunction with maintaining an existing patio.

Timeline:

August 23, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

September 12, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

September 19, 2012: 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 September 26th deadline to submit additional evidence for staff to factor into their analysis; and the October 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.

October 2, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October 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 Building Inspection Senior 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 completing and maintaining (according to the submitted site plan) an approximately 950 square foot (approximately 50' x 19.5') "new patio" structure, most of which would be located in the site's 15' Henderson Avenue front yard setback on a property developed with an alcoholic beverage establishments use (The Dram).
- The minimum front yard setback on a lot zoned PD 462 is 15' and the maximum front yard setback is 30'. The applicant has submitted a plot plan/site plan indicating a "new patio" structure that is located on the site's front property line (or 15' into the required 15' front yard setback). The applicant also submitted a document labeled "A1" drawings including a partial site plan and three elevations.
- According to calculations taken from the applicant's submitted plot/site plan by the Board Administrator, virtually all of the approximately 950 square foot structure is located in the 15' front yard setback.

- The site is flat, “L” shaped, and according to the application, 0.326 acres (or approximately 14,000 square feet) in area. The PD 462-zoned subject site has two street frontages and two front yard setbacks as any corner property with two street frontages would that is not zoned agricultural, single family, or duplex.
- According to DCAD records, the “improvements” for property at “2920 N. Henderson Avenue” is a “free standing retail store” with 7,970 square feet built n 1929.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the 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 PD 462 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 462 zoning classification.
- If the Board grants the front yard variance of 15’, imposing the submitted site plan as a condition would limit the structure’s encroachment into the setback to what is shown on this site plan.

BOARD OF ADJUSTMENT ACTION: OCTOBER 17, 2012

APPEARING IN FAVOR: Ed Simons, 900 Jackson St., Dallas, TX
 Tommy DeAlamo, 5237 Vickery Blvd., Dallas, TX

APPEARING IN OPPOSITION: Mark Rieves, 5530 Goodwin, Dallas, TX

MOTION: Chernock

I move that the Board of Adjustment, in Appeal No. **BDA 112-096** on application of Ed Simons, **deny** the variance to the front yard setback regulations **without prejudice**, because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: Wilson

AYES: 4– Reynolds, Chernock, Wilson, Leone

NAYS: 1 – Gaspard

MOTION PASSED 4 – 1

MOTION: **Wilson**

I move to adjourn this meeting.

SECONDED: **Chernock**

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

NAYS: 0 –

MOTION PASSED 4 – 0 (unanimously)

4:05 P.M. - Board Meeting adjourned for **October 17, 2012.**

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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