

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL, 6ES
WEDNESDAY, OCTOBER 23, 2013**

MEMBERS PRESENT AT BRIEFING: Darlene Reynolds, Vice Chair, Robert Agnich, alternate member, Danny Alan Scott, alternate member and Philip Lewis, alternate member

MEMBERS ABSENT FROM BRIEFING: Sam Gillespie, Panel Vice Chair, Christian Chernock, regular member David Wilson, regular member and Paula Leone, regular member

MEMBERS PRESENT AT HEARING: Darlene Reynolds, Vice Chair, Robert Agnich, alternate member, Danny Alan Scott, alternate member and Philip Lewis, alternate member

MEMBERS ABSENT FROM HEARING: Sam Gillespie, Panel Vice Chair, Christian Chernock, regular member David Wilson, regular member and Paula Leone, regular member

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

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11:10 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **October 23, 2013 docket.**

1:05 P.M.

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

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel B September 18, 2013 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: OCTOBER 23, 2013

MOTION: Lewis

I move approval of the **Wednesday, September 18, 2013** Board of Adjustment Public Hearing minutes.

SECONDED: Agnich

AYES: 4– Reynolds, Agnich, Scott, Lewis

NAYS: 0 –

MOTION PASSED 4 – 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

To approve the Board of Adjustment Panel B's 2014 public hearing calendar.

BOARD OF ADJUSTMENT ACTION: OCTOBER 23, 2013

MOTION: Lewis

I move **approval** of the Board of Adjustment Panel B's 2014 public hearing calendar.

SECONDED: Scott

AYES: 4– Reynolds, Agnich, Scott, Lewis

NAYS: 0 –

MOTION PASSED 4 – 0 (unanimously)

FILE NUMBER: BDA 123-098

BUILDING OFFICIAL'S REPORT: Application of Karen J. Hutton, represented by Christopher Berry, for a variance to the front yard setback regulations at 3231 S. Lancaster Road. This property is more fully described as Lot 18A, Block 6/4058, and is zoned CR, which requires a front yard setback of 15 feet. The applicant proposes to

construct and maintain a structure and provide a 10 foot front yard setback, which will require a 5-foot variance to the front yard setback regulations.

LOCATION: 3231 S. Lancaster Road

APPLICANT: Karen J. Hutton
Represented by Christopher Berry

REQUEST:

A request for a variance to the front yard setback regulations of 5' is made in conjunction with constructing and maintaining an approximately 6,800 square foot retail structure (O'Rilley Auto Parts), part of which would be located in the site's S. Lancaster Avenue 15' front yard setback on a site that is currently developed with a vacant structure that the applicant intends to demolish. (No part of the proposed structure is represented to be located in the site's Oakley Street 15' front yard setback).

STANDARD FOR A VARIANCE:

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

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

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The subject site has a restrictive area caused by a 5' wide street right-of-way widening easement that runs parallel to its S. Lancaster Road frontage that, according to the applicant, was put into place in the early 70's. Granting this variance does not appear to be contrary to public interest since according to the City's Department of Public Works and Transportation, the City does not have plans to utilize this 5' wide easement for any future widening of S. Lancaster Road.

- The applicant states that the proposed structure/development on the site cannot be shifted 5' westward from the S. Lancaster Road right-of-way line without resulting in noncompliance with off-street parking regulations related to the number of parking spaces required for the proposed use, to required parking space depths, and to required parking lot drive aisle widths.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA 123-040, Property at 3231 S. Lancaster Road (the subject site)

On May 22, 2013, the Board of Adjustment Panel B granted a request for a special exception to the off-street parking regulations of 6 spaces. The Board imposed the following condition: The special exception of 6 parking spaces shall automatically and immediately terminate if and when the general merchandise or food store greater than 3,500 square feet uses is changed or discontinued.

The case report stated that the request was made in conjunction in conjunction with constructing and maintaining an approximately 6,800 square foot “general merchandise or food store greater than 3,500 square feet” use (O’Reilly Auto Parts).

Timeline:

- August 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.
- September 19, 2013: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.

September 19, 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 October 2nd deadline to submit additional evidence for staff to factor into their analysis; and the October 11th 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 24, 2013: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).

October 8, 2013: 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 Engineering Division Assistant Director, the Sustainable Development and Construction Department Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining an approximately 6,800 square foot retail structure (O'Rilley Auto Parts), part of which would be located in the site's S. Lancaster Avenue 15' front yard setback on a site that is currently developed with a vacant structure that the applicant intends to demolish. No part of the proposed structure is represented to be located in the site's Oakley Street 15' front yard setback.
- Structures on lots zoned CR are required to provide a minimum front yard setback of 15'.
- The subject site is located at the northwest corner of S. Lancaster Road and Oakley Street. Regardless of how the proposed structure is to be oriented, the subject site has two 15' front yard setbacks along both streets as would any property with two street frontages not zoned agricultural, single family, or duplex.
- A site plan has been submitted denoting that the distance between the proposed structure and the existing right-of-way of S. Lancaster Road is 15' and the distance between the proposed structure and the existing street easement is 10'.
- Since the Dallas Development Code states that the front yard setback is measured from the front property lot line of the building site or the required right-of-way as determined by the thoroughfare plan for all thoroughfares, whichever creates the

greater setback, the applicant seeks a variance of 5' to the front yard setback regulations along S. Lancaster Road since the proposed structure is 5' into the 15' front yard setback or only 10' from the existing required street right-of-way line.

- It appears from calculations made by the Board Administrator from the submitted site plan that approximately 450 square feet (or about 7 percent) of the proposed approximately 6,800 square foot building footprint is to be located in the site's S. Lancaster Road 15' front yard setback.
- DCAD records indicate the improvements for property at 3231 S. Lancaster Road is a "free standing retail store" with 2,475 square feet constructed in 1969.
- The subject site is rectangular in shape (130' x 110') and according to the application, is 0.34 acres (or approximately 14,810 square feet) in area. The submitted plat map indicates that the subject site and the lot immediately north have what the applicant has described as a 5' street widening easement put into place in 1972. (According to Public Works and Transportation, the City does not have plans to utilize this 5' wide easement for any future widening of S. Lancaster Road).
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations along S. Lancaster Road 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 CR 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 CR zoning classification.
- If the Board were to grant the variance request and impose the submitted site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document– which is a structure to be located 10' from the site's S. Lancaster Road front property line (or 5' into this 15' front yard setback).

BOARD OF ADJUSTMENT ACTION: OCTOBER 23, 2013

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Scott

I move that the Board of Adjustment grant application **BDA 123-098** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general

purpose and intent of the Code or PD. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: Agnich

AYES: 4– Reynolds, Agnich, Scott, Lewis

NAYS: 0 –

MOTION PASSED 4 – 0 (unanimously)

FILE NUMBER: BDA 123-104

BUILDING OFFICIAL’S REPORT: Application of Zac Lytle for a special exception to the landscape regulations at 6544 E. Lovers Lane (et al). This property is more fully described as Lot 4 (et al), Block 1/5431, and is zoned TH-3(A), which requires mandatory landscaping. The applicant proposes to construct and maintain a single family residential shared access development and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 6544 E. Lovers Lane (et al)

APPLICANT: Zac Lytle

REQUEST:

A request for a special exception to the landscape regulations is made in conjunction with developing a single family residential shared access development on a site currently developed with a single family home, and not fully meeting the landscape regulations.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

The board may grant a special exception to the landscape regulations of this article upon making a special finding from the evidence presented that:

- (1) strict compliance with the requirements of this article will unreasonably burden the use of the property;
- (2) the special exception will not adversely affect neighboring property; and
- (3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

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

- the extent to which there is residential adjacency;
- the topography of the site;
- the extent to which landscaping exists for which no credit is given under this article;
- and

- the extent to which other existing or proposed amenities will compensate for the reduction of landscaping.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan is required.

Rationale:

- The applicant has substantiated how strict compliance with the requirements of the landscape regulations of the Dallas Development Code will unreasonably burden the use of the property, and that the special exception will not adversely affect neighboring property. The submitted plan's deficiency from full compliance with street tree requirements for shared access developments is compensated by the applicant's plan to retain several large trees on the subject site.
- The City's Chief Arborist recommends approval of the applicant's request for exception to the Landscape Regulations.

BACKGROUND INFORMATION:

Zoning:

Site: TH-3(A) (Townhouse)
North: TH-3(A) (Townhouse)
South: R-7.5(A) (Single family 7,500 square feet)
East: R-7.5(A) (Single family 7,500 square feet)
West: TH-3(A) (Townhouse)

Land Use:

The site is currently developed with a single family use. The areas to the north, south, east, and west appear to be developed with single family uses.

Timeline:

August 9, 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.

September 19, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

September 19, 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 October 2nd deadline to submit additional evidence for staff to factor into their analysis;

and the October 11th 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 30, 2013: The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).

October 8, 2013: 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 Engineering Division Assistant Director, the Sustainable Development and Construction Department Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

October 9 2013: The City of Dallas Chief Arborist submitted a memo regarding the request (see Attachment B).

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on developing a single family residential shared access development on a site currently developed with a single family home, and not fully meeting the landscape regulations. More specifically, according to the City of Dallas Chief Arborist, the site is deficient to the Landscape Regulations regarding the number of new trees to be provided in the shared access development – the plan is providing 23 new trees within the SAD (shared access development) and the retention of several large trees where the ordinance would require a minimum of 36 trees for the shared lot with at least 24 trees in the front yard.
- The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period.
- The City of Dallas Chief Arborist submitted a memo regarding the applicant's request (see Attachment B). The memo states how this request is triggered by new construction of a shared access development on the site.
- The arborist's memo lists the following factors for consideration:
 1. All of the trees to be planted are on the approved replacement tree list; the plan calls for planting 23 new trees within the SAD.
 2. The design of the shared access development includes the retention of several large trees, including one large shade tree at the Lovers Lane street frontage.

3. The proposed plan would comply with the minimum landscape requirements of 51A-10.125(a)(2)(B) for a shared access development in “districts other than single family districts,” with the exception of the placement of one street tree.
- The City of Dallas Chief Arborist recommends approval of this proposed landscape plan
 - The applicant has the burden of proof in establishing the following:
 - Strict compliance with the requirements of the Landscape Regulations of the Dallas Development Code will unreasonably burden the use of the property; and
 - The special exception will not adversely affect neighboring property.
 - If the Board were to grant this request and impose the submitted landscape plan as a condition to the request, the site would be provided exception from full compliance with the street tree requirements for shared access developments of Article X: The Landscape Regulations.

BOARD OF ADJUSTMENT ACTION: OCTOBER 23, 2013

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Scott**

I move that the Board of Adjustment grant application **BDA 123-104** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted alternate landscape plan is required.

SECONDED: **Agnich**

AYES: 4– Reynolds, Agnich, Scott, Lewis

NAYS: 0 –

MOTION PASSED 4 – 0 (unanimously)

FILE NUMBER: BDA 123-106

BUILDING OFFICIAL’S REPORT: Application of Ed Simons for special exceptions to the fence height and visual obstruction regulations at 9741 Meadowbrook Drive. This property is more fully described as Lot 2, Block 1/5601 and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct and maintain a 6 foot 10 inch high fence, which will require a 2 foot 10 inch special exception to the fence height regulations, and to locate and maintain items in required visibility triangles, which will require a special exception to the visual obstruction regulations.

LOCATION: 9741 Meadowbrook Drive

APPLICANT: Ed Simons

REQUESTS:

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

1. A request for a special exception to the fence height regulations of 2' 10" is made in conjunction with constructing and maintaining what is shown on the submitted elevation as a 6' 6 ½" high fence (a 4' 6 ½" high open iron picket fence atop a 2' high limestone wall) and a 6' 6 ½" high open iron picket gate in the site's 40' front yard setback.
2. Requests for special exceptions to the visual obstruction regulations are made in conjunction with locating and maintaining portions of the 6' 6 ½" high fence (a 4' 6 ½" high open iron picket fence atop a 2' high limestone wall) in the 20' visibility triangles on either side of the driveway into the site from Meadowbrook Lane.

(Note that this application abuts a property to the south and west where the same applicant seeks similar fence height and visual obstruction special exceptions on that subject site's western side along Ravine Drive. See BDA 123-107).

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 exception):

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

STAFF RECOMMENDATION (visual obstruction special exceptions):

Approval, subject to the following condition:

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

Rationale:

- The Sustainable Development and Construction Department Engineering Division Assistant Director has indicated that he has no objections to these requests.

- The applicant has substantiated how the location of portions of the proposed fence to be located in the 20' visibility triangles on either side of the driveway into the site from Meadowbrook Lane does not constitute a traffic hazard.

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 undeveloped. The areas to the north, east, south, and west are developed with single family uses.

Zoning/BDA History:

- | | |
|---|---|
| <p>1. BDA 123-107, Property at 9707 Meadowbrook Lane (the lot immediately south and west of subject site)</p> | <p>On October 23, 2013, the Board of Adjustment Panel B will consider requests for special exceptions to the fence height and visual obstruction regulations requested in conjunction with constructing and maintaining a 6' 6 1/2" high open iron fence and gate with 8' 6" high limestone columns in the site's Ravine Drive 40' front yard setback, and locating and maintaining portions of the fence and columns in the 20' visibility triangles on either side of the driveway into the site from Ravine Drive.</p> |
| <p>2. BDA 112-078, Property at 9807 Meadowbrook Drive (the lot immediately north of the subject site)</p> | <p>On August 15, 2012, the Board of Adjustment Panel B granted request for special exceptions to the fence height and visual obstruction regulations and imposed the submitted revised site plan and elevation as a condition to these requests. The case report stated that the request was made in conjunction with completing/maintaining an 8' high board-on-board fence and sliding gate located in one of the site's two front yard setbacks (Ravine Drive) on a site developed with a single family home, and completing/maintaining a portion of the aforementioned board fence and gate in the 20' visibility triangle on the west side of the driveway into the site from Ravine Drive.</p> |
| <p>3. BDA 80-191, Property at 9807</p> | <p>On June 10, 1980, the Board of Adjustment</p> |

Meadowbrook Drive (the lot immediately north of subject site)

granted a variance of 3' for the "application for a permit to erect a 7' high brick column and a 6' 3" wrought-iron fence which will permit a variance of 3'."

4. BDA 101-042, Property at 9821 Meadowbrook Drive (two lots immediately north of the subject site)

On May 16, 2011, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations and imposed the submitted site plan and "landscape development plan"/partial elevation as conditions to this request. The case report stated that the request was made in conjunction with constructing and maintaining an 8' 8" high open wrought iron fence with 9' 1" high columns and a 12' 4" high open wrought iron entry gate in the site's 40' front yard setback on a lot being developed with a single family home

5. BDA 090-070, Property at 5306 Falls Road (the lot immediately east of subject site)

On June 16, 2010, the Board of Adjustment Panel B granted a request for special exception to the fence height regulations of 4' 6" and imposed the submitted revised site plan/elevation document dated 6-10-10 as a condition to the request. The case report stated that the special exceptions to the fence height regulations of 4' 6" were requested in conjunction with constructing and maintaining an 8' high "masonry/wrought iron" fence/wall (5' wrought iron atop a 3' masonry base) in the site's Falls Road front yard setback, and an alternating 8' high solid masonry or stone fence wall with an 8' high wrought iron fence in the site's Meadowbrook Drive front yard setback.

6. BDA 090-071, Property at 5323 Park Lane (the lot immediately southeast of subject site)

On June 16, 2010, the Board of Adjustment Panel B granted a request for special exception to the fence height regulations of 4' 6" and imposed the submitted site plan/elevation document as a condition to the request. The case report stated that the special exceptions to the fence height regulations of 4' 6" were requested in conjunction with constructing and maintaining an 8' high "masonry/wrought iron" fence/wall (5' wrought iron atop a 3' masonry base) with 8' 6" high columns in the site's Park Lane front yard setback.

7. BDA 090-017, Property at 5323 Park Lane (the lot immediately southeast of the subject site)

On February 17, 2010, the Board of Adjustment Panel B granted a request for a fence height special exception and imposed the site plan/elevation plan submitted on

February 15, 2010 as a condition to the request. The case report stated that the request was made to construct and maintain a 7' 4" high solid masonry fence/wall with 7' 10" high columns; an 8' 4" high "decorative wrought iron fence" on the portion of the site that is shown as a "floodway easement in the Meadowbrook Drive front yard setback parallel to the street, and perpendicular to the street on the north "side" of the site in the front yard setback;" and to construct and maintain an 8' 4" high "decorative wrought iron fence" in the Park Lane front yard setback *perpendicular* to this street on the east side of the subject site.

8. BDA 967-203, Property at 9707 Meadowbrook Drive (the lot immediately south of the subject site)

On March 18, 1997, the Board of Adjustment Panel B granted requests for special exception to the fence height to maintain an 8' 6" fence with columns of a maximum height of 13' 4", and gates with a maximum height of 15' 3" and to the visual obstruction regulations and imposed the following conditions: 1) Compliance with the submitted revised site plan/elevation plan and submitted revised landscape plan is required; and 2) Trees and branches located on the visibility triangle at the service entry driveway and Ravine Drive must have at least 8' clearance from ground level; 3) landscape must be provided as indicated on the submitted revised landscape plan for the property adjacent to the fence on Meadowbrook Road to a distance of 3' west of the fence toward the main building, and the area east of the fence on Meadowbrook Road to the pavement line provided the applicant can obtain a license to place landscaping on the public right-of-way; if not the applicant must reapply to the Board of approval of a revised plan. The case report stated that the request were made in conjunction with constructing and maintaining an 8' 6" high open metal fence, 13' 4" high columns, and a 15' 3" high entry gate in the front yards and in drive approach visibility triangles along Meadowbrook Drive

and Ravine Drive.

9. BDA 089-085, Property at 9635 Meadowbrook Drive (two lots immediately south of subject site)

On August 17, 2009, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 4' 9" and imposed the following condition: compliance with the submitted site plan and elevation document is required. The case report stated that the request was made in conjunction with constructing and maintaining a predominantly 5' – 6' high open ornamental iron fence with 8' 9" high open ornamental iron gate/stone entry columns in the site's 40' front yard setback

Timeline:

- August 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.
- September 19, 2013: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- September 19, 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 October 2nd deadline to submit additional evidence for staff to factor into their analysis; and the October 11th 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 8, 2013: 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 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.
- October 10, 2013: The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet regarding the applicant's request for special

exceptions to the visual obstruction regulations marked “Has no objections.”

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

- This request focuses on constructing and maintaining what is shown on the submitted elevation as a 6’ 6 ½” high fence (a 4’ 6 ½” high open iron picket fence atop a 2’ high limestone wall) and a 6’ 6 ½” high open iron picket gate in the site’s 40’ front yard setback on an undeveloped lot.
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4’ above grade when located in the required front yard.
- The applicant has submitted a site plan/elevation of the proposal in the front yard setback that reaches a maximum height of 6’ 6 ½”.
- The following additional information was gleaned from the submitted site plan/elevation:
 - The proposal is represented as being approximately 140’ in length parallel to the street.
 - The proposal is represented as being located on the property line or about 16’ from the pavement line.
- The Board Administrator conducted a field visit of the site and surrounding area (approximately 500’ north and south of the subject site) and noted the following fences above 4 feet high which appeared to be located in a front yard setback:
 - an approximately 8’ 8” high open wrought iron fence with 9’ 1” high columns and a 12’ 4” high open wrought iron entry gate two lots immediately north of the site that appears to be the result of a granted fence height special exception from 2011 – BDA 101-042.
 - an approximately 8’ high combination solid masonry and open iron wrought iron fence immediately east of the site that appears to be the result of a granted fence height special exception from 2010 – BDA 090-070.
 - an approximately 8’ 6” high fence with columns of a maximum height of 13’ 4”, and gates with a maximum height of 15’ 3” immediately south of the site that appears to be the result of a granted fence height special exception from 1997 – BDA 967-203.
 - an approximately 7’ 4” high solid masonry fence/wall with 7’ 10” high columns southeast of the subject site that appears to be the result of a granted fence height special exception from 2011 – BDA 090-017.
- As of October 14, 2013, no letters have been submitted in support of or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 2’ 10” will not adversely affect neighboring property.
- Granting this special exception of 2’ 10” with a condition imposed that the applicant complies with the submitted site plan/elevation would require the proposal exceeding 4’ in height in the front yard setback to be maintained in the location and of the heights and materials as shown on this document.

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

- These requests focus on locating and maintaining portions of a 6' 6 ½" high fence (a 4' 6 ½" high open iron picket fence atop a 2' high limestone wall) in the 20' visibility triangles on either side of the driveway into the site from Meadowbrook Lane.
- The Dallas Development Code states the following: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections, and 20 foot visibility triangles at drive approaches and at alleys on properties zoned single family); and
 - between two and a half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- A site plan/elevation has been submitted indicating portions of a 6' 6 ½" high fence (a 4' 6 ½" high open iron picket fence atop a 2' high limestone wall) in the 20' visibility triangles on either side of the driveway into the site from Meadowbrook Lane.
- 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 maintain portions of a 6' 6 ½" high fence (a 4' 6 ½" high open iron picket fence atop a 2' high limestone wall) in the 20' visibility triangles on either side of the driveway into the site from Meadowbrook Lane does not constitute a traffic hazard.
- Granting these requests with a condition imposed that the applicant complies with the submitted site plan/elevation would require the item (a 6' 6 ½" high fence - 4' 6 ½" high open iron picket fence atop a 2' high limestone wall) in the 20' visibility triangles on either side of the driveway into the site from Meadowbrook Lane to be limited to the locations, height and materials of this item as shown on this document.

BOARD OF ADJUSTMENT ACTION: **OCTOBER 23, 2013**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Scott**

I move that the Board of Adjustment grant application **BDA 123-106** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Agnich

AYES: 4– Reynolds, Agnich, Scott, Lewis

NAYS: 0 –

MOTION PASSED 4 – 0 (unanimously)

FILE NUMBER: BDA 123-107

BUILDING OFFICIAL’S REPORT: Application of Ed Simons for special exceptions to the fence height and visual obstruction regulations at 9707 Meadowbrook Drive. This property is more fully described as Lot 1B, Block 1/5589 and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct and maintain an 8 foot 6 inch high fence, which will require a 4 foot 6 inch special exception to the fence height regulations, and to locate and maintain items in required visibility triangles, which will require a special exception to the visual obstruction regulations.

LOCATION: 9707 Meadowbrook Drive

APPLICANT: Ed Simons

REQUESTS:

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

1. A request for a special exception to the fence height regulations of 4’ 6” is made in conjunction with constructing and maintaining what is shown on the submitted elevation as a 6’ 6 ½” high open iron fence and gate with 8’ 6” high limestone columns in the site’s Ravine Drive 40’ front yard setback.
2. Requests for special exceptions to the visual obstruction regulations are made in conjunction with locating and maintaining portions of the 6’ 6 ½” high fence and 8’ 6” high limestone columns in the 20’ visibility triangles on either side of the driveway into the site from Ravine Drive.

Note the following with regard to this property that has two front yard setbacks – one on the east along Meadowbrook Lane, the other on the west along Ravine Drive:

- This application abuts a property to the north and east where the same applicant seeks similar fence height and visual obstruction special exceptions on that subject site’s frontage along Meadowbrook Lane. See BDA 123-106;
- the applicant has stated that application is merely to extend the fence that was granted on the Ravine Street side of this property by the Board in 1997 when the property at that time did not include the parcel of land to the north that is now part of the subject site; and
- This application is not to address any fence or amendment to the existing fence on the Meadowbrook Lane side of this property since the fence on this side of the property has not changed from and complies with conditions imposed by the Board in 1997.

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 exception):

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

STAFF RECOMMENDATION (visual obstruction special exceptions):

Approval, subject to the following condition:

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

Rationale:

- The Sustainable Development and Construction Department Engineering Division Assistant Director has indicated that he has no objections to these requests.
- The applicant has substantiated how the location of portions of the proposed fence and columns to be located in the 20' visibility triangles on either side of the driveway into the site from Ravine Drive does not constitute a traffic hazard.

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:

1. BDA 23-106, Property at 9807 Meadowbrook Drive (the lot immediately north and east of the subject site)

On October 23, 2013, the Board of Adjustment Panel B will consider requests for special exceptions to the fence height and visual obstruction regulations requested in conjunction with constructing and maintaining a 6' 6 1/2" high fence (a 4' 6 1/2" high open iron picket fence atop a 2' high limestone wall) and a 6' 6 1/2" high open iron picket gate in the front yard setback, and locating and maintaining portions of the fence in the 20' visibility triangles on either side of the driveway into the site from Meadowbrook Lane.

2. BDA 112-078, Property at 9807 Meadowbrook Drive (the lot north of the subject site)

On August 15, 2012, the Board of Adjustment Panel B granted requests for special exceptions to the fence height and visual obstruction regulations and imposed the submitted revised site plan and elevation as a condition to these requests. The case report stated that the request was made in conjunction with completing/maintaining an 8' high board-on-board fence and sliding gate located in one of the site's two front yard setbacks (Ravine Drive) on a site developed with a single family home, and completing/maintaining a portion of the aforementioned board fence and gate in the 20' visibility triangle on the west side of the driveway into the site from Ravine Drive.

3. BDA 967-203, Property at 9707 Meadowbrook Drive (the subject site)

On March 18, 1997, the Board of Adjustment Panel B granted requests for special exception to the fence height to maintain an 8' 6" fence with columns of a maximum height of 13' 4", and gates with a maximum height of 15' 3" and to the visual obstruction regulations and imposed the following conditions: 1) Compliance with the submitted revised site plan/elevation plan and submitted revised landscape plan is required; and 2) Trees and branches located on the visibility triangle at the service entry driveway and Ravine Drive must have at least 8' clearance from ground level; 3) landscape must be provided as indicated on the submitted revised landscape plan for the property adjacent to the fence on Meadowbrook Road to a distance of 3' west of the fence toward the main building, and the area east of the fence on Meadowbrook Road to the pavement line provided the

applicant can obtain a license to place landscaping on the public right-of-way; if not the applicant must reapply to the Board of approval of a revised plan. The case report stated that the request were made in conjunction with constructing and maintaining an 8' 6" high open metal fence, 13' 4" high columns, and a 15' 3" high entry gate in the front yards and in drive approach visibility triangles along Meadowbrook Drive and Ravine Drive.

Timeline:

- August 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.
- September 19, 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."
- September 19, 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 October 2nd deadline to submit additional evidence for staff to factor into their analysis; and the October 11th 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 8, 2013: 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 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.
- October 10, 2013: The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review

comment sheet regarding the applicant's request for special exceptions to the visual obstruction regulations marked "Has no objections."

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

- This request focuses on constructing and maintaining what is shown on the submitted elevation as a 6' 6 ½" high open iron fence and gate with 8' 6" high limestone columns in the site's Ravine Drive 40' front yard setback on site developed with a single family home/use.
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The applicant has submitted a site plan and an elevation of the proposal in the front yard setback that reaches a maximum height of 8' 6".
- The following additional information was gleaned from the submitted site plan:
 - The proposal is represented as being approximately 240' in length parallel to the street.
 - The proposal is represented as being located on the property line or about 5' from the pavement line.
- The Board Administrator conducted a field visit of the site and surrounding area and noted the following fence above 4 feet high which appeared to be located in a front yard setback:
 - an approximately 8' high solid board-on-board fence located immediately north of the site that appears to be the result of a granted fence height special exception from August of 2012 – BDA 112-078.
- As of October 14, 2013, no letters have been submitted in support of or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' 6" will not adversely affect neighboring property.
- Granting this special exception of 4' 6" with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding 4' in height in the front yard setback to be maintained in the location and of the heights and materials as shown on these documents.

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

- These requests focus on locating and maintaining portions of the 6' 6 ½" high fence and 8' 6" high limestone columns in the 20' visibility triangles on either side of the driveway into the site from Ravine Drive.
- The Dallas Development Code states the following: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections, and 20 foot visibility triangles at drive approaches and at alleys on properties zoned single family); and

- between two and a half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- A site plan and elevation has been submitted indicating portions of a 6' 6 ½" high fence and 8' 6" high limestone columns in the 20' visibility triangles on either side of the driveway into the site from Ravine Drive.
- 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 maintain portions of a 6' 6 ½" high fence and 8' 6" high limestone columns in the 20' visibility triangles on either side of the driveway into the site from Ravine Drive does not constitute a traffic hazard.
- Granting these requests with a condition imposed that the applicant complies with the submitted site plan and elevation would require the items (a 6' 6 ½" high fence and 8' 6" high limestone columns) in the 20' visibility triangles on either side of the driveway into the site from Ravine Drive to be limited to the locations, height and materials of this item as shown on these documents.

BOARD OF ADJUSTMENT ACTION: OCTOBER 23, 2013

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Scott**

I move that the Board of Adjustment grant application **BDA 123-107** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: **Agnich**

AYES: 4– Reynolds, Agnich, Scott, Lewis

NAYS: 0 –

MOTION PASSED 4 – 0 (unanimously)

FILE NUMBER: BDA 123-097

BUILDING OFFICIAL'S REPORT: Application of Brian Luscher, represented by Audra Buckley, for a variance to the off-street parking regulations at 3001 Gaston Avenue. This property is more fully described as part of Lot 9, Block 493, and is zoned PD-298 (Subarea 12), which requires off-street parking to be provided. The applicant proposes to construct and/or maintain a structure for restaurant without drive-in or drive-through

service use and warehouse use and provide 10 of the required 20 off-street parking spaces, which will require a variance to the off-street parking regulations of 10 spaces.

LOCATION: 3001 Gaston Avenue

APPLICANT: Brian Luscher
Represented by Audra Buckley

REQUEST:

A request for a variance to the off-street parking regulations of 10 spaces is made in conjunction with maintaining approximately 4,200 square feet of structure with warehouse use, and leasing and maintaining approximately 1,600 square feet of vacant structure with restaurant without drive-in or drive-through use (Luscher's Post Oak Red Hots) where the applicant proposes to provide 10 (or 50 percent) of the required 20 required off-street parking spaces.

STANDARD FOR A VARIANCE:

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

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

STAFF RECOMMENDATION:

Denial

Rationale:

- While the 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 298 (Subarea 12) zoning classification. The subject site is flat, rectangular in shape, and according to the application, is 0.19 acres (or

approximately 8,300 square feet) in area. While the property has two street frontages with two front yard setbacks this is not a unique feature to any property with two street frontages not zoned agricultural, single family, or duplex.

- The features of this site do not preclude the applicant from leasing the existing structure built in the 40's with a number of uses permitted in the zoning district where an off-street parking reduction request would not be necessary.
- The applicant has not substantiated how this variance for specific uses (restaurant without drive-in or drive-through service and warehouse) is not needed to relieve a self-created hardship.

BACKGROUND INFORMATION:

Zoning:

Site: PD 298 (Subarea 12) (Planned Development District)
North: PD 298 (Subarea 11) (Planned Development District)
South: MU-3 (Mixed Use)
East: PD 298 (Subarea 12) (Planned Development District)
West: PD 298 (Subarea 12) (Planned Development District)

Land Use:

The subject site is developed with a structure, part of which is vacant and part of which is warehouse use. The area to the north is developed with a park use (Central Square Park); the areas to the east and west are developed with commercial uses; and the area to the south is developed as a surface parking lot.

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 29, 2013: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

September 19, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

September 19, 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 October 2nd deadline to submit additional evidence for staff to factor into their analysis; and the October 11th 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 8, 2013: 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 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.

October 10, 2013: The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked “Has no objections.”

GENERAL FACTS/ STAFF ANALYSIS:

- This request focuses on maintaining approximately 4,200 square feet of vacant structure with warehouse use, and leasing and maintaining approximately 1,600 square feet of vacant structure with restaurant without drive-in or drive-through service use where the applicant proposes to provide 10 (or 50 percent) of the required 20 required off-street parking spaces.
- The subject site is zoned PD 298 (Subarea 12). The parking requirements state that the parking provisions of Chapter 51A apply in the Bryan Area SPD except as modified in the ordinance. While the ordinance makes certain modifications to off-street parking required for large scale mixed use developments, and certain other specific uses in subareas other than Subarea 12, no specific off-street parking requirement is made for a warehouse use or a restaurant without drive-in or drive-through service use on properties in Subarea 12.
- The Dallas Development Code requires the following off-street parking requirement:
 - Restaurant without drive-in or drive-through service: 1 space per 100 square feet of floor area
 - Warehouse: 1 space per 1,000 square feet of floor area up to 20,000 square feet, and one space per 4,000 square feet of floor area over 20,000 square feet.
 The applicant proposes to provide 10 (or 50 percent) of the required 20 off-street parking spaces in conjunction with the retention of space within the structure as a warehouse and the leasing of space within the structure as a restaurant without drive-in or drive-through service.
- The site is flat, rectangular in shape, and according to the application, is 0.19 acres (or approximately 8,300 square feet) in area. The site is zoned PD 298 (Subarea 12). The property with two street frontages has two front yard setbacks as any property with two street frontages would that is not zoned agricultural, single family, or duplex.
- DCAD records indicate that the improvement at 3001 Gaston Avenue is a “free standing retail store” with 5,704 square feet built in 1946.

- 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 298 (Subarea 12) 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 298 (Subarea 12) zoning classification.
- The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked “Has no objections.”

BOARD OF ADJUSTMENT ACTION: **OCTOBER 23, 2013**

APPEARING IN FAVOR: Audra Buckley, 416 S. Ervay, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Agnich**

I move that the Board of Adjustment, in Appeal No. **BDA 123-097**, on application of Brian Luscher, **deny** the requested off-street parking variance without prejudice 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 not result in unnecessary hardship to this applicant.

SECONDED: **Reynolds**

AYES: 4– Reynolds, Agnich, Scott, Lewis

NAYS: 0 –

MOTION PASSED 4 – 0 (unanimously)

MOTION: **Agnich**

I move to adjourn this meeting.

SECONDED: **Scott**

AYES: 4 – Reynolds, Agnich, Scott, Lewis

NAYS: 0 –

MOTION PASSED 4 – 0 (unanimously)

1:42 P.M. Board Meeting adjourned for **October 23, 2013.**

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.