

**BOARD OF ADJUSTMENT, PANEL C  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, ROOM 6ES  
MONDAY, FEBRUARY 21, 2013**

**MEMBERS PRESENT AT BRIEFING:**

Bruce Richardson, Chair, Joel Maten, regular member, Ross Coulter, regular member, Bob Richard, regular member, and Robert Agnich, alternate member

**MEMBERS ABSENT FROM BRIEFING:**

Joe Carreon, regular member

**MEMBERS PRESENT AT HEARING:**

Bruce Richardson, Chair, Joel Maten, regular member, Ross Coulter, regular member, Bob Richard, regular member, and Robert Agnich, alternate member

**MEMBERS ABSENT FROM HEARING:**

Joe Carreon, regular member

**STAFF PRESENT AT BRIEFING:**

Steve Long, Board Administrator, Tammy Palomino, Asst. City Atty., Bert Vandenberg, Asst. City Atty., Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, David Cossom, Asst. Director, and Trena Law, Board Secretary

**STAFF PRESENT AT HEARING:**

Steve Long, Board Administrator, Tammy Palomino, Asst. City Atty., Bert Vandenberg, Asst. City Atty., Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, and Trena Law, Board Secretary

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**11:05 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **February 21, 2013** docket.  
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**1:05P.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 C December 10, 2012 public hearing minutes.

### **BOARD OF ADJUSTMENT ACTION: FEBRUARY 21, 2013**

#### **MOTION:** Maten

I move **approval** of the Monday, **December 10, 2012** public hearing minutes.

#### **SECONDED:** Coulter

**AYES:** 5— Richardson, Maten, Coulter, Richard, Agnich

**NAYS:** 0 –

**MOTION PASSED:** 5— 0 (unanimously)

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## **MISCELLANEOUS ITEM NO. 2**

**FILE NUMBER:** BDA 112-119

**REQUEST:** To waive the two year limitation on a request for a variance to the side yard setback regulations of 12' granted by Board of Adjustment Panel C on November 12, 2012, subject to the submitted site plan.

**LOCATION:** 3130 Kingbridge Street

**APPLICANT:** Rob Baldwin

### **STANDARD FOR WAIVING THE TWO YEAR TIME LIMITATION ON A FINAL DECISION REACHED BY THE BOARD:**

The Dallas Development Code states that the board may waive the two year time limitation on a final decision reached by the board if there are changed circumstances regarding the property sufficient to warrant a new hearing.

### **GENERAL FACTS/TIMELINE:**

November 12, 2012: The Board of Adjustment Panel C granted a request for variance to the side yard setback regulations of 12' and imposed the submitted site plan as a condition to the request (see Attachment A for information related to this appeal). requested in conjunction with constructing and maintaining a one-story, approximately 77,000 square foot assisted living facility use on an undeveloped lot, part of

which would be located in the site's 50' side yard setback on the north side of the property.

December 10, 2012: The applicant submitted a letter to staff requesting that the Board waive the two year limitation on a request for a variance to the side yard setback regulations of 12' granted by Board of Adjustment Panel C on November 12, 2012, subject to the submitted site plan( see Attachment B). This miscellaneous item request to waive the two year limitation was made in order for the applicant to file a new application for a side yard variance on the property – a side yard setback variance of 17.

Note that The Dallas Development Code states the following with regard to board action:

- Except as provided below, after a final decision is reached by the board, no further request on the same or related issues may be considered for that property for two years from the date of the final decision.
- If the board renders a final decision of denial without prejudice, the two year limitation is waived.
- The applicant may apply for a waiver of the two year limitation in the following manner:
  - The applicant shall submit his request in writing to the director. The director shall inform the applicant of the date on which the board will consider the request and shall advise the applicant of his right to appear before the board.
  - The board may waive the two year time limitation if there are changed circumstances regarding the property sufficient to warrant a new hearing. A simple majority vote by the board is required to grant the waiver. If a rehearing is granted, the applicant shall follow the process outlined in the code.

December 20, 2012: The Board Administrator emailed the applicant the following information:

- the public hearing date and panel that will consider the miscellaneous request (February 21, 2013 – Panel C);
- the criteria/standard that the board will use in their decision to approve or deny the request;
- information related to the original application; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

The applicant confirmed that he was aware of the fact that this 2-year waiver request in conjunction with BDA 112-119 would be scheduled on the same day as his newly filed application for variance to the side yard setback regulations on this property (BDA 123-007), and that if the board did not waive his miscellaneous item request for your 2-year waiver on February 21st, then the board will not be able to consider his newly filed application at February 21, 2013 public hearing.

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

APPEARING IN FAVOR: Robert Baldwin, 3904 Elm Street, Ste B, Dallas, TX

APPEARING IN OPPOSITION: No One

MOTION: Coulter

I move to **approve** the waiver of the two year limitation on a request for a variance to the side yard setback regulations of 12' granted by Board of Adjustment Panel C on November 12, 2012, subject to the submitted site plan.

SECONDED: Coulter

AYES: 5– Richardson, Maten, Coulter, Richard, Agnich

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

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FILE NUMBER: BDA 123-007

**BUILDING OFFICIAL'S REPORT:**

Application of Robert Baldwin for a variance to the side yard setback regulations at 3130 Kingbridge Street. This property is more fully described as Lot 1, Block BB/7135 and is zoned PD-508 (Tract 4), which requires a side yard setback of 50 feet. The applicant proposes to construct a residential structure and provide a 33 foot side yard setback, which will require a variance to the side yard setback regulations of 17 feet.

LOCATION: 3130 Kingbridge Street

APPLICANT: Robert Baldwin

**REQUEST:**

A variance to the side yard setback regulations of 17' is requested in conjunction with constructing and maintaining a one-story, approximately 77,000 square foot assisted living facility use on an undeveloped lot, part of which would be located in the site's 50' side yard setback on the north side of the property.

**STANDARD FOR A VARIANCE:**

The Dallas Development Code Section 51A-3.102(d)(10) 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 compliance with the submitted site plan

#### Rationale:

- The lot's irregular shape and restrictive area preclude its development in a manner commensurate with other developments found on similarly-zoned PD 508 lots. The usually large 50' side yard setbacks required in this Planned Development district on this property create hardship on this narrow lot. The applicant has stated that the two 50 foot side yard setbacks account for over 33 percent of its width when most combined side yard setbacks on a typical lot in residential zoning districts account for about 10 percent of the total lot width.
- Granting this variance does appear to be contrary to public interest in that the property immediately north of the subject site where the side yard setback variance is requested is the same owner as that of the subject site: Dallas Housing Authority.

#### **BACKGROUND INFORMATION:**

##### **Zoning:**

Site: PD 508 Tract 4 (Planned Development)  
North: PD 508 Tract 4 (Planned Development)  
South: PD 508 Tract 13 & 14 (Planned Development)  
East: PD 508 Tract 9 (Planned Development)  
West: PD 508 Tract 14 (Planned Development)

##### **Land Use:**

The subject site is undeveloped. The areas to the north and east appear to be developed with residential uses; and the areas to the south and west appear to be undeveloped.

##### **Zoning/BDA History:**

1. BDA 112-119, Property at 3130 Kingbridge Street (the subject site)
2. Miscellaneous Item #2, Request to waive the two year limitation on BDA 112-119, Property at 3130 Kingbridge Street (the subject site)

On November 12, 2012, the Board of Adjustment Panel C granted a request for variance to the side yard setback regulations of 12' and imposed the submitted site plan as a condition to the request. The case report stated that this request was made in conjunction with constructing and maintaining a one-story, approximately 77,000 square foot assisted living facility use on an undeveloped lot, part of which would be located in the site's 50' side yard setback on the north side of the property.

On February 21, 2013, the Board of Adjustment Panel C will consider a request to waive the two year limitation on a request for a variance to the side yard setback regulations of 12' granted by Board of Adjustment Panel C on November 12, 2012, with a submitted site plan imposed as a condition to this request. This request is made in order for the applicant to file a new application for a side yard variance on the property – a side yard setback variance of 17'. The applicant is aware of the fact that that this 2-year waiver request in conjunction with BDA 112-119 is scheduled on the same day as his newly filed application for variance to the side yard setback regulations on this property (BDA 123-007), and that if the board does not waive his miscellaneous item request for your 2-year waiver on February 21st, then the board will not be able to consider his newly filed application at the February 21, 2013 public hearing.

#### **Timeline:**

- December 17, 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.
- January 13, 2013: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C. 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.”

January 14, 2013: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the January 30th deadline to submit additional evidence for staff to factor into their analysis; and the February 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

January 28, 2013: The applicant forwarded additional information beyond what was submitted with the original application (see Attachment A).

February 5, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

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

- This request focuses on constructing and maintaining a one-story, approximately 77,000 square foot assisted living facility use on an undeveloped lot, part of which would be located in the site’s 50’ side yard setback on the north side of the property.
- A 50’ side yard setback is required for properties zoned PD 508 Tract 4.
- Even though the applicant has requested a 17’ variance which would imply that a 33’ setback was being provided, a site plan has been submitted showing that a portion of the structure/building footprint is actually located 34.2’ from the northern property line or 15.8’ into this 50’ side yard setback.
- The site is flat, slightly irregular in shape, and according to the application, is 6.391 acres in area. The site is zoned PD 508 Tract 4.
- According to DCAD records, there are “no improvements” for the property at 3130 Kingbridge Street.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the side 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 to side yard setback regulations 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 508 zoning classification.
- The variance to side yard setback regulations 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 DP 508 zoning classification.
- If the Board were to grant the front yard variance request, imposing a condition whereby the applicant must comply with the submitted site plan, the structure in the side yard setback would be limited to what is shown on the submitted plan which is a structure that is located about 34' from the site's northern side property line or about 16' into this 50' side yard setback.

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

APPEARING IN FAVOR: No One

APPEARING IN OPPOSITION: No One

MOTION: **Richard**

I move that the Board of Adjustment grant application **BDA 123-007** 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 site plan is required.

SECONDED: **Coulter**

AYES: 5– Richardson, Maten, Coulter, Richard, Agnich

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

**FILE NUMBER:** BDA 123-015

**BUILDING OFFICIAL'S REPORT:**

Application of Brian Lidji, represented by Peter Kavanagh of Zone Systems, for a variance to the front yard setback regulations and a special exception to the fence height regulation at 3628 Springbrook Street. This property is more fully described as

Lot 1, Block 6/2022, and is zoned PD-193 (D), which requires a front yard setback of 25 feet and limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain a structure and provide a 3 foot front yard setback, which will require a variance to the front yard setback regulations of 22 feet; and to construct and maintain a 9 foot high fence which will require a special exception to the fence regulations of 5 feet.

**LOCATION:** 3628 Springbrook Street

**APPLICANT:** Brian Lidji  
Represented by Peter Kavanagh of Zone Systems

**February 21, 2013 Public Hearing Notes:**

- The applicant's representative submitted a revised site plan and elevation to the Board at the public hearing.

**REQUESTS:**

The following appeals have been made on a site that is currently developed with a duplex structure that the applicant intends to demolish:

1. a variance to the front yard setback regulations of up to 22' is requested in conjunction with constructing and maintaining a pool structure and a single family home structure, either all or part of which would be located in one of the site's two 25' front yard setbacks (Springbrook Street); and
2. a special exception to the fence height regulations of 5' is requested in conjunction with constructing and maintaining a solid brick wall and open steel picket fence ranging (given grade changes on the site) from 6' 6" – 9' in height in the site's 25' front yard setback along Springbrook Street .

(No part of this application is made to construct and/or maintain a structure or to construct or maintain a fence in the site's Glenwood Avenue 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.

### **STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:**

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

### **STAFF RECOMMENDATION (front yard setback variance):**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The subject site is unique and different from most lots zoned PD 193 (D) in that it is a corner lot with a restrictive area due to its two front yard setbacks. The atypical two front yard setbacks on the lot precludes it from being developed in a manner commensurate with development on other similarly zoned properties - in this case, the redevelopment on the property currently developed with a duplex structure with a single family home.

### **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.

### **BACKGROUND INFORMATION:**

#### **Zoning:**

Site: PD 193 (D) (Planned Development, Duplex)  
North: PD 193 (D) (Planned Development, Duplex)  
South: PD 193 (D) (Planned Development, Duplex)  
East: PD 193 (D) (Planned Development, Duplex)  
West: PD 193 (R-7.5) (Planned Development, Single family residential)

#### **Land Use:**

The subject site is developed with a duplex use. The areas to the north, south, east and west are developed with residential uses.

#### **Zoning/BDA History:**

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

**Timeline:**

- January 3, 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.
- January 14, 2013: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- January 14, 2013: The Board Administrator emailed the applicant’s representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the January 30th deadline to submit additional evidence for staff to factor into their analysis; and the February 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- February 5, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior 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 (front yard variance):**

- This request focuses primarily on demolishing an existing duplex structure on the site and constructing and maintaining a single family home structure, part of which would be located in one of the site’s two 25’ front yard setbacks (Springbrook Street). Part of this request is to locate and maintain a pool structure in the Springbrook Street front yard setback as well.
- Structures on lots zoned PD 193 (D) are required to provide a minimum front yard setback of 25’.
- The subject site is located at the southeast corner of Glenwood Avenue and Springbrook Street. Regardless of how the proposed single family structure is to be

oriented, the subject site has two 25' front yard setbacks along both streets. The site has a 25' front yard setback along Glenwood Avenue, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in a duplex zoning district. The site also has a 25' front yard setback along Springbrook Street, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where only a 5' setback is required. But the site's Springbrook Street frontage is deemed a front yard setback nonetheless to maintain the continuity of the established front yard setbacks established by the lots developed with duplexes to the east along Springbrook Street that front northward.

- A site plan has been submitted denoting the proposed pool structure located 3' from the site's front property line along Springbrook Street or 22' into this 25' front yard setback, and part of the proposed single family home structure located 10' 6" from the site's front property line along Springbrook Street or 14' 6" into this 25' front yard setback. ((No encroachment is proposed in the Glenwood Avenue 25' front yard setback)).
- It appears from the submitted site plan that all of the 125 square foot pool structure and approximately 19 percent (or approximately 600 square feet) of the proposed approximately 3,200 square foot building footprint is to be located in the site's Springbrook Street 25' front yard setback.
- According to DCAD records, the "main improvements" at 3628 Springbrook is a structure built in 1946 with 3,220 square feet of living area and 3,220 square feet of total area. According to DCAD records, the "additional improvements" at 3628 Springbrook is a 600 square foot detached garage.
- The subject site is rectangular in shape (60' x 140') and is according to the application, 0.19 acres (or 8,400 square feet) in area. The site is zoned PD 193 (D). The site has two 25' front yard setbacks; and two 5' side yard setbacks; most residentially-zoned lots have one front yard setback, two side yard setbacks, and one rear yard setback.
- Only a 30' width of developable space would remain once a 5' side yard setback and a 25' front yard setback would be accounted for on the 60' wide site.
- 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 193 (D) 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 193 (D) zoning classification.
- If the Board were to grant the variance request and impose the submitted site plan as a condition, the structures in the front yard setback would be limited to what is

### **GENERAL FACT /STAFF ANALYSIS (fence height special exception):**

- This request focuses on constructing and maintaining a solid brick wall and open steel picket fence ranging (given grade changes on the site) from 6' 6" – 9' in height in the site's 25' front yard setback along Springbrook Street. (No part of this application is made to construct and maintain a fence in the site's Glenwood Avenue front yard setback).
- As described previously in this case report, the subject site located at the southeast corner of Glenwood Avenue and Springbrook Street has two 25' front yard setbacks.
- If it were not for the lots immediately east of the subject site that actually front onto Springbrook Street, the proposed 9' high fence proposed along Springbrook Street could be constructed and maintained by right since this frontage of the corner subject site is the longer of the subject site's two street frontages.
- 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 had submitted a scaled site plan and elevation that shows the proposal in the Springbrook Street front yard setback reaching a maximum height of 9'.
- The following additional information was gleaned from the submitted site plan:
  - Approximately 67' in length parallel to the street (and 9' in length perpendicular on the sides of the site in the required front yard), approximately on the front property line or approximately 12' from the pavement line where no home has direct frontage to the proposal since the home directly across Springbrook Street fronts westward to Glenwood Avenue.
  - The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences higher than 4' in the immediate area.
- The following additional information was gleaned from the submitted elevation:
  - The approximately 67' long fence parallel to the street is proposed to be brick and the 9' long fences perpendicular on the sides of the site in the required front yard is proposed to be steel pickets.
- As of February 11, 2013, three letters had been submitted to staff in support of the request and no letters had been submitted in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal that would reach 9' in height) will not adversely affect neighboring property.
- Granting this special exception of 5' 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 Springbrook Street front yard setback to be constructed/maintained in the location and of the heights and materials as shown on these documents.

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

APPEARING IN FAVOR: Peter Kavanagh, 1620 Handley, Dallas, TX  
Max Levy, 3308 Amherst, Dallas, TX  
Robert Latorre, 5400 Surrey Circle, Dallas, TX

APPEARING IN OPPOSITION: No One

**MOTION #1: Coulter**

I move that the Board of Adjustment, in Appeal No. **BDA 123-015**, on application of Brian Lidji, **grant** the request to maintain an 8 foot high fence as a special exception to height requirement for fences in the Dallas Development Code, because our evaluation of the property and the testimony shows that the special exception will not adversely affect neighboring property. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

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

**SECONDED: Maten**

AYES: 5– Richardson, Maten, Coulter, Richard, Agnich

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

**MOTION #2: Coulter**

I move that the Board of Adjustment, in Appeal No. **BDA 123-015**, on application of Brian Lidji, grant a 22 foot variance to the minimum front yard setback regulations because our evaluation of the property and the testimony shows that physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the revised submitted site plan is required.

**SECONDED: Maten**

AYES: 5– Richardson, Maten, Coulter, Richard, Agnich

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

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**FILE NUMBER:** BDA 112-120

**BUILDING OFFICIAL'S REPORT:**

Application of Melissa Kingston to appeal an administrative official's decision regarding 5902 Goliad Avenue. This property is more fully described as Lot 1, Block 14/1900 and is zoned CD-12, the Belmont Addition Conservation District No. 12. The applicant proposes to appeal the administrative official's decision to issue a building permit.

**LOCATION:** 5902 Goliad Avenue

**APPLICANT:** Melissa Kingston

**REQUEST:**

An appeal has been made requesting that the Board of Adjustment reverse/overtake the Building Official's decision to issue a permit for a new "SFD" or single family dwelling (Permit # 1206271083) for property at 5902 Goliad Avenue on a site currently under development.

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

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

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

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

**BACKGROUND INFORMATION:**

**Zoning:**

Site: CD 12 (Conservation District)  
North: CD 12 (Conservation District)  
South: CD 12 (Conservation District)  
East: CD 12 (Conservation District)  
West: CD 12 (Conservation District)

**Land Use:**

The subject site is under development. 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:**

October 11, 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.

November 7, 2012: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

November 7, 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 November 21<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the November 30<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the outline of procedure for appeals from decisions of the building official to the board of adjustment; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

November 16, 2012: The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded a copy of the permit that is the issue of this request to the Board Administrator (see Attachment A).

November 27, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November 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.

November 30, 2012: One of the property owners of the subject site forwarded information on this application to the Board Administrator (see Attachment B).

November 30, 2012: The applicant forwarded information on this application to the Board Administrator beyond what was submitted with the original application (see Attachment C).

November 30, 2012: The Assistant City Attorney assisting the Building Official on this application to the Board Administrator beyond what was submitted with the original application (see Attachment D).

December 10, 2012: The Board of Adjustment Panel C conducted a hearing on this application and moved to hold the matter under advisement until February 21, 2013.

February 7, 2013: The applicant forwarded information on this application to the Board Administrator beyond what was submitted with the original application and beyond what was submitted at the December 10, 2012 public hearing (see Attachment E).

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

- A copy of the permit for a new “SFD” or single family dwelling (Permit # 1206271083) for property at 5902 Goliad Avenue is included in this case report.
  - The board shall have all the powers of the administrative official on the action appealed from. The board may in whole or in part affirm, reverse, or amend the decision of the official.

## **BOARD OF ADJUSTMENT ACTION: DECEMBER 10, 2012**

APPEARING IN FAVOR: Melissa Kingston, 5901 Palo Pinto, Dallas, TX  
Michele Hille, 5927 Palo Pinto, Dallas, TX  
Peggy Turlington, 5903 Goliad Ave., Dallas, TX  
Ernest Schneiderman

APPEARING IN OPPOSITION: Brittany Bailey, 5902 Goliad, Dallas, TX  
James Cooper, 5902 Goliad, Dallas, TX

APPEARING FOR THE CITY: Andrew Gilbert, 1500 Marilla, Dallas, TX  
LaShonda Holmes Stringfellow, 320 E. Jefferson,  
Dallas, TX  
Deana Lawrence, 320 E. Jefferson, Dallas, TX

## MOTION #1: Maten

I move that the Board of Adjustment, in Appeal No. **BDA 112-120**, on application of Melissa Kingston, after having fully reviewed the decision of the administrative official, and having evaluated the evidence and heard all of the testimony and facts, I move that

the Board of Adjustment **affirm** the decision of the administrative official and **deny** the relief requested by the applicant **with prejudice**.

SECONDED: **Carreon**

AYES: 2–Maten, Carreon

NAYS: 3 – Richardson, Richard, Lewis

MOTION FAILED: 2– 3

MOTION #2: **Richard**

I move that the Board of Adjustment, in Appeal No. **BDA 112-120**, on application of Melissa Kingston, after having fully reviewed the decision of the administrative official, and having evaluated the evidence and heard all of the testimony and facts, I move that the Board of Adjustment **reverse** the decision of the administrative official and **grant** the relief requested by this applicant.

SECONDED: **Lewis**

AYES: 3– Richardson, Richard, Lewis

NAYS: 2 – Maten, Carreon

MOTION FAILED: 3– 2

MOTION #3: **Richard**

I move that the Board of Adjustment, in Appeal No. **BDA 112-120**, hold this matter under advisement until **February 21, 2013**.

SECONDED: **Lewis**

AYES: 3– Richardson, Richard, Lewis

NAYS: 2 – Maten, Carreon

MOTION PASSED: 3– 2

### **BOARD OF ADJUSTMENT ACTION: FEBRUARY 21, 2013**

APPEARING IN FAVOR:      Melissa Kingston, 5901 Palo Pinto, Dallas, TX  
    Michele Hille, 5927 Palo Pinto, Dallas, TX

APPEARING IN OPPOSITION: Brittany Bailey, 5902 Goliad, Dallas, TX

APPEARING FOR THE CITY: Andrew Gilbert, 1500 Marilla, Dallas, TX  
    LaShonda Holmes Stringfellow, 320 E. Jefferson,  
    Dallas, TX

**4:54 P.M.: Executive Session**

**5:05 P.M.: Public Hearing Resumed**

**MOTION #1: Richardson**

I move to **compel** the appearance of Margaret Fiskell as a witness in this appeal.

**SECONDED: Richard**

AYES: 2– Richardson, Richard

NAYS: 3 – Maten, Coulter, Agnich

MOTION FAILED: 2– 3

**MOTION #2: Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 112-120**, on application of Melissa Kingston, after having fully reviewed the decision of the administrative official, and having evaluated the evidence and heard all of the testimony and facts, I move that the Board of Adjustment **affirm** the decision of the administrative official and **deny** the relief requested by the applicant **with prejudice**.

**SECONDED: Coulter**

AYES: 3 – Maten, Coulter, Agnich

NAYS: 2 – Richardson, Richard

MOTION PASSED: 3-2

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**FILE NUMBER:** BDA 112-103

**BUILDING OFFICIAL'S REPORT:**

Application of Donna Woods, represented by Mark A. Mosley, for a special exception to the tree preservation regulations at 2800 Prichard Lane. This property is more fully described as Tract 4 in City Block 6118 and is zoned R-7.5(A), which requires mandatory landscaping and tree mitigation. The applicant proposes to construct and/or maintain a structure and provide an alternate plan for tree mitigation which will require a special exception to the tree preservation regulations.

**LOCATION:** 2800 Prichard Lane

**APPLICANT:** Donna Woods  
Represented by Mark A. Mosley

**REQUEST:**

A special exception to the tree preservation regulations is requested in conjunction with the removal of trees on a site developed as a private school (Nova Academy), and not fully complying with the Chapter X: Tree Preservation Regulations of the Dallas Development Code.

## **STANDARD FOR A SPECIAL EXCEPTION TO THE TREE PRESERVATION REGULATIONS:**

The board may grant a special exception to the tree preservation 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:**

Denial

Rationale:

- The applicant has not substantiated:
  - how strict compliance with the requirements of the Tree Preservation 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 City's Chief Arborist recommends denial of the request.

## **BACKGROUND INFORMATION:**

### **Zoning:**

<u>Site:</u>	R-7.5(A)(SUP 1805) (Single family residential 7,500 square feet, Specific Use Permit)
<u>North:</u>	R-7.5(A) (Single family residential 7,500 square feet)
<u>South:</u>	R-7.5(A) (Single family residential 7,500 square feet)
<u>East:</u>	CR (Community Retail)
<u>West:</u>	R-7.5(A) (Single family residential 7,500 square feet)

### **Land Use:**

The subject site is developed with a private school (Nova Academy). The areas to the north and west appear to be undeveloped; the area to the east is partially developed with multifamily use and partially undeveloped; and the area to the south is 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:**

September 5, 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 C.

September 19, 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 September 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the October 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

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.

Staff concluded at this meeting that the application must be postponed until November given that no alternate tree preservation plan had been submitted to date.

November 27, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November

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.

Staff concluded at this meeting that the application must be postponed until February given that no alternate tree preservation plan had been submitted to date.

February 5, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

Staff concluded at this meeting that the application should be scheduled for February given the amount of time that had passed since the application was submitted in September of 2012.

February 6, 2013: The Board Administrator emailed the applicant's representative the following information:

- notice that his application would be scheduled for February 21<sup>st</sup>; and
- the February 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials.

February 8, 2013: The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment A).

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

- An application has for a "special exception of the Dallas Development Code Article X, Landscape and Tree Preservation Regulations through a Conservation Easement Grant" on property that is developed as a private school.
- The Dallas Development Code requires full compliance with the Tree Preservation Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet.
- The City of Dallas Chief Arborist submitted a memo regarding this request to the Board Administrator (see Attachment A). The memo stated among other things how the request is triggered by new construction of an educational facility and removal of 2,005 caliper inches of trees to be mitigated.

- The Chief Arborist states that the property is currently under an active building permit with pending inspection for tree mitigation. The tree mitigation has not yet been resolved beyond a number of trees planted for compliance with the landscape requirements.
- The Chief Arborist notes that a conservation easement does not exist. The applicant has proposed but not produced a final document for approval that is acceptable by the City of Dallas. In addition, the arborist notes that the property is heavily wooded in the western and southern portions which would have had limited impact from development, and that the land area found to be suitable for a conservation easement could provide for up to a 65 percent mitigation reduction if a recorded easement was completed. But lastly the arborist notes that an easement by ordinance would not resolve all tree mitigation requirements for the property.
- The Chief Arborist recommends denial of the request.
- The property owner can comply with tree preservation regulations by mitigating the removed trees in any of the alternative methods provided for in Article X: planting within one mile of the Property, donating trees to the Park Department, forming a conservation easement on property within city limits, and/or paying into the Reforestation Fund.
- The applicant has the burden of proof in establishing the following:
  - Strict compliance with the requirements of the Tree Preservation Regulations of the Dallas Development Code will unreasonably burden the use of the property.
  - The special exception will not adversely affect neighboring property.

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

APPEARING IN FAVOR: Mark Mosley, 1410 Avenue G, Plano, TX

APPEARING IN OPPOSITION: No One

MOTION: **Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 113-103**, hold this matter under advisement until **April 15, 2013**.

SECONDED: **Coulter**

AYES: 5– Richardson, Maten, Coulter, Richard, Agnich

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

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**MOTION: Maten**

I move to adjourn this meeting.

**SECONDED: Coulter**

**AYES:** 5 – Richardson, Maten, Coulter, Richard, Agnich

**NAYS:** 0 -

**MOTION PASSED:** 5 – 0 (Unanimously)

**5:21 P. M. - Board Meeting adjourned for February 21, 2013.**

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CHAIRPERSON

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BOARD ADMINISTRATOR

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BOARD SECRETARY

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