

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM
MONDAY, MAY 20, 2013**

MEMBERS PRESENT AT BRIEFING: Bruce Richardson, Chair, Ross Coulter, regular member, Bob Richard, regular member, Philip Lewis, alternate member and Scott Jackson, alternate member

MEMBERS ABSENT FROM BRIEFING: Joel Maten, regular member

MEMBERS PRESENT AT HEARING: Bruce Richardson, Chair, Ross Coulter, regular member, Bob Richard, regular member, Philip Lewis, alternate member and Scott Jackson, alternate member

MEMBERS ABSENT FROM HEARING: Joel Maten, regular member

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

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

11:11 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **May 20, 2013** docket.

1:03 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 C April 15, 2013 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: MAY 20, 2013

MOTION: Richard

I move **approval** of the Monday, **April 15, 2013** public hearing minutes.

SECONDED: Coulter

AYES: 5– Richardson, Coulter, Richard, Lewis, Jackson

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 123-041

BUILDING OFFICIAL’S REPORT: Application of James L. Coon, represented Mark C. Webb of Webb Engineering, for a variance to the front yard setback regulation at 8610 Eustis Avenue. This property is more fully described as Lot 44A, Block A/5248 and is zoned R-7.5(A), which requires a front yard setback of 25 feet. The applicant proposes to construct and maintain a structure and provide a 10 foot front yard setback, which will require a variance to the front yard setback regulations of 15 feet.

LOCATION: 8610 Eustis Avenue

APPLICANT: James L. Coon
Represented Mark C. Webb of Webb Engineering

REQUEST:

A variance to the front yard setback regulations of 15’ is made in conjunction with constructing and maintaining a two-story single family home structure, part of which would be located in one of the site’s two 25’ front yard setbacks (Eustis Avenue) on a site that is currently undeveloped.

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 is unique and different from most lots zoned R-7.5(A) in that it is a slightly irregularly-shaped corner lot with a restrictive area due to its size and its two front yard setbacks. The atypical two front yard setbacks on the approximately 8,600 square foot slightly irregularly-shaped lot precludes the applicant from developing it in a manner commensurate with development on other similarly zoned properties - in this case, the development on the property being the maintenance of a single family home with an approximately 1,500 square foot building footprint. The site has a 0 – 14’ width for development once a 25’ front yard setback and a 5’ side yard setback is accounted for on the 27’ – 48’ wide subject site.
- NOTE: This request is the same application made to and granted by the Board of Adjustment Panel C on June 18, 2012 (BDA 112-067) where the applicant has re-filed this new application only because he failed to file for a building permit within 180 days of the previously filed application.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5(A) (Single family district 7,500 square feet)
North: R-7.5(A) (Single family district 7,500 square feet)
South: R-10(A) (Single family district 10,000 square feet)
East: R-7.5(A) (Single family district 7,500 square feet)
West: R-10(A) (Single family district 10,000 square feet)

Land Use:

The subject site is undeveloped. The areas to the north, south, east, and west are either undeveloped parcels of land or developed with single family uses.

Zoning/BDA History:

1. BDA 112-067, Property at 8610 Eustis Avenue (the subject site)

On June 18, 2012, the Board of Adjustment Panel C granted a request for a variance to the front yard setback regulations of 15' and imposed the submitted site plan as a condition. The case report stated that the request was made in conjunction with constructing and maintaining a two-story single family home structure, part of which would be located in one of the site's two 25' front yard setbacks (Eustis Avenue) on a site that is currently undeveloped. (It was noted that no request had been made in this application to construct/maintain any structure in the site's Lakeland Avenue front yard setback).

2. BDA 101-124, Property at 8610 Eustis Avenue (the southwestern half of the subject site)

On December 12, 2011, the Board of Adjustment Panel C granted a request for a variance to the front yard setback regulations of 15' and imposed the submitted site plan as a condition. The case report stated that the request was made in conjunction with constructing and maintaining a two-story single family home structure, part of which would be located in one of the site's two 25' front yard setbacks (Eustis Avenue) on a site that is currently undeveloped. (It was noted that no request was made in this application to construct/maintain any structure in the site's Lakeland Avenue front yard setback).

Timeline:

March 11, 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."

April 16, 2103: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the May 1st deadline to submit additional evidence for staff to factor into their analysis; and the May 10th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence; and
- Unless advised differently from the applicant, a representation would be made to the board that a discussion with him, that this application is the same proposal that the board granted in June of 2012 (BDA 112-067) and that the applicant's need to re-file this application was because the applicant did not file for a building permit within 180 days from the June 2012 hearing. (Note that the applicant informed the Board Administrator by phone that this application was the same as the previously filed application, and that the reason for the new application was simply because the applicant had not filed a building permit within 180 days of the previously filed application granted on June 18, 2012).

May 7, 2013:

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

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining a two-story single family structure, part of which would be located in one of the two 25' front yard setbacks (Eustis Avenue).
- The applicant has informed the Board Administrator that this application is the same as the one previously filed on this property granted by the Board of Adjustment Panel C on June 18, 2012 (BDA 112-067), and that the reason for the new application was simply because he had failed to file for a building permit within 180 days of the previously filed application.
- Structures on lots zoned R-7.5(A) are required to provide a minimum front yard setback of 25'.
- The subject site is located at the east corner of Lakeland Avenue and Eustis Avenue. Regardless of how the proposed single-family structure appears to be

oriented to Eustis Avenue, the subject site has two 25' front yard setbacks along both streets. The site has a 25' front yard setback along Lakeland Avenue, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in a single-family zoning district. The site also has a 25' front yard setback along Eustis Avenue, 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 Eustis Avenue frontage is deemed a front yard setback nonetheless to maintain the continuity of the established front yard setback established by the lots developed with single family homes northeast of the site that front/are oriented northwestward onto Eustis Avenue.

- A scaled site plan has been submitted indicating that the proposed single family home would be located 10' from the Eustis Avenue front property line or 15' into the 25' front yard setback. (No encroachment is proposed in the Lakeland Avenue 25' front yard setback).
- According to DCAD records, there are "no main improvements" at 8610 Eustis Avenue.
- The subject site is sloped, somewhat irregular in shape (48' on the northeast, 27' on the southwest, and approximately 231' on the northwest and southeast), and approximately 8,600 square feet in area. 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.
- Although the zoning map shows that the site is located in Flood Plain, the City of Dallas Flood Plain Manager had emailed the Board Administrator on the previously filed application on this property that "this area comes out of the floodplain with the new 2010 maps... and is an area that has been consistently mapped incorrectly."
- According to calculations taken by the Board Administrator from the submitted site plan, the area of the proposed home to be located in the site's Eustis Avenue 25' front yard setback is approximately 1,000 square feet in area or approximately 66 percent of the approximately 1,500 square foot building footprint.
- The site has a 0 – 14' width for development once a 25' front yard and a 5' side yard setback is accounted for on the 27' – 48' wide subject site.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the Eustis Street front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.

- If the Board were to grant the variance request, and impose the submitted site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document– which in this case is a structure to be located 10’ from the Eustis Street front property line (or 15’ into this 25’ front yard setback).

BOARD OF ADJUSTMENT ACTION: MAY 20, 2013

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Coulter

I move that the Board of Adjustment grant application **BDA 123-041** 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: Richard

AYES: 5– Richardson, Coulter, Richard, Lewis, Jackson

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 123-044

BUILDING OFFICIAL’S REPORT: Application of Julianne McGee of Pink Consulting for a variance to the front yard setback regulations at 3802 Gaston Avenue. This property is more fully described as Lot 1A, Block A/0777 and is zoned PD-298 (Subarea 12), which requires a maximum front yard setback of 15 feet. The applicant proposes to construct and maintain a structure and provide a 78 foot front yard setback, which will require a variance to the maximum front yard setback regulations of 63 feet.

LOCATION: 3802 Gaston Avenue

APPLICANT: Julianne McGee of Pink Consulting

May 21, 2013 Public Hearing Notes:

- The Board Administrator circulated a revised site plan submitted by the applicant of the site indicating the location of trash receptacles to the Board at the briefing.

REQUEST:

A variance to the front yard setback regulations of 63' is made in conjunction with constructing and maintaining an addition to an existing "restaurant with drive-in or drive-through service" use (McDonald's) which is proposed to be located outside or beyond the maximum 15' front yard setback along Washington Avenue.

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:

- In 1994, the Board of Adjustment found hardship on this subject site and granted a variance to the maximum front yard setback regulations of 71.6 feet to construct and maintain the existing "restaurant with drive-in or drive-through service" use (McDonald's) on the property. The front yard variance granted on this site allowed the construction and maintenance of what is now the existing restaurant on this site 86.6 feet from the Washington Avenue front property line. The current request is merely to expand/add to the existing restaurant, which in this case, according to the applicant, would make the structure with its proposed addition 8' 6" closer to Washington Avenue than what was granted with the previous request for a variance to the front yard setback regulations of 71.6'.
- Denial of this variance would allow the retention of the existing structure in its current location (given the variance granted on this site in 1994) 8' 6" less compliant with the required 15' maximum front yard setback than if the current variance request were granted.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 298 (Planned Development)
North: PD No. 298 (Planned Development)
South: PD No. 298 (Planned Development)
East: PD No. 298 (Planned Development)
West: PD No. 298 (Planned Development)

Land Use:

The subject site is developed with a “restaurant with drive-in or drive-through service” use (McDonald’s). The areas to the north, east, south, and west are developed with a mix of uses including primarily office and retail uses.

Zoning/BDA History:

1. BDA 090-004, Property at 3802 Gaston Avenue (the subject site)
On December 14, 2009, the Board of Adjustment Panel C granted a request for a special exception to the off-street parking regulations of 8 parking spaces (or a 23 percent reduction of the required off-street parking), imposing the following condition: special exception shall automatically and immediately terminate if and when the restaurant with drive-through service use on the site is changed or discontinued. The case report stated that the request was made in conjunction adding and maintaining an approximately 580 square foot addition to an existing approximately 2,900 square foot “restaurant with drive-in or drive-through service” use (McDonald’s) on the subject site. The applicant proposed to provide 27 of the required 35 off-street parking spaces in conjunction with converting the existing outdoor patio dining area to indoor restaurant dining space.
2. BDA 94-032, Property at 3802 Gaston Avenue (the subject site)
On March 8, 1994, the Board of Adjustment granted a request for a variance to the front yard setback of 71.6 feet, a request for a special exception to the off-street parking regulations of 6 spaces, and a request for a special exception to the landscape regulations. The case report stated that the requests were made in conjunction with the

construction of a 2,900 square foot restaurant (McDonald's) on a site that (at the time) was vacant- a structure that would be 86.6 feet from the Washington Avenue front property line (Note that the minutes show that the board imposed no conditions to these requests).

Timeline:

March 4, 2013: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

April 16, 2013: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

April 16, 2013: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the May 1st deadline to submit additional evidence for staff to factor into their analysis; and the May 10th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

May 1 & 2, 2013: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

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

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining an approximately 800 square foot addition to an existing approximately 2,900 square foot restaurant with drive-in structure/use, part of which would be located outside or beyond the maximum 15' front yard setback along Washington Avenue.
- The front yard setback within the Bryan Area SPD is no less than a five-foot front yard setback in all subareas; and no more than a 15-foot front yard setback in Subareas 1, 3, 4, 5, 8, 10, 10A, 12, and 13 in front yards fronting on Pedestrian Linkage Streets. (The site is located in Subarea 12 and fronts Washington Street which is a Pedestrian Linkage Street).
- A scaled site plan has been submitted indicating that part of the addition to the existing structure is to be located as far away from the Washington Avenue front property line as 78' outside or 63' beyond the *maximum* 15' front yard setback.
- According to DCAD records, the "improvements" at 3802 Gaston Avenue is a fast food restaurant built in 1994 with 2,922 square feet.
- The applicant has stated that the proposed addition would be 8' 6" closer to Washington Avenue than the previous request for a variance to the front yard setback regulations of 71.6' granted on this site granted by the Board of Adjustment in 1994: BDA 94-032.
- The subject site is flat, rectangular in shape, and according to the application, is 0.76 acres (or approximately 33,000 square feet) in area.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the Washington Avenue 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 298 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 298 zoning classification.
- If the Board were to grant the variance request, and impose the submitted site plan as a condition, the structure located outside the maximum front yard setback along Washington Avenue would be limited to what is shown on this document– which in this case is a structure to be located 78' from the Washington Avenue front property line (or 63' outside or beyond the 15' maximum front yard setback).

BOARD OF ADJUSTMENT ACTION: MAY 20, 2013

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Coulter

I move that the Board of Adjustment grant application **BDA 123-044** 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 revised site plan is required.

SECONDED: Richard

AYES: 5– Richardson, Coulter, Richard, Lewis, Jackson

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 123-047

BUILDING OFFICIAL’S REPORT: Application of Martin Belcher for a special exception to the off-street parking regulations at 10340 Denton Drive. This property is more fully described as an approximately 5.4 acre parcel in Block 5777 and is zoned IR, which requires that off-street parking be provided. The applicant proposes to construct and/or maintain a structure for industrial (inside) use and provide 143 of the required 210 parking spaces, which will require a special exception to the off-street parking regulations of 67 spaces.

LOCATION: 10340 Denton Drive

APPLICANT: Martin Belcher

REQUEST:

A special exception to the off-street parking regulations of 67 parking spaces (or a 32 percent reduction of the 210 off-street parking spaces that are required) is made in conjunction with constructing and maintaining awning structures and performing some interior improvements on a site developed with an approximately 126,000 square foot “industrial (inside)” use (Clark Dietrich Building Systems). The applicant proposes to provide 143 (or 68 percent) of the required 210 off-street parking spaces in conjunction with maintaining this use with this square footage on the property.

STANDARD FOR A SPECIAL EXCEPTION TO THE OFF-STREET PARKING REGULATIONS:

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(A). For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 75 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). For the office use, the maximum reduction authorized by this section is 35 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). Applicants may seek a special exception to the parking requirements under this section and an administrative parking reduction under Section 51A-4.313. The greater reduction will apply, but the reduction may not be combined.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
 - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
 - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
 - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
 - (E) The availability of public transit and the likelihood of its use.
 - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
 - (A) Establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
 - (B) Impose restrictions on access to or from the subject property; or
 - (C) Impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.

- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
 - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
 - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The special exception of 67 spaces shall automatically and immediately terminate if and when the “industrial (inside)” use is changed or discontinued.

Rationale:

- The applicant has substantiated how the parking demand generated by the “industrial (inside)” use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- The Sustainable Development and Construction Department Engineering Division Assistant Director has indicated that he has no objections to this request.

BACKGROUND INFORMATION:

Zoning:

Site: IR (Industrial/research)
North: IR (Industrial/research)
South: IR (Industrial/research)
East: IR (Industrial/research)
West: IR (Industrial/research)

Land Use:

The subject site is currently developed with an industrial use (Clark Dietrich Building Systems). The areas to the north, east, south, and west are developed mostly as commercial and industrial uses.

Zoning/BDA History:

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

Timeline:

February 15, 2013: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

April 16, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

April 16, 2013: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the May 1st deadline to submit additional evidence for staff to factor into their analysis; and the May 10th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

May 3, 2013: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application, and the Building Inspection Senior Plans Examiner/Development Code Specialist forwarded a revised Building Official’s Report on this application (see Attachment A).

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

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on (1) constructing and maintaining awning structures (approximately 3,200 square feet) and (2) performing some interior improvements on a site developed with an approximately 126,000 square foot “industrial (inside)” use (Clark Dietrich Building Systems) and providing 143 (or 69 percent) of the required 210 off-street parking spaces.
- The applicant has stated that this request is mainly prompted by performing some interior improvements on the site and addressing what has been discovered in conjunction with these improvements to be an “under-parked” site.
- The Dallas Development Code requires the following off-street parking requirement:
 - Industrial (inside) use: 1 space per 600 square feet of floor area.
- The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Has no objections.”
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the industrial (inside) use on the site does not warrant the number of off-street parking spaces required, and
 - The special exception of 67 spaces (or a 32 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, and impose the condition that the special exception of 67 spaces shall automatically and immediately terminate if and when the industrial (inside) use is changed or discontinued, the applicant would be allowed to modify/maintain the site with this specific use and provide only 143 of the 210 code required off-street parking spaces.

BOARD OF ADJUSTMENT ACTION: MAY 20, 2013

APPEARING IN FAVOR: Brion Sargent, 5420 LBJ Frwy, #1100, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Jackson**

I move that the Board of Adjustment, in Appeal No. **BDA 123-047**, on application of Martin Belcher, grant the requested special exception of 67 spaces to the off-street parking regulations, because our evaluation of the property and the testimony shows that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception of 67 spaces shall automatically and immediately terminate if and when the industrial (inside) use is changed or discontinued.

SECONDED: **Coulter**

AYES: 5– Richardson, Coulter, Richard, Lewis, Jackson

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 123-048

BUILDING OFFICIAL’S REPORT: Application of Michael Gurley for a variance to the front yard setback regulations at 4040 Cochran Chapel Road. This property is more fully described as Lot 13, Block 5078, and is zoned R-1(A), which requires a front yard setback of 40 feet. The applicant proposes to construct and maintain a structure and provide a 25 foot front yard setback, which will require a variance to the front yard setback regulations of 15 feet.

LOCATION: 4040 Cochran Chapel Road

APPLICANT: Michael Gurley

REQUEST:

A variance to the front yard setback regulations of 15’ is made in conjunction with replacing an existing one-story home with a two-story home in virtually the same location, part of which would be located in the 40’ front yard setback.

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 revised “Topo Survey”/site plan is required.

Rationale:

- The lot’s irregular shape and restrictive area (caused by most of the lot being located in floodplain) preclude its development in a manner commensurate with other

developments found on similarly-zoned R-1ac(A) lots. According to the applicant, , a single family home with a building footprint of about 4,000 square feet is proposed on the subject site – a new home that would replace an existing home in virtually the same location.

- The applicant has provided information showing that the proposed home with about living area not to exceed 6,000 square feet is comparable to five other homes he found in the same R-1ac(A) zoning district that average at about 6,400 square feet of living area.

BACKGROUND INFORMATION:

Zoning:

Site: R-1ac (A) (FP)(Single family district 1 acre)(Flood plain)
North: R-1ac (A) (Single family district 1 acre)
South: R-10 (A) (FP) (Single family district 10,000 square feet)(Flood plain)
East: R-1ac (A) (Single family district 1 acre)
West: R-10 (A) (FP) (Single family district 10,000 square feet)(Flood plain)

Land Use:

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

Zoning/BDA History:

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

Timeline:

- March 28, 2013: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- April 16, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- April 16, 2013: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the May 1st deadline to submit additional evidence for staff to factor into their analysis; and the May 10th deadline to submit additional evidence to be incorporated into the Board’s docket materials;

- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

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

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

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on demolishing an existing one-story single family home that according to DCAD was built in 1960, and constructing and maintaining a two-story single family home with according to the applicant about 6,000 square feet of living area with a garage in virtually the same location, part of which is proposed to be located in the site's 40' front yard setback.
- Structures on lots zoned R-1ac(A) are required to provide a minimum front yard setback of 40'.
- A revised "Topo Survey"/site plan has been submitted denoting a portion of the existing and proposed single family home located 25' from the site's front property line (or 15' into the 40' front yard setback). (The site plan shows two lines: one line labeled as "original 25 foot construction line for house" and the other line labeled as "approximate 100 – yr flood plain line.")
- It appears from calculations taken from the submitted site plan by the Board Administrator that approximately 1/3 (or approximately 1,500 square feet) of the proposed approximately 4,000 square foot building footprint is to be located in the site's 40' front yard setback.
- According to DCAD records, the "main improvements" at 4040 Cochran Chapel is a structure built in 1960 with 3,753 square feet of living area and 3,753 square feet of total area. According to DCAD records, the "additional improvements" at 4040 Cochran Chapel Road is a 532 square foot detached garage.
- The subject site is irregular in shape, sloped, and according to the application, is 1.465 acres in area. The site is zoned R-1ac(A) where lots are typically one acre in area. The site plan indicates that the site is bisected by Bachman's Creek.

- The applicant has stated that about 13,500 square feet (or about 1/5) of the approximately 69,000 square foot lot is outside the flood plain.
- The applicant has provided information showing that the proposed home with about living area not to exceed 6,000 square feet is comparable to five other homes he found in the same R-1ac(A) zoning district that average at about 6,400 square feet of living area.
- 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 R1ac(A) zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-1ac(A) zoning classification.
- If the Board were to grant the variance request and impose the submitted revised "Topo Survey"/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 25' from the site's front property line (or 15' into the 40' front yard setback).

BOARD OF ADJUSTMENT ACTION: MAY 20, 2013

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Coulter

I move that the Board of Adjustment grant application **BDA 123-048** 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 revised topo survey/site plan is required.

SECONDED: Richard

AYES: 5– Richardson, Coulter, Richard, Lewis, Jackson

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

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:

Approval of the request, subject to the following conditions:

1. The property owner must pay a minimum of \$50,000.00 into the Dallas Reforestation Fund by the end of the day on Friday, June 21, 2013. The property owner may provide to the Building Official a volunteer performance plan outlining its schedule of tree mitigation performance when submitting the minimum \$50,000.00 payment into the Dallas Reforestation Fund.
2. If the property owner's tree mitigation performance plan includes scheduled partial payments into the Dallas Reforestation Fund, no more than four partial payments may be received before the end of the day on Monday, June 22, 2015.
3. Unless the property owner provides tree mitigation using other alternative methods of compliance with tree mitigation listed in Article X of the Dallas Development Code or has made additional partial payments beyond June 21, 2013, the property owner must pay to the Dallas Reforestation Fund the remaining minimum required tree mitigation due of \$151,246.00 by the end of the day of Monday, June 22, 2015.
4. If the property owner has provided alternative methods of tree replacement or has made additional partial payments into the Dallas Reforestation Fund within the two year extension time, the property owner must pay any remaining tree mitigation balance due, if any, to the Dallas Reforestation Fund by the end of the day on Monday, June 22, 2015.
5. The property owner must track and report all methods of tree mitigation, including planting trees within one mile of the property, donating trees to the Park Department, or the creation of a conservation easement, when such tree mitigation occurs.

If the required tree mitigation is not completed by the end of the day on Monday, June 22, 2015, the Building Official may take enforcement action against the property owner until compliance with Article X landscape and tree replacement regulations is completed, including revocation of its certificate of occupancy.

Rationale:

- The City's Chief Arborist recommends approval of the request, subject to the conditions listed above.

BACKGROUND INFORMATION:

Zoning:

- Site: R-7.5(A)(SUP 1805) (Single family residential 7,500 square feet, Specific Use Permit)
- North: R-7.5(A) (Single family residential 7,500 square feet)
- South: R-7.5(A) (Single family residential 7,500 square feet)
- East: CR (Community Retail)
- West: 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 26th deadline to submit additional evidence for staff to factor into their analysis; and the October 5th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

October 2, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Building Inspection Senior Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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 21st, and
- the February 8th 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).

February 21, 2013: The Board of Adjustment Panel C conducted a public hearing on this application. The applicant's representative provided testimony stating that his request to the Board was for a special exception to the tree preservation regulations was one where the applicant would fully comply with the tree preservation regulations with one exception: the timing in which the applicant would be required to fully mitigate. The Board held the request under advisement until April 15th.

March 1, 2013: The Board Administrator sent a letter to the applicant's representative noting the February 21st action of the Board, the March 27th deadline to submit any new information for staff review,

and the April 5th deadline to submit additional evidence to be incorporated into the Board's docket materials.

- April 2, 2013: At this time, no additional information had been submitted to the Board Administrator by the applicant's representative. The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- April 4, 2013: The City of Dallas Chief Arborist submitted an updated memo regarding this request (see Attachment B).
- April 15, 2013: The Board of Adjustment Panel C conducted a public hearing on this application and held it under advisement until their next hearing to be held on May 20, 2013.
- April 19, 2013: The Board Administrator sent a letter to the applicant noting the April 15th action of the Board, the May 1st deadline to submit any new information for staff review, and the May 10th deadline to submit additional evidence to be incorporated into the Board's docket materials.
- May 2, 2013: The applicant's representative submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application and beyond what was submitted to the Board at the previous public hearings (see Attachment C).
- May 7, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Sustainable Development and Construction Department Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- May 2, 2013: The applicant's representative submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application and beyond what was

submitted to the Board at the previous public hearings (see Attachment D).

May 10, 2013: The City of Dallas Chief Arborist submitted an updated memo regarding this request (see Attachment E).

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.
- On February 8, 2013, the City of Dallas Chief Arborist had submitted a memo regarding this request to the Board Administrator prior to the February 21st hearing (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 had stated 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 had noted that a conservation easement did not exist; that the applicant had proposed but not produced a final document for approval that was acceptable by the City of Dallas; that in addition, the arborist noted that the property was 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 noted that an easement by ordinance would not resolve all tree mitigation requirements for the property.
- The Chief Arborist had recommended denial of the request.
- On April 4, 2013, the City of Dallas Chief Arborist submitted an updated memo regarding this request to the Board Administrator (see Attachment B). The memo stated among other things how the request is made to the timing requirements for completing tree mitigation and is triggered by new construction of an educational facility and removal of 2,005 caliper inches of trees to be mitigated.
- The Chief Arborist stated in his April 4th memo that the property was 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 minimum landscape requirements.
- The Chief Arborist noted in his April 4th memo the following factors for consideration: 1) based on comments before the Board, and to him on March 28th, the applicant is requesting “the time to exercise the option(s)” to mitigate the tree removal per Article X methods of replacement. All methods of mitigation in Sections 51A-10.134 and 10.135 are currently available to the owners of the property; and 2) the mitigation

requirements for protected trees removed or other disturbances have been codified in ordinance since 1994; the property was permitted for construction and tree removal in August of 2010.

- The Chief Arborist had recommended denial of the request.
- On May 10, 2013, the City of Dallas Chief Arborist submitted an updated memo regarding this request to the Board Administrator (see Attachment E). The memo stated among other things how the applicant has submitted a request before the Board of Adjustment for an extension of time in which to complete the tree mitigation requirements for 2800 Prichard Lane and wishes to document its remedy plan via a performance affidavit.
- The Chief Arborist recommends approval of the request for an extension of time of two years to complete the tree mitigation requirements for the property, with the following conditions:
 1. The property owner must pay a minimum of \$50,000.00 into the Dallas Reforestation Fund by the end of the day on Friday, June 21, 2013. The property owner may provide to the Building Official a volunteer performance plan outlining its schedule of tree mitigation performance when submitting the minimum \$50,000.00 payment into the Dallas Reforestation Fund.
 2. If the property owner's tree mitigation performance plan includes scheduled partial payments into the Dallas Reforestation Fund, no more than four partial payments may be received before the end of the day on Monday, June 22, 2015.
 3. Unless the property owner provides tree mitigation using other alternative methods of compliance with tree mitigation listed in Article X of the Dallas Development Code or has made additional partial payments beyond June 21, 2013, the property owner must pay to the Dallas Reforestation Fund the remaining minimum required tree mitigation due of \$151,246.00 by the end of the day of Monday, June 22, 2015.
 4. If the property owner has provided alternative methods of tree replacement or has made additional partial payments into the Dallas Reforestation Fund within the two year extension time, the property owner must pay any remaining tree mitigation balance due, if any, to the Dallas Reforestation Fund by the end of the day on Monday, June 22, 2015.
 5. The property owner must track and report all methods of tree mitigation, including planting trees within one mile of the property, donating trees to the Park Department, or the creation of a conservation easement, when such tree mitigation occurs.

If the required tree mitigation is not completed by the end of the day on Monday, June 22, 2015, the Building Official may take enforcement action against the property owner until compliance with Article X landscape and tree replacement regulations is completed, including revocation of its certificate of occupancy.

- 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 123-103**, 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)

BOARD OF ADJUSTMENT ACTION: APRIL 15, 2013

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

APPEARING IN OPPOSITION: No one

MOTION: **Coulter**

I move that the Board of Adjustment, in Appeal No. **BDA 123-103**, hold this matter under advisement until **May 20, 2013**.

SECONDED: **Maten**

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: MAY 20, 2013

APPEARING IN FAVOR: Mark Mosley, 1410 Avenue G, Ste 400, Plano, TX
Donna Woods, 2800 Prichard, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Richard**

I move that the Board of Adjustment, in Appeal No. **BDA 112-103**, on application of Mark A. Mosley, **grant** the special exception to the landscape regulations in the Dallas Development Code because our evaluation of the property and the testimony shows that strict compliance with the requirements will unreasonably burden the use of the property and 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:

- The time period in which the applicant has to fully mitigate the protected tress removed from the site is approximately 24 months or June 22, 2015.
- The property owner must pay a minimum of \$50,000.00 into the Dallas Reforestation Fund by the end of the day on Friday, June 21, 2013. The property owner may provide to the Building Official a volunteer performance plan outlining its schedule of tree mitigation performance when submitting the minimum \$50,000.00 payment into the Dallas Reforestation Fund.
- If the property owner's tree mitigation performance plan includes scheduled partial payments into the Dallas Reforestation Fund, no more than four partial payments may be received before the end of the day on Monday, June 22, 2015.
- Unless the property owner provides tree mitigation using other alternative methods of compliance with tree mitigation listed in Article X of the Dallas Development Code or has made additional partial payments beyond June 21, 2013, the property owner must pay to the Dallas Reforestation Fund the remaining minimum required tree mitigation due of \$151,246.00 by the end of the day of Monday, June 22, 2015.
- If the property owner has provided alternative methods of tree replacement or has made additional partial payments into the Dallas Reforestation Fund within the two year extension time, the property owner must pay any remaining tree mitigation balance due, if any, to the Dallas Reforestation Fund by the end of the day on Monday, June 22, 2015.
- The property owner must track and report all methods of tree mitigation, including planting trees within one mile of the property, donating trees to the Park Department, or the creation of a conservation easement, when such tree mitigation occurs.

SECONDED: Coulter

AYES: 5– Richardson, Coulter, Richard, Lewis, Jackson

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 123-026

BUILDING OFFICIAL'S REPORT: Application of Grayson Wafford for variances to the front yard setback regulations and a special exception to the fence height regulations at 6422 Sondra Drive. This property is more fully described as Lot 4 in City Block 5/4909 and is zoned R-7.5(A), Neighborhood Stabilization Overlay (NSO) No. 4, which requires a front yard setback of 30 feet and limits the height of a fence in the front yard to 4 feet.

The applicant proposes to construct and maintain a single family structure and provide minimum front yard setbacks of 20 feet, which will require variances to the front yard setback regulations of up to 10 feet. The applicant also proposes to construct and maintain an 8-foot 6-inch-high fence in a required front yard, which will require a special exception to the fence height regulations of 4 feet 6 inches.

LOCATION: 6422 Sondra Drive

APPLICANT: Grayson Wafford

ORIGINAL MARCH 18, 2013 REQUESTS:

The following appeals had been made on a site that is currently developed with a single family home structure, which the applicant intends to demolish:

1. A variance to the front yard setback regulations of 9' 6" was requested in conjunction with constructing and maintaining single family home structure part of which would be located in the site's 30' Sondra Avenue front yard setback.
2. A variance to the front yard setback regulations of 8' was requested in conjunction with constructing and maintaining a single family home structure, part of which would be located in the site's 30' Marquita Avenue front yard setback.
3. A special exception to the fence height regulations of 4' 6" was requested in conjunction with constructing an 8' 6" high solid wood fence in the site's Marquita Avenue front yard setback.

On March 18, 2013, the Board of Adjustment Panel C conducted a public hearing on this application, and took the following actions: (1) granted a 9 foot 6 inch variance along Sondra Avenue to the minimum front yard setback regulations and an 8 foot variance along Marquita Avenue to the minimum front yard setback regulations, with the site plan imposed as a condition; and (2) held the request for a special exception to the fence height regulations of 4' 6" until April 15th.

APRIL 15, 2013 REQUEST:

A special exception to the fence height regulations of 4' 6" was made in conjunction with constructing and maintaining an 8' 6" high combination solid masonry/open metal picket fence in the site's Marquita Avenue front yard setback on a site currently developed with a single family home that the applicant intends to replace with a new single family home.

On April 15, 2013, the Board of Adjustment Panel C conducted a public hearing on this application, and held the request for a special exception to the fence height regulations of 4' 6" until May 20th.

UPDATED MAY 20, 2013 REQUEST:

A special exception to the fence height regulations of 4' (reduced from 4' 6") is made in conjunction with constructing and maintaining a maximum 8' high proposal that includes an open metal picket fence atop an 18" high masonry base with 8' high masonry columns in the site's Marquita Avenue front yard setback on a site currently developed with a single family home that the applicant intends to replace with a new single family home.

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:

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.

Zoning:

- Site:** R-7.5(A) (NSO 4) (Single family district 7,500 square feet, Neighborhood Stabilization Overlay)
- North:** R-7.5(A) (NSO 4) (Single family district 7,500 square feet, Neighborhood Stabilization Overlay)
- South:** R-7.5(A) (NSO 4) (Single family district 7,500 square feet, Neighborhood Stabilization Overlay)
- East:** R-7.5(A) (NSO 4) (Single family district 7,500 square feet, Neighborhood Stabilization Overlay)
- West:** R-7.5(A) (NSO 4) (Single family district 7,500 square feet, Neighborhood Stabilization Overlay)

Land Use:

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

Zoning/BDA History:

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

Timeline:

January 25, 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.

- February 13, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- February 13, 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 February 29th deadline to submit additional evidence for staff to factor into their analysis; and the March 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the requests; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- February 21, 2013: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).
- March 5, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- March 6, 2013: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment B).
- March 8, 2013: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment C).
- March 18, 2013: The Board of Adjustment Panel C conducted a public hearing on this application, and took the following actions: granted a 9 foot 6 inch variance along Sondra Avenue to the minimum front yard setback regulations and an 8 foot variance along Marquita Avenue to the minimum front yard setback regulations, and imposed the submitted site plan as a condition; and held the request for a special exception to the fence height regulations of 4' 6" until April 15th.

- March 21, 2013: The Board Administrator sent a letter to the applicant noting the March 21st action of the Board, and the April 5th deadline to submit additional evidence to be incorporated into the Board's docket materials.
- April 2, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- April 5, 2013: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application and beyond what was submitted at the March 18th public hearing (see Attachment D).
- April 15, 2013: The Board of Adjustment Panel C conducted a public hearing on this application. The applicant submitted a full scale revised site plan/elevation to the Board at the public hearing (see Attachment E). The Board held the application under advisement until their next hearing to be held on May 20, 2013.
- April 19, 2013: The Board Administrator sent a letter to the applicant noting the April 15th action of the Board, the May 1st deadline to submit any new information for staff review, and the May 10th deadline to submit additional evidence to be incorporated into the Board's docket materials.
- May 7, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Sustainable Development and Construction Department Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- May 8, 2013: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted

with the original application and beyond what was submitted at the March 18th public hearing (see Attachment F).

GENERAL FACT /STAFF ANALYSIS:

- This request that remains in this application focuses constructing and maintaining an 8' 6" high combination solid masonry/open metal picket fence in the site's 30' front yard setback along Marquita Avenue. (No fence is proposed in the site's 30' front yard setback along Sondra Avenue).
- 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 originally submitted a scaled site plan and an elevation that showed the proposal in the Marquita Avenue front yard setback reaches a maximum height of 8' 6".
- The following additional information was gleaned from the originally submitted site plan:
 - Approximately 68' in length parallel to Marquita Avenue (and approximately 23 in length perpendicular on the sided of the site in this required front yard setback), approximately on this front property line or approximately 12' from the pavement line where two homes would have direct frontage to the proposal - homes with no fences in their front yards.
- On April 5, 2013, the applicant emailed reduction copies of a revised site plan and a revised partial elevation (see Attachment D). The applicant stated the following in the email that accompanied this revised plans:
 - The site plan attached includes NO changes to the size, shape or foot print of the home to be built on the lot. The only changes that have been made are to the fence.
 - The maximum height of the fence will be 8'6" at the top of the capstones at each pillar and the maximum height of the walls of the fence between pillars will be 8'.
 - The fence will be built 1' from the property line along Marquita Avenue.
 - The fence will be approximately 12' from the curb/pavement along Marquita Avenue.
 - Measuring from the edge of the home to the end of the pillar, the length of the wall located on the western property line is 22'.
 - Measuring from the edge of the home to the end of the pillar, the length of the wall located on the eastern side of the lot, including the gate, is 21'.
 - Measuring from pillar's edge to pillar's edge, the wall located along the Marquita Avenue property line is 63'.
 - A 50 square foot circular planter has been added on the southwest corner of the fence.
 - The board on board wooden fence has been changed to either masonry or metal material
 - The metal portions of the fence will serve as lattice for creeping vines and climbing rose plants.

- The gate on the Marquita Avenue wall has been removed to eliminate any increased foot traffic and improve safety and aesthetic appeal.
- The applicant submitted full scale copies of a revised site plan/partial elevations at the April 15, 2013 public hearing (see Attachment E).
- On May 8, 2013, the applicant emailed reduction copies of a revised site plan/elevation (see Attachment F). The applicant stated the following in the email that accompanied this revised plan:
 - The site plan attached includes NO changes to the size, shape or foot print of the home to be built on the lot. The only changes that have been made are to the fence.
 - The maximum height of the fence has been reduced to 8' at the top of the capstones at each pillar.
 - The fence will be built just inside the property line along Marquita.
 - The fence will be approximately 11' from the curb/pavement along Marquita.
 - Measuring from the edge of the home to the end of the pillar, the length of the wall located on the western property line is 31'6".
 - Measuring from the edge of the home to the end of the pillar, the length of the wall located on the eastern side of the lot, including the gate, is 23'.
 - Measuring from pillar's edge to pillar's edge, the wall located along the Marquita property line is 70' 3".
 - Six pillars have been removed from previous plans and replaced with metal posts to increase the transparency of the fence and reduce the 'weight' of the wall.
- 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.
- As of May 13, 2013, no letters had been submitted in support or in opposition to the revised requests that the applicant submitted on April 5, 2013, April 15, 2013, and May 8, 2013.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' (whereby the revised proposal that would reach 8' in height) will not adversely affect neighboring property.
- Granting this special exception of 4' with a condition imposed that the applicant complies with the submitted revised site plan/elevation would require the proposal exceeding 4' in height in the Marquita Avenue front yard setback to be constructed/maintained in the location and of the heights and materials as shown on this document.

BOARD OF ADJUSTMENT ACTION: MARCH 18, 2013

APPEARING IN FAVOR: Grayson Wafford, 6422 Sondra, Dallas, TX

APPEARING IN OPPOSITION: James Scott, 6427 Vanderbilt Ave., Dallas, TX
 Kerry Robichaux, 6431 Sondra Dr., Dallas, TX
 John Hamilton, 6441 Sondra, Dallas, TX
 Jonathan Phillips, 6428 Marquita Ave., Dallas, TX

MOTION #1: Maten

I move that the Board of Adjustment, in Appeal No. **BDA 123-026**, on application of Grayson Wafford, grant a 9 foot 6 inch variance along Sondra Avenue to the minimum front yard setback regulations and an 8 foot variance along Marquita Avenue 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 submitted site plan is required.

SECONDED: Lewis

AYES: 4–Maten, Coulter, Richard, Lewis

NAYS: 1 – Richardson,

MOTION PASSED: 4– 1

MOTION #2: Maten

I move that the Board of Adjustment, in Appeal No. **BDA 123-026**, on application of Grayson Wafford, hold the fence height special exception under advisement until **April 15, 2013**.

SECONDED: Coulter

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

NAYS: 0 –

MOTION PASSED: 5– 0(unanimously)

BOARD OF ADJUSTMENT ACTION: APRIL 15, 2013

APPEARING IN FAVOR: Grayson Wafford, 6422 Sondra, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Maten

I move that the Board of Adjustment, in Appeal No. **BDA 123-026**, hold this matter under advisement until **May 20, 2013**.

SECONDED: Coulter

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: MAY 20, 2013

APPEARING IN FAVOR: Grayson Wafford, 6422 Sondra, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Lewis**

I move that the Board of Adjustment, in Appeal No. **BDA 123-026**, on application of Grayson Wafford, grant the request to maintain an 8 foot high fence in the front yard along Marquita Avenue as a special exception to the height requirement for fences in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: **Coulter**

AYES: 5– Richardson, Coulter, Richard, Lewis, Jackson

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

MOTION: **Jackson**

I move to adjourn this meeting.

SECONDED: **Lewis**

AYES: 5– Richardson, Coulter, Richard, Lewis, Jackson

NAYS: 0 -

MOTION PASSED: 5 – 0 (Unanimously)

1:55 P. M. - Board Meeting adjourned for **May 20, 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.