

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM
MONDAY, AUGUST 19, 2013**

MEMBERS PRESENT AT BRIEFING: Bruce Richardson, Chair, Joel Maten, regular member, Ross Coulter, regular member, Bob Richard, regular member and Joe Carreon, regular member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Bruce Richardson, Chair, Joel Maten, regular member, Ross Coulter, regular member, Bob Richard, regular member and Joe Carreon, regular member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Tammy Palomino, Asst. City Atty., Laura Morrison, Asst. City Atty., Todd Duerksen, Development Code Specialist, and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Tammy Palomino, Asst. City Atty., Laura Morrison, Asst. City Atty., Todd Duerksen, Development Code Specialist, and Trena Law, Board Secretary

10:40 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **August 19, 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 June 17, 2013 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: AUGUST 19, 2013

MOTION: **Maten**

I move **approval** of the Monday, **June 17, 2013** public hearing minutes.

SECONDED: **Coulter**

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 123-067

BUILDING OFFICIAL’S REPORT: Application of Robert Baldwin for a special exception to the landscape regulations at 100 W. Ledbetter Drive. This property is more fully described as Lot 1, Block 11/5993 and is zoned MC-1, which requires mandatory landscaping. The applicant proposes to construct a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 100 W. Ledbetter Drive

APPLICANT: Robert Baldwin

REQUEST:

A special exception to the landscape regulations is requested in conjunction with constructing and maintaining a general merchandise or food store greater than 3,500 square feet use (Quick Trip) on a site currently under development, and not fully meeting the landscape regulations.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

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

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

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

- the extent to which there is residential adjacency;
- the topography of the site;
- the extent to which landscaping exists for which no credit is given under this article; and
- the extent to which other existing or proposed amenities will compensate for the reduction of landscaping.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan is required.

Rationale:

- The applicant has substantiated how strict compliance with the requirements of the landscape regulations of the Dallas Development Code will unreasonably burden the use of the property, and that the special exception will not adversely affect neighboring property. The existing utilities, right-of-way, and topography features of the subject site preclude the applicant from fully meeting the Landscape Regulations.
- The City’s Chief Arborist recommends approval of the applicant’s request for exception to the Landscape Regulations.

BACKGROUND INFORMATION:

Zoning:

Site: MC-1 (Multiple commercial)
North: RR (Regional retail)
South: PD 863 (Planned Development)
East: RR (Regional retail)
West: MC-1 & RR (Multiple commercial and Regional retail)

Land Use:

The site is currently under development. The areas to the north and west appear to be undeveloped; the area to the east is developed with a freeway (R. L. Thornton Freeway); and the area to the south is under development.

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:

- May 28, 2013: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- July 3, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- July 5, 2013: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the July 31st deadline to submit additional evidence for staff to factor into their analysis; and the August 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 request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- July 30, 2013: The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).
- August 6, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Interim Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Sustainable Development and Construction Department Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- August 8, 2013: The City of Dallas Chief Arborist submitted a memo regarding the request (see Attachment B).

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses constructing and maintaining a general merchandise or food store greater than 3,500 square feet use (Quick Trip) on a site currently developed, and not fully meeting the landscape regulations. More specifically, according to the City of Dallas Chief Arborist, the site is deficient to the Landscape Regulations for: 1) street tree requirements; and 2) the specifications for screening of off-street parking (24” height specification is proposed when a 36” height is required).
- The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or

increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period.

- The City of Dallas Chief Arborist submitted a memo regarding the applicant's request (see Attachment B). The memo states how this request is triggered by new construction of a retail development on the site.
- The arborist's memo lists the following factors for consideration:
 1. The construction will be on a property that will have significant tree removal and site grading to address topographical challenges. The public service area will be significantly elevated above the Ledbetter street level. This and the double row of shrubs in the shown locations around the parking should provide sufficient screening to parking when grown and maintained in the required code standard of 36" height.
 2. Underground and overhead public utilities will impair the ability to plant large trees in required locations along Ledbetter and the IH 35 service road. The applicant proposes small trees along the service road and large canopy trees along the elevated portions behind the required 30' distance for street trees due to conflicts with utility, right-of-way, and slope.
- The City of Dallas Chief Arborist recommends approval of this request given his assessment of how the applicant has demonstrated how strict compliance with the requirements of the landscape ordinance will unreasonably burden the use of the property.
- The applicant has the burden of proof in establishing the following:
 - Strict compliance with the requirements of the Landscape Regulations of the Dallas Development Code will unreasonably burden the use of the property; and
 - The special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose the submitted landscape plan as a condition to the request, the site would be provided exception from full compliance with the street tree and parking screening requirements of Article X: The Landscape Regulations.

BOARD OF ADJUSTMENT ACTION: AUGUST 19, 2013

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITON: No one

MOTION: Coulter

I move that the Board of Adjustment grant application **BDA 123-067** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted alternate site plan is required.

SECONDED: Maten

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 123-071

BUILDING OFFICIAL’S REPORT: Application of Tom Prohaska for a variance to the front yard setback regulations at 400 W. Colorado Boulevard. This property is more fully described as Lot 9A, Block 40/3360 and is zoned PD-160 (Tract 1B), which requires front yard setbacks must be the same as, or between, the setbacks of the closest adjacent main structures, or a maximum front yard setback of 25 feet. The applicant proposes to construct a structure and provide a 34 foot 6 inch front yard setback, which will require a 9 foot 6 inch variance to the front yard setback regulations.

LOCATION: 400 W. Colorado Boulevard

APPLICANT: Tom Prohaska

REQUEST:

A variance to the front yard setback regulations of 9’ 6” is made in conjunction with constructing and maintaining a single family home structure on an undeveloped lot, a structure which is proposed to be located outside or beyond the maximum 25’ front yard setback.

STANDARD FOR A VARIANCE:

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

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

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted revised site plan is required.

Rationale:

- The applicant cannot develop the property/subject site and meet the required maximum 25' front yard setback because of the restrictive area caused by a 10' wide storm water easement that runs parallel to the street between the front property line and 35' from the front property line. The applicant cannot locate the proposed home at the maximum 25' front yard setback because if he were to do so, it would be located directly on/over the existing 10' wide easement. Thus, there is an unnecessary hardship that is not self-created on the property.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 160 (Tract 1B) (Planned Development)
North: PD No. 160 (Tract 1B) (Planned Development)
South: PD No. 160 (Tract 1B) (Planned Development)
East: PD No. 468 (Planned Development)
West: PD No. 160 (Tract 1B) (Planned Development)

Land Use:

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

Zoning/BDA History:

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

Timeline:

- May 20, 2013: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 3, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- July 5, 2013: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the July 31st deadline to submit additional evidence for staff to factor into their analysis; and the

August 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 request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

July 31, 2013: The applicant submitted additional documentation on this application 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 (see Attachment A).

August 6, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Interim Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Sustainable Development and Construction Department Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining a single family home on an undeveloped lot, which is proposed to be located outside or beyond the maximum 25' front yard setback.
- The front yard setback on lots in Tract 1B of PD 160 must be the same as, or between, the setbacks of the closest main structures.
- A revised site plan has been submitted denoting a "25' average building line" and a building footprint of the proposed home that is located as close as 33' 4 3/8" from the front property line or approximately 9' 6" beyond the maximum 25' front yard setback on the property.
- The submitted site plan denotes a 20' wide S.S.W. easement that is located between the front property line and the location of the proposed home.
- According to DCAD records, there are "no main improvements" at 400 W. Colorado Boulevard.
- The subject site is relatively flat, irregular in shape, and according to the application, is 0.21 acres (or approximately 9,100 square feet) in area. The site is zoned PD 160 (Tract 1B).
- 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 160 (Tract 1B) 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 160 (Tract 1B) zoning classification.
- If the Board were to grant the variance request and impose the submitted revised site plan as a condition, the structure in the front yard setback would be limited to what is shown on the revised site plan – which is a structure to be located beyond the maximum 25’ from the site’s front property line (or 9’ 6” beyond the maximum 25’ front yard setback).

BOARD OF ADJUSTMENT ACTION: AUGUST 19, 2013

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITON: No one

MOTION: Coulter

I move that the Board of Adjustment grant application **BDA 123-071** 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: Maten

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 123-073

BUILDING OFFICIAL'S REPORT: Application of Larry C. Gilstrap III, represented by Lisa Lamkin of BRW Architects, Inc., for a special exception to the landscape regulations at 2915 Vine Street. This property is more fully described as Lot 6A, Block 960 and is zoned PD-193 (GR), which requires mandatory landscaping. The applicant proposes to construct a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 2915 Vine Street

APPLICANT: Larry C. Gilstrap III
Represented by Lisa Lamkin of BRW Architects, Inc.

REQUEST:

A special exception to the landscape regulations is made in conjunction with constructing and maintaining an approximately 5,200 square foot addition to an existing approximately 34,000 square foot office use/structure (American Board of Obstetrics and Gynecology Educational Foundation), and not fully providing required landscaping.

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

PD 193 specifies that the board may grant a special exception to the landscaping requirements of this section if, in the opinion of the Board, the special exception will not compromise the spirit and intent of this section. When feasible, the Board shall require that the applicant submit and that the property comply with a landscape plan as a condition to granting the special exception.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan is required with the condition that three small ornamental trees must be provided in the general parkway location of Laclede Street where three cypress trees are to be removed, as shown on the landscape plan.

Rationale:

- The applicant has substantiated how granting this request would not compromise the spirit and intent of the landscaping requirements of PD 193.
- The City's Chief Arborist recommends approval of this request with the aforementioned minor modifications to be made by the applicant to the submitted alternate landscape plan.

BACKGROUND INFORMATION:

Zoning:

Site: PD 193 (GR)(Planned Development District, General retail)
North: PD 193 (PDS 86)(Planned Development District, Planned Development Sundistrict)
South: PD 193 (GR)(Planned Development District, General retail)
East: PD 193 (PDS 2)(Planned Development District, Planned Development Subdistrict)
West: PD 193 (GR)(Planned Development District, General retail)

Land Use:

The subject site is developed with an existing office use/structure (American Board of Obstetrics and Gynecology Educational Foundation). The areas to the north and east are developed with multifamily uses; and the areas to the south and west are developed with mixed uses.

Zoning/BDA History:

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

Timeline:

- June 14, 2013: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- July 3, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- July 5, 2013: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the July 31st deadline to submit additional evidence for staff to factor into their analysis; and the August 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 request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- July 30, 2013: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachments A and B).

- August 6, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Interim Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Sustainable Development and Construction Department Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- August 8, 2013: The applicant submitted additional documentation on this application beyond what was submitted with the original application and discussed at the August 6th staff review team meeting (see Attachment C).
- August 8, 2013: The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment D).

GENERAL FACTS/ STAFF ANALYSIS:

- This request focuses on constructing and maintaining an addition to an existing office use/structure (American Board of Obstetrics and Gynecology Educational Foundation), and not fully providing required landscaping.
- PD 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind.
- The City of Dallas Chief Arborist submitted a memo regarding the applicant's request (see Attachment D). The memo states how this request is triggered by new addition of floor area to the property.
- The arborist's memo lists the following ways in which the applicant's alternate landscape plan is deficient to the PD 193 Landscaping Requirements:
 1. The sidewalk is required to be a minimum 6' and between 5' -12' from back of curb. The existing sidewalk conditions vary and do not match the current PD 193 requirements.
 2. The trees are required to be in a tree planting zoned between 2.5' – 5' from back of curb. Some trees in the Cole Avenue and Vine area are more restricted. (The minimum number of required trees is provided).
 3. Screening of off-street surface parking is not consistent in meeting the minimum requirement of attaining a "minimum height of 3 ½' above the parking surface.
- The arborist's memo lists the following factors for consideration:
 1. The property and parkway is currently developed with an established landscape. The property owners are requesting to maintain the existing conditions while

supplementing portions with new plant material to improved screening and restore landscape beds.

2. The site does not fully match the landscape plan approved for building permit on October 4, 2000. However the sidewalk and some the current landscape trees were in current locations and approved by staff in that review and inspection.
 3. Adjacent properties shown on the plan are owned by the property owner but are not included in this request – they are shown of visual reference only.
 4. Some of the parkway trees are existing crepe myrtles within a visibility triangle. The trees were originally approved in these locations in 2000. The ordinance allows for the conditional presence of a tree in a visibility triangle. Staff may authorize this condition in some circumstances.
 5. The owners propose to remove three cypress trees along Laclede Street that were planted beneath a complex of utility poles and overhead power lines. The growth habit of these trees to grow tall with a dominant central stem makes this a recommended adjustment to avoid topping of trees. Replacement of trees in this location has not been shown.
- The City of Dallas Chief Arborist recommends approval of this request with the condition that three small ornamental trees must be provided in the general parkway area location on Laclede Street where the three cypress trees are to be removed.
 - The applicant has the burden of proof in establishing the following:
 - The special exception (where an alternate landscape plan has been submitted that is deficient in fully meeting the sidewalk, tree planting zone, required front yard landscape site area, and off-street parking screening requirements of the PD 193 landscaping requirements) will not compromise the spirit and intent of the section of the ordinance (Section 26: Landscape, streetscape, screening, and fencing standards).
 - If the Board were to grant this request and impose the submitted alternate landscape plan (with amendments suggested by the City of Dallas Chief Arborist) as a condition, the site would be granted exception from full compliance to sidewalk, tree planting zone, required front yard landscape site area, and off-street parking screening requirements of the Oak Lawn PD 193 landscape ordinance.

BOARD OF ADJUSTMENT ACTION: AUGUST 19, 2013

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITON: No one

MOTION: **Coulter**

I move that the Board of Adjustment grant application **BDA 123-073** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted alternate landscape plan is required.
- Three small ornamental trees must be provided as shown on the alternate landscape plan in the parkway location at Laclede Street where the cypress trees are being removed.

SECONDED: Maten

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 123-080

BUILDING OFFICIAL’S REPORT: Application of Scott Harvel for variances to the front, side, and rear yard setback regulations, and a special exception to the fence height regulations at 3620/3622 Edgewater Drive. This property is more fully described as Lot 4, Block 5/2022 and is zoned PD-193 (D), which requires a 25 foot front yard setback, a 5 foot side yard setback, a 10 foot rear yard setback, and limits the height of a fence in the side and rear yard to 9 feet in height. The applicant proposes to maintain a structure and provide a 15 foot front yard setback, which will require a 10 foot variance to the front yard setback regulations, provide a 0 foot side yard setback, which will require a 5 foot variance to the side yard setback regulations, and provide a 0 foot rear yard setback, which will require a 10 foot variance to the rear yard setback regulations. The applicant also proposes to maintain a 12 foot 6 inch high fence in required side and rear yard setbacks, which will require a 3 foot 6 inch special exception to the fence height regulations.

LOCATION: 3620/3622 Edgewater Drive

APPLICANT: Scott Harvel

REQUESTS:

The following appeals have been made in conjunction with maintaining development for portions of one half of a duplex structure and fence on the subject site (the attached single family home structure and fence located on the west side of the subject site at 3622 Edgewater Street):

1. a variance to the front yard setback regulations of 10’ is requested to maintain a storage structure/stucco fountain structure located 15’ from the front property line or 10’ into the required 25’ front yard setback;
2. a variance to the side yard setback regulations of 5’ is requested to maintain portions of deck, Jacuzzi/hot tub, and fountain structures located on the site’s western side property line or 5’ into the required 5’ side yard setback;

3. a variance to the rear yard setback regulations of 10' is requested to maintain a portion of deck and planter container structures located on the site's rear property line or 10' into the required 10' rear yard setback; and
4. special exceptions to fence height regulations of 3' 6" are requested in conjunction with maintaining 12' 6" high solid board fences in the side and rear yard setbacks.

(Note that the other attached single family home on the east side of the subject site at 3620 Edgewater Street is not seeking any variance or special exception).

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:

- (D) 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;
- (E) 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
- (F) 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, side, and rear yard setback variances):

Approval, subject to the following condition:

- Compliance with the submitted revised site plan is required.

Rationale:

- The lot's slightly irregular shape and restrictive area (a lot size that is about 5,700 square feet or, according to the applicant, about 1,000 square feet less in size than the next smallest lot in the PD 193 (D) zoning district) preclude its development in a manner commensurate with other developments found on similarly-zoned PD 193 (D)lots. In this case, according to the applicant's submittals, the other lots in this zoning district are on average a full approximately 2,500 square feet larger where the subject site has the smallest depth of any lot in the zoning district.

- The variances would allow development on the property that is commensurate with development found on other PD 193 (D) zoned properties – the applicant states that the building footprint on the subject site is 13 percent smaller than the average footprint on the 18 lots in the zoning district developed or redeveloped since the year 2000.

STAFF RECOMMENDATION (fence height special exceptions):

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

BACKGROUND INFORMATION:

Zoning:

Site: PD 193 (D) (Planned Development District, Duplex)
North: CD 17 (Conservation District)
South: PD 193 (D) (Planned Development District, Duplex)
East: PD 193 (D) (Planned Development District, Duplex)
West: PD 193 (D) (Planned Development District, Duplex)

Land Use:

The subject site is developed with a duplex – a single family home on the east side of the site at 3620 Edgewater Street, and a single family home on the west side of the site at 3622 Edgewater Street. The areas to the north, south, east and west are developed with residential uses.

Zoning/BDA History:

1. BDA 090-057, Property at 3620 Edgewater Drive(the subject site)

On August 16, 2010, the Board of Adjustment Panel C denied requests variances to the side yard setback regulations with prejudice. The case report stated that the variances to the side yard setback regulations were requested in conjunction with obtaining a final building permit on a recently constructed three-story duplex, portions of which (existing staircases) were located and to be redesigned in the site’s eastern and western 5’ side yard setbacks. According to documents submitted with the application, the “structures” located in the setbacks were “flatwork, stairs and landings” structures and/or concrete stair structures in the site’s eastern and western 5’ side yard setbacks,

however, according to a document submitted by the applicant's representative on June 4, 2010, the existing concrete stair structures that completely fill the 5' setbacks were to be redesigned to be 3' 8" wide, and to be made of steel and wood.

Timeline:

- June 27, 2013: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 3, 2013: The Board of Adjustment Secretary 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."
- July 5, 2013: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the July 31st deadline to submit additional evidence for staff to factor into their analysis; and the August 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.
- August 2, 2013: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).
- August 5, 2013: The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded a revised Building Official's Report (see Attachment B).
- August 5, 2013: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment C).
- August 6, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Interim Assistant Director, the Sustainable

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

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

GENERAL FACTS/STAFF ANALYSIS (front yard variance):

- This request focuses on maintaining an approximately 38 square foot storage structure/stucco fountain structure on the western half of the subject site located 15' from the front property line or into the required 25' front yard setback.
- Single family structures on lots zoned PD 193 (D) are required to provide a minimum front yard setback of 25'.
- A revised site plan has been submitted denoting that the existing "stucco fountain" structure is located 15' from the site's front property line or 10' into the 25' front yard setback.
- It appears from calculations made by the Board Administrator from the submitted site plan that all of the approximately 35 square foot storage structure/stucco fountain structure is located in the site's 25' front yard setback.
- According to DCAD records, the "main improvements" at 3620 Edgewater Drive area structure with 2,800 square feet of living area and 2,800 square feet of total area built in 2008 with "additional improvement" of a 440 square foot attached garage.
- According to DCAD records, the "main improvements" at 3622 Edgewater Drive area structure with 2,800 square feet of living area and 2,800 square feet of total area built in 2008 with "additional improvement" of a 399 square foot attached garage.
- The subject site is somewhat sloped, slightly irregular in shape, and approximately 5,700 square feet in area. The site is zoned PD 193 (D).
- 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 revised 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 15’ from the site’s front property line (or 10’ into this 25’ front yard setback).

GENERAL FACTS/STAFF ANALYSIS (side yard variance):

- This request focuses on maintaining portions of deck, Jacuzzi/hot tub, and fountain structures located on the site’s western side property line or 5’ into the required 5’ side yard setback on the western half of the subject site.
- Single family structures on lots zoned PD 193 (D) are required to provide a minimum side yard setback of 5’.
- A revised site plan has been submitted denoting a wood deck, a hot tub, and two fountain structures located on the site’s western side property line or 5’ into this 5’ side yard setback.
- It appears from calculations made by the Board Administrator from the submitted site plan that approximately 40 square feet of the approximately 270 square foot deck structure, that approximately 32 square feet of the approximately 50 square foot hot tub structure, approximately ½ of a 12 square foot fountain structure, and the entire 8 square feet of another fountain structure are located in the site’s 5’ western side yard setback.
- According to DCAD records, the “main improvements” at 3620 Edgewater Drive area structure with 2,800 square feet of living area and 2,800 square feet of total area built in 2008 with “additional improvement” of a 440 square foot attached garage.
- According to DCAD records, the “main improvements” at 3622 Edgewater Drive area structure with 2,800 square feet of living area and 2,800 square feet of total area built in 2008 with “additional improvement” of a 399 square foot attached garage.
- The subject site is somewhat sloped, slightly irregular in shape, and approximately 5,700 square feet in area. The site is zoned PD 193 (D).
- 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 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 revised site plan as a condition, the structures in the rear yard setback would be limited to that what is shown on this document– which are structures located on the site’s western side property line (or 5’ into this 5’ side yard setback).

1:50 P.M.: Break
1:57 P.M.: Resumed

BOARD OF ADJUSTMENT ACTION: AUGUST 19, 2013

APPEARING IN FAVOR: Scott Harvel, 3622 Edgewater, Dallas, TX
Frank Stich, 4224 N hall St., Dallas, TX

APPEARING IN OPPOSITON: Judy Desanders, 3619 Springbrook St., Dallas, TX

MOTION #1: Maten

I move that the Board of Adjustment, in Appeal No. **BDA 123-080**, on application of Scott Harvel, **grant** a 10 foot variance to the minimum front yard setback regulations and a 5 foot variance to the minimum side yard setback regulations and a 10 foot variance to the minimum rear yard setback regulations, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. 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: Coulter

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

MOTION #2: Coulter

I move that the Board of Adjustment, in Appeal No. **BDA 123-080**, on application of Scott Harvel, grant the request to construct and maintain a 12 foot, 6 inch high fence in the property's side and rear yards as a special exception the fence height requirements 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 conditions be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Maten

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

NAYS: 0 –
MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 123-054

BUILDING OFFICIAL’S REPORT: Application of Colesen C. Evans for a variance to the front yard setback regulations at 8000 Park Lane. This property is more fully described as Lot 1C, Block A/5456, and is zoned MU-3 (SAH), which requires a front yard setback of 35 feet for portions of a structure greater than 45 feet in height. The applicant proposes to construct a structure over 45 feet in height and provide a 15 foot 6 inch front yard setback for a portion of a structure over 45 feet in height, which will require a variance to the front yard setback regulations of 19 foot 6 inches.

LOCATION: 8000 Park Lane

APPLICANT: Colesen C. Evans

FILE NUMBER: BDA 123-054

REQUEST:

A variance to the urban form front yard setback regulations of 19’ 6” is requested in conjunction with constructing and maintaining an approximately 80’ high mixed use (retail/restaurant/office) structure that would be located within the required 35’ front yard setback for the portion of it above 45’ in height along the I-75/North Central Expressway service road. The site is developed as a mixed use development (Park Lane).

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:

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

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan and site section document is required.

Rationale:

- The subject site is restricted in its developable area given its multiple front yards, its narrow width, and an off-set at the corner of Park Lane and the north bound frontage road to accommodate a TXDOT deceleration lane which (according to the applicant) without this required lane, a variance would not be required.
- Granting the variance to the urban form front yard setback regulations (with the suggested condition imposed) would not be contrary to the public interest since the portion of the proposed structure to be “varied” is:
 - A maximum 80’ in height or 35’ above/beyond the 45’ height in which the additional 20’ urban form front yard setback begins; and
 - Located on a portion of the site that abuts the I-75/North Central Expressway service road where the property to the west is separated by over 300’ of public right-of-way.

BACKGROUND INFORMATION:

Site: MU-3(SAH) (Deed restricted)* (Mixed Use, Standard Affordable Housing)
North: RR (Regional Retail)
South: GO(A) (General Office)
East: MU-3 (Mixed Use)
West: RR (Regional Retail)

- * Note that the applicant acknowledged in an email to the Board Administrator on May 16, 2013 of the deed restrictions on the property. The applicant stated that these deed restrictions do not affect this application to the board since they only pertain to overall density.

Land Use:

The subject site is currently developed as a mixed use development (Park Lane). The areas to the north, south, east and west are development with mostly retail and office uses.

Zoning/BDA History:

1. BDA 101-019, Property at 8000Park Lane (the subject site)

On February 17, 2011, the Board of Adjustment Panel C granted requests for variances to the urban form front yard setback regulations of up to 10.75’ The board imposed the following condition: compliance with the submitted site plan is required. The case report stated that the

requests were made in conjunction with constructing and maintaining an approximately 400 square foot 68' high sign "structure" that would not comply with the required 35' front yard setback for the portion of it above 45' in height along Blackwell Street and the I-75/North Central Expressway service road. It was noted that the site was developed as a mixed use development (Park Lane).

2. BDA 089-125, Property at 8070 Park Lane (the subject site)

On December 14, 2009, the Board of Adjustment Panel C granted a request for a special exception to the tree preservation regulations requested in conjunction with not fully mitigating protected trees removed on a site that is currently being developed with a mixed use office/residential/dining/shopping project (Park Lane). The board imposed the following condition: All protected trees, as defined by Article X that remain on the Property following the date of the hearing, are considered to be protected and subject to the Article X tree preservation ordinance. Any protected tree that is determined to be removed, based on conditions as defined in Article X, must be subject to replacement.

3. BDA067-052, Property at 8070 Park Lane (the subject site)

On May 14, 2007, the Board of Adjustment Panel C granted a request for a special exception to the off-street parking regulations of 374 spaces (or 5.67% of the required off-street parking) and imposed the following conditions: The special exception shall automatically and immediately terminate if and when the office uses on the site are changed or discontinued to have less than 125,000 square feet of office use; and the applicant or property owner must submit a parking analysis of the site to the Department of Development Services engineer no later than December 31, 2011. Should the parking analysis show any parking deficiency, the applicant or property owner must immediately mitigate that deficiency as may be agreed between the

applicant or property owner and the Department of Development Services. The case report stated that the request was made in conjunction with developing a 33-acre site with mixed-uses.

Timeline:

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

May 15, 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."

May 15, 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 29th deadline to submit additional evidence for staff to factor into their analysis; and the June 7th 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.

June 4, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June 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.

June 17, 2013: The Board of Adjustment Panel C conducted a public hearing on this application. The Board held the request under advisement until

August 19, 2013 in order for staff to attempt to obtain a five member panel that could hear the application on this date.

June 25, 2013: The Board Administrator sent a letter to the applicant that noted the decision of the panel, the July 31st deadline to submit any additional evidence for staff to factor into their analysis; and the August 9th deadline to submit additional evidence to be incorporated into the Board's docket materials.

July 5, 2013: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date that the panel that will consider the application; the July 31st deadline to submit additional evidence for staff to factor into their analysis; and the August 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 request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

August 1, 2013: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application, and beyond the materials that were part of the record at the June 17th public hearing (see Attachment A).

August 6, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Interim Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Sustainable Development and Construction Department Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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 80' high mixed use (retail/restaurant/office) structure with an approximately 32,000 square foot building footprint that does not comply with the required 35' front yard setback (or additional 20' setback to the required 15' front yard setback) for that portion of

the structure above 45' in height along the I-75/North Central Expressway service road. The site is developed as a mixed use development (Park Lane).

- Development on lots zoned MU-3 are required to provide a 15' front yard setback and an additional 20' setback for any portion of a structure above 45' in height.
- The applicant has submitted an overall site plan (that includes a "detail plan" and "site section" document indicating the portion of the proposed structure above 45' in height that is located as close as 15' 6" from the site's front property line along the I-75/North Central Expressway service road but as much as 19' 6" into the 35' front yard setback *for the portion of a structure over 45' in height*).
- The submitted "detail plan" denotes a hatched area that is the building area within the urban form setback; with average grade being about 579' with a new proposed tower height of approximately 658'.
- The applicant has submitted a "site section" document representing how the upper two stories of the proposed 5 story structure encroaches into the additional 20' front yard setback for the portion of the structure above 45' in height.
- The applicant has submitted a document stating that the area that is proposed to encroach into the urban form setback is approximately 4 percent of the building square footage.
- Staff has interpreted that the additional 20' setback provision for structures or portions of structures higher than 45' in height was enacted to discourage a canyon effect that a structure may create once it exceeds a specific height, and that this additional front yard setback was enacted to ensure openness, light, and airflow between tower structures.
- According to the applicant, about 4 percent (or about 6,500 square feet) of the total area of the structure (approximately 160,000 square feet) encroaches into the urban form setback. The applicant states that there are 5 floors at approximately 32,000 each where portions of the 2 upper floors that intrude into the urban form setback.
- The subject site is somewhat sloped, slightly irregular in shape, and, according to the application, 33.32 acres in area. The site is zoned MU-3(SAH). The site encompasses an entire block whereby given this and its zoning, the site has 4 front yard setbacks.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the urban form front yard setback requested to construct and maintain an approximately 80' high structure 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 MU-3 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 MU-3 zoning classification.

- If the Board were to grant the urban form front yard variance request of up to 19' 6", imposing a condition whereby the applicant must comply with the submitted site plan and site section document, the structure would be limited to what is shown on these documents – a structure that complies with setbacks 45' in height and below, but where 35' of the structure proposed to exceed 45' in height would be allowed to be located in the additional 20' setback along the I-75/North Central Expressway service road.

***Member Robert Agnich recused himself and did not hear or vote on this matter.**

BOARD OF ADJUSTMENT ACTION: JUNE 17, 2013

APPEARING IN FAVOR: Barry Knight, 2728N. Harwood, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION:**Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 123-054**, hold this matter under advisement until **August 19, 2013**.

SECONDED: **Coulter**

AYES: 4–Richardson, Maten, Coulter, Lewis

NAYS: 0–

MOTION PASSED: 4– 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: AUGUST 19, 2013

APPEARING IN FAVOR: Tommy Mann, Winstead Bldg., Dallas, TX
Sandy Spurgin, 8080 Park Lane, Dallas, TX

APPEARING IN OPPOSITON: No one

MOTION #1: **Richard**

I move that the Board of Adjustment, in Appeal No. **BDA 123-054**, on application of Colesen C. Evans, **grant** a 19 foot, 6 inch variance to the urban form front yard setback regulations, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. 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 and site section document is required.

SECONDED: **Coulter**

AYES: 3– Coulter, Richard, Carreon

NAYS: 2 – Richardson, Maten,

MOTION FAILED: 3– 2

MOTION #2: Maten

I move that the Board of Adjustment, in Appeal No. **BDA 123-054**, on application of Colesen C. Evans, **deny** the variance to the urban form front yard setback regulations **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: Richardson

AYES: 2– Richardson, Maten

NAYS: 3 –Coulter, Richard, Carreon

MOTION FAILED: 2– 3

MOTION #3: Coulter

I move that the Board of Adjustment, in Appeal No. **BDA 123-054**, on application of Colesen C. Evans, hold this matter under advisement until **September 16, 2013**.

SECONDED: Richard

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

NAYS: 0 –

MOTION PASSED: 5– 0(unanimously)

FILE NUMBER: BDA 123-057

BUILDING OFFICIAL’S REPORT: Application of Jim Tusing, represented by Bryan M. Burger, for a variance to the off-street parking regulations at 3826 Lemmon Avenue. This property is more fully described as Lot 6A, Block Q/1318 and is zoned PD-193 (GR), which requires off-street parking to be provided. The applicant proposes to construct and maintain a structure for a restaurant with drive-in or drive-through service use and provide 39 of the required 46 parking spaces, which will require a variance to the off-street parking regulations of 7 spaces.

LOCATION: 3826 Lemmon Avenue

APPLICANT: Jim Tusing
Represented by Bryan M. Burger

August 19, 2013 Public Hearing Notes:

- The Board Administrator circulated an August 13th email from the applicant's representative requesting that the board deny the application without prejudice.

REQUEST:

A variance to the off-street parking regulations of 7 spaces is requested in conjunction with constructing and maintaining a 300 square foot building expansion and adding a drive-through lane to an existing approximately 4,300 square foot restaurant use (Panera Bread) where the applicant proposes to provide 39 (or 85 percent) of the required 46 required off-street parking spaces.

STANDARD FOR A VARIANCE:

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

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

STAFF RECOMMENDATION:

Denial

Rationale:

- The Sustainable Development and Construction Department Engineering Division Assistant Director recommends that this request be denied.
- In addition, staff was unable to conclude how the parcel/subject site differs from other parcels of land by being of such restrictive area, shape, or slope that it cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD 193 (GR) zoning classification. The size, shape, and slope of the flat, rectangular, approximately ½ acre subject site have not precluded the applicant/owner from developing it with a restaurant use without drive-in service use.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	PD 193 (GR) (Planned Development District, General retail)
<u>North:</u>	PD 193 (MF-2) (Planned Development District, Multifamily)
<u>South:</u>	PD 193 (GR) (Planned Development District, General retail)
<u>East:</u>	PD 193 (GR) (Planned Development District, General retail)
<u>West:</u>	PD 193 (GR) (Planned Development District, General retail)

Land Use:

The subject site is developed with a “restaurant without drive-in or drive-through service” use (Panera Bread). The area to the north is developed with residential uses; and the areas to east, south, and west are developed mostly as retail uses.

Zoning/BDA History:

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

Timeline:

- March 29, 2013: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- May 15, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- May 15, 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 May 29th deadline to submit additional evidence for staff to factor into their analysis; and the June 7th 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.
- June 4, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June 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.

- June 7, 2013: The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked "Has no objections."
- June 17, 2013: The Board of Adjustment Panel C conducted a public hearing on this application where at this time The Board Administrator circulated a revised review comment sheet from Sustainable Development and Construction Department Engineering Division Assistant Director marked "Recommends that this be denied" to the Board at the briefing. This revised review comment sheet made the additional notation: "Proposed drive through would only increase the already high level of congestion in the parking lot. Observed take out volume did not agree with the application." The Board held the request under advisement until August 19, 2013, per the request of the applicant.
- June 25, 2013: The Board Administrator sent a letter to the applicant that noted the decision of the panel, the July 31st deadline to submit any additional evidence for staff to factor into their analysis; and the August 9th deadline to submit additional evidence to be incorporated into the Board's docket materials.
- July 5, 2013: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date that the panel that will consider the application; the July 31st deadline to submit additional evidence for staff to factor into their analysis; and the August 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 request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- August 6, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Interim Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Sustainable Development and Construction Department Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

No additional review comment sheets with comments were submitted in conjunction with this application however the Sustainable Development and Construction Department Engineering Division Assistant Director informed the Board Administrator that his comments of June 14th had not changed.

GENERAL FACTS/ STAFF ANALYSIS:

- This request focuses on constructing and maintaining a 300 square foot building expansion and adding a drive-through lane to an existing approximately 4,300 square foot restaurant use (Panera Bread) where the applicant proposes to provide 39 (or 85 percent) of the required 46 required off-street parking spaces.
- The subject site is zoned PD 193 (GR). PD 193 states that the parking requirement for “restaurant” use to be one space per 100 square feet of floor area.
- Dallas Development Code Section 51A-4.311(a)(1) states that the Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces 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; and that the maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
- However, Dallas Development Code Section 51A-311(a)(6) states that the Board of Adjustment *shall not* grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
 - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
 - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.
- Therefore, because PD 193 does not make references to the existing off-street parking regulations in Chapter 51 or Chapter 51(A), the applicant may only apply for a *variance* and only the variance standard applies on this request to reduce the off-street parking regulations for restaurant use in PD 193 even though the reduction request is 15 percent of the required off-street parking.
- A site plan has been submitted that indicates a building area of 4,613 square feet and a provision of 39 off-street parking spaces.
- The site is flat, rectangular in shape, and according to the application, is 0.55 acres (or approximately 24,000 square feet) in area. The site is zoned PD 193 (GR). The corner property with two street frontages has two front yard setbacks as any corner property with two street frontages would that is not zoned agricultural, single family, or duplex.

- DCAD records indicate that the improvements at 3826 Lemmon are a “restaurant” with 3,919 square feet built in 2004.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the off-street parking regulations of 7 spaces will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site (that differs from other parcels of land by being of such a restrictive area, shape, or slope) that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD 193 (GR) zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the PD 193 (GR) zoning classification.
- The Sustainable Development and Construction Department Engineering Division Assistant Director had originally submitted a review comment sheet marked “Has no objections.” But on June 14th, he submitted a revised review comment sheet marked “Recommends that this be denied” to the Board at the briefing. This revised review comment sheet made the additional notation: “Proposed drive through would only increase the already high level of congestion in the parking lot. Observed take out volume did not agree with the application.”
- No additional written documentation has been submitted by the applicant beyond what was included in the June 17th docket.

BOARD OF ADJUSTMENT ACTION: JUNE 17, 2013

APPEARING IN FAVOR: Bryan Burger, 17103 Preston Dr, Ste 180N, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Lewis

I move that the Board of Adjustment, in Appeal No. **BDA 123-057**, hold this matter under advisement until **August 19, 2013**.

SECONDED: Maten

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: JUNE 17, 2013

APPEARING IN FAVOR: Bryan Burger, 17103 Preston Dr, Ste 180N, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Lewis**

I move that the Board of Adjustment, in Appeal No. **BDA 123-057**, hold this matter under advisement until **August 19, 2013**.

SECONDED: **Maten**

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: AUGUST 19, 2013

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 123-057**, on application of Jim Tusing, represented by Bryan M. Burger, **deny** the requested off-street parking variance **without prejudice**.

SECONDED: **Coulter**

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

MOTION: **Maten**

I move to adjourn this meeting.

SECONDED: **Richard**

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

NAYS: 0 -

MOTION PASSED: 5 – 0 (Unanimously)

:00 P. M. - Board Meeting adjourned for **August 19, 2013**.

CHAIRPERSON

BOARD ADMINISTRATOR

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