

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN AUDITORIUM
MONDAY, SEPTEMBER 15, 2014**

MEMBERS PRESENT AT BRIEFING: Bruce Richardson, Chair, Ross Coulter, regular member, Joe Carreon, regular member, Peter Schulte, regular member and Marla Beikman, regular member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Bruce Richardson, Chair, Ross Coulter, regular member, Joe Carreon, regular member, Peter Schulte, regular member and Marla Beikman, regular member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Jamilah Way, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Ali Hatefi, Engineer, Phil Erwin, Chief Arborist, Danielle Jimenez, Planner, Neva Dean, Interim Asst. Director and Donna Moorman, Chief Planner, and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator and Acting Board Secretary, Jamilah Way, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Ali Hatefi, Engineer, Phil Erwin, Chief Arborist, Danielle Jimenez, Planner, and Donna Moorman, Chief Planner, and Trena Law, Board Secretary

11:03 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **September 15, 2014** docket.

1:00 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.

FILE NUMBER: BDA 134-079

BUILDING OFFICIAL'S REPORT: Application of Harvey Wright for a variance to the front yard setback regulations at 2662 Sutton Street. This property is more fully described as Lot 1, Block 15/1841, and is zoned PD595 (R-5(A)), which requires a front yard setback of 20 feet. The applicant proposes to construct and/or maintain a structure and provide an 11 foot front yard setback, which will require a 9 foot variance to the front yard setback regulations.

LOCATION: 2662 Sutton Street

APPLICANT: Harvey Wright

REQUESTS:

Requests for variances to the front yard setback regulations of up to 9' are made to maintain a porch and ramp structures, part or all of which are located in the site's 20' Sutton Street front yard setback, and to maintain single family home and porch structures, part of which are located in the site's 20' Spring Street front yard setback.

STANDARD FOR A VARIANCE:

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

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

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The approximately 3,900 square foot subject site is unique and different from most lots zoned PD 595 (R-5) in that:
 - 1) it is a corner lot with a restrictive area due to its size/width and its two front yard setbacks, and
 - 2) its total area is approximately 1,100 square feet less than other lots in this zoning district with 5,000 square feet.

The atypical two front yard setbacks on the approximately 3,900 square foot subject site preclude the applicant from developing it in a manner commensurate with development on other similarly zoned PD 595 (R-5) properties with the typical one front yard setback and with 5,000 square feet.

- The development on the property is a one-story single family home structure with an approximately 1,200 square foot building footprint that appears to of a size similar to the others in the zoning district.
- The subject site has a 25’ width for development once a 20’ front yard setback is accounted for on the southeast and a 5’ side yard setback is accounted for on the northwest of the 50’ wide subject site. If this PD 595 (R-5) zoned property were not a corner lot with two front yard setbacks, there would be a 40’ width for development once two 5’ side yard setbacks are accounted for on this 50’ wide property.

BACKGROUND INFORMATION:

Zoning:

- Site: PD 595 (R-5) (Planned Development, Single family district 5,000 square feet)
- North: PD 595 (R-5) (Planned Development, Single family district 5,000 square feet)
- South: PD 595 (R-5) (Planned Development, Single family district 5,000 square feet)
- East: PD 595 (R-5) (Planned Development, Single family district 5,000 square feet)
- West: PD 595 (R-5) (Planned Development, Single family district 5,000 square feet)

Land Use:

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on maintaining a porch and ramp structures, part or all of which are located in the site's 20' Sutton Street front yard setback, and maintaining a single family home and porch structures, part of which are located in the site's 20' Spring Street front yard setback.
- Structures on lots zoned PD 595 (R-5) are required to provide a minimum front yard setback of 20'.
- The subject site is located at the north corner of Sutton Street and Spring Street. Regardless of how the existing single-family structure is oriented to front Sutton Street and side to Spring Street, the subject site has two 20' front yard setbacks along both streets. The site has a 20' front yard setback along Sutton Street, 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 20' front yard setback along Spring Street, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where only a 5' setback is required. But the site's Sutton Street frontage is side yard treated as a front yard setback nonetheless to maintain the continuity of the established front yard setback established by the vacant lot to the northeast zoned PD 595 (R-5) that fronts/is oriented southeastward towards Spring Street.
- The applicant is aware of the fact that the subject site has a 25' platted building line along Sutton Street in which the existing single family home encroaches into, and that in addition to obtaining a variance to the front yard setback regulations from the Board of Adjustment, he will be required to file an application to the City Plan Commission to remove the platted building line through the re-plat process.
- A scaled site plan has been submitted indicating that a portion of a porch structure and a ramp structure attached to the single family home on the subject site is located as 11' from the Sutton Street front property line or 9' into this 20' front yard setback. The submitted site plan indicates a portion of the single family home structure is located 15' 3" from the Spring Street front property line or 4' 9" into this 20' front yard setback.
- According to calculations taken by the Board Administrator from the submitted site plan, approximately half of the approximately 200 square foot porch structure and the entire approximately 50 square foot ramp structure is located in the site's 20' Sutton Street front yard setback; and that approximately 200 square feet (or approximately 16 percent) of the approximately 1,200 square foot single family home is located in the Spring Street front yard setback.
- According to DCAD records, the "main improvement" at 2662 Sutton Street is a structure with 1,300 square feet of living/total area built in 1925. (No additional improvements are noted at this address).
- The applicant has informed the Board Administrator that the porch that he seeks variance for replaced on that had been on the site for decades and that was most likely a nonconforming structure. But the Dallas Development Code states that the right to rebuild a nonconforming structure ceases if the structure is destroyed by the intentional act of the owner or the owner's agent.

- The subject site is flat, virtually rectangular in shape, (approximately 50' x 80'), and according to the submitted site plan 3,884 square feet in area. The site is zoned PD 595 (R-5) where lots are typically 5,000 square feet in area, and the site has two 20' front yard setbacks; and two 5' side yard setbacks when most residentially-zoned lots have one front yard setback, two side yard setbacks, and one rear yard setback.
- The site has an approximately 25' width for development once a 20' front yard and a 5' side yard setback is accounted for on the approximately 50' wide subject site. Other lots of this width in this zoning district with one front yard, two side yards, and one rear yard of the same width would have a 40' width for development.
- The applicant has the burden of proof in establishing the following:
 - That granting the variances to the Sutton Street and Spring 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 variances are 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 (R-5) zoning classification.
 - The variances 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 595 (R-5) zoning classification.
- If the Board were to grant the variance requests, and impose the submitted site plan as a condition, the structures in the front yard setbacks would be limited to what is shown on this document– which in this case are structures located as close as 11' from the Sutton Street front property line (or 9' into this 20' front yard setback) and 15' 3" from the Spring Street front property line (or 4' 9" into this 20' front yard setback).
- Note that granting the requested variances to the front yard setback regulations and imposing the submitted site plan as a condition will not provide any relief to existing or proposed features on the site that are not compliant with fence height or visual obstruction regulations.

Timeline:

- June 25, 2014: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- August 14, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- August 15, 2014: 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 August 27th deadline to submit additional evidence for staff to factor into their analysis; and the September 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.

August 21, 2014:

The Board Administrator emailed the applicant the following:

- notice that his application to the board of adjustment was for a variance to the front yard setback regulations on his property that has a front yard setback on Sutton Street and a front yard setback on Spring Street;
- notice that while it appeared that there was a fence higher than 4' in the site's Spring Street front yard (see attached photo) in his field visit last week, the application as submitted does not indicate any fence in this location, and will not provide any relief for any fence located in a front yard setback that is higher than 4 feet in a front yard setback;
- a request for him to touch base no later than August 22nd if for any reason he feels that he would need to add another request to this application to address any fence in noncompliance with the fence height regulations that was attached; and
- notice that the discovery of any additional appeal needed other than front yard variance request would result in postponement of the appeal from September until the panel's next regularly scheduled public hearing.

September 2, 2014:

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

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

BOARD OF ADJUSTMENT ACTION: September 15, 2014

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Schulte

I move that the Board of Adjustment grant application **BDA 134-079** 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: Beikman

AYES: 5 – Bruce, Coulter, Carreon, Schulte, Beikman

NAYS: 0 –

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 134-089

BUILDING OFFICIAL’S REPORT: Application of John L. Bourret, represented by Amy J. Bourret, for a special exception to the fence height regulations at 3706 Duchess Trail. This property is more fully described as Lot 1, Block N/6412, and is zoned R-16(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and/or maintain a 9 foot high fence, which will require a 5 foot special exception to the fence height regulations.

LOCATION: 3706 Duchess Trail

APPLICANT: John L. Bourret
Represented by Amy J. Bourret

REQUEST:

A request for a special exception to the fence height regulations of 5’ is made to maintain a solid cedar wood fence that reaches 9’ in height (given grade changes on the site) and a 7’ 3” high gate in the one of the site’s two required front yards (Marsh Lane) on a site that is developed with a 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.

BACKGROUND INFORMATION:

Zoning:

Site: R-16(A) (Single family district 16,000 square feet)
North: R-16(A) (Single family district 16,000 square feet)
South: R-16(A) (Single family district 16,000 square feet)
East: R-16(A) (Single family district 16,000 square feet)
West: R-16(A) (Single family district 16,000 square feet)

Land Use:

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on maintaining a solid cedar wood fence that reaches 9' in height (given grade changes on the site) and a 7' 3" high gate in the one of the site's two required front yards (Marsh Lane) on a site that is developed with a single family home.
- 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 site is located at the southeast corner of Duchess Trail and Marsh Lane. Regardless of how the home on the site is oriented to front northward to Duchess Trail and to side westward onto Marsh Lane, the site has a 15' required front yard along Marsh Lane, the shorter of the two frontages by approximately 3 feet, which is always deemed the front yard setback on a corner lot in a single-family zoning district. The site also has a 30' required front yard along Duchess Trail, the longer of

the two frontages of this corner lot, which is typically regarded as a side yard where a 9' high fence is allowed by right. But the site's Duchess Trail frontage is a side yard treated as a front yard setback nonetheless to maintain the continuity of the established front yard setback established by the lots developed with single family homes east of the site that front/are oriented northward towards Duchess Trail.

- The applicant's request in this application is only to maintain fence higher than 4' in the site's front yard setback on Marsh Lane – a setback that functions as is side yard but is a front yard nonetheless because it is 3' shorter than the site's Duchess Trail frontage. No part of the application is made to address any fence in the site's Duchess Trail required front yard.
- The applicant has submitted a site plan and elevations of the proposal in the front yard setback with notations indicating that the fence reaches a maximum height of 9'.
- The following additional information was gleaned from the submitted site plan:
 - The proposal is represented as being approximately 85' in length parallel to the Marsh Lane and approximately 13' perpendicular to Marsh Lane on the north and south sides of the site in this front yard setback.
 - The proposal is represented as being located about 2' from the Marsh Lane front property line or about 12' from the Marsh Lane pavement line.
- The proposal/existing fence is located across from two single family homes, neither of which have fences in their front yard setbacks.
- The Board Administrator conducted a field visit of the site and surrounding area and noted one other fence that appeared to be above 4' in height and located in a front yard setback - an approximately 6' high solid wood fence located immediately south of the subject site.
- As of September 8, 2014, no letters have been submitted in support of or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 5' will not adversely affect neighboring property.
- Granting this special exception of 5' with a condition imposed that the applicant complies with the submitted site plan and elevations would require the proposal exceeding 4' in height in the Marsh Lane required front yard to be maintained in the location and of the heights and materials as shown on these documents.

Timeline:

July 22, 2014: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

August 14, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

August 15, 2014: 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 August 27th deadline to submit additional evidence for staff to factor into their analysis; and the September 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.

September 2, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Sustainable Development and Construction Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: September 15, 2014

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Schulte**

I move that the Board of Adjustment grant application **BDA 134-089** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: **Beikman**

AYES: 5 – Bruce, Coulter, Carreon, Schulte, Beikman

NAYS: 0 –

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 134-059

BUILDING OFFICIAL'S REPORT: Application of John Moncure Henderson, IV for variances to the front and side yard setback regulations, and a variance to the off-street parking regulations at 2114 Clements Street. This property is more fully described as a part of Lot 5, Block 3/2097, and is zoned R-7.5(A), which requires a front yard setback of 25 feet, a side yard setback of 5 feet, and for a parking space to be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces or can be entered directly from the street. The applicant proposes to construct/maintain a structure and provide a 12 foot front yard setback, which will require a 13 foot variance to the front yard setback regulations, provide a 1 foot 3 inch side yard setback, which will require a 3 foot 9 inch variance to the side yard setback regulations, and to locate/maintain an enclosed parking space that faces and can be entered directly from the street at a distance of 13 feet, which will require a variance of 7 feet to the off-street parking regulations.

LOCATION: 2114 Clements Street

APPLICANT: John Moncure Henderson, IV

REQUESTS:

The following requests were made in conjunction with constructing and maintaining a two-story (with finished attic) single family home structure on a site that is currently developed with a vacant one-story nonconforming single family structure/use that the applicant had intended to demolish:

1. A variance to the front yard setback regulations of 13' had been requested as the proposed structure (roof eave) would be located 12' from the site's front property line or 13' into the required 25' front yard setback.
2. A variance to the side yard setback regulations of 3' 9" had been requested as the proposed structure and roof eaves would be located as close as 1' 3" from the site's southern side property line or 3' 9" into this required 5 side yard setback.
3. A variance to the off-street parking regulations of 7' had been requested as the proposed home would have a parking space enclosed in a proposed attached garage that would be located 13' from the front property/right-of-way line or 7' into the required 20' distance from this street right-of-way.

STANDARD FOR A VARIANCE:

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

ORIGINAL STAFF RECOMMENDATION (front and side yard setbacks):

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff had concluded that the subject site is unique and different from most lots zoned R-7.5(A) in that it is only approximately 2,300 square feet in area or about 5,000 square feet less than the area of most lots in the R-7.5(A) zoning district that have 7,500 square feet.
- Staff had concluded that the applicant had provided information showing how his proposed development on this site (a single family home with about 2,300 square feet of living and garage space) was commensurate with other developments found on similarly zoned properties with an average approximately 2,900 square feet of living and garage space.
- Staff had concluded that granting the variances did not appear to be contrary to public interest in that the proposed single family home would replace an existing nonconforming single family home that is noncompliant with front and side yard setbacks; and as it relates to the front yard variance request, the fact that the subject site was the only lot in its blockface between Richmond Avenue and Prospect Street with a front yard in which to maintain.

ORIGINAL STAFF RECOMMENDATION (off-street parking variance):

Approval, subject to the following conditions:

1. Compliance with the submitted site plan is required.
2. An automatic garage door must be installed and maintained in working order at all times.
3. At no time may the area in front of the garage be utilized for parking of vehicles.

Rationale:

- Staff had concluded that the subject site was unique and different from most lots zoned R-7.5(A) in that it is only approximately 2,300 square feet in area or about 5,000 square feet less than the area of most lots in the R-7.5(A) zoning district that have 7,500 square feet.

- Staff had concluded that the applicant had provided information showing how his proposed development on this site (a single family home with about 2,300 square feet of living and garage space) was commensurate with other developments found on similarly zoned properties with an average approximately 2,900 square feet of living and garage space.
- Staff had concluded that granting this variance would not appear to be contrary to public interest in that Sustainable Development and Construction Department Project Engineer had no objections if the Board imposed the staff suggested conditions.

REVISED/UPDATED STAFF RECOMMENDATION (all variances):

Denial without prejudice

Rationale:

- Staff supports the applicant’s request of September 5th for the Board to deny the variances without prejudice. If the board were to deny the variance requests **without** prejudice, the applicant/or anyone could refile a new application on this property at any time, as opposed to if the board were to deny the variance requests **with** prejudice where the applicant or anyone would be required to wait two years to refile an new application on this property.

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: CD 14 (Conservation District)
East: R-7.5(A) (Single family district 7,500 square feet)
West: R-7.5(A) (Single family district 7,500 square feet)

Land Use:

The subject site is developed with a vacant one-story nonconforming single family home/use. The areas to the north, south, east, and west are developed with single family uses.

Zoning/BDA History:

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| <ol style="list-style-type: none"> 1. BDA 067-151, Property at 6141 Prospect Avenue (the lot immediately south of the subject site) | <p>On November 12, 2007, the Board of Adjustment Panel C granted a variance to the front yard setback regulations of 19'. The board imposed the following condition: compliance with the submitted site plan is required. The case report stated that the</p> |
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request was made in conjunction with constructing and maintaining a single family home structure in the site's Clements Street 25' front yard setback.

GENERAL FACTS/STAFF ANALYSIS (front yard variance):

- This request had focused on constructing and maintaining a two-story (with finished attic) single family structure, part of which would be located in the site's 25' front yard setback on a property developed with a vacant one-story nonconforming single family structure/use that the applicant intends to demolish.
- Structures on lots zoned R-7.5(A) are required to provide a minimum front yard setback of 25'.
- The applicant had submitted a site plan that showed a structure located 12' from the front property line or 13' into the 25' front yard setback.
- The applicant had also submitted a plan that denoted the building footprint of the existing vacant house on the property that appears to be a nonconforming/"grandfathered" structure in that it appears to be constructed in 1930's and that it is located 18.2' from the front property line or approximately 7' into the current 25' front yard setback. The Dallas Development Code states that "the right to rebuild a nonconforming structure ceases if the structure is destroyed by the intentional act of the owner or the owner's agent."
- The applicant had intended to destroy/demolish the existing nonconforming structure hence the request for variance to the front yard setback regulations to replace/relocate a new structure back into the 25' front yard setback.
- According to DCAD records, the "main improvement" for property at 2114 Clements Street is a structure built in 1933 with 440 square feet of living area and 440 square feet of total area; with "additional improvements" of a 200 square foot storage building.
- According to calculations taken from the submitted site plan by the Board Administrator, approximately 275 square feet (or 25 percent) of the total approximately 1,025 square foot building footprint was to be located in the 25' front yard setback.
- The subject site is rectangular in shape (approximately 60' x 38') and according to the application, is 0.052 acres (or approximately 2,300 square feet) in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- The applicant had the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations would not have been 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 would have been 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 have been 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 12’ from the front property line or 13’ into the 25’ front yard setback.
- On September 5, 2014, the applicant informed the Board Administrator that he requested that the Board deny his variances without prejudice.

GENERAL FACTS/STAFF ANALYSIS (side yard variance):

- This request had focused on constructing and maintaining a two-story (with finished attic) single family structure, part of which would be located in the site’s 5’ side yard setback on the south side of the property developed with a vacant one-story nonconforming single family structure/use that the applicant intends to demolish.
- Structures on lots zoned R-7.5(A) are required to provide a minimum side yard setback of 5’.
- The applicant had submitted a site plan that shows the proposed structure and roof eaves located as close as 1’ 3” from the site’s southern side property line or 3’ 9” into this required 5 side yard setback.
- The applicant had also submitted a plan that denoted the building footprint of the existing vacant house on the property that appears to be a nonconforming/ “grandfathered” structure in that it appears to be constructed in 1930’s and that it is located in the two 5’ side yard setbacks. The Dallas Development Code states that “the right to rebuild a nonconforming structure ceases if the structure is destroyed by the intentional act of the owner or the owner’s agent.”
- The applicant had intended to destroy/demolish the existing nonconforming structure hence the request for variances to the side yard setback regulations to replace/relocate a new structure back into the 5’ side yard setbacks.
- According to DCAD records, the “main improvement” for property at 2114 Clements Street is a structure built in 1933 with 440 square feet of living area and 440 square feet of total area; with “additional improvements” of a 200 square foot storage building.
- According to calculations taken from the submitted site plan by the Board Administrator, approximately 110 square feet (or 11 percent) of the total approximately 1,025 square foot building footprint is to be located in the southern 5’ side yard setback.
- The subject site is rectangular in shape (approximately 60’ x 38’) and according to the application, is 0.052 acres (or approximately 2,300 square feet) in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- The applicant had the burden of proof in establishing the following:
 - That granting the variance to the side yard setback regulations would not have been 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 would have been 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 have been 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 this variance request, and impose the submitted site plan as a condition, the structure in the southern side yard setback would be limited to what is shown on this document– which, in this case, is a structure to be located as close as 3’ 9” into this 5’ side yard setback.
- On September 5, 2014, the applicant informed the Board Administrator that he requested that the Board deny his variances without prejudice.

GENERAL FACTS/STAFF ANALYSIS (off-street parking variance):

- The request had focused on enclosing a parking space with a garage door in the proposed garage attached to the proposed single family home, where the parking space entered from Clements Street would be located less than the required 20’ distance from the street right-of-way line, more specifically where the enclosed parking space in the garage would be located 13’ from the right-of-way line or 7’ into the required 20’ distance from the Clements Street property line/right-of-way line.
- The Dallas Development Code states that a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in enclosed structure and if the space faces upon or can be entered directly from a street or alley.
- The submitted site plan and 1st floor plan had denoted the location of an enclosed parking space in the proposed structure 13.1’ from the Clements Street street right-of-way line or approximately 31’ from the projected pavement line.
- The subject site is rectangular in shape (approximately 60’ x 38’) and according to the application, is 0.052 acres (or approximately 2,300 square feet) in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- According to DCAD records, the “main improvement” for property at 2114 Clements Street is a structure built in 1933 with 440 square feet of living area and 440 square feet of total area; with “additional improvements” of a 200 square foot storage building.
- The Sustainable Development and Construction Department Project Engineer had submitted a review comment sheet regarding the applicant’s request marked “Has no objections if certain conditions are met” commenting “subject to provide 15’ of clearance between the face of the proposed garage and the property line instead of 13.1 feet as shown on the site plan.” But at the June 23rd briefing, he informed the Board at the briefing that he no longer felt that imposing the condition that a 15’

clearance between the face of the proposed garage and the property line must be provided and maintained was necessary as long as the Board imposed the condition that at no time may the area in front of the garage be utilized for parking of vehicles.

- The applicant had the burden of proof in establishing the following:
 - That granting the variance to the off-street parking regulations would not have been 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 would have been 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 have been 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, staff recommends imposing the following conditions:
 1. Compliance with the submitted site plan is required.
 2. An automatic garage door must be installed and maintained in working order at all times.
 3. At no time may the area in front of the garage be utilized for parking of vehicles. (These conditions are imposed to help assure that the variance will not be contrary to the public interest).
- On September 5, 2014, the applicant informed the Board Administrator that he requested that the Board deny his variances without prejudice.

Timeline:

- April 24, 2014: 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 19, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- May 19, 2014: 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 28th deadline to submit additional evidence for staff to factor into their analysis; and the June 13th 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.

June 6, 2014: The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded a revised Building Official's report to the Board Administrator on this application (see Attachment A).

June 10, 2014: 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 Interim Assistant Director of Sustainable Development and Construction, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, and the Assistant City Attorney to the Board.

June 10, 2014: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" commenting "subject to provide 15 feet of clearance between the face of the proposed garage and the property line instead of 13.1 feet as shown on the site plan."

June 23, 2014: The Board of Adjustment Panel C held a public hearing on this application where the Sustainable Development and Construction Department Senior Engineer informed the Board at the briefing that he no longer felt that imposing the condition that a 15' clearance between the face of the proposed garage and the property line must be provided and maintained was necessary as long as the Board imposed the condition that at no time may the area in front of the garage be utilized for parking of vehicles. The Board delayed action on this application until August 18, 2014.

June 24, 2014: The Board Administrator sent a letter to the applicant that noted the decision of the panel, the July 30th deadline to submit additional evidence for staff review and the August 8th deadline to submit additional evidence to be incorporated into the Board's docket materials.

August 5, 2014: 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 Chief Planner, the Assistant Building Official, the Board Administrator, Building Inspection Senior Plans Examiners/Development Code Specialists, the Sustainable Development and Construction Department Project

Engineer, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, and the Assistant City Attorney to the Board.

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

August 6, 2014: The applicant submitted additional information to staff beyond what was submitted with the original application and beyond what was submitted at the June 23rd public hearing (see Attachment B). Note that the applicant made no changes to his plans from what was submitted to the Board at the June 23rd public hearing.

August 18, 2014: The Board of Adjustment Panel C held a public hearing on this application and delayed action on this application per the request of the applicant until September 15, 2014.

August 22, 2014: The Board Administrator sent a letter to the applicant that noted the decision of the panel, the August 27th deadline to submit additional evidence for staff review and the September 5th deadline to submit additional evidence to be incorporated into the Board's docket materials.

September 2, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Sustainable Development and Construction Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, and the Assistant City Attorney to the Board.

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

September 5, 2014: The Board Administrator emailed the applicant a record of their phone conversation of that morning where the applicant informed the Board Administrator that he was requesting that the Board deny his variances without prejudice (see Attachment C).

BOARD OF ADJUSTMENT ACTION: June 23, 2014

APPEARING IN FAVOR: John M. Henderson, IV, 4512 Abbott Ave, Dallas, Texas

APPEARING IN OPPOSITION: Nina J. Denny, 6140 Richmond Ave, Dallas, Texas

MOTION: **Beikman**

I move that the Board of Adjustment in Appeal No. **BDA 134-059**, hold this matter under advisement until **August 18, 2014**.

SECONDED: **Schulte**

AYES: 4 – Richardson, Coulter, Schulte, Beikman

NAYS: 1 - Carreon

MOTION PASSED: 4 – 1

BOARD OF ADJUSTMENT ACTION: August 18, 2014

APPEARING IN FAVOR: John M. Henderson, IV, 4512 Abbott Ave, Dallas, Texas

APPEARING IN OPPOSITION: No one

MOTION #1: **Beikman**

I move that the Board of Adjustment in Appeal No. **BDA 134-059**, hold this matter under advisement until **September 15, 2014** but accept testimony from those who want to speak today.

SECONDED: **Schulte**

* **Motion was withdrawn by the maker on this matter.**

MOTION #2: **Schulte**

I move that the Board of Adjustment in Appeal No. **BDA 134-059**, hold this matter under advisement until **September 15, 2014**.

SECONDED: **Beikman**

AYES: –Coulter, Schulte, Beikman, Bartos

NAYS: 0

MOTION PASSED: 4 – 0

BOARD OF ADJUSTMENT ACTION: September 15, 2014

APPEARING IN FAVOR: Olive Tally, 6133 Prospect Ave., Dallas, TX
Paul Hardy, 6145 Prospect Ave., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: **Coulter**

I move that the Board of Adjustment grant application **BDA 134-059**, on application of John Moncure Henderson, IV **deny** the variance to the 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: Carreon

AYES: 5 – Bruce, Coulter, Carreon, Schulte, Beikman

NAYS: 0 –

MOTION PASSED: 5 – 0 (unanimously)

MOTION #2: Coulter

I move that the Board of Adjustment grant application **BDA 134-059**, on application of John Moncure Henderson, IV **deny** the variances to the side yard and off-street parking 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: Carreon

AYES: 5 – Bruce, Coulter, Carreon, Schulte, Beikman

NAYS: 0 –

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 134-065D

BUILDING OFFICIAL’S REPORT: Application of Ann Covington-Wilburn represented by Craig Barnes for a special exception to the landscape regulations at 3005 Fairmount Street. This property is more fully described as Lot 4, Block 9/944, and is zoned PD-193 (GR), which requires mandatory landscaping. The applicant proposes to construct a nonresidential structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 3005 Fairmount Street

APPLICANT: Ann Covington-Wilburn
Represented by Craig Barnes of Shield Engineering Group, PLLC

REQUEST:

A special exception to the landscape regulations is made to convert an existing residence into a twenty (20) space commercial parking lot, and not fully provide required landscaping.

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

Section 51P-193-126(a)(4) of the Dallas City Code specifies that the board may grant a special exception to the landscaping requirements of this section if, in the opinion of the

Board, the special exception will not compromise the spirit and intent of this section. When feasible, the Board shall require that the applicant submit and that the property comply with a landscape plan as a condition to granting the special exception.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted landscape plan is required.

Rationale:

- The City of Dallas Chief Arborist supports the applicant's request in that the submitted revised alternate landscape proposal meets the spirit and intent of the PD 193 landscape regulations.

BACKGROUND INFORMATION:

Site: PD 193 (GR) (Planned Development, General Retail)
North: PD 193 (GR) (Planned Development, General Retail) and PD 193, PDS 98
South: PD 193 (LC) (Planned Development, Light Commercial) and PD 193, PDS 39
East: PD 193 (GR) (Planned Development, General Retail)
West: PD 193 (GR) (Planned Development, General Retail), PD 193, PDS 93, and PD 193, PDS 15

Land Use:

The subject site is developed with a single family residential structure. The areas to the north, east, south, and west are developed with a mix of land 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.

GENERAL FACTS/ STAFF ANALYSIS:

- This request focuses on constructing and maintaining a new parking lot on an approximately 7,733.5 square foot lot, 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.

- Previously, the City of Dallas Chief Arborist had stated in a memo (see Attachment A) that the request in this case was triggered by new construction of a parking lot, and he noted that the site was deficient in meeting the landscape requirements in that the proposed plan did not fully comply with sidewalk, tree planting zone, and off-street parking and screening requirements.
- The Chief Arborist had also highlighted several factors considered in this case, including slope, an existing retaining wall, elevation, alignment of an existing sidewalk along the block face, plants proposed for the site, and existing trees within or on adjacent property boundaries.
- The Chief Arborist had supported the request because the applicant demonstrated that the submitted alternate landscape plan met the spirit and intent of the PD 193 regulations.
- During the August 18th public hearing, the Board voted to hold the application under advisement so that the applicant and representative could revisit the landscape plan and address issues brought forth during the meeting.
- On August 29, 2014, the applicant's engineer submitted a revised alternate landscape plan to the Building Inspection Senior Plans Examiner/Development Code Specialist.
- The City of Dallas Chief Arborist states in an updated memo (see Attachment B) that the amended landscape plan now "more properly demonstrate[s] the area of permeable pavement for the parking spaces," adjusts parking configuration, moves the desert willow trees closer to the street frontage, and slightly adjusts the location of plant materials.
- The Chief Arborist maintains a recommendation of approval for the proposed amended alternate landscape plan, as it still meets the spirit and intent of the PD 193 regulations.
- As of September 8, 2014, no letters have been submitted in support and 8 letters have been submitted in opposition to the request.
- The applicant has the burden of proof in establishing the following:
 - The special exception (where an alternate landscape plan has been submitted that is deficient in meeting the sidewalk and tree planting zone requirements of the PD 193 landscape regulations) will not compromise the spirit and intent of Section 51P-193-126: Landscape, streetscape, screening, and fencing standards".
- If the Board were to grant this request and impose the submitted alternate landscape plan as a condition, the site would be granted exception from full compliance to sidewalk, tree planting zone, and off-street parking and screening requirements of the landscape requirements of the Oak Lawn PD 193 landscape ordinance.

Timeline:

May 6, 2014: 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 15, 2014: The Interim Assistant Director of Sustainable Development and Construction, acting on behalf of the Board of Adjustment Secretary, randomly assigned this case to Board of Adjustment Panel C.
- July 17, 2014: The Board Planner emailed the following information to the applicant:
- an attachment that provided the public hearing date and panel that will consider the application; the July 30th deadline to submit additional evidence for staff to factor into their analysis; and the August 8th 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 5, 2014: 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 Chief Planner, the Assistant Building Official, the Board Administrator, Building Inspection Senior Plans Examiners/Development Code Specialists, the Sustainable Development and Construction Department Senior Engineer, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, and the Assistant City Attorney to the Board.
- August 7, 2014: The City of Dallas Chief Arborist submitted a memo regarding this application (see Attachment A).
- August 29, 2014: The applicant's engineer submitted a revised alternate landscape plan to the Building Inspection Senior Plans Examiner/Development Code Specialist.
- September 2, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Sustainable Development and Construction Chief Planner, the Assistant Building Official, the Board Administrator, Building Inspection Senior Plans Examiners/Development Code Specialists, the Sustainable Development and Construction Department Senior Engineer, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, and the Assistant City Attorney to the Board.
- September 3, 2014: The City of Dallas Chief Arborist submitted a new memo regarding this application (see Attachment B).

BOARD OF ADJUSTMENT ACTION: August 18, 2014

APPEARING IN FAVOR: Jon Kroehler, 4704 Waterford Dr., Ft, Worth, TX
Ann Covington Wilburn, 2601 Grandview Dr, Dallas, TX
Craig Wallace, 3608 Champion LN., Dallas, TX

APPEARING IN OPPOSITION: Jennifer Baker, 3019 Fairmount, Dallas, TX
Jeremy Burnell, 3015 Fairmount, Dallas, TX
Carol Moore, 3031 Fairmount, Dallas, TX
James French, 3001 Fairmount, Dallas, TX
Sheldon Nagish, 3013 Fairmount, Dallas, TX
Marc Kaminer, 3011 Fairmount, Dallas, TX

MOTION: **Schulte**

I move that the Board of Adjustment in request No. **BDA 134-065D**, hold this matter under advisement until **September 15, 2014**.

SECONDED: **Beikman**

AYES: 3– Coulter, Schulte, Beikman

NAYS: 1 – Bartos

MOTION PASSED: 3– 1

BOARD OF ADJUSTMENT ACTION: September 15, 2014

APPEARING IN FAVOR: Jon Kroehler, 4704 Waterford Dr., Ft, Worth, TX
Ann Covington Wilburn, 2601 Grandview Dr, Dallas, TX

APPEARING IN OPPOSITION: Marc Kaminer, 3011 Fairmount, Dallas, TX

MOTION: **Schulte**

I move that the Board of Adjustment, in Appeal No. **BDA 134-065D**, on application of Ann Covington-Wilburn, **grant** the request to provide an alternate landscape plan as a special exception to the landscape regulations in PD 193(GR) in the Dallas Development code because our evaluation of the property and the testimony shows that the special exception will not compromise the spirit and intent of the Oak Lawn Ordinance. I further move that the following conditions be imposed to further the purpose and intent of the Oak Lawn Ordinance:

- Compliance with the submitted revised alternate landscape plan is required.

SECONDED: **Coulter**

AYES: 4 – Bruce, Coulter, Carreon, Schulte

NAYS: 1 – Beikman

MOTION PASSED: 4 – 1

FILE NUMBER: BDA 134-084

BUILDING OFFICIAL'S REPORT: Application of Robert Baldwin for a variance to the off-street parking regulations at 4020 Gilbert Avenue. This property is more fully described as Lot 4A, Block29/1570, and is zoned PD193 (MF-2), which requires off-street parking to be provided. The applicant proposes to construct and maintain a structure and provide 40 of the required 48 off-street parking spaces which will require an 8 space variance to the off-street parking regulations.

LOCATION: 4020 Gilbert Avenue

APPLICANT: Robert Baldwin

September 15, 2014 Public Hearing Notes:

- The Board Administrator circulated a September 10th letter from the applicant to the board members at the briefing (see Attachment B). The applicant's letter requested that the Board deny his request without prejudice on the fact that he no longer wished to pursue the variance.

REQUEST:

A request for a variance to the off-street parking regulations of 8 spaces is made to construct and maintain a 24,000 square foot multifamily use/development, where the applicant proposes to provide 40 (or 83 percent) of the required 48 required off-street parking spaces on a site that is developed with a multifamily use that the applicant intends to demolish.

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 site is flat, rectangular in shape, and according to the application, 0.65 acres in area where none of these features/conditions preclude the applicant from developing the subject site in a manner commensurate with the development of other parcels of land in the same PD 193 (MF-2) zoning.
- The applicant has not substantiated how this variance for this specific use (multifamily) at its proposed size is not needed to relieve a self-created hardship. The features/conditions of this flat, rectangular-shaped site do not appear to restrict the applicant from developing it with a smaller sized development that could provide the number of off-street parking spaces required by code.
- Granting the variance appears to be contrary to public interest since the Sustainable Development and Construction Department Project Engineer has recommended that this request be denied based on his conclusion that there is not enough information from the applicant to justify the need for the proposed reduction.

BACKGROUND INFORMATION:

Site: PD 193 (MF-2) (Planned Development, Multifamily)
North: PD 193 (MF-2) (Planned Development, Multifamily)
South: PD 193 (MF-2) (Planned Development, Multifamily)
East: PD 193 (MF-2) (Planned Development, Multifamily)
West: PD 193 (MF-2) (Planned Development, Multifamily)

Land Use:

The subject site is developed a multifamily use that the applicant intends to demolish. The areas to the north, east, south, and west is developed with multifamily 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.

GENERAL FACTS/ STAFF ANALYSIS:

- The request focuses on constructing and maintaining a 24,000 square foot multifamily use/development, where the applicant proposes to provide 40 (or 83 percent) of the required 48 required off-street parking spaces on a site that is developed with a multifamily use that the applicant intends to demolish.
- The subject site is zoned PD 193 (MF-2) that requires the following off-street parking requirement:

- Multifamily: 1 space for each 500 square feet of dwelling unit floor area within the building site
- Dallas Development Code Section 51A-4.311(a)(1) states that the Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces 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 multifamily use in PD 193 even though the reduction request is 17 percent of the required off-street parking.
- The Sustainable Development and Construction Department Project Engineer has submitted a Review Comment Sheet marked “Recommends that this be denied” commenting “There is not enough information to justify the need for the proposed reduction.”
- The site is flat, rectangular in shape, and according to the application, 0.65 acres in area. The site is zoned PD 193 (MF-2).
- DCAD records indicate that the “improvements” at 4020 Gilbert is an “apartment” with 20,094 square feet built in 1972.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to off-street parking 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 PD193 (MF-2) 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 (LC) zoning classification.

- If the Board were to grant this request, the applicant would be required to provide 40 (or 83 percent) of the 48 off-street parking spaces required to construct and maintain a 24,000 square foot multifamily use on the subject site.

Timeline:

- June 25, 2014: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- August 14, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- August 15, 2014: 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 August 27th deadline to submit additional evidence for staff to factor into their analysis; and the September 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.
- September 2, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Sustainable Development and Construction Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, and the Assistant City Attorney to the Board.
- September 3, 2014: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Recommends that this be denied” commenting “There is not enough information to justify the need for the proposed reduction.”
- September 5, 2014: The applicant submitted additional documentation on this application beyond what was submitted with the original application and discussed at the September 2nd staff review team meeting (see Attachment A).

BOARD OF ADJUSTMENT ACTION: September 15, 2014

APPEARING IN FAVOR: None one

APPEARING IN OPPOSITION: No one

MOTION: Shulte

I move that the Board of Adjustment grant application **BDA 134-084**, on application of Robert Baldwin **deny** the special exception to the off-street parking regulations **without prejudice**, because our evaluation of the property and the testimony shows that the use warrants the number of off-street parking spaces required, and the special exception would not create a traffic hazard and increase traffic congestion on adjacent and nearby streets.

SECONDED: Beikman

AYES: 5 – Bruce, Coulter, Carreon, Schulte, Beikman

NAYS: 0 –

MOTION PASSED: 5 – 0 (unanimously)

MOTION: Coulter

I move to adjourn this meeting.

SECONDED: Schulte

AYES: 5 – Bruce, Coulter, Carreon, Schulte, Beikman

NAYS: 0 –

MOTION PASSED: 5 – 0 (unanimously)

1:42 P. M. - Board Meeting adjourned for **September 15, 2014.**

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.