

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM
MONDAY, SEPTEMBER, 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, Phil Erwin, Chief Arborist, Neva Dean, Interim Asst. Director 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, Phil Erwin, Chief Arborist, Neva Dean, Interim Asst. Director and Trena Law, Board Secretary

11:39 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **September 16, 2013** 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.

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel C August 19, 2013 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 16, 2013

MOTION: Maten

I move **approval** of the Monday, **August 19, 2013** public hearing minutes.

SECONDED: Coulter

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 123-091

BUILDING OFFICIAL’S REPORT: Application of Paul Brian Jankowski for variances to the front and side yard setback regulations at 2415 Laneri Avenue. This property is more fully described as the northern part of Lots 15 & 16, Block 7/1973 and is zoned R-7.5(A), which requires a front yard setback of 25 feet and requires a side yard setback of 5 feet. The applicant proposes to construct/maintain a structure and provide a 15 foot 6 inch front yard setback, which will require a 9 foot 6 inch variance to the front yard setback regulations, and to provide a 3 foot 3 inch side yard setback, which will require a 1 foot 9 inch variance to the side yard setback regulations.

LOCATION: 2415 Laneri Avenue

APPLICANT: Paul Brian Jankowski

REQUESTS:

The following appeals have been made in conjunction with maintaining a nonconforming single family home structure and adding a second floor/attic:

1. a variance to the front yard setback regulations of 9’ 6” is requested to remedy/address the nonconforming aspect of the existing nonconforming porch/stair structure attached to the nonconforming single family structure located 15’ 6” from the front property line or 9’ 6” into the 25’ front yard setback.
2. a variance to the front yard setback regulations of 8’ is requested to cover/align vertically over the existing nonconforming porch structure with a new roof structure attached to the nonconforming single family structure located 17’ from the front property line or 8’ into the site’s 25’ front yard setback.
3. a variance to the front yard setback regulations of approximately 3” is requested to remedy/address the nonconforming aspect of the existing nonconforming single

family home structure that is located approximately 24' 9" from the front property line or 3" into the 25' front yard setback.

4. a variance to the front yard setback regulations of approximately 3" is requested to vertically align over the existing nonconforming single family home structure with a 2nd floor addition located approximately 24' 9" from the front property line or 3" into the 25' front yard setback.
5. a variance to the side yard setback regulations of 1' 9" is requested to remedy/address the nonconforming aspect of the existing nonconforming single family home structure that is located 3' 3" from the site's southern side property line or 1' 9" into the site's 5' southern side yard setback.
6. a variance to the side yard setback regulations of 1' 9" is requested to construct and maintain a 2nd floor/attic addition that would align vertically over the nonconforming single family home structure located 3' 3" from the site's southern side property line or 1' 9" into the site's 5' southern side 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 lot's restrictive area (caused by the lot being 2,000 square feet less in area than most lots in the same R-7.5(A) zoning classification) precludes the applicant from developing it in a manner commensurate with other developments found on similarly-zoned R-7.5(A) lots that are of typical sized to the zoning district: 7,500 square feet in area.
- The applicant has provided documentation showing that the existing home with proposed addition will have approximately 3,000 square feet – a size that is smaller

in size that 11 other developments found in R-7.5(A) zoning, none with less than 4,000 square feet.

- Granting these requests do not appear to be contrary to public interest given that the variances are sought to align porch roof and a second floor addition over a nonconforming single family home structure where the original building footprint does not becoming more nonconforming to the front and side yard setbacks.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5 (A)(Single family district 7,500 square feet)
North: CD 15 (Conservation District)
South: R-7.5 (A)(Single family district 7,500 square feet)
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 single family home structure that appears to be nonconforming as to the front and side yard setback regulations. 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.

Timeline:

- July 22, 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.
- August 20, 2013: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- August 20, 2013: The Board Administrator contacted the applicant and shared the following information via email:
- an attachment that provided the public hearing date and panel that will consider the application; the August 28th deadline to submit additional evidence for staff to factor into their analysis; and the September 6th 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 23, 2013: The Board Administrator emailed the applicant the following information:

- code provisions related to nonconforming structures.

August 28, 2013: The applicant submitted documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

September 3, 2013: 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 Department Current Planning Division Interim Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

GENERAL FACTS/STAFF ANALYSIS (front yard variances):

- These requests focus on remedying/addressing the nonconforming aspect of the existing nonconforming porch/stair and single family home structures that are located in the 25’ front yard setback, and covering/aligning an addition vertically over these structures in the 25’ front yard setback.
- The existing single family home structure appears to be a nonconforming structure as to the front and side yard setback regulations because of the fact that (according to DCAD) it was built in 1922. The proposed structure/addition is to be added atop the existing structure in the front and side yard setbacks.
- Structures on lots zoned R-7.5(A) are required to provide a minimum front yard setback of 25’.
- A site plan has been submitted denoting a portion of the existing structure located as close as 15.6’ away from the front property line or as much as 9’ 6” into the 25’ front yard setback.
- The applicant has chosen to seek variances to the front yard setback regulations to remedy the nonconforming stair/porch/single family structures in the front yard setback and to allow the new construction/additions to the existing structures in the front yard setback.
- The code defines nonconforming structure as a structure that does not conform to the regulations of the code, but which was lawfully constructed under the regulations in force at the time of construction.
- According to DCAD records, the “main improvements” at 2415 Laneri Avenue is a structure built in 1922 with 1,162 square feet of living area and 1,162 square feet of

total area. According to DCAD records, there are no “additional improvements” at this address.

- The 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.
- It appears from calculations taken from the submitted site plan by the Board Administrator that the entire approximately 20 square foot stair structure, the entire approximately 230 square foot porch structure, and about 10 square feet (or approximately 1 percent) of the approximately 1,100 square foot building footprint is in the front yard setback.
- The subject site is flat, rectangular in shape, and according to the application, is approximately 5,000 square feet in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet.
- The applicant has provided information showing that the existing home with the added addition would have approximately 3,000 square feet where 11 other properties that he found in R-7.5(A) have not less than 4,000 square feet.
- The applicant states that granting the requested variances will not change the existing building footprint.
- The applicant has the burden of proof in establishing the following:
 - That granting the variances 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 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 R-7.5(A) 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 R-7.5(A) 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 setback would be limited to what is shown on this document– which are structures located as close as 15’ 6” from the front property line or as much as 9’ 6” into the 25’ front yard setback.

GENERAL FACTS/STAFF ANALYSIS (side yard variances):

- These requests focus on remedying/addressing the nonconforming aspect of the existing nonconforming single family home structure and aligning an addition vertically over this structure in the site’s southern 5’ side yard setback.
- The existing single family home structure appears to be a nonconforming structure as to the front and side yard setback regulations because of the fact that (according to DCAD) it was built in 1922. The proposed structure/addition is to be added atop the existing structure in the front and side yard setbacks.

- Structures on lots zoned R-7.5(A) are required to provide a minimum side yard setback of 5'.
- A site plan has been submitted denoting a portion of the existing structure located as close as 3' 3" away from the site's southern side property line or as much as 1' 9" into this 5' side yard setback.
- The applicant has chosen to seek variances to the front yard setback regulations to remedy the nonconforming stair/porch/single family structures in the front yard setback and to allow the new construction/additions to the existing structures in the front yard setback.
- The code defines nonconforming structure as a structure that does not conform to the regulations of the code, but which was lawfully constructed under the regulations in force at the time of construction.
- According to DCAD records, the "main improvements" at 2415 Laneri Avenue is a structure built in 1922 with 1,162 square feet of living area and 1,162 square feet of total area. According to DCAD records, there are no "additional improvements" at this address.
- The 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.
- It appears from calculations taken from the submitted site plan by the Board Administrator that about 60 square feet (or approximately 6 percent) of the approximately 1,100 square foot building footprint is in the side yard setback.
- The subject site is flat, rectangular in shape, and according to the application, is approximately 5,000 square feet in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet.
- The applicant has provided information showing that the existing home with the added addition would have approximately 3,000 square feet where 11 other properties that he found in R-7.5(A) have not less than 4,000 square feet.
- The applicant states that granting the requested variances will not change the existing building footprint.
- The applicant has the burden of proof in establishing the following:
 - That granting the variances 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 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 R-7.5(A) 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 R-7.5(A) zoning classification.
- If the Board were to grant the variance requests and impose the submitted site plan as a condition, the structures in the side yard setback would be limited to what is

shown on this document– which are structures located 3’ 3” from the site’s southern side property line or 1’ 9” into this 5’ side yard setback.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 16, 2013

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITON: No one

MOTION: **Coulter**

I move that the Board of Adjustment grant application **BDA 123-091** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: **Richard**

AYES: 5– Richardson, 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

September 16, 2013 Public Hearing Notes:

- The Board Administrator circulated a September 12th letter from the applicant requesting that the board continue this application until the Board’s October meeting given his client continues to work on its plans for the property.

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 US 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 US 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 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 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 were submitted in conjunction with this application.

August 19, 2013: The Board of Adjustment Panel C conducted a public hearing on this application. The Board held the request under advisement until September 16, 2013.

August 20, 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 August 28th deadline to submit additional evidence for staff to factor into their analysis; and the September 6th deadline to submit additional evidence to be incorporated into the Board's docket materials; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

September 3, 2013: 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 Department Current Planning Division Interim Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

No review comment sheets 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 US 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 US 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 US 75/North Central Expressway service road.
- No additional written documentation has been submitted by the applicant beyond what was included in the August 19th docket.

***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)

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 16, 2013

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITON: No one

MOTION: **Richardson**

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 **October 21, 2013**.

SECONDED: **Maten**

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 123-092

BUILDING OFFICIAL’S REPORT: Application of Mark Housewright for a variance to the front yard setback regulations at 5522 Maple Avenue. This property is more fully described as Lot 9, Block A/5708 and is zoned MU-3, which requires a front yard setback of 15 feet and an additional urban form setback of 20 feet for that portion of the structure above 45 feet in height. The applicant proposes to construct/maintain a structure with a building height of 51 feet and provide a 15 foot front yard setback, which will require a 20 foot variance to the front yard setback regulations for the portion of the structure over 45 feet in height.

LOCATION: 5522 Maple Avenue

APPLICANT: Mark Housewright

September 16, 2013 Public Hearing Notes:

- The Board Administrator circulated a September 12th letter from the applicant requesting that the board hold this case for one month given that an easement issue with DART has arisen which will require some negotiations between that agency and the prospective developer, and in addition, these discussions must consider the intent of the City Council-approved TIF and how easement decisions will affect those plans.

REQUEST:

A variance to the urban form front yard setback regulations of 20’ is requested in conjunction with constructing and maintaining an approximately 51’ high, 4-story high, structure in a proposed multifamily development (Alta Maple Station) that would be located within the required 35’ front yard setback for the portion of it above 45’ in height along Maple Avenue. The site is currently developed as an office/warehouse 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:

- (D) 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;
- (E) 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
- (F) 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:

Denial

Rationale:

- Granting this request does not appear to be contrary to public interest given that the variance request (if the submitted site plan and “overall elevations” document were imposed as conditions to this request) would allow only a 51’ high structure to encroach into the urban form setback – a structure only 6’ above the 45’ in height that triggers the additional 20’ setback. However, staff recommends denial of the request since the applicant has not addressed the remaining components of the variance standard.
- While the subject site is moderately sloped, the applicant has not provide documentation to show how this feature nor its area (at 2.2 acres) or shape (rectangular) preclude the applicant from developing it in a manner commensurate with the development of other parcels of land in the same MU-3 zoning.

BACKGROUND INFORMATION:

Site: MU-3 (Mixed Use) (Deed restricted)*
North: MU-3 (Mixed Use)
South: PD 862 (Planned Development)
East: IR (Industrial research)
West: MU-3 (Mixed Use)

- * Note that the applicant acknowledged in an email to the Board Administrator on August 26, 2013 of the deed restrictions on the property. The applicant stated that these deed restrictions that refer to height do not affect this application to the board since the applicant’s proposal in this application at approximately 51’ in height is significantly less than the 90 feet or seven stories.

Land Use:

The subject site is currently developed as an office/warehouse. The area to the north is developed as a rail line station; and the areas to the east, south, and west are development with mostly office and warehouse 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:

August 18, 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.

August 20, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

August 20, 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 August 28th deadline to submit additional evidence for staff to factor into their analysis; and the September 6th 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

August 27, 2013: The Building Inspection Senior Plans Examiner/Development Code Specialist submitted a revised Building Official's Report to the Board Administrator on this application (see Attachment A).

August 28, 2013: The applicant submitted documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment B).

September 3, 2013: 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 Department Current Planning Division Interim Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining an approximately 51' high structure in a proposed multifamily development (Alta Maple Station) 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 it above 45' in height along Maple Avenue. The site is developed with an office/warehouse use that the applicant intends to demolish.
- 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 a site plan indicating the portion of the proposed structure above 45' in height that is located as close as 15' from the site's front property line along Maple Avenue.
- The applicant has submitted an "overall elevations" document representing how a portion of the upper story of the 4th floor of the structure encroaches into the additional 20' front yard setback for the portion of the structure above 45' in height.
- The applicant emailed staff that only 6' of the fourth floor of the building is encroaching into the urban form front yard setback. The applicant stated that the total amount of this structure encroaching into the setback is 4,775 square feet (or approximately 3 percent) of its total 155,761 square feet.
- 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.
- The subject site is moderately-sloped, rectangular in shape, and, according to the application, 2.28 acres in area. The site is zoned MU-3.
- DCAD records indicate that the improvements at 5522 Maple Avenue are a "storage warehouse" with 50,052 square feet built in 1956.
- 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 51' 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 20' imposing a condition whereby the applicant must comply with the submitted site plan and "overall elevations" 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 6' of the structure proposed to exceed 45' in height would be allowed to be located in the additional 20' setback along the Maple Avenue.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 16, 2013

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITON: No one

MOTION: **Richardson**

I move that the Board of Adjustment, in Appeal No. **BDA 123-092**, on application of Colesen C. Evans, hold this matter under advisement until **October 21, 2013**.

SECONDED: **Maten**

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

MOTION: **Maten**

I move to adjourn this meeting.

SECONDED: **Coulter**

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

NAYS: 0 -

MOTION PASSED: 5 – 0 (Unanimously)

1:10 P. M. - Board Meeting adjourned for **September 16, 2013**.

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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

