

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
MONDAY, SEPTEMBER 17, 2012**

MEMBERS PRESENT AT BRIEFING: Bruce Richardson, Chair, Ross Coulter, regular member, Jim Gaspard, alternate member, and Danny Alan Scott alternate member

MEMBERS ABSENT FROM BRIEFING: Joel Maten, regular member and Bob Richard, regular member

MEMBERS PRESENT AT HEARING: Bruce Richardson, Chair, Ross Coulter, regular member, Jim Gaspard, alternate member, and Danny Alan Scott alternate member

MEMBERS ABSENT FROM HEARING: Joel Maten, regular member and Bob Richard, regular member

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Tammy Palomino, Asst. City Atty., Todd Duerksen, Development Code Specialist, Lloyd Denman, Building Official, David Cossum, Asst. Director and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Casey Burgess, Asst. City Atty., Todd Duerksen, Development Code Specialist, Lloyd Denman, Building Official, David Cossum, Asst. Director and Trena Law, Board Secretary

11:30 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **September 17, 2012** docket.

1:07 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 13, 2012 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 17, 2012

MOTION: Coulter

I move **approval** of the Monday, **August 13, 2012** public hearing minutes.

SECONDED: Gaspard

AYES: 4– Richardson, Coulter, Gaspard, Scott

NAYS: 0 –

MOTION PASSED: 4– 0 (unanimously)

FILE NUMBER: BDA 112-070

BUILDING OFFICIAL’S REPORT:

Application of Roger Albright for a special exception to the off-street parking regulations at 2422 N. Henderson Avenue. This property is more fully described as Lot 1A in City Block 1/1975 and is zoned PD-462 (Subdistrict 3), which requires off-street parking to be provided. The applicant proposes to construct/maintain a structure for a restaurant without drive-in or drive-through service use and provide 37 of the required 42 off-street parking spaces, which will require a special exception to the off-street parking regulations of 5 spaces.

LOCATION: 2422 N. Henderson Avenue

APPLICANT: Roger Albright

REQUEST:

- A special exception to the off-street parking regulations of 5 parking spaces (or a 12 percent reduction of the 42 off-street parking spaces that are required) is requested in conjunction with maintaining an approximately 4,200 square foot structure/restaurant (Jake’s). The applicant proposes to provide 37 (or 88 percent) of the required 42 off-street parking spaces in conjunction with maintaining this use with this square footage within or that is part of the existing structure.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds,

after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.

- 2) In determining whether to grant a special exception, the board shall consider the following factors:
 - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
 - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
 - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
 - (E) The availability of public transit and the likelihood of its use.
 - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
 - (A) Establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
 - (B) Impose restrictions on access to or from the subject property; or
 - (C) Impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
 - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
 - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The special exception shall automatically and immediately terminate if and when the restaurant without drive-in or drive-through service use is changed or discontinued.

Rationale:

- The applicant has substantiated how the parking demand generated by the proposed restaurant with drive-in or drive-through service use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- The Sustainable Development and Construction Department Project Engineer has indicated that he has no objections to the applicant's request.

BACKGROUND INFORMATION:

Zoning:

Site: PD 462 (Planned Development)
North: TH-3(A) (Townhouse)
South: MF-2(A) (Multifamily)
East: PD 462 (Planned Development)
West: PD 462 (Planned Development)

Land Use:

The subject site is currently developed with restaurant without drive-in or drive-through service use (Jake's). The areas to the north, south, and west are developed with multifamily uses, and the area to the east is developed with retail uses.

Zoning/BDA History:

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

Timeline:

- April 27, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 16, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- May 17, 2012: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the May 30th deadline to submit additional evidence for staff to factor into their analysis; and the June 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 requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

May 18, 2012: The applicant requested postponement of this application from Panel C's June 18th hearing to Panel C's August 13th hearing.

July 17, 2012: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the July 25th deadline to submit additional evidence for staff to factor into their analysis; and the August 3rd 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.

July 27, 2012: The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded an amended Building Official's Report on this application (see Attachment A).

July 27, 2012: The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked "Has no objections."

July 30, 2012: The applicant submitted a revised site plan (see Attachment B).

July 31, 2012: 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 Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, and the Assistant City Attorneys to the Board.

August 3, 2012: Staff discovered an error with meeting notification requirements on this application for Panel C's August 13th hearing. Given this error, the Board Administrator informed the applicant that his applicant was postponed until Panel C's next scheduled hearing to be held on September 17, 2012.

August 7, 2012: The Board Administrator emailed the applicant the deadlines for additional submittals: staff review - August 29th and board docket - September 7th.

September 4, 2012: 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 Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, Building Inspection Chief Planners, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on maintaining an approximately 4,200 square foot structure/restaurant (Jake's) of which includes a 3,700 square foot enclosed/roofed restaurant use/structure and a 500 square foot open yet "roofed/covered patio area that must provide off-street parking at 1 space per 100 square feet of floor area.
- The Dallas Development Code requires the following off-street parking requirements: Restaurant without drive-in or drive-through service use: 1 space per 100 square feet of floor area.
- The applicant proposes to provide 37 (or 88 percent) of the required 42 off-street parking spaces in conjunction with the site being maintained with the use mentioned above. The applicant's revised site plan dated 07-30-12 (see Attachment B) denotes a "building area" of 3,700 square feet requiring 37 spaces and a "patio" of 520 square feet requiring 5 spaces.
- The applicant has stated that the restaurant (not including the approximately 500 square foot patio) meets the Code's parking requirement since it is 3,700 square feet which requires 37 off-street parking places. The approximately 500 square foot patio (covered by awning or some type of roof) is the additional square footage that prompts/necessitates this special exception request since the City deems the covered patio floor area which must be parked at one space per 100 square feet of floor area.
- The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked "Has no objections."
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the restaurant without drive-in or drive through use on the site does not warrant the number of off-street parking spaces required, and
 - The special exception of 5 spaces (or a 12 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request and impose the condition that the special exception of 5 spaces shall automatically and immediately terminate if and when the restaurant without drive-in or drive through service use is changed or discontinued,

the applicant would be allowed to maintain the site with this specific use and provide only 37 of the 42 code required off-street parking spaces.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 17, 2012

APPEARING IN FAVOR: Roger Albright

APPEARING IN OPPOSITION: No one

MOTION: Gaspard

I move that the Board of Adjustment, in Appeal No. **BDA 112-070**, hold this matter under advisement until **November 12, 2012**.

SECONDED: Scott

AYES: 4– Richardson, Coulter, Gaspard, Scott

NAYS: 0 –

MOTION PASSED 4 – 0 (unanimously)

FILE NUMBER: BDA 112-081

BUILDING OFFICIAL’S REPORT:

Application of Martin Castaneda for a special exception to the single family use regulations at 3803 Meredith Street. This property is more fully described as Lot 1 & 10 feet of Lot 2 in City Block 1/4861 and is zoned R-5(A), which limits the number of dwelling units to one. The applicant proposes to construct an additional dwelling unit, which will require a special exception to the single family zoning use regulations.

LOCATION: 3803 Meredith Street

APPLICANT: Martin Castaneda

September 17, 2012 Public Hearing Notes:

- The applicant submitted additional written documents to the board at the public hearing.

REQUEST:

- A request for a special exception to the single family use development standard regulations is requested in conjunction with an additional dwelling unit that according to the application would be “under the same roof” as the existing dwelling unit on the subject site.

STANDARD FOR A SPECIAL EXCEPTION TO THE SINGLE FAMILY USE DEVELOPMENT STANDARDS REGULATIONS TO AUTHORIZE AN ADDITIONAL DWELLING UNIT:

The Board of Adjustment may grant a special exception to the single family use development standards regulations of the Dallas Development Code to authorize an additional dwelling unit on a lot when, in the opinion of the board, the special exception will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties.

In granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent use of the additional dwelling unit as rental accommodations.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to authorize an additional dwelling unit since the basis for this type of appeal is *when in the opinion of the board*, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties.

In granting a special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

Zoning:

Site: R-5 (A) (Single family district 5,000 square feet)
North: R-5 (A) (Single family district 5,000 square feet)
South: City of Cockrell Hill
East: R-7.5 (A) (Single family district 7,500 square feet)
West: R-5 (A) (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, 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:

- June 27, 2012: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- July 17, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- July 17, 2012: The Board Administrator spoke with the applicant and informed him of the public hearing date and the standard in which the board would use in considering his application. The applicant informed the administrator that he did not have an email address but would have his daughter make contact at a later date.
- July 31, 2012: 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 Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, and the Assistant City Attorneys to the Board.
- No additional review comment sheets with comments were submitted in conjunction with this application.
- August 3, 2012: Staff discovered an error with meeting notification requirements on this application for Panel C’s August 13th hearing. Given this error, the Board Administrator informed the applicant that his applicant was postponed until Panel C’s next scheduled hearing to be held on September 17, 2012.
- August 7, 2012: The Board Administrator emailed the applicant’s daughter the following information:
- an attachment that provided the public hearing date (September 17th) and panel that will consider the application; the August 29th deadline to submit additional evidence for staff to factor into their analysis; and the September 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.
- September 4, 2012: 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 Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant

Director, Building Inspection Chief Planners, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

GENERAL FACTS/ STAFF ANALYSIS:

- According to the applicant's daughter, the request focuses on constructing and maintaining an additional dwelling unit within or under the same roof as the existing structure that is a dwelling unit.
- The single family use regulations of the Dallas Development Code state that only one dwelling unit may be located on a lot, and that the board of adjustment may grant a special exception to this provision and authorize an additional dwelling unit on a lot when, in the opinion of the board, the special exception will not: 1) be contrary to the public interest; or 2) adversely affect neighboring properties. The Dallas Development Code defines "single family" use as "one dwelling unit located on a lot;" and a "dwelling unit" as "one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms."
- A site plan has been submitted denoting the location of what appears to be a main structure and an accessory "metal storage" structure on the site. The site plan represents the sizes and locations of the two building footprints relative to the entire lot/property.
- Elevations have been submitted of the main structure on the site – elevations that appear to be representations of the existing main structure on the site as noted by the Board Administrator on his field trip of the site on July 11, 2012.
- Floor plans have been submitted of the main structure on the site. The first floor plan denotes the following rooms: two living rooms, a study, a kitchen, two play rooms, three bedrooms, a master bedroom, three baths, and four closets. The second floor plan denotes the following rooms: two bedrooms, two baths, two closets, and a kitchen/dining room.
- Building Inspection staff has reviewed the submitted floor plans and deemed there to be more than one "dwelling unit" within the existing structure- that is two dwelling units within the structure per code definition: "one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms."
- DCAD records indicate that the property at 3803 Meredith has the following improvements:
 - "main improvement:" a structure built in 1950 with 1,022 square feet of living area, and 2,702 square feet of total area; and
 - "additional improvement:" 1,680 square foot room addition.
- This request appears to center on the function of what is proposed to be located within one structure on the subject site. No other request for variance or special exception to any other zoning code provision has been made to the board. Given this, it appears that if the board were to deny this request that the structure shown on the site plan and in elevations could be maintained but without certain

components as shown on the submitted floor plans- modifications to the submitted floor plans where the City would deem there to be only one dwelling unit on the property.

- As of September 10, 2012, no letters had been submitted to staff in support or in opposition to the application.
- The applicant has the burden of proof in establishing that the additional dwelling unit will not be used as rental accommodations (by providing deed restrictions, if approved) and will not adversely affect neighboring properties.
- If the board were to approve the request for a special exception to the single family regulations, the board may want to determine if they feel that imposing a condition that the applicant comply with the submitted site plan and/or floor plan are necessary in assuring that the special exception will not adversely affect neighboring properties. Note that granting this special exception request will not provide any relief to the Dallas Development Code regulations other than allowing an additional dwelling unit on the site (i.e. development on the site must meet all required code requirements including but not limited to setback and coverage requirements).
- The Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 17, 2012

APPEARING IN FAVOR: Oscar Castaneda, 423 McLean Ave., Dallas, TX
Martin Castaneda, 423 McLean Ave., Dallas, TX

APPEARING IN OPPOSITION: Diana Jacinto, 404 S. Gilpin, Dallas, TX

MOTION: **Gaspard**

I move that the Board of Adjustment, in Appeal No. **BDA 112-081**, on application of Martin Castaneda, **deny** the request of this applicant to maintain an additional dwelling unit on the property **without prejudice**, because our evaluation of the property and testimony shows that the additional dwelling unit on the site will adversely affect neighboring properties.

SECONDED: **Coulter**

AYES: 4– Richardson, Coulter, Gaspard, Scott

NAYS: 0 –

MOTION PASSED 4 – 0 (unanimously)

FILE NUMBER: BDA 112-085

BUILDING OFFICIAL’S REPORT:

Application of Ken Reese, represented by Robert Reeves of Robert Reeves and Associates, for a variance to the off-street parking regulations at 3000 Turtle Creek

Plaza. This property is more fully described as Lot 1R in City Block A/993 and is zoned PD-193 (PDS 61), which requires off-street parking to be provided. The applicant proposes to construct and maintain a structure for office use and provide 331 of the required 441 off-street parking spaces, which will require a variance to the off-street parking regulations of 110 spaces.

LOCATION: 3000 Turtle Creek Plaza.

APPLICANT: Ken Reese
Represented by Robert Reeves of Robert Reeves and Associates

REQUEST:

- A variance to the off-street parking regulations of 110 parking spaces (or a 25 percent reduction of the 441 off-street parking spaces that are required) is requested in conjunction with constructing and maintaining an approximately 161,500 square foot office use/structure on a site that is currently undeveloped. The applicant proposes to provide 331 (or 75 percent) of the required 441 off-street parking spaces in conjunction with constructing and maintaining this use with this square footage.

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:

- (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

Rationale:

- The applicant has substantiated how the subject site is unique and different from most lots zoned PD 193 in that subject site is: 1) somewhat irregular in shape; 2) of restrictive area caused by 33 percent of it as floodway easement (non-buildable

area); and 3) sloped with a 24 foot change in grade from near the center of the site westward to Cedar Springs Road.

- In addition, granting the variance is not contrary to the public interest in that: 1) Sustainable Development and Construction Department Engineering Division Assistant Director has no objections to the request; and 2) the applicant has provided a parking study projecting that the anticipated average peak parking demand for the proposal is 232 vehicles or 99 spaces less than the requested parking supply of 331 spaces.

BACKGROUND INFORMATION:

Zoning:

Site: PD 193 (PDS 61) (Planned Development, Planned Development)
North: PD 193 (O-2) (Planned Development, Office)
South: PD 184 (Planned Development)
East: PD 193 (O-2 & PDS 94) (Planned Development, Office and Planned Development)
West: PD 193 (O-2) (Planned Development, Office)

Land Use:

The subject site is undeveloped. The area to the north is Turtle Creek; the areas to the east and south are developed with office uses, and the area to the west is office and undeveloped land.

Zoning/BDA History:

1. BDA 967-251, Property at 2920 Turtle Creek Plaza (the subject site) On May 19, 1997, the Board of Adjustment Panel C granted a request for a variance to the height regulations of 60 feet. The case report states that the request was made to construct and maintain an approximately 300,000 square foot, 300 foot high condominium tower use.

Timeline:

- June 25, 2012: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- July 17, 2012: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

- July 17, 2012: The Board Administrator emailed the applicant's representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the July 25th deadline to submit additional evidence for staff to factor into their analysis; and the August 3rd 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.
- July 25 & August 2 & 7, 2012: The applicant's representative submitted additional information to staff beyond what was submitted with the original application (see Attachments A and B).
- July 27, 2012: The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked "Has no objections."
- July 31, 2012: 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 Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, and the Assistant City Attorneys to the Board.
- August 1, 2012: The applicant's representative requested that this application be postponed from Panel C's August 13th hearing to Panel C's September 14th hearing.
- September 4, 2012: 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 Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, Building Inspection Chief Planners, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

GENERAL FACTS/ STAFF ANALYSIS:

- This request focuses on constructing and maintaining an approximately 161,500 square foot office use/structure on a site that is currently undeveloped and providing

331 (or 75 percent) of the required 441 off-street parking spaces in conjunction with constructing and maintaining this use with this square footage.

- The subject site is zoned PD 193 (PDS 61). While PDS 61 makes specific off-street parking requirements for “retirement housing community” use, the PDS states that off-street parking requirements for all other uses be provided as listed in PD 193. PD 193 states that the parking requirement for “office” use to be one space per 366 square feet of floor area.
- Dallas Development Code Section 51A-4.311(a)(1) states that the Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required *under this article* if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets; and that the maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
- However, Dallas Development Code Section 51A-311(a)(6) states that the Board of Adjustment *shall not* grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
 - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
 - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.
- Therefore, because PD 193 does not make references to the existing off-street parking regulations in Chapter 51 or Chapter 51(A), the applicant may only apply for a *variance* and only the variance standard applies on this request to reduce the off-street parking regulations for office uses in PD 193 by 25 percent.
- The subject site is somewhat irregular in shape and, according to the application, 5.853 acres in area. The applicant has submitted documents that indicate that the 33 percent of the site is floodway easement (non-buildable area) and has a 24 foot change in grade from near the center of the site westward to Cedar Springs Road.
- DCAD records indicate “no improvements” for property at 3000 Turtle Creek Plaza.
- On July 25, 2012, the applicant’s representative submitted additional information beyond what was submitted with the original application (see Attachment A).
- The applicant has provided a parking study stating that the proposed development on the site is being designed for up to 280 employees where according to the Institute of Transportation Engineers (ITE) Parking Generation manual, the anticipated average peak parking demand is 232 vehicles (due to employees absenteeism- sick, vacation, business travel, etc.) or 92 spaces less than the requested parking supply of 331.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the off-street parking regulations of will not be contrary to the public interest when, owing to special conditions, a literal

enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.

- The variance is necessary to permit development of the subject site (that differs from other parcels of land by being of such a restrictive area, shape, or slope) that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD 193 (PDS 61) zoning classification.
- The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the PD 193 (PDS 61) zoning classification.

The Sustainable Development and Construction Department Engineering Division Assistant Director has submitted a review comment sheet marked "Has no objections."

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 17, 2012

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Coulter

I move that the Board of Adjustment grant application **BDA 112-085** 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.

SECONDED: Gaspard

AYES: 4– Richardson, Coulter, Gaspard, Scott

NAYS: 0 –

MOTION PASSED 4 – 0 (unanimously)

FILE NUMBER: BDA 112-088

BUILDING OFFICIAL’S REPORT:

Application of Lisa Brinser for a variance to the front yard setback regulation at 10726 Webster Terrace. This property is more fully described as lot 9 in City Block D/6154 and is zoned R-16(A), which requires a front yard setback of 35 feet. The applicant proposes to construct/maintain a structure and provide a 0 foot front yard setback, which will require a variance to the front yard setback regulations of 35 feet.

LOCATION: 10726 Webster Terrace

APPLICANT: Lisa Brinser

REQUESTS:

- A variance to the front yard setback regulations of up to 35' is requested in conjunction with constructing and maintaining the following in one of the site's two required front yards (Morning Glory Drive) on a site developed with a single family home:
 - a portion of an approximately 700 square foot swimming pool structure that is shown to be located 20' from the Morning Glory Drive front property line; and
 - an approximately 64 square foot pool equipment/concrete pad structure to be located in an approximately 250 square foot area as close as on the Morning Glory Drive front property line.(No part of this application is made to construct/maintain any structure in the site's Webster Terrace required front yard).

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:

- 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;
- 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
- 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 submitted revised site plan is required.

Rationale:

- The applicant has substantiated how the subject site is unique and different from most lots zoned R-16(A) in that it is irregular in shape and has two required front yards.
- In addition, granting this request does not appear to be contrary to the public interest in that the "structures" requiring variances in this case are of minimal sizes and/or are to be located behind a board of adjustment-approved 8' high solid wood fence.

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, east, south, and west are developed with single family uses.

Zoning/BDA History:

1. BDA 101-066, Property at 10727 Webster Terrace (the subject site) On December 13, 2010, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 4' 6" and imposed the submitted site plan and partial elevation as a condition to the request. The case report stated that the request was made in conjunction with constructing and maintaining an 8' high board-on-board fence/wall with 8' 6" high pickets to be located in one of the site's two 40' required front yards (Morning Glory Drive) on a site developed with a single family home.

Timeline:

- July 26, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- August 16, 2012: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- August 16, 2012: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the August 29th deadline to submit additional evidence for staff to factor into their analysis;

and the September 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.

September 4, 2012: 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 Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, Building Inspection Chief Planners, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

September 7, 2012: The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).

GENERAL FACTS/STAFF ANALYSIS:

- The request focuses on constructing and maintaining a swimming pool structure and a related pool equipment/concrete pad structure in one of the site's two required front yards (Morning Glory Drive) on a site developed with a single family home.
- The subject site is located at the intersection of Webster Terrace and Morning Glory Drive. Even though the Webster Terrace frontage of the subject site functions as its front yard and the Morning Glory Drive frontage functions as its side yard, the subject site has two required front yards created by platted building lines along both streets. The site has a 40' required front yard along Webster Terrace (the shorter of the two frontages, which is always deemed a front yard on a corner lot in a single family zoning district), and a 35' required front yard along Morning Glory Drive (the longer of the two frontages of this corner lot which would typically be regarded as a side yard where a 10' side yard setback would be required or a 0 foot side yard setback would be required for any accessory structure located in the rear 30 percent of the lot and 15' in height or less). The site's Morning Glory Drive frontage is deemed a front yard nonetheless to maintain the continuity of the established required front yard established by the lots northeast of the site that front/are oriented southeastward onto Morning Glory Drive.
- The minimum front yard setback for the subject site on Morning Glory Drive given a platted building line is 35 feet. The applicant has submitted a revised site plan/survey plat (see Attachment A) indicating a 16' x 16' area on the site on the Morning Glory Drive front property line – an area designated as the area in which a 4' x 16' pool equipment structure will be located atop a concrete pad.
- The site is flat, irregular in shape, and is (according to the application) 0.69 acres (or approximately 30,000 square feet) in area. The applicant has stated that the property had been recently replatted with two building lines along Webster Terrace

and Morning Glory Drive. The site is zoned R-16(A) where lots are typically 16,000 square feet in area. The site is unique from most parcels of land in this zoning district in that it has two required front yards.

- According to DCAD records, the property at 10726 Webster Terrace has the following improvements:
 - “main improvement” built in 1959 with 2,210 square feet of living area, and 2,210 square feet of total area;
 - “additional improvements:” a 440 square foot detached carport.
- It appears from the submitted revised site plan that roughly ¼ of the proposed approximately 700 square foot swimming pool and all of the 250 square foot concrete pad is to be located in the 35’ Morning Glory Drive required front yard behind an 8’ high solid board fence that was granted by Board of Adjustment Panel C in December of 2010.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-16(A) (single family) zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-16(A) (Single family) zoning classification.
- If the Board were to grant the front yard variance of up to 35’, imposing a condition whereby the applicant must comply with the submitted revised site plan, the structures encroaching into this setback would be limited to that shown on the site plan which in this case is approximately ¼ of an swimming pool structure and all of a related approximately 64 square foot pool equipment/concrete pad structure that is to be located as close as on the Morning Glory Drive front property line behind a board-approved 8’ high solid board fence.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 17, 2012

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Coulter

I move that the Board of Adjustment grant application **BDA 112-088** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general

purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted revised site plan is required.

SECONDED: Gaspard

AYES: 4– Richardson, Coulter, Gaspard, Scott

NAYS: 0 –

MOTION PASSED 4 – 0 (unanimously)

MOTION: Gaspard

I move to adjourn this meeting.

SECONDED: Scott

AYES: 4– Richardson, Coulter, Gaspard, Scott

NAYS: 0 -

MOTION PASSED: 4 – 0 (Unanimously)

1:46 P. M. - Board Meeting adjourned for **September 17, 2012.**

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.