

**BOARD OF ADJUSTMENT, PANEL C  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM  
MONDAY, OCTOBER 21, 2013**

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

MEMBERS ABSENT FROM BRIEFING: No one

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

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, 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, Laura Morrison, Asst. City Atty., Todd Duerksen, Development Code Specialist, Lloyd Denman, Asst. Director of Engineering, Phil Erwin, Chief Arborist, Neva Dean, Interim Asst. Director and Trena Law, Board Secretary

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**11:06 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **October 21, 2013** docket.  
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**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.

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel C September 16, 2013 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: OCTOBER 21, 2013**

**MOTION: Coulter**

I move **approval** of the Monday, **September 16, 2013** public hearing minutes.

**SECONDED: Richard**

**AYES: 5– Richardson, Coulter, Richard, Carreon, Schulte**

**NAYS: 0 –**

**MOTION PASSED: 5– 0 (unanimously)**

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**MISCELLANEOUS ITEM NO. 2**

Consideration and Approval of the Board of Adjustment Panel C’s 2014 Public Hearing Calendar.

**BOARD OF ADJUSTMENT ACTION: OCTOBER 21, 2013**

**MOTION: Schulte**

I move approval of the Board of Adjustment Panel C’s 2014 Public Hearing Calendar.

**SECONDED: Coulter**

**AYES: 5– Richardson, Coulter, Richard, Carreon, Schulte**

**NAYS: 0 –**

**MOTION PASSED: 5– 0 (unanimously)**

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**FILE NUMBER: BDA 123-083**

**BUILDING OFFICIAL’S REPORT:** Application of Juanita Couch for a special exception to the fence height regulations at 8410 Blue Bonnet Road. This property is more fully described as Lot 1, Block H/4978 and is zoned PD-455, which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and/or maintain a 9 foot high fence, which will require a special exception to the fence height regulations of 5 feet.

**LOCATION: 8410 Blue Bonnet Road**

**APPLICANT: Juanita Couch**

**October 21, 2013 Public Hearing Notes:**

- The Board Administrator circulated an October 21<sup>st</sup> email from the applicant requesting that the board deny her request without prejudice.

**REQUEST:**

A special exception to the fence height regulations of 5' is requested in conjunction with maintaining a masonry fence/wall in the site's 30' front yard setback on a site that is currently developed with a single family home – a fence/wall that according to the applicant's submittals averages 8' 6" in height but ranges from 7' 6" – 9' given grade changes on the property.

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:**

Section 51A-4.602 of the Dallas Development Code states that the board may grant a special exception to the height requirement for fences when in the opinion of the board, the special exception will not adversely affect neighboring property.

**STAFF RECOMMENDATION:**

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

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 455 (Planned Development)  
North: PD 455 (Planned Development)  
South: R-10(A) (Single family district 10,000 square feet)  
East: PD 455 (Planned Development)  
West: PD 455 (Planned Development)

**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 123-062, Property at 8410 Bluebonnet Road ( the subject site) On June 17, 2013, the Board of Adjustment Panel B denied a request for a special exception to the fence height regulations of 5

feet without prejudice. The case report stated the application was made in conjunction with maintaining a masonry wall in the site's 30' front yard setback on a site that is currently developed with a single family home – a wall that according to the applicant's submittals averaged 8' 6" in height but ranged from 7' 6" – 9' given grade changes on the property.

2. BDA 86-172, Property at 8410 Bluebonnet Road ( the subject site)

On July 22, 1986, the Board of Adjustment granted a request to maintain an 8 foot fence on the property as a special exception to the height regulations for fences. The board imposed the following condition: "The landscape plan be adhered to as submitted to the Board also including the existing sprinkler system not shown the plans." The case report stated that the applicant was asking that he be permitted to erect a solid fence in the front yard along Bluebonnet Road, and that landscape plans submitted by the applicant reflect the existing vegetation, and the placement of the fence will be behind this vegetation, thereby, reducing the solidness of the fence.

**Timeline:**

June 26, 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. 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."

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 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

October 8, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Department 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.

**GENERAL FACTS/STAFF ANALYSIS:**

- This request focuses on maintaining a masonry fence/wall in the front yard setback on a property developed with a single family home – a wall that according to the applicant's submittals averages 8' 6" in height and ranges from 7' 6" – 9' in height given grade changes on the property.
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The applicant has submitted a site plan and an elevation document of the proposal in the front yard setback with notations indicating that the masonry fence reaches a maximum height of 9'.
- The following additional information was gleaned from the submitted plot plan/site plan:
  - The proposal in the front yard setback is represented as being approximately 120' in length parallel to the street and approximately 30' in length perpendicular to the street on the north side of the site in the front yard setback.
  - The proposal is represented as being located on the property line or about 13' from the pavement line.
- The following additional information was gleaned from the submitted elevation document:
  - Notation of "the front wall detail will include cable nail trellis with evergreen jasmine vines, the vines will be planted every 3'-0" along the wall. They will be planted as a 5 gallon plant."

- The proposal is located across from three single family homes, none that appear to have fences in their front yards over 4' in height.
- The Board Administrator conducted a field visit of the site and surrounding area and noted one other fence that appeared to be above 4' in height and located in a front yard setback- an approximately 8' high wood fence/7' high brick fence located immediately south of the site with no recorded BDA history.
- As of October 14, 2013, no letters/emails have been submitted in support of or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 5' will not adversely affect neighboring property.
- Granting this special exception of 5' with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding 4' in height in the front yard setback to be maintained in the location and of the heights and materials as shown on these documents

**BOARD OF ADJUSTMENT ACTION: OCTOBER 21, 2013**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: Joe Werner, 4400 Bluffview, Dallas, TX  
 John Cranfill, 4403 Bluffview, Dallas, TX  
 Nancy Kenty, 8723 Canyon Dr., Dallas, TX  
 Pat White, 4714 Wildwood Rd., Dallas, TX  
 Carl Schwalm, 4807 Bluffview Blvd, Dallas, TX

MOTION: **Richard**

I move that the Board of Adjustment, in Appeal No. **BDA 123-083**, on application of Juanita Couch, **deny** the special exception requested by this applicant **with prejudice**, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: **Schulte**

AYES: 4 – Richardson, Richard, Carreon, Schulte

NAYS: 1 – Coulter

MOTION PASSED: 4– 1

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FILE NUMBER: BDA 123-099

**BUILDING OFFICIAL'S REPORT:** Application of Jeff Davis for a special exception to the fence height regulations at 4410 Walnut Hill Lane. This property is more fully described as the western part of Lot 26, Block 5543, and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and/or maintain a 7 foot 6 inch high fence, which will require special exception to the fence height regulations of 3 feet 6 inches.

**LOCATION:** 4410 Walnut Hill Lane

**APPLICANT:** Jeff Davis

**REQUEST:**

A special exception to the fence height regulations of 3' 6" is requested in conjunction with completing and maintaining a stone fence/wall with columns in the site's Walnut Hill Lane 40' front yard setback on a site that is currently developed with a single family home – a fence/wall with columns that according to the applicant's submittal ranges in height given grade changes on the property from 5' – 7' 6".

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:**

Section 51A-4.602 of the Dallas Development Code states that the board may grant a special exception to the height requirement for fences when in the opinion of the board, the special exception will not adversely affect neighboring property.

**STAFF RECOMMENDATION:**

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

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-1ac(A) (Single family district 1 acre)  
North: R-16(A) (Single family district 16,000 square feet)  
South: R-1ac(A) (Single family district 1 acre)  
East: R-1ac(A) (Single family district 1 acre)  
West: R-10(A) (Single family district 10,000 square feet)

**Land Use:**

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

**Zoning/BDA History:**

1. BDA 078-116, Property at 4421 Walnut Hill Lane ( the subject site) On October 14, 2008, the Board of Adjustment Panel A denied a request for a special exception to the fence height

regulations of 4 feet without prejudice. The case report stated the application was made in conjunction with completing and maintaining an 8' high solid cedar board-on-board fence/wall with two 7' 6" high open wrought iron gates in the site's 35' front yard setback on a site developed with a single family home.

**Timeline:**

August 14, 2013: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

September 19, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

September 19, 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 October 2nd deadline to submit additional evidence for staff to factor into their analysis; and the October 11<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

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

October 8, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Department 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.

**GENERAL FACTS/STAFF ANALYSIS:**

- This request focuses on maintaining a stone fence/wall with columns in the site's Walnut Hill Lane 40' front yard setback on a site that is currently developed with a single family home – a fence/wall with columns that according to the applicant's submittals ranges in height given grade changes on the property from 5' – 7' 6".
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The site is located at the southeast corner of Walnut Hill Lane and Crestline Avenue. The site has two 40' front yard setbacks where the focus of the applicant's request in this application is only to complete and maintain a fence higher than 4' in the site's front yard setback on Walnut Hill Lane. No part of the application is made to address any fence in the site's Crestline Avenue front yard setback.
- The applicant has submitted a revised site plan and a "plan and elevations" document of the proposal in the front yard setback with notations indicating that the stone wall and stone columns reaches a maximum height of 7' 6".
- The following additional information was gleaned from the submitted revised site plan:
  - The proposal in the front yard setback is represented as being approximately 130' in length parallel to the Walnut Hill Lane and approximately 5' in length perpendicular to Walnut Hill Lane on the west side of the site in the Walnut Hill Lane front yard setback.
  - The proposal is represented as being located approximately 2' – 35' from the Walnut Hill Lane front property line or about 7' – 40' from the Walnut Hill Lane pavement line.
- The proposal is located across from two single family homes, neither of which have fences in their front yards.
- The Board Administrator conducted a field visit of the site and surrounding area and noted one other fence that appeared to be above 4' in height and located in a front yard setback. This fence is an approximately 8' high wood fence/7' high brick fence located immediately east of the site with no recorded BDA history.
- As of October 14, 2013, four letters/emails have been submitted in support of the request, and no letters/emails have been submitted in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 3' 6" will not adversely affect neighboring property.
- Granting this special exception of 3' 6" with a condition imposed that the applicant complies with the submitted site plan and "plan and elevations" document would require the proposal exceeding 4' in height in the front yard setback to be maintained in the location and of the heights and materials as shown on these documents.

**BOARD OF ADJUSTMENT ACTION: OCTOBER 21, 2013**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

**\*Member Peter Schulte recused himself and did not hear or vote on this matter.**

**MOTION: Coulter**

I move that the Board of Adjustment, in Appeal No. **BDA 123-099**, on application of Jeff Davis, **grant** the request to construct and maintain a 7 foot, 6 inch high fence in the property's front yard as a special exception to the fence requirements in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

**SECONDED: Carreon**

**AYES: 4 – Richardson, Coulter, Richard, Carreon,**

**NAYS: 0 –**

**MOTION PASSED: 4**

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**FILE NUMBER: BDA 123-101**

**BUILDING OFFICIAL'S REPORT:** Application of Troy Broussard, represented by Abby A. Hiles, for a special exception to the off-street parking regulations at 2211 Singleton Boulevard. This property is more fully described as Lot 1, Block DDD/7135, and is zoned CR, which requires off-street parking to be provided. The applicant proposes to construct and/or maintain structures for a library, art gallery or museum use, office use, medical clinic or ambulatory surgical center use, dry cleaning or laundry store use, general merchandise or food store 3500 square feet or less use, general merchandise or food store greater than 3500 square feet use, general merchandise or food store 100,000 square feet or more use, motor vehicle fueling station use, personal service use, restaurant without drive-in or drive-through service use, and restaurant with drive-in or drive-through service use, and provide 616 of the required 749 off-street parking spaces, which will require a special exception to the off-street parking regulations of 133 spaces.

**LOCATION: 2211 Singleton Boulevard**

**APPLICANT: Application of Troy Broussard  
Represented by Abby A. Hiles**

## **REQUEST:**

A request for a special exception to the off-street parking regulations of 133 spaces is made in conjunction with renovating the surface parking lot and pedestrian amenities on a property developed with an existing community retail center (Lakewest Town Center) that has approximately 152,000 square feet of leasable area with a certain mix of uses (library/art gallery/museum, office, medical clinic or ambulatory surgical center, dry cleaning/laundry store, personal service, general merchandise or food store 3,500 square feet or less, general merchandise or food store greater than 3,500 square feet or less, general merchandise or food store 100,000 square feet, motor vehicle fueling station, personal service, restaurant without drive-in or drive through service, restaurant with drive-in or drive through) and providing 616 (or 82 percent) of the 749 required off-street parking spaces.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(A). For the office use, the maximum reduction authorized by this section is 35 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). Applicants may seek a special exception to the parking requirements under this section and an administrative parking reduction under Section 51A-4.313. The greater reduction will apply, but the reduction may not be combined.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
  - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
  - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
  - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
  - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
  - (E) The availability of public transit and the likelihood of its use.
  - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.

- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
  - (A) Establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
  - (B) Impose restrictions on access to or from the subject property; or
  - (C) Impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- The special exception of 133 spaces shall automatically and immediately terminate if and when the library/art gallery/museum, office, medical clinic or ambulatory surgical center, dry cleaning/laundry store, personal service, general merchandise or food store 3,500 square feet or less, general merchandise or food store greater than 3,500 square feet or less, general merchandise or food store 100,000 square feet, motor vehicle fueling station, personal service, restaurant without drive-in or drive through service, restaurant with drive-in or drive through uses, or combination of these uses, that would normally need no more than 749 required parking spaces, are changed or discontinued.

Rationale:

- The applicant has substantiated how the parking demand generated by the existing/proposed library/art gallery/museum, office, medical clinic or ambulatory surgical center, dry cleaning/laundry store, personal service, general merchandise or food store 3,500 square feet or less, general merchandise or food store greater than 3,500 square feet or less, general merchandise or food store 100,000 square feet, motor vehicle fueling station, personal service, restaurant without drive-in or drive through service, restaurant with drive-in or drive through uses does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- The Sustainable Development and Construction Department Engineering Division Assistant Director has indicated that he has no objections to the applicant's request.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: CR (Community Retail)  
North: CR (Community Retail)

South: IM (Industrial Manufacturing)  
East: CR and MF-2(A) (Community Retail and multifamily)  
West: PD 508 (Planned Development)

**Land Use:**

The subject site is developed with an existing retail center (Lakewest Town Center) with approximately 152,000 square feet of leasable area. The area to the north is developed with a school use (L.C. Pinkston High School); the area to the east is developed with multifamily and retail uses; the area to the south is developed with commercial uses, and the area to the west is a park use (Fish Trap Lake).

**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 9, 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.

September 19, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

September 19, 2013: The Board Administrator contacted the applicant’s representative and shared the following information via email:

- an attachment that provided the public hearing date and panel that will consider the application; the October 2nd deadline to submit additional evidence for staff to factor into their analysis; and the October 11<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

October 8, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Engineering Division Assistant Director, the Sustainable Development and Construction Department Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

**GENERAL FACTS/STAFF ANALYSIS:**

- This request focuses on renovating the surface parking lot and pedestrian amenities on a property developed with an existing community retail center (Lakewest Town Center) that has approximately 152,000 square feet of leasable area with a certain mix of uses (library/art gallery/museum, office, medical clinic or ambulatory surgical center, dry cleaning/laundry store, personal service, general merchandise or food store 3,500 square feet or less, general merchandise or food store greater than 3,500 square feet or less, general merchandise or food store 100,000 square feet, motor vehicle fueling station, personal service, restaurant without drive-in or drive through service, restaurant with drive-in or drive through) and providing 616 (or 82 percent) of the 749 required off-street parking spaces.
  - The applicant has stated that the request is made in conjunction with renovations and enhancement of the parking lot and related pedestrian ways which will result in a loss of a number of off-street parking spaces currently provided on the site.
  - The Dallas Development Code requires the following off-street parking requirement:
    - Library, art gallery, or museum: one space per 500 square feet of floor area.
    - Office use: 1 space per 333 square feet of floor area.
    - Medical clinic or ambulatory surgical center use: 1 space per 200 square feet of floor area
    - Dry cleaning or laundry store: 1 space per 200 square feet of floor area.
    - General merchandise or food store 3,500 square feet or less: 1 space for 200 square feet of floor area.
    - General merchandise or food store greater than 3,500 square feet: 1 space for 200 square feet of floor area for uses with less than 10,000 square feet. 1 space per 220 square feet of floor area for uses with a floor area of 10,000 square feet or greater, but less than 40,000 square feet of floor area. 1 space per 250 square feet of floor area for uses with a floor area of 40,000 square feet or greater, but less than 100,000 square feet of floor area.
    - General merchandise or food store 100,000 square feet or greater: 1 space for 200 square feet of floor area for uses with less than 10,000 square feet. 1 space per 300 square feet of floor area.
    - Motor vehicle fueling station: Two spaces
    - Personal service use: 1 space per 200 square feet of floor area.
    - Restaurant without drive-in service use: as a main use: 1 space per 100 square feet of floor area; as a limited or accessory use: 1 space per 200 square feet of floor area
    - Restaurant with drive-in service use: as a main use: 1 space per 100 square feet of floor area with a minimum of four spaces.
- The applicant proposes to provide 616 (or 83 percent) of the required 749 off-street parking spaces in conjunction with the renovations proposed to the existing center

leased/maintained with a combination of the uses mentioned above and losing some of the off-street parking currently provided on the site.

- The applicant has submitted a study that has concluded that results from a parking survey of the center shows that the maximum recorded parking spaces used is 70 percent of 585 spaces. This number of spaces used is 31 spaces less than the 616 spaces proposed to be provided and 164 spaces less than the 749 spaces required for the uses and related square footages in the center.
- The Sustainable Development and Construction Department Engineering Division Assistant Director has indicated that he has no objections to the applicant's request.
- The applicant has the burden of proof in establishing the following:
  - The parking demand generated by the existing/proposed library/art gallery/museum, office, medical clinic or ambulatory surgical center, dry cleaning/laundry store, personal service, general merchandise or food store 3,500 square feet or less, general merchandise or food store greater than 3,500 square feet or less, general merchandise or food store 100,000 square feet, motor vehicle fueling station, personal service, restaurant without drive-in or drive through service, restaurant with drive-in or drive through uses on the site does not warrant the number of off-street parking spaces required, and
  - The special exception of 133 spaces (or an 18 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 133 spaces shall automatically and immediately terminate if and when the library/art gallery/museum, office, medical clinic or ambulatory surgical center, dry cleaning/laundry store, personal service, general merchandise or food store 3,500 square feet or less, general merchandise or food store greater than 3,500 square feet or less, general merchandise or food store 100,000 square feet, motor vehicle fueling station, personal service, restaurant without drive-in or drive through service, restaurant with drive-in or drive through uses, or combination of these uses, that would normally need no more than 749 required parking spaces, are changed or discontinued, the applicant would be allowed to update the existing retail center and lease/maintain the site with these specific uses with the specified square footages, providing 616 of the 749 code required off-street parking spaces.

**BOARD OF ADJUSTMENT ACTION: OCTOBER 21, 2013**

APPEARING IN FAVOR: Abby Hiles, 3535 Travis St., Ste. 250, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Coulter**

I move that the Board of Adjustment, in Appeal No. **BDA 123-101**, on application of Troy Broussard, **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development Code by 133 spaces, because our evaluation of the property and the testimony shows that the parking demand generated by the proposed use on the site does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase

traffic congestion on adjacent and nearby streets. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception of 133 off-street parking spaces automatically and immediately terminates if and when the library, art gallery or museum use, office use, medical clinic or ambulatory surgical center use, dry cleaning or laundry store use, general merchandise or food store 3500 square feet or less use, general merchandise or food store greater than 3500 square feet use, general merchandise or food store 100,000 square feet or more use, motor vehicle fueling station use, personal service use, restaurant without drive-in or drive-through service use, and restaurant with drive-in or drive-through service use, or combination of these uses, that would normally need no more than 749 required parking spaces, are changed or discontinued.

**SECONDED:** Richard

**AYES:** 5 – Richardson, Coulter, Richard, Carreon, Schulte

**NAYS:** 0 –

**MOTION PASSED:** 5-0(unanimously)

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**FILE NUMBER:** BDA 123-054

**BUILDING OFFICIAL’S REPORT:** Application of Coleson 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:** Coleson C. Evans

**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 29<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the June 7<sup>th</sup> 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 31<sup>st</sup> deadline to submit any additional evidence for staff to factor into their analysis; and the August 9<sup>th</sup> 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 31<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the August 9<sup>th</sup> 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 17<sup>th</sup> 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 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 6<sup>th</sup> 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.

September 16, 2013: The Board of Adjustment Panel C conducted a public hearing on this application. The Board Administrator circulated a September 12<sup>th</sup> letter from the applicant requesting that the board continue this application until the Board's October meeting given his client was continuing to work on its plans for the property. The Board held the request under advisement until October 21, 2013.

September 16, 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; October 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis;

- and the October 11<sup>th</sup> 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.

October 8, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Department 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.

### **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 19<sup>th</sup> 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)

**BOARD OF ADJUSTMENT ACTION: OCTOBER 21, 2013**

APPEARING IN FAVOR: Barry Knight, 2728 N. Harwood, Dallas, TX  
Sandy Spurgin, 8080 Park Lane, Dallas, TX

APPEARING IN OPPOSITON: No one

MOTION: **Carreon**

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 elevation document is required.

SECONDED: **Schulte**

AYES: 4 – Coulter, Richard, Carreon, Schulte

NAYS: 1 – Richardson

MOTION PASSED: 4– 1

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**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

**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:

- (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:**

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 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 6<sup>th</sup> 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.
- September 16, 2013: The Board of Adjustment Panel C conducted a public hearing on this application. The Board Administrator circulated a September 12<sup>th</sup> letter from the applicant requesting that the board hold this case for one month given that an easement issue with DART had arisen which would 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. The Board held the request under advisement until October 21, 2013.

September 16, 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; October 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis; and the October 11<sup>th</sup> 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.

October 2, 2013: The applicant submitted documentation on this application to the Board Administrator beyond what was submitted with the original application and by/at the September 16<sup>th</sup> public hearing (see Attachment C).

October 8, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Department 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.

### **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 4<sup>th</sup> 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)

2:25 P.M.: Break

2:30 P.M.: Resumed

**BOARD OF ADJUSTMENT ACTION: OCTOBER 21, 2013**

APPEARING IN FAVOR: Mark Housewright, 900 Jackson St., Dallas, TX  
Dallas Cothrum, 900 Jackson, St., Dallas, TX

APPEARING IN OPPOSITON: No one

MOTION: **Richard**

I move that the Board of Adjustment, in Appeal No. **BDA 123-092**, on application of Mark Housewright, **grant** a 20 foot 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 “overall elevations” document is required.

SECONDED: **Coulter**

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

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**MOTION: Richard**

I move to adjourn this meeting.

**SECONDED: Coulter**

**AYES: 5**– Richardson, Coulter, Richard, Carreon, Schulte

**NAYS: 0** -

**MOTION PASSED: 5 – 0** (Unanimously)

**3:25 P. M.** - Board Meeting adjourned for **October 21, 2013.**

\_\_\_\_\_  
CHAIRPERSON

\_\_\_\_\_  
BOARD ADMINISTRATOR

\_\_\_\_\_  
BOARD SECRETARY

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