

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
MONDAY, NOVEMBER 12, 2012**

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

MEMBERS ABSENT FROM BRIEFING: No one

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

MEMBERS ABSENT FROM HEARING: No one

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

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

11:00 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **November 12, 2012** docket.

1:09 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 October 15, 2012 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 12, 2012

MOTION: Maten

I move **approval** of the Monday, **October 15, 2012** public hearing minutes.

SECONDED: Richard

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

NAYS: 0 – Richard

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 112-105

BUILDING OFFICIAL’S REPORT:

Application of Richard Hanes for a special exception to the landscape regulations at 4305 W. Wheatland Road. This property is more fully described as Lot 2 in City Block A/7543 and is zoned MU-1, which requires mandatory landscaping. The applicant proposes to construct a structure and provide an alternate landscape plan, which will require a special exception.

LOCATION: 4305 W. Wheatland Road

APPLICANT: Richard Hanes

REQUEST:

A special exception to the landscape regulations is requested in conjunction with constructing and maintaining an approximately 7,000 square foot office/retail facility on an undeveloped site, and not fully meeting the landscape regulations.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

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

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

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

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

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted landscape plan is required.

Rationale:

- The City’s Chief Arborist supports the request given that an existing water easement and overhead utility lines on the site preclude the applicant from locating street trees in the code-required location, and that the site complies with all other Article X mandatory and design standard requirements.
- The applicant has substantiated how strict compliance with the requirements of the Landscape Regulations of the Dallas Development Code will unreasonably burden the use of the property, and that the special exception will not adversely affect neighboring property.

BACKGROUND INFORMATION:

Zoning:

Site: MU-1 (Mixed Use)
North: MU-1 (Mixed Use)
South: City of Duncanville
East: MU-1 (Mixed Use)
West: MU-1 (Mixed Use)

Land Use:

The site is currently undeveloped. The areas to the north and east are undeveloped, the area to the south is developed as townhomes, and the area to the west is developed with retail uses.

Zoning/BDA History:

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

Timeline:

September 17, 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.

October 10, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

October 10, 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 October 24th deadline to submit additional evidence for staff to factor into their analysis; and the November 2nd 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 30, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November 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 Building Inspection 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.

November 2, 2012: The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment A).

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on an approximately 7,000 square foot office/retail facility on an undeveloped site, and not fully meeting the landscape regulations.
- The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot is increased by more than 2,000 square feet, or when an application is made for a building permit for construction work that: (1) increases the number of stories in a building on the lot; or (2) increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period.
- The applicant has submitted an alternate landscape plan that, according to the City of Dallas Chief Arborist, does not comply with street tree requirements of Article X: The Landscape Regulations.

- The City of Dallas Chief Arborist submitted a memo to the Board Administrator regarding the applicant's request (see Attachment A). The memo states how this request is triggered by new construction on the site and how the alternate plan proposes the required number of street trees to be located within 60' of back of street curb rather than the required 30' back of curb. The Chief Arborist states that the location of a 15' water easement and overhead utility lines restrict the placement of the street trees in the code-required location.
- The Chief Arborist supports the applicant's landscape special exception request given the conditions/features of the site that preclude full compliance with Article X, and that other than the location of street trees, the site complies with all other Article X mandatory and design standard requirements.
- The applicant has the burden of proof in establishing the following:
 - Strict compliance with the requirements of the Landscape Regulations of the Dallas Development Code will unreasonably burden the use of the property; and
 - The special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose the submitted landscape plan as a condition to the request, the site would be provided exception from full compliance with the street tree requirements of Article X: The Landscape Regulations in this case, street trees located 60' rather than within 30' of back of curb.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 12, 2012

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Coulter**

I move that the Board of Adjustment grant application **BDA 112-105** 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 alternate landscape plan is required.

SECONDED: **Maten**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 112-112

BUILDING OFFICIAL'S REPORT:

Application of Kim Blair for a special exception to the fence height regulations at 2860 Lacompte Drive. This property is more fully described as Lot 49 in City Block 26/6129 and is zoned R-7.5(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct an 8 foot 2 inch high fence, which will require a special exception of 4 feet 2 inches.

LOCATION: 2860 Lacompte Drive

APPLICANT: Kim Blair

REQUEST:

A special exception to the fence height regulations of 4' 2" is requested in conjunction with constructing and maintaining an 8' 2" high solid wood fence in the site's Belteau Lane 15' required front yard on a site developed with a single family home. (No part of this application is made to construct and/or maintain a fence higher than 4' in the site's Lacompte Drive required front yard).

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-7.5(A) (Single family district 7,500 square feet)
North: R-7.5(A) (Single family district 7,500 square feet)
South: R-7.5(A) (Single family district 7,500 square feet)
East: R-7.5(A) (Single family district 7,500 square feet)
West: R-7.5(A) (Single family district 7,500 square feet)

Land Use:

The subject site is developed with a single family home. The areas to the north, east, south, 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 the subject site or in the immediate vicinity of the subject site.

Timeline:

September 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.

October 10, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

October 10, 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 October 24th deadline to submit additional evidence for staff to factor into their analysis; and the November 2nd 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 30, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November 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 Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

GENERAL FACT /STAFF ANALYSIS:

- This request focuses on constructing and maintaining an 8’ 2” high solid wood fence in the site’s Belteau Lane 15’ required front yard on a site developed with a single family home.

- The subject site is a corner lot zoned R-7.5(A) with two street frontages of unequal distance. The site is located at the southwest corner of Lacompte Drive and Belteau Lane. The site has a required front yard along Lacompte Drive as the shorter of the two frontages are typically deemed the front yard on a corner lot of unequal frontage distance in a single family zoning district. But the site's Belteau Lane frontage is deemed a front yard to maintain the continuity of the established front yard setbacks of the lots immediately south fronting eastward to Belteau Lane.
- Additionally, the subject site has two required setbacks created by platted building lines: a 25' required setback along Lacompte Drive and a 15' required setback along Belteau Lane.
- If it were not for the lots immediately south of the subject site that actually front onto Belteau Lane, the proposed 8' 2" high fence could be constructed/maintained by right since this frontage of the corner subject site is the longer of the subject site's two street frontages.
- 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 had submitted a scaled site and partial elevation that shows the proposal in the Belteau Lane front yard setback reaching a maximum height of 8' 2".
- The following additional information was gleaned from the submitted site plan:
 - Approximately 80' in length parallel to Belteau Lane (and approximately 15' in length perpendicular on the north and south sides of the site in the required front yard), approximately on the Belteau Lane front property line or approximately 13' from the pavement line where three homes would have direct/indirect frontage to the proposal none of which have fences in their front yards.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other *front yard* fences higher than 4' in the immediate area. However, a number of fences higher than 4' were noted immediately north of the site – solid board fences about 8' - 9' in height that appear to be located in these property's rear yards given a platted easement line on the east sides of these properties.
- As of November 5, 2012, one petition signed by 18 neighbors/owners had been submitted to staff in support of the request or no letters had been submitted opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal that would reach 8' 2" in height) will not adversely affect neighboring property.
- Granting this special exception of 4' 2" with a condition imposed that the applicant complies with the submitted site plan and partial elevation would require the proposal exceeding 4' in height in the Belteau Lane required front yard to be constructed/maintained in the location and of the heights and materials as shown on these documents.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 12, 2012

APPEARING IN FAVOR: Lisa Morrison, 6922 Beltow, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Richard**

I move that the Board of Adjustment, in Appeal No. **BDA 112-112**, on application of Kim Blair, **grant** the request of this applicant to construct and maintain a 8-foot, 2 inch high fence on the property as a special exception to the height requirement for fences 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 partial elevation is required.

SECONDED: **Maten**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 112-114

BUILDING OFFICIAL’S REPORT:

Application of H. Rex Dinger for a special exception to the fence height regulations at 432 N. Acres Drive (AKA: 430 N. Acres Drive). This property is more fully described as a single family residential building site consisting of part of Lot 1.1 and part of Lot 1.2 in City Block B/6657 and is zoned R-7.5(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and/or maintain a 6 foot 6 inch high fence, which will require a special exception of 2 foot 6 inches.

LOCATION: 432 N. Acres Drive (AKA: 430 N. Acres Drive)

APPLICANT: H. Rex Dinger

REQUEST:

A special exception to the fence height regulations of 2’ 6’ is requested in conjunction with maintaining what is represented on a submitted elevation as a 6’ 2” high solid metal fence with 6’ 6” high metal posts on a site developed with a single family home.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STAFF RECOMMENDATION:

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

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5(A) (Single family district 7,500 square feet)
North: R-7.5(A) (Single family district 7,500 square feet)
South: R-7.5(A) (Single family district 7,500 square feet)
East: City of Balch Springs
West: CR & R-7.5(A) (Community Retail & Single family district 7,500 square feet)

Land Use:

The subject site is developed with a single family home. The areas to the north and east are developed with church use (Full Gospel Church); the area to the south is developed with single family uses; and the area to the west is developed with commercial and single family uses.

Zoning/BDA History:

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

Timeline:

September 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.

October 10, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

October 10, 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 October 24th deadline to submit additional evidence for staff to factor into their analysis;

and the November 2nd 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 30, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November 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 Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

GENERAL FACT /STAFF ANALYSIS:

- This request focuses on maintaining 6' 2" high solid metal fence with 6' 6" high metal posts on a site developed with a single family home.
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The applicant had submitted a site plan/partial elevation that shows the proposal in the front yard reaching a maximum height of 6' 6".
- The following additional information was gleaned from the submitted site plan/partial elevation:
 - Approximately 80' in length parallel to N. Acres Drive (and approximately 23' in length perpendicular to the street on the south side of the site in the front yard setback), ranging from approximately 2' – 11' from the front property line and approximately 21' – 30' from the pavement line where one home has direct/indirect frontage to the proposal.
- The Board Administrator conducted a field visit of the site and surrounding area along N. Acres Drive (approximately 500' north and south of the subject site) and noted two other fences above 4 feet high (approximately 6' high board fences) immediately north and northwest of the subject site. Although a number of other fences were noted on N. Acres Drive south of the subject site, these fences appeared to be approximately 4' in height.
- As of November 5, 2012, no letters had been submitted in support or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the existing fence that reaches 6' 6" in height) does not adversely affect neighboring property.

- Granting this special exception of 2' 6" with a condition imposed that the applicant complies with the submitted site plan/elevation would require the proposal exceeding 4' in height to be maintained in the location and of the heights and materials as shown on this document.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 12, 2012

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Coulter

I move that the Board of Adjustment, in Appeal No. **BDA 112-114**, on application of H. Rex Dinger, **grant** the request of this applicant to maintain a 6-foot, 6 inch high fence on the property as a special exception to the height requirement for fences 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/elevation is required.

SECONDED: Richard

AYES: 4 – Richardson, Coulter, Richard, Carreon

NAYS: 1 - Maten

MOTION PASSED: 4– 1

FILE NUMBER: BDA 112-119

BUILDING OFFICIAL’S REPORT:

Application of Rob Baldwin for a variance to the side yard setback regulations at 3130 Kingbridge Street. This property is more fully described as Lot 1 in City Block BB/7135 and is zoned PD-508 (Tract 4), which requires a 50 foot side yard setback. The applicant proposes to construct a structure and provide a 38 foot side yard setback, which will require a variance of 12 feet.

LOCATION: 3130 Kingbridge Street

APPLICANT: Rob Baldwin

REQUEST:

A variance to the side yard setback regulations of 12' is requested in conjunction with constructing and maintaining a one-story, approximately 77,000 square foot assisted

living facility use on an undeveloped lot, part of which would be located in the site's 50' side yard setback on the north side of the property.

STANDARD FOR A VARIANCE:

The Dallas Development Code Section 51A-3.102(d)(10) specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

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

STAFF RECOMMENDATION:

Approval, subject to compliance with the submitted site plan

Rationale:

- The lot's irregular shape and restrictive area preclude its development in a manner commensurate with other developments found on similarly-zoned PD 508 lots. The usually large 50' side yard setbacks required in this Planned Development district on this property create hardship on this narrow lot. The applicant has stated that the two 50 foot side yard setbacks account for over 33 percent of its width when most combined side yard setbacks on a typical lot in residential zoning districts account for about 10 percent of the total lot width.
- Granting this variance does appear to be contrary to public interest in that the property immediately north of the subject site where the side yard setback variance is requested is the same owner as that of the subject site: Dallas Housing Authority.

BACKGROUND INFORMATION:

Zoning:

Site: PD 508 Tract 4 (Planned Development)
North: PD 508 Tract 4 (Planned Development)
South: PD 508 Tract 13 & 14 (Planned Development)
East: PD 508 Tract 9 (Planned Development)
West: PD 508 Tract 14 (Planned Development)

Land Use:

The subject site is undeveloped. The areas to the north and east appear to be developed with residential uses; and the areas to the south and west appear to be undeveloped.

Zoning/BDA History:

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

Timeline:

October 10, 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.

October 16, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

October 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 October 24th deadline to submit additional evidence for staff to factor into their analysis; and the November 2nd 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 24 & 31, 2012: The applicant forwarded additional information beyond what was submitted with the original application (see Attachments A and B).

October 30, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November 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 Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining a one-story, approximately 77,000 square foot assisted living facility use on an undeveloped lot, part of which would be located in the site’s 50’ side yard setback on the north side of the property.
- A 50’ side yard setback is required for properties zoned PD 508 Tract 4.
- A site plan has been submitted showing that a portion of the structure/building footprint is located 12’ into the 50’ side yard setback.
- The site is flat, slightly irregular in shape, and according to the application, is 6.391 acres in area. The site is zoned PD 508 Tract 4.
- According to DCAD records, there are “no improvements” for the property at 3130 Kingbridge Street.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the side yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance to side yard setback regulations 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 508 zoning classification.
 - The variance to side yard setback regulations 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 DP 508 zoning classification.
- If the Board were to grant the front yard variance request, imposing a condition whereby the applicant must comply with the submitted site plan, the structure in the side yard setback would be limited to what is shown on the submitted plan – a structure that could be located 38’ from the site’s northern side property line or 12’ into the 50’ side yard setback.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 12, 2012

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Coulter

I move that the Board of Adjustment grant application **BDA 112-119** 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 site plan is required.

SECONDED: Nolen

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

NAYS: 0 -

MOTION PASSED: 5– 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.
- September 17, 2012: The Board of Adjustment Panel C conducted a hearing on this application and moved to hold the matter under advisement until November 12, 2012.
- September 18, 2012: The Board Administrator wrote the applicant a letter that conveyed the board's decision along with the October 24th deadline to submit additional evidence for staff to factor into their analysis; and the November 2nd deadline to submit additional evidence to be incorporated into the Board's docket materials.
- October 30, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November 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 Building Inspection 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.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on maintaining an approximately 4,200 square foot structure (Jake's), which includes a 3,700 square foot restaurant use/structure and a 500 square foot open covered patio 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 restaurant without drive-in or drive-through service use.

- 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 3,700 square foot restaurant meets the Code's parking requirement of 37 off-street parking places. The approximately 500 square foot covered patio is the additional square footage that necessitates this special exception.
- 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 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)

BOARD OF ADJUSTMENT ACTION: NOVEMBER 12, 2012

APPEARING IN FAVOR: Roger Albright, 3301 Elm St., Dallas, TX
Greg Garvey, 4338 Travis, Dallas, TX

APPEARING IN OPPOSITION: Mark Rieves, 5530 Goodwin, Dallas, TX

MOTION: Maten

I move that the Board of Adjustment, in Appeal No. **BDA 112-070**, on application of Roger Albright, **grant** the request of this applicant to reduce the number of off-street parking spaces in the Dallas Development Code by 5 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 will 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 5 off-street parking spaces automatically and immediately terminates if and when the restaurant without drive-in or drive-through use is changed or discontinued.

SECONDED: Coulter

AYES: 4 –Maten, Coulter, Richard, Carreon

NAYS: 1 - Richardson

MOTION PASSED: 4– 1

MOTION: Maten

I move to adjourn this meeting.

SECONDED: Coulter

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

NAYS: 0 -

MOTION PASSED: 5 – 0 (Unanimously)

2:59 P. M. - Board Meeting adjourned for **November 12, 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.