

**BOARD OF ADJUSTMENT, PANEL C  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, 6ES  
MONDAY, DECEMBER 16, 2013**

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

MEMBERS ABSENT FROM BRIEFING: No one

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

MEMBERS ABSENT FROM HEARING: No one

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

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Laura Morrison, Asst. City Atty., Todd Duerksen, Development Code Specialist, Neva Dean, Interim Asst. Director, Lloyd Denman, Asst. Dir., Engineering 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 **December 16, 2013** docket.

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**1:05 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 November 18, 2013 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: DECEMBER 16, 2013**

**MOTION:** Schulte

I move **approval** of the Monday, **November 18, 2013** public hearing minutes.

**SECONDED:** Beikman

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

**NAYS:** 0 –

**MOTION PASSED:** 5– 0 (unanimously)

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**FILE NUMBER:** BDA 123-121

**BUILDING OFFICIAL’S REPORT:** Application of Mark Dann for a special exception to the fence height regulations at 10416 Marsh Lane. This property is more fully described as Lot 2, Block 3/6413 and is zoned R-16(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain a 7 foot high fence, which will require a 3 foot special exception to the fence height regulations.

**LOCATION:** 10416 Marsh Lane

**APPLICANT:** Mark Dann

**REQUEST:**

A special exception to the fence height regulations of 3’ is requested in conjunction with constructing and maintaining a 6’ high solid wood fence and gate with 7’ high stone columns in the site’s 35’ front yard setback on a site that is currently being developed with a single family home.

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

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

**STAFF RECOMMENDATION:**

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

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

The subject site is being developed with a single family home. The lot to the north is being developed with a single family home; and the areas to the east and west are developed with single family uses.

**Zoning/BDA History:**

1. BDA 123-122, Property at 10418 Marsh Lane ( the lot immediately north of the subject site)      On December 16, 2013, the Board of Adjustment Panel C will consider a request for a special exception to the fence height regulations of 3' made in conjunction with constructing and maintaining a 6' high solid wood fence and gate with 7' high brick columns in the site's front yard setback on a site being developed with a single family home.
  
2. BDA 123-094, Property at 10424 Marsh Lane ( two lots immediately north of the subject site)      On September 17, 2013, the Board of Adjustment Panel A granted a request for a special exception to the fence height regulations of 3' 6", and imposed the following condition to this request: compliance with the submitted revised site plan/landscape plan/elevation document and entryway elevation is required. The case report stated that the request was made to maintain "a 6' wrought iron fence with an 8' high gate and columns of 6.5' as amended." The case report stated that the request was made to construct/maintain a 6' high open

steel tube post fence with a 6' high open steel tube gate flanked by two approximately 6' solid masonry wing walls with approximately 7' 6" high entry gate columns in the site's 35' front yard setback on a site that is currently developed with a single family home.

**Timeline:**

October 8, 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.

November 12, 2013: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

November 13, 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 November 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the December 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."

December 3, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. 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 Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, 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 a 6' high solid wood fence and gate with 7' high stone columns in the site's 35' front yard setback on a site that is currently being 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 has submitted a full site plan and partial site plan/elevation indicating that the proposal reaches a maximum height of 7'.
- The following additional information was gleaned from the submitted partial site plan:
  - The proposal in the front yard setback is represented as being approximately 85' in length generally parallel to the street (with a recessed entry way).
  - The proposed fence is represented as being located approximately 3' from the front property line or approximately 14' from the pavement line.
  - The proposed rolling gate is represented as being approximately 7' from the front property line or approximately 18' from the projected pavement line.
- The proposal is located across from three single family homes none that 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 6' high open steel tube post fence that is located two lots to the north of the subject site and appears to be a result of a fence height special exception request granted by Board of Adjustment Panel A in September of 2013: BDA 123-094.
- As of December 9, 2013, no letters/emails/faxes have been submitted in support of or in opposition to this request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 3' will not adversely affect neighboring property.
- Granting this special exception of 3' with a condition imposed that the applicant complies with the submitted full site plan and partial site plan/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: DECEMBER 16, 2013**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

**MOTION: Schulte**

I move that the Board of Adjustment grant application **BDA 123-121** 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 full site plan partial site plan/elevation is required.

**SECONDED: Beikman**

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

**NAYS: 0 –**

**MOTION PASSED: 5– 0 (unanimously)**

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**FILE NUMBER: BDA 123-122**

**BUILDING OFFICIAL’S REPORT:** Application of Mark Dann for a special exception to the fence height regulations at 10418 Marsh Lane. This property is more fully described as Lot 1, Block 3/6413 and is zoned R-16(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain a 7 foot high fence, which will require a 3 foot special exception to the fence height regulations.

**LOCATION: 10418 Marsh Lane**

**APPLICANT: Mark Dann**

**REQUEST:**

A special exception to the fence height regulations of 3’ is requested in conjunction with constructing and maintaining a 6’ high solid wood fence and gate with 7’ high brick columns in the site’s 35’ front yard setback on a site that is currently being developed with a single family home.

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

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

**STAFF RECOMMENDATION:**

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

**BACKGROUND INFORMATION:**

**Zoning:**

**Site: R-16(A) (Single family residential 16,000 square feet)**

**North: R-16(A) (Single family residential 16,000 square feet)**

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

**Land Use:**

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

**Zoning/BDA History:**

1. BDA 123-121, Property at 10416 Marsh Lane ( the lot immediately south of the subject site) 

On December 16, 2013, the Board of Adjustment Panel C will consider a request for a special exception to the fence height regulations of 3' made in conjunction with constructing and maintaining a 6' high solid wood fence and gate with 7' high stone columns in the site's front yard setback on a site being developed with a single family home.
  
2. BDA 123-094, Property at 10424 Marsh Lane (the lot immediately north of the subject site) 

On September 17, 2013, the Board of Adjustment Panel A granted a request for a special exception to the fence height regulations of 3' 6", and imposed the following condition to this request: compliance with the submitted revised site plan/landscape plan/elevation document and entryway elevation is required. The case report stated that the request was made to maintain "a 6' wrought iron fence with an 8' high gate and columns of 6.5' as amended." The case report stated that the request was made to construct/maintain a 6' high open steel tube post fence with a 6' high open steel tube gate flanked by two approximately 6' solid masonry wing walls with approximately 7' 6" high entry gate columns in the site's 35' front yard setback on a site that is currently developed with a single family home.

**Timeline:**

October 8, 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.

November 12, 2013: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

November 13, 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 November 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the December 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."

December 3, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. 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 Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, 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 a 6' high solid wood fence and gate with 7' high brick columns in the site's 35' front yard setback on a site that is currently being 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 has submitted a full site plan and partial site plan/elevation indicating that the proposal reaches a maximum height of 7'.
- The following additional information was gleaned from the submitted partial site plan:
  - The proposal in the front yard setback is represented as being approximately 85' in length generally parallel to the street (with a recessed entry way).



- The proposed fence is represented as being located approximately 3' from the front property line or approximately 14' from the pavement line.
- The proposed rolling gate is represented as being approximately 7' from the front property line or approximately 18' from the projected pavement line.
- The proposal is located across from three single family homes none that 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 6' high open steel tube post fence that is located immediately north of the subject site and appears to be a result of a fence height special exception request granted by Board of Adjustment Panel A in September of 2013: BDA 123-094.
- As of December 9, 2013, no letters/emails/faxes have been submitted in support of or in opposition to this request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 3' will not adversely affect neighboring property.
- Granting this special exception of 3' with a condition imposed that the applicant complies with the submitted full site plan and partial site plan/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: DECEMBER 16, 2013**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Schulte**

I move that the Board of Adjustment grant application **BDA 123-122** 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 full site plan partial site plan/elevation is required.

SECONDED: **Beikman**

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

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**FILE NUMBER:** BDA 123-124

**BUILDING OFFICIAL'S REPORT:** Application of Frank Richardson of Poss Design Group for a variance to the front yard setback regulations at 9650 Chartwell Drive. This property is more fully described as a 4.86 tract of land in Block A/8071 and is zoned IR, which requires a front yard setback of 15 feet. The applicant proposes to construct and maintain structures and provide a 0 foot front yard setback, which will require a 15 foot variance to the front yard setback regulations.

**LOCATION:** 9650 Chartwell Drive

**APPLICANT:** Frank Richardson of Poss Design Group

**REQUEST:**

A request for a variance to the front yard setback regulations of 15' is made in conjunction with constructing and maintaining approximately 1,500 square foot waste water treatment facility structures, part of which are to be located in the site's Hillguard Road 15' front yard setback on a site that is currently developed with an approximately 100,000 square foot industrial use (Don Miguel Mexican Foods). (No part of any proposed structure is represented to be located in the site's Chartwell Drive 15' front yard setback).

**STANDARD FOR A VARIANCE:**

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

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

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The subject site has an irregular shape that precludes the location of proposed waste water treatment facility structures related to the existing use other than in one of the site’s two 15’ front yard setbacks (Hillguard Road).
- According to a letter submitted with the file from the City of Dallas Water Utilities Department, the new waste water treatment facility structures proposed to be located in the site’s Hillguard Road front yard setback are part of an approved Compliance Plan with the Pretreatment and Laboratory Services (PALS) Division of Dallas Water Utilities due to continued violations of the Local Limit on Oil & Grease on the subject site. The City of Dallas Water Utilities letter further states that the Compliance Plan calls for the construction of a new treatment system at the facility to treat the wastewater prior to discharge into the sanitary sewer – the discharge line for the facility is located along Hillguard Road. The letter states that due to the location of the existing sanitary sewer connection (on the east/Hillguard Road side of the side of the subject site), the present configuration of the facility, and a concern for food process sanitation which the applicant is required to comply, PALS agrees with the decision of the company/applicant to construct and locate the new treatment facility in the proposed location along Hillguard Road.

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: IR (Industrial/Research)
- North: IR (Industrial/Research)
- South: IR (Industrial/Research)
- East: IR (Industrial/Research)
- West: IR (Industrial/Research)

**Land Use:**

The subject site is currently developed with an industrial use (Don Miguel Mexican Foods). The areas to the north, east, south, and west are developed mostly as industrial 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:**

- October 7, 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.
- November 12, 2013: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- November 13, 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 November 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the December 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.”
- December 3, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. 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 Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, 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 approximately 1,500 square foot waste water treatment facility structures, part of which are to be located in the site’s Hillguard Road 15’ front yard setback on a site that is currently developed with an industrial use (Don Miguel Mexican Foods). No part of any proposed structure is represented to be located in the site’s Chartwell Drive 15’ front yard setback.
- Structures on lots zoned IR are required to provide a minimum front yard setback of 15’.
- The subject site is located at the southwest corner of Chartwell Drive and Hillguard Road). Regardless of how the structures are oriented, the subject site has two 15’ front yard setbacks along both streets as would any property with two street frontages not zoned agricultural, single family, or duplex.

- A site plan has been submitted denoting that the proposed structures are to be located as close as on the Hillguard Road front property line or as much as 15' into this 15' front yard setback.
- It appears from calculations made by the Board Administrator from the submitted site plan that approximately 600 square feet (or about 7 percent) of the proposed approximately total 1,500 square foot building footprint or approximately 1 percent of the total approximately 100,000 square foot building footprint is to be located in the site's Hillguard Road front yard setback.
- DCAD records indicate the improvements for property at 9650 Chartwell Drive is a "distribution warehouse" with 101,020 square feet constructed in 1978.
- The subject site is irregular in shape and according to the application, is 4.86 acres (or approximately 211,000 square feet) in area.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the front yard setback regulations along Hillguard Road 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 IR 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 IR zoning classification.
- If the Board were to grant the variance request and impose the submitted site plan as a condition, the structures in the front yard setback would be limited to what is shown on this document– which are structures to be located as close as 0 feet from the site's Hillguard Road front property line (or 15' into this 15' front yard setback).

**BOARD OF ADJUSTMENT ACTION: DECEMBER 16, 2013**

APPEARING IN FAVOR: Frank Richardson, 5310 Harvest Hill Rd., Dallas, TX  
Bruce Salciolo, 9650 Chartwell Dr., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Beikman**

I move that the Board of Adjustment, in Appeal No. **BDA 123-124**, on application of Frank Richardson, **grant** a 15-foot variance to the front yard setback regulations because our evaluation of the property and 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 is required.

**SECONDED:** Carreon

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

**NAYS:** 0 –

**MOTION PASSED:** 5– 0 (unanimously)

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**FILE NUMBER:** BDA 123-127

**BUILDING OFFICIAL’S REPORT:** Application of Sandy Stephens of Cole Design Group for a special exception to the off-street parking regulations at 7754 Lyndon B. Johnson Freeway. This property is more fully described as Lot 4, Block C/7729, and is zoned MU-3, which requires off-street parking to be provided. The applicant proposes to construct and maintain a multifamily use and provide 168 of the required 185 parking spaces, which will require a 17 space special exception to the off-street parking regulations.

**LOCATION:** 7754 Lyndon B. Johnson Freeway

**APPLICANT:** Sandy Stephens of Cole Design Group

**REQUEST:**

A special exception to the off-street parking regulations of 17 spaces is requested in conjunction with constructing and maintaining a 98 unit multifamily development and providing 168 (or 91 percent) of the 185 off-street parking spaces required by code.

**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).
- 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 (off-street parking special exception):**

Approval, subject to the following condition:

- The special exception of 17 spaces shall automatically and immediately terminate if and when the multifamily use that would normally need no more than 185 required parking spaces is changed or discontinued.

Rationale:

- 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: MU-3 (Mixed Use)  
North: R-7.5(A) (Single family residential)  
South: MU-3 (Mixed Use)  
East: MU-3 (Mixed Use)  
West: MU-3 (Mixed Use)

**Land Use:**

The subject site is undeveloped. The area immediately north is the LBJ Freeway; the area to the east is developed with office use; the area to the west is developed with

multifamily residential use; and the area to the south is developed with a vacant financial institution with drive-through window use.

**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:**

October 17, 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.

November 12, 2013: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

November 13, 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 November 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the December 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.”

December 3, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. 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 Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, and the Assistant City Attorney to the Board.

December 6, 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 constructing and maintaining a 98 unit multifamily development and providing 168 (or 91 percent) of the 185 off-street parking spaces required by code.
- The Dallas Development Code requires the following off-street parking requirement:
  - Multifamily: one space per bedroom with a minimum of one space per dwelling unit. An additional one-quarter space per dwelling unit must be provided if the required parking is restricted to resident parking only. No additional parking is required for accessory uses that are limited principally to residents.
- The applicant has submitted a document stating that 168 of the 185 required off-street parking spaces are proposed to be provided.
- 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 proposed multifamily use does not warrant the number of off-street parking spaces required, and
  - The special exception of 17 spaces (or a 9 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 17 spaces shall automatically and immediately terminate if and when the multifamily use is changed or discontinued, the applicant would be allowed to construct and maintain the multifamily development, providing 168 of the 185 code required off-street parking spaces.

**BOARD OF ADJUSTMENT ACTION: DECEMBER 16, 2013**

APPEARING IN FAVOR: Sandy Stephen, 6175 Main St., Dallas, TX  
Paul Merrill, 4777 Cedar Springs, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Schulte**

I move that the Board of Adjustment in Appeal No. **BDA 123-127**, hold this matter under advisement until **February 20, 2014**.

SECONDED: **Beikman**

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)



.....  
**FILE NUMBER:** BDA 123-123

**BUILDING OFFICIAL'S REPORT:** Application of Karl A. Crawley of Masterplan for a special exception to the visual obstruction regulations at 2533 McKinney Avenue. This property is more fully described as Tract 12, Block 2/954 and is zoned PD-193 (LC), which requires a 45 foot visibility triangle at street intersections. The applicant proposes to locate and maintain items in a required visibility triangle, which will require a special exception to the visual obstruction regulations.

**REQUEST:**

A special exception to the visual obstruction regulations is made in conjunction with maintaining an existing 5' high open fence located in the 45' visibility triangle at the intersection of McKinney Avenue and Routh Street on a site developed with a restaurant without drive-in or drive-through service (Sfuzzi's).

**STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:**

The Board shall grant a special exception to the requirements of the visual obstruction regulations when, in the opinion of the Board, the item will not constitute a traffic hazard.

**STAFF RECOMMENDATION:**

Denial

Rationale:

- The Sustainable Development and Construction Department Engineering Division Assistant Director recommends that this request be denied in that visibility of the intersection and crosswalk are compromised.
- The applicant has not substantiated how the location of the fence located in the 45' visibility triangle at the intersection of McKinney Avenue and Routh Street does not constitute a traffic hazard.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 193 (LC) (Planned Development, Light Commercial)  
North: PD 193 (LC) (Planned Development, Light Commercial)  
South: PD 193 (LC) (Planned Development, Light Commercial)  
East: PD 193 (PDS 73) (Planned Development, Planned Development)  
West: PD 9 (Planned Development)

### **Land Use:**

The subject site is developed with a restaurant without drive-in or drive-through service (Sfuzzi's). The area to north is undeveloped; the area to the east is under development; the area to the south is developed with office/retail uses; and the area to the west is developed with a surface parking lot.

### **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:**

October 7, 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.

November 12, 2013: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

November 13, 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 November 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the December 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;
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence"; and
- posed the question of if he had intentionally not submitted an elevation of what item/items is located in the visibility triangle where in many instances with this type of application, the applicant submits an elevation in addition to a site plan that shows what item/items is in the required visibility triangle.

November 26, 2013: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).

December 3, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. 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 Assistant Building Official, the Board

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

December 4, 2013: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment B).

December 6, 2013: The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet regarding the applicant's request for a special exception to the visual obstruction regulations marked "Recommends that this be denied" commenting "visibility of intersection and crosswalk is compromised."

### **GENERAL FACTS/STAFF ANALYSIS:**

- This request focuses on maintaining an existing 5' high open fence located in the 45' visibility triangle at the intersection of McKinney Avenue and Routh Street on a site developed with a restaurant without drive-in or drive-through service (Sfuzzi's).
- The Dallas Development Code states the following: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
  - in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections, and 20 foot visibility triangles at drive approaches and at alleys on properties zoned single family); and
  - between two and a half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- PD 193 defines "visibility triangle" as
  1. where a street designated on the city's thoroughfare plan intersects another street, the portion of a corner lot within a triangular area formed by connecting together the point of intersection of adjacent curb lines (or, if there are no street curbs, what would be the normal street curb lines) and points on each of the street curb lines 45 feet from the intersection;
  2. where two streets not designated on the city's thoroughfare plan intersect, the portion of a corner lot within a triangular area formed by connecting together the point of intersection of adjacent curb lines (or, if there are no street curbs, what would be the normal street curb lines) and points on each of the street curb lines 30 feet from the intersection;
  3. where an alley or driveway intersects with a street, the portion of a lot within a triangular area formed by connecting together the point of intersection of the edge of a driveway or alley and adjacent street curb line (or, if there are no street curbs, what would be the normal street curb line) and points on the driveway or alley edge and the street curb line 20 feet from the intersection.
- A site plan and cross section have been submitted indicating portions of an 18" high retaining wall and a 5' high open fence in the 45' visibility triangle at the intersection of McKinney Avenue and Routh Street. (Note that an 18" high retaining wall exists in

the 45' visibility triangle but does not require a special exception since items requiring this type of special exception request begin 2 ½ feet from the top of the adjacent street curb).

- The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet regarding the applicant's request for a special exception to the visual obstruction regulations marked "Recommends that this be denied" commenting "visibility of intersection and crosswalk is compromised."
- The applicant has the burden of proof in establishing how granting the request for special exception to the visual obstruction regulations to maintain portions of an existing 5' high open fence located in the 45' visibility triangle at the McKinney Avenue/Routh Street intersection does not constitute a traffic hazard.
- Granting this request with a condition imposed that the applicant complies with the submitted site plan and cross section would limit the item located in the 45' visibility triangle at the McKinney Avenue/Routh Street intersection to that what is shown on these documents - a 5' high open fence.

**BOARD OF ADJUSTMENT ACTION: DECEMBER 16, 2013**

**APPEARING IN FAVOR:** Karl Crawley, 900 Jackson St., Dallas, TX

**APPEARING IN OPPOSITION:** Jack Irwin, 2708 Fairmount St., Dallas, TX  
Judy Hearst, 2512 Thomas Ave., Dallas, TX  
Paula Nemec, 2504 State St., Dallas, TX

**MOTION: Schulte**

I move that the Board of Adjustment, in Appeal No. **BDA 123-123**, on application of Karl Crawley, **deny** the special exception requested **without prejudice**, because our evaluation of the property and the testimony shows that granting the application would constitute a traffic hazard.

**SECONDED: Beikman**

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

**NAYS:** 0 –

**MOTION PASSED:** 5– 0 (unanimously)

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**FILE NUMBER:** BDA 123-128

**BUILDING OFFICIAL'S REPORT:** Application of Ed Simons for a variance to the side yard setback regulations at 3723 Greenville Avenue. This property is more fully described as Lot 10, Block C/2907, and is zoned CR(D) MD-1, which requires a side yard setback of 20 feet where there is residential adjacency. The applicant proposes to construct and maintain a structure and provide a 0 foot side yard setback, which will require a 20 foot variance to the side yard setback regulations.

**LOCATION:** 3723 Greenville Avenue

**APPLICANT:** Ed Simons

**REQUEST:**

A request for a variance to the side yard setback regulations of 20' is made in conjunction with constructing and maintaining structures (power cabinets and inspection panels) related to cell phone service equipment to be located inside/behind an existing solid CMU/brick veneer walled/approximately 120 square foot subleased area, all of which would be located in the site's western 20' side yard setback on a site that is currently developed with an office use/nonconforming structure (Spryrocket Work Space and Business Lounge).

**STANDARD FOR A VARIANCE:**

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

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

**STAFF RECOMMENDATION:**

Denial

Rationale:

- While granting the variance for the structures in the site's western side yard setback does not appear to be contrary to public interest given that these structures are to be inside/behind a solid CMU/brick veneer screen wall and that the land use adjacent to the proposed encroachment zoned D(A) is a surface parking lot; staff is unable to conclude that there is an unnecessary hardship as the parcel/subject site does not differ from other parcels of land by being of such restrictive area, shape, or slope that it cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same CR zoning classification. The subject site is rectangular in shape and, according to the application, is 0.17 acres (or approximately 7,400 square feet) in area. The site zoned CR(D) MD-1 has two front

yard setbacks as would any property with two street frontages not zoned agricultural, single family, or duplex.

- The features of this site do not appear to preclude the applicant from locating the structures in another location on the site where a setback variance request would not be necessary.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: CR(D) MD-1 (Community Retail, Dry, Modified Delta)  
North: CR(D) MD-1 (Community Retail, Dry, Modified Delta)  
South: CR(D) MD-1 (Community Retail, Dry, Modified Delta)  
East: CR(D) MD-1 (Community Retail, Dry, Modified Delta)  
West: D(A) (Duplex)

### **Land Use:**

The subject site is currently developed with an office/retail use/nonconforming structure (Spryrocket Work Space and Business Lounge). The area to the north is developed with multifamily use; the areas to the east and south are developed retail uses; and the area to the west zoned D(A) Duplex is a surface parking lot.

### **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:**

- October 24, 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.
- November 12, 2013: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- November 13, 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 November 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the December 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.”

November 25, 2013: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).

December 3, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. 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 Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, 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 structures (power cabinets and inspection panels) related to cell phone service equipment to be located inside/behind an existing solid CMU/brick veneer walled/approximately 120 square foot subleased area, all of which would be located in the site’s western 20’ side yard setback on a site that is currently developed with an office use/nonconforming structure (Spryrocket Work Space and Business Lounge).
- The minimum side yard setback on lots zoned CR is 20 feet when adjacent to or directly across an alley from an R, R(A), D, D(A), TH, TH(A), CH, MF, or MF(A) district, and no minimum in all other cases.
- The subject site is located at the southwest corner of Greenville Avenue and Matalee Road). Regardless of how the structures are oriented, the subject site has two 15’ front yard setbacks along both streets as would any property with two street frontages not zoned agricultural, single family, or duplex; one 0’ side yard setback on the south (where the adjacent zoning is CR); and one 20’ side yard setback on the west (where the adjacent zoning is D(A)).
- A site plan denotes that the proposed structures are to be located as close as 1’ away from the site’s western side property line or as much as 19’ into this 20’ side yard setback.
- The site plan also denotes that part of the existing main structure (which according to DCAD was built in the 1950’s) is in the 20’ side yard setback but the applicant has chosen not to seek variance to remedy what appears to be this nonconforming structure.
- According to calculations taken from the site plan, the total square footage of structures proposed to be in the 20’ side yard setback is about 40 square feet.



- DCAD records indicate the improvements for property at 3723 Greenville Avenue is a “converted service station” with 1,711 square feet constructed in 1955.
- The subject site is rectangular in shape and according to the application, is 0.17 acres (or approximately 7,400 square feet) in area. The site is zoned CR(D) MD-1. The subject site has two front yard setbacks as would any property with two street frontages not zoned agricultural, single family, or duplex.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the side yard setback regulations along the west side of the subject site 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 CR 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 CR zoning classification.
- If the Board were to grant the variance request and impose the submitted site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document– which are structures to be located as close as 1 foot from the site’s western side property line (or 19’ into this 20’ side yard setback)

**BOARD OF ADJUSTMENT ACTION: DECEMBER 16, 2013**

APPEARING IN FAVOR: Ed Simons, 900 Jackson St., Dallas, TX  
 Greg Yocom, 607 Newell Ave., Dallas, TX  
 Brooksie Roberts, 4440 Edmondson, Dallas, TX

APPEARING IN OPPOSITION: Cleve Schneider, 5514 Mercedes Ave., Dallas, TX

**MOTION: Schulte**

I move that the Board of Adjustment, in Appeal No. **BDA 123-128**, on application of Ed Simons, **grant** a 20-foot variance to the side yard setback regulations because our evaluation of the property and 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 is required.
- The variance automatically and immediately terminates if and when the lot immediately to the west of the subject site is developed with a residential use.

**SECONDED:** Beikman

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

**NAYS:** 0 –

**MOTION PASSED:** 5– 0 (unanimously)

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**FILE NUMBER:** BDA 134-001

**BUILDING OFFICIAL’S REPORT:** Application of Tad Weatherford, represented by Steven Wood, for a variance to the front yard setback regulations at 4407 Middleton Road. This property is more fully described as Lot 15, Block 1/5537, and is zoned R-16(A), which requires a front yard setback of 35 feet. The applicant proposes to construct and maintain a structure and provide a 28 foot front yard setback, which will require a 7 foot variance to the front yard setback regulations.

**LOCATION:** 4407 Middleton Road

**APPLICANT:** Tad Weatherford  
Represented by Steven Wood

**REQUEST:**

A variance to the front yard setback regulations of 7’ for tree preservation is requested in conjunction with constructing and maintaining a two-story single family structure with a total under roof area of 7,450 square feet, part of which is proposed to be located in one of the site’s two 35’ front yard setbacks (Crestline Road) on a site that is under development. (No request has been made in this application to construct/maintain any structure in the site’s Middleton Road front yard setback).

**STANDARD FOR A VARIANCE:**

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

- (A) not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;
- (B) necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and

(C) not granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

**STAFF RECOMMENDATION:**

Denial

Rationale:

- While staff concluded that the subject site is unique and different from most lots zoned R-16(A) in that it is slightly irregular in shape, with two mature trees that the applicant intends to preserve, and is somewhat restrictive in area due to its two front yard setbacks, the applicant had not substantiated how these features of the approximately 18,300 square foot subject site preclude him from developing it (with a “7,450 SF total area under roof” single family home) with it in a manner commensurate with development on other similarly zoned R-16(A) properties.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-16(A) (Single family district 16,000 square feet)  
North: PD 627 (Planned Development)  
South: R-16(A) (Single family district 16,000 square feet)  
East: R-16(A) (Single family district 16,000 square feet)  
West: R-16(A) (Single family district 16,000 square feet)

**Land Use:**

The subject site is under development. The area 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 or in the immediate vicinity of the subject site.

**Timeline:**

October 24, 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.

November 12, 2013: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

November 13, 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 November 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the December 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."

November 26, 2013: The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded a revised Building Official's report to the Board Administrator (see Attachment A).

December 3, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. 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 Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, and the Assistant City Attorney to the Board.

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

December 4, 2013: The applicant's representative submitted additional documentation on this application beyond what was submitted with the original application (see Attachment B).

#### **GENERAL FACTS/STAFF ANALYSIS:**

- This request focuses constructing and maintaining a two-story single family structure with a total under roof area of 7,450 square feet, part of which is proposed to be located in the one of the site's two 35' front yard setbacks (Crestline Road) on a site that is under development. (No request has been made in this application to construct/maintain any structure in the site's Middleton Road front yard setback).
- Structures on lots zoned R-16(A) are required to provide a minimum front yard setback of 35'.
- The subject site is a lot that runs from one street to another (Crestline Avenue on the north, Middleton Road on the south). Regardless of how the proposed single-family structure appears to be oriented towards Middleton Road, the site has front yard setbacks on both streets since the code states that if a lot runs from one street to another and has double frontage, a required front yard must be provided on both streets.

- The submitted site plan denotes that the proposed single family home is located 28' from the site's Crestline Avenue front property line or 7' into this 35' front yard setback. (No encroachment is shown in the Middleton Road front yard setback).
- According to calculations taken from the site plan, about 280 square feet (or approximately 7 percent) of the proposed approximately 3,700 square foot lower floor building footprint is to be located in the site's Crestline Avenue 35' front yard setback.
- The subject site is flat, somewhat irregular in shape, and according to the application is 0.42 acres (or approximately 18,300 square feet) in area. The site is zoned R-16(A) where lots typically are 16,000 square feet in area. The submitted site plan denotes a 43" Oak tree and a 29" Oak tree to remain on the site.
- The site has two front 35' front yard setbacks; and two 10' side yard setback; most residentially-zoned lots have one front yard setback, two side yard setbacks, and one rear yard setback.
- According to DCAD records, there are "no main improvements" at 4407 Middleton Road.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the Crestline Road front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-16(A) zoning classification.
  - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-16(A) zoning classification.
- If the Board were to grant the variance request, and impose the submitted site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document— which in this case is a structure to be located 28' from the site's Crestline Road front property line (or 7' into this 35' front yard setback).

**BOARD OF ADJUSTMENT ACTION: DECEMBER 16, 2013**

APPEARING IN FAVOR: Danny Sipes, P.O. Box 3293, Forney, TX

APPEARING IN OPPOSITION: No one

MOTION: **Coulter**

I move that the Board of Adjustment, in Appeal No. **BDA 134-001**, on application of Steven Wood, **grant** a 7-foot variance to the front yard setback regulations because our evaluation of the property and 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 is required.

**SECONDED: Beikman**

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

**NAYS:** 0 –

**MOTION PASSED:** 5– 0 (unanimously)

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**MOTION: Schulte**

I move to adjourn this meeting.

**SECONDED: Carreon**

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

**NAYS:** 0 -

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

**3:27 P. M.** - Board Meeting adjourned for **December 16, 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.