

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN AUDITORIUM
WEDNESDAY, FEBRUARY 17, 2016**

MEMBERS PRESENT AT BRIEFING: Scott Hounsel, Acting Vice-Chair, Larry Brannon, regular member, Alex Winslow, regular member, Wini Cannon, regular member and Lorlee Bartos, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Scott Hounsel, Acting Vice-Chair, Larry Brannon, regular member, Alex Winslow, regular member, Wini Cannon, regular member and Lorlee Bartos, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Bert Vandenberg, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, David Lam, Engineering, Steve Buhrlé, Engineering, Donna Moorman, Chief Planner and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Bert Vandenberg, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, Engineering, Donna Moorman, Chief Planner and Trena Law, Board Secretary

11:05 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **February 17, 2016 docket.**

1:01 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 B January 20, 2016 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 16, 2016

MOTION: None

The minutes were approved.

FILE NUMBER: BDA156-007(SL)

BUILDING OFFICIAL’S REPORT: Application of Tony Visconti, represented by Darren Marlowe, for a special exception to the fence height regulations at 4926 Deloache Avenue. This property is more fully described as Lot 12, Block 11/5584, and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain a 10 foot 6 inch high fence, which will require a 6 foot 6 inch special exception to the fence height regulations.

LOCATION: 4926 Deloache Avenue

APPLICANT: Tony Visconti
Represented by Darren Marlowe

REQUEST:

A request for a special exception to the fence height regulations of 6’ 6” is made to construct and maintain the following fence proposal in the front yard setback on a site being developed with a single family home:

- a 6’ 3” high open wrought iron fence with 7’ high cement plaster columns,
- an approximately 8’ high open metal pedestrian gate with approximately 8’ high cement plaster columns topped with approximately 2’ high decorative urns, and
- an approximately 9’ 6” high open metal vehicular entry gate with approximately 8’ 6” high cement plaster columns topped with 2’ high decorative urns.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STAFF RECOMMENDATION:

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

BACKGROUND INFORMATION:

Zoning:

Site: R-1ac (A) (Single family district 1 acre)
North: R-1ac (A) (Single family district 1 acre)
South: R-1ac (A) (Single family district 1 acre)
East: R-1ac (A) (Single family district 1 acre)
West: R-1ac (A) (Single family district 1 acre)

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining a 6' 3" high open wrought iron fence with 7' high cement plaster columns, an approximately 8' high open metal pedestrian gate with approximately 8' high cement plaster columns topped with approximately 2' high decorative urns, and an approximately 9' 6" high open metal vehicular entry gate with approximately 8' 6" high cement plaster columns topped with 2' high decorative urns on a site 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 subject site is zoned R-1ac(A) and has a 40' front yard setback.
- The applicant has submitted two documents – a site plan, and a site plan with elevation of the proposal with notations indicating that the proposal reaches a maximum height of 10' 6".
- The following additional information was gleaned from the submitted site plan:
 - The proposal is represented as being approximately 170' in length parallel to the street, and approximately 30' in length perpendicular to the street on the east and west sides of the site in the front yard setback.
 - The proposed fence is represented as being located approximately 10' from the front property line, or approximately 19' from the pavement line.

- The proposed gates are represented as being located approximately 15' from the front property line, or approximately 24' from the pavement line.
- Two single family lots front the proposed fence, one with a fence in its front yard that appears lower than 4' high, and the other with an approximately 5' high open metal fence with no recorded BDA history.
- The Board Administrator conducted a field visit of the site and surrounding area (properties along Deloache Avenue from Sunnybrook Lane on the west to approximately 300 feet to the east of the site) and noted no other fences over 4' in height and in front yard setbacks other than the one previously mentioned located northwest of the subject site.
- As of February 5, 2016, no letters have been submitted in support of or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 6' 6" will not adversely affect neighboring property.
- Granting this special exception of 6' 6" with a condition imposed that the applicant complies with the submitted site plan and site plan with elevation documents would require the proposal exceeding 4' in height in the front yard setback to be constructed and maintained in the location and of the heights and materials as shown on these documents.

Timeline:

- December 2, 2015: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- January 6, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- January 6, 2016: The Board Administrator contacted the applicant and emailed him the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the January 27th deadline to submit additional evidence for staff to factor into their analysis; and the February 5th 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."
- February 2, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Sustainable Development and Construction Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable

Development and Construction Department Project Engineers, and the Assistant City Attorneys to the Board.

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

BOARD OF ADJUSTMENT ACTION: FEBRUARY 17, 2016

APPEARING IN FAVOR: Darron Marlowe, 6709 Vanderbilt Ave, Dallas, TX

APPEARING IN OPPOSITION: Pat Ford, 633 N Manus, Dallas, TX
Tony Visconti, 4850 Longview, Frisco, TX

MOTION #1: Winslow

I move that the Board of Adjustment, in request No. **BDA 156-007**, on application of Tony Visconti, represented by Darren Marlowe, **grant** the request to construct and maintain an 10-foot 6 inch high fence as a special exception to the fence height requirements in the Dallas Development Code because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted overall site plan and partial site plan with elevation documents is required.

SECONDED: Cannon

AYES: 3–Hounsel, Winslow, Cannon,

NAYS: 2 – Brannon, Bartos

MOTION FAILED 3 – 2

MOTION #2: Hounsel

I move that the Board of Adjustment, in request No. **BDA 156-007**, on application of Tony Visconti, represented by Darren Marlowe, **deny** the special exception requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: Bartos

AYES: 3–Hounsel, Winslow, Bartos

NAYS: 2 – Brannon, Cannon,

MOTION PASSED 3 – 2

FILE NUMBER: BDA156-012(SL)

BUILDING OFFICIAL’S REPORT: Application of David Diamond, represented by John Alexander, for a special exception to the single family use regulations at 6127 Yorkshire Drive. This property is more fully described as Lot 16, Block 5/6378, and is zoned R-16(A), which limits the number of dwelling units to one. The applicant proposes to construct and maintain an additional dwelling unit, which will require a special exception to the single family zoning use regulations.

LOCATION: 6127 Yorkshire Drive

APPLICANT: David Diamond
Represented by John Alexander

REQUEST:

A request for a special exception to the single family use development standard regulations is made to construct and maintain a 2-story cabana/additional “dwelling unit” structure on a site being developed with a 2-story main single family home/dwelling unit structure.

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

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

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

STAFF RECOMMENDATION:

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

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining a 2-story cabana/additional “dwelling unit” structure on a site being developed with a 2-story main single family home/dwelling unit structure.
- The site is zoned R-1ac (A) where the Dallas Development Code permits one dwelling unit per lot.
- The single family use regulations of the Dallas Development Code state that only one dwelling unit may be located on a lot, and that the board of adjustment may grant a special exception to this provision and authorize an additional dwelling unit on a lot when, in the opinion of the board, the special exception will not: 1) be contrary to the public interest; or 2) adversely affect neighboring properties.
- The Dallas Development Code defines “single family” use as “one dwelling unit located on a lot;” and a “dwelling unit” as “one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms.”
- The Dallas Development Code defines “kitchen” as “any room or area used for cooking or preparing food and containing one or more ovens, stoves, hot plates, or microwave ovens; one or more refrigerators; and one or more sinks. This definition does not include outdoor cooking facilities.”
- The Dallas Development Code defines “bathroom” as “any room used for personal hygiene and containing a shower or bathtub, or containing a toilet and sink.”
- The Dallas Development Code defines “bedroom” as “any room in a dwelling unit other than a kitchen, dining room, living room, bathroom, or closet. Additional dining rooms and living rooms, and all dens, game rooms, sun rooms, and other similar rooms are considered bedrooms.”
- The submitted site plan denotes the locations of two building footprints, the larger of the two denoted as “two story stone and brick” and the smaller of the two with denoted as “two story cabana 25% of main house”. The latter structure has been deemed by Building Inspection, given what is denoted on a submitted site plan as an additional dwelling unit - that is per Code definition: “one or more rooms to be a

single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms.”

- The site plan represents the sizes and locations of the two building footprints relative to the entire lot.
- This request appears to center on the function of what is proposed to be inside the smaller structure on the site – the “two story cabana” structure. The applicant has written the following: “the cabana plan for 6127 Yorkshire complies with all requirements by the city of Dallas with the exception of the wall that reflects a refrigerator, stove, dishwasher which comprises a kitchen..... It complies with all other City of Dallas building specifications....size, height, percent of main dwelling and any other requirements have been met...”
- DCAD records indicate “main improvement” for the property at 6127 Yorkshire Drive to be a structure with 6,741 square feet of living area/total area built in 2015, and the “additional improvements” to be the following: a 323 square foot attached garage, a 528 square foot attached garage, and a 390 square foot outdoor living area.
- The applicant has the burden of proof in establishing that the additional dwelling unit will not be used as rental accommodations (by providing deed restrictions, if approved) and will not adversely affect neighboring properties.
- If the Board were to approve this request, the Board may choose to impose a condition that the applicant comply with the site plan if they feel it is necessary to ensure that the special exception will not adversely affect neighboring properties. But granting this special exception request will not provide any relief to the Dallas Development Code regulations other than allowing an additional dwelling unit on the site (i.e. development on the site must meet all required code requirements).
- The Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

Timeline:

December 15, 2015: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

January 6, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

January 6, 2016: The Board Administrator contacted the applicant and emailed him the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the January 27th deadline to submit additional evidence for staff to factor into their analysis; and the February 5th 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.”

January 25, 2016: The applicant's representative submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

February 2, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Sustainable Development and Construction Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Project Engineers, and the Assistant City Attorneys to the Board.

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

BOARD OF ADJUSTMENT ACTION: FEBRUARY 17, 2016

APPEARING IN FAVOR: Rob Baldwin, 3904 Elm St., Suite B, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Cannon

I move that the Board of Adjustment, in request No. **BDA 156-012**, hold this matter under advisement until **March 23, 2016**.

SECONDED: Bartos

AYES: 5--Hounsel, Brannon, Winslow, Cannon, Bartos

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA156-013(SL)

BUILDING OFFICIAL'S REPORT: Application of Jonathan Stites, represented by Kori Haug of Bella Firma, Inc., for a special exception to the landscape regulations at 9209 Old Hickory Trail. This property is more fully described as Lot 22, Block A/7553, and is zoned IR, which requires mandatory landscaping. The applicant proposes to construct and maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 9209 Old Hickory Trail

APPLICANT: Jonathan Stites
Represented by Kori Haug of Bella Firma, Inc.

REQUEST:

A special exception to the landscape regulations is made to construct and maintain an office/warehouse use/structure on a site currently under development, and not fully meet the landscape regulations.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE AND TREE PRESERVATION REGULATIONS:

The board may grant a special exception to the landscape and tree preservation 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 alternate landscape plan is required.

Rationale:

- The Chief Arborist recommends approval of the alternate landscape plan because the special exception will not adversely affect neighboring properties which have similar or industrial uses.
- Staff also concluded that strict compliance with the requirements of the landscape regulations (planting the required number of trees on the site) will unreasonably burden the use of the property because it is encumbered with a wide gas easement along the entire northern perimeter of the lot, large detention ponds to the east, and slope to a regional detention basin on the west.

BACKGROUND INFORMATION:

Zoning:

- Site: IR (Industrial / research)
- North: IR (Industrial / research)
- South: City of Desoto
- East: IR (Industrial / research)
- West: City of Desoto

Land Use:

The subject site is under development. The areas to the north and east are developed with what appears to be office/warehouse uses; and the areas to the south and west in the City of Desoto are developed with multifamily 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.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on developing the site with an office/warehouse use/structure and not fully meeting the landscape regulations, more specifically not providing the required number of trees.
- The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or 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 City of Dallas Chief Arborist submitted a memo regarding the applicant's request (see Attachment A). The memo states how this request is triggered by a new construction of an office/warehouse use.
- With regard to how the proposal is deficient to the landscape regulations, the Chief Arborist stated that site trees are required for office/warehouse showroom uses at a ratio of one tree for every 4,000 square feet of lot area, or 419 trees; and that the proposed plan provides 280 trees for the approximately 38 acre lot, being generally at a rate of one tree for every 6,000 square feet of lot area. This is a deficiency of 139 site trees, but the planting level is standard for industrial uses.
- The Chief Arborist's memo lists the following factors for consideration:
 1. Section 51A-10.125(b)(3) states all lots, other than single family or duplex uses, must have one tree per 4,000 square feet, except for industrial uses in IM and IR districts where one tree per 6,000 square feet of lot area must be provided.
 2. Site trees may be provided with large or small (ornamental) trees, provided that all other requirements for Article X are met.
 3. The property is encumbered with a wide gas easement along the entire northern perimeter of the lot for 97,165 square feet, or 2.23 acres, and large detention ponds (143,200 square feet, or 3.28 acres) to the east. These areas are restrictive to planting trees and reducing for these areas would lower the requirement to 360 trees, being at a ratio of 1 tree per 4,657 square feet. The western perimeter also has a slope to a regional detention basin. The bulk of the site is paved for the structure and parking, and for the maneuvering of large vehicles to support its main use.
 4. The property is surrounded by more industrial and manufacturing uses, and is the middle tract of a 157 acre 'Master Planned Industrial Park' in Dallas and DeSoto. This particular property is currently under development as an office/showroom warehouse with a final use of the structure to be determined. The property to the north, which was recently constructed, is designated as an industrial use and is planted at 1:6,000 square feet for site trees.
 5. The proposed plan has no other Article X deficiencies. No trees are required for tree mitigation purposes.
- The City of Dallas Chief Arborist recommends approval of the submitted landscape because the special exception will not adversely affect neighboring properties which have similar or industrial uses.
- 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 required number of site trees on the subject site.

Timeline:

December 10, 2015: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

January 6, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

January 6, 2016: 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 January 27th deadline to submit additional evidence for staff to factor into their analysis; and the February 5th 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."

The Board Administrator asked the applicant if she could represent that there are no publicly filed deed restrictions on the subject site, or if there are deed restrictions, that this request to the board of adjustment in no way violates any such deed restriction.

January 14, 2016: The applicant emailed the Board Administrator stating that there are deed restrictions on the property but there are no restrictions that are related to, affect or regulate landscaping; and that the deed restrictions will not be impacted by this request of an alternate landscape plan

February 2, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Sustainable Development and Construction Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Project Engineers, and the Assistant City Attorneys to the Board.

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

February 5, 2016: The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment A).

BOARD OF ADJUSTMENT ACTION: FEBRUARY 17, 2016

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Winslow

I move to grant that the Board of Adjustment grant application **BDA 156-013** 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 landscape plan is required.

SECONDED: Cannon

AYES: 5–Hounsel, Brannon, Winslow, Cannon, Bartos

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA156-017(SL)

BUILDING OFFICIAL’S REPORT: Application of Danny Sipes for a special exception to the landscape regulations at 5021 Bowser Avenue. This property is more fully described as Lot 13-17 & part of 12, Block 2/2457, and is zoned PD-193 (LC), which requires mandatory landscaping. The applicant proposes to increase nonpermeable coverage and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 5021 Bowser Avenue

APPLICANT: Danny Sipes

REQUEST:

A request for a special exception to the landscape regulations is made to maintain nonpermeable coverage added to a lot currently developed with a vehicle display, sales, or service use, and not fully provide required landscaping.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS IN OAK LAWN:

Section 51P-193-126(a)(4) of the Dallas City Code specifies that the board may grant a special exception to the landscaping requirements of this section if, in the opinion of the Board, the special exception will not compromise the spirit and intent of this section. When feasible, the Board shall require that the applicant submit and that the property comply with a landscape plan as a condition to granting the special exception.

STAFF RECOMMENDATION:

Approval, subject to the following conditions:

1. Compliance with the submitted revised alternate landscape plan is required.
2. The landscape plant material specifications must conform to the minimum tree and screening requirements of Section 51P-193.126.

Rationale:

- The Chief Arborist recommends approval with the conditions listed above imposed because the special exception for sidewalk and tree planting dimensions will not compromise the spirit and intent of the of the landscape requirements of PD 193.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	PD 193 (LC) (Planned Development District, Light Commercial)
<u>North:</u>	PD 193 (LC) (Planned Development District, Light Commercial)
<u>South:</u>	PD 193 (LC) (Planned Development District, Light Commercial)
<u>East:</u>	PD 193 (LC) (Planned Development District, Light Commercial))
<u>West:</u>	PD 193 (LC) (Planned Development District, Light Commercial)

Land Use:

The subject site is developed with a vehicle display, sales, or service use. The areas to the north and east are developed with multifamily use; and the areas to the south and west are 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.

GENERAL FACTS/ STAFF ANALYSIS:

- This request focuses on maintaining nonpermeable coverage added to a lot currently developed with a vehicle display, sales, or service use, and not fully provide required landscaping. More specifically, according to the City of Dallas Chief Arborist, the features shown on the submitted revised alternate landscape plan would not conform to PD 193 landscape regulation standards related to the street trees and sidewalk location.

- PD 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind.
- The City of Dallas Chief Arborist states in a memo (see Attachment B) that the request in this case is triggered by new construction of a surface parking lot on the property.
- The Chief Arborist notes that the submitted revised alternate landscape site plan is deficient in the following ways:
 1. Street Trees (193.126(b)(5)) are not planted between 2.5 to 5 feet from back of curb.
 2. The sidewalk (193.126(b)(4)) is not placed between 5 to 12 feet from back of curb.
- The Chief Arborist listed several factors for consideration:
 1. The required street trees are planted between 6' to 8' from back of curb.
 2. The 6' sidewalk is spaced greater than 14' from back of curb.
 3. The proposed landscape plan complies with all other landscape requirements for the placement and number of plant materials. The proposed landscape plan does not specify the landscape materials or sizes installed.
- The Chief Arborist recommends approval of the proposed landscape plan, with condition, because the special exception for sidewalk and tree planting dimensions will not compromise the spirit and intent of the ordinance. (Condition: The landscape plant material specifications must conform to the minimum tree and screening requirements of Section 51P-193.126).
 - The applicant has the burden of proof in establishing the following:
 - The special exception (where a revised alternate landscape plan has been submitted that is deficient in meeting the street tree and sidewalk location requirements of the PD 193 landscape regulations) will not compromise the spirit and intent of Section 51P 193-126: "Landscape, streetscape, screening, and fencing standards".
- If the Board were to grant this request and impose the staff suggested conditions, the site would be granted exception from full compliance to the street tree and sidewalk location requirements of the PD 193 landscape regulations.

Timeline:

December 18, 2015: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

January 6, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

- January 6, 2016: 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 January 27th deadline to submit additional evidence for staff to factor into their analysis; and the February 5th 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.”
- February 2, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Sustainable Development and Construction Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Project Engineers, and the Assistant City Attorneys to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- February 4, 2016: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).
- February 5, 2016: The City of Dallas Chief Arborist submitted a memo regarding the request (see Attachment B).

BOARD OF ADJUSTMENT ACTION: FEBRUARY 17, 2016

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Winslow

I move to grant that the Board of Adjustment grant application **BDA 156-017** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised alternate landscape plan is required.
- The landscape plant material specifications must conform to the minimum tree and screening requirements of Section 51P-193.126.

SECONDED: Cannon

AYES: 5–Hounsel, Brannon, Winslow, Cannon, Bartos

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

MOTION: Cannon

I move to adjourn this meeting.

SECONDED: Hounsel

AYES: 5–Hounsel, Brannon, Winslow, Cannon, Bartos

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

1:27 P.M. Board Meeting adjourned for **February 17, 2016**

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.