

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN AUDITORIUM
WEDNESDAY, MARCH 23, 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, Wini Cannon, regular member and Lorlee Bartos, alternate member

MEMBERS ABSENT FROM HEARING: Alex Winslow, regular member

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Bert Vandenberg, Asst. City Attorney, Mary McCollough, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, Donna Moorman, Chief Planner, Neva Dean, Interim Asst. Director and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Bert Vandenberg, Asst. City Attorney, Mary McCollough, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, 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 **March 23, 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 February 17, 2016 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: MARCH 23, 2016

MOTION: None

The minutes were approved.

FILE NUMBER: BDA156-021(SL)

BUILDING OFFICIAL’S REPORT: Application of Steven Wood for a special exception to the landscape regulations at 5024 Bowser Avenue. This property is more fully described as Lot 6 & Lot 7, Block 3/2458, 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: 5024 Bowser Avenue

APPLICANT: Steven Wood

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 condition:

- Compliance with the submitted revised alternate landscape plan is required.

Rationale:

- Staff concurs with the Chief Arborist and recommends approval of this request with the condition imposed above because this special exception will not compromise the spirit and intent of the of the landscape requirements of PD 193.

BACKGROUND INFORMATION:

Zoning:

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

1. BDA156-017, Property at 5021 Bowser Avenue (the property south of the subject site) On February 17, 2016, the Board of Adjustment Panel B granted a request for a special exception to the landscape regulations and imposed the following conditions: 1. Compliance with the submitted revised alternate landscape plan is required; and 2. The landscape plant material specifications must conform to the minimum tree and screening requirements of Section 51P-193.126. The case report stated that the request was made in conjunction with maintaining nonpermeable coverage added to a lot currently developed with a vehicle display, sales, or service use, and not fully provide required landscaping.

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 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 A) that the request in this case is triggered by new construction of a parking lot with increased impervious surface on the property.
- The Chief Arborist notes that the submitted revised alternate landscape site plan is deficient in that the sidewalk is not placed between 5 to 12 feet from back of curb.
- The Chief Arborist listed several factors for consideration:
 1. Under landscape sidewalk requirements, a sidewalk for a non-residential district is required to be a minimum of 6 feet in width and placed between 5 and 12 feet from the back of the street curb. The sidewalk along Bowser is set 7' 3" from back of curb on the west side of the driveway at Bowser, and 13' 6" from back of curb along the east side of the driveway entry. The sidewalk adjusts for a short distance along Mahanna to avoid a utility pole. The sidewalk is a minimum of 6 feet in width except at the utility pole, where it is reduced to 4 feet.
 2. Street trees along Mahanna and Bowser are set back from the tree planting zone as allowed under ordinance when the owner is unable to plant in the parkway by permit. The required trees along Mahanna are placed in the required front yard to avoid underground utilities under the standard tree planting zone, and the location of the tree along Bowser is amended for restricted space for utilities and a visibility triangle at the driveway. A required detention drainage further restricts planting east of the driveway along Bowser. The required number of eight street trees are represented.
 3. The sidewalk along Mahanna discontinues at the end of the property which is adjacent to a public utility.
 4. The proposed landscape plan complies with all other landscape requirements for the placement and number of plant materials.
- The Chief Arborist recommends approval of the proposed landscape plan because the plan does not compromise the spirit and intent of this ordinance.
 - The applicant has the burden of proof in establishing the following:
 - The special exception (where an alternate landscape plan has been submitted that is deficient in meeting the 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 submitted alternate landscape plan as a condition, the site would be granted exception from full compliance to the sidewalk location requirements of the PD 193 landscape regulations.

Timeline:

January 7, 2016: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

February 9, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

February 9, 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 March 2nd deadline to submit additional evidence for staff to factor into their analysis; and the March 11th 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.”

March 8, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Interim Building Official, 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, and the Assistant City Attorneys to the Board.

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

March 14, 2016: The City of Dallas Chief Arborist submitted a memo regarding the request (see Attachment A).

BOARD OF ADJUSTMENT ACTION: MARCH 23, 2016

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Cannon

I move to grant that the Board of Adjustment grant application **BDA 156-021** 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.

SECONDED: Bartos

AYES: 4 –Hounsel, Brannon, Cannon, Bartos

NAYS: 0 –

MOTION PASSED 4 – 0 (unanimously)

FILE NUMBER: BDA156-024(SL)

BUILDING OFFICIAL’S REPORT: Application of Scott Morrison, represented by Travis Pierce of KSA Engineers, for a special exception to the landscape regulations at 4019 Frankford Road. This property is more fully described as Lot 52D, Block 3/8740, and is zoned CR, 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: 4019 Frankford Road

APPLICANT: Scott Morrison
Represented by Travis Pierce of KSA Engineers

REQUEST:

A special exception to the landscape regulations is made to construct and maintain an auto service center use/structure on a site currently undeveloped, 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.

C

Rationale:

- Staff concurs with the Chief Arborist and recommends approval of the proposed landscape plan because strict compliance with the street tree requirements for this building site will unreasonably burden the use of the property, and the plan does not adversely affect neighboring properties.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community retail)
North: CR (Community retail)
South: CR (Community retail)
East: CR (Community retail)
West: CR (Community retail)

Land Use:

The subject site is undeveloped. The areas to the north, south, and west are developed with retail uses; and the area to the west is developed with a child care facility 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.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on developing the site with an auto service center use/structure and not fully meeting the landscape regulations, more specifically not providing the required number of street 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 commercial development.
- With regard to how the proposal is deficient to the landscape regulations, the Chief Arborist stated that street tree requirements of Article X call for one large tree per 50 feet of frontage, with a minimum of two street trees, to be planted within 30 feet of the street curb. The proposed landscape plan calls for no street trees.
- The Chief Arborist's memo lists the following factors for consideration:
 1. The property is a portion of a previously platted development site which has frontage only along Frankford Road through a shared access easement set into its property.
 2. The applied design with the adjacent previously developed lots restricts the ability of this lot to adjust for suitable planting areas for large street trees without significant compromises being made by the adjacent properties to amend platted boundary lines to accommodate the additional plantings for this property.
 3. 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 proposed landscape plan because strict compliance with the street tree requirements for this building site will unreasonably burden the use of the property, and the plan does not adversely affect neighboring properties.
- 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 street trees on the subject site.

Timeline:

- January 21, 2016: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- February 9, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- February 9, 2016: The Board Administrator emailed the applicant's representative the following information:
 - an attachment that provided the public hearing date and panel that will consider the application; the March 2nd deadline to

submit additional evidence for staff to factor into their analysis; and the March 11th 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.”

March 8, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Interim Building Official, 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, and the Assistant City Attorneys to the Board.

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

March 14, 2016: The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment A).

BOARD OF ADJUSTMENT ACTION: MARCH 23, 2016

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Cannon**

I move to grant that the Board of Adjustment grant application **BDA 156-024** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted alternate landscape plan is required.

SECONDED: **Bartos**

AYES: 4 – Hounsel, Brannon, Cannon, Bartos

NAYS: 0 –

MOTION PASSED 4 – 0 (unanimously)

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

March 23, 2016 Public Hearing Notes:

- The Board Administrator forwarded additional written documentation submitted by the applicant to the Board at the briefing (see Attachment B).

REQUEST:

A request for a special exception to the single family use development standard regulations is made to construct and maintain a two-story cabana/additional “dwelling unit” structure on a site being developed with a two-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 two-story cabana/additional “dwelling unit” structure on a site being developed with a two-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 location of two building footprints, the larger of the two denoted as “two story stone and brick” and the smaller of the two 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).
- As of March 11, 2016, no additional information had been submitted to staff from what was presented prior to and at the February 17th public hearing.
- 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.

February 17, 2016: The Board of Adjustment Panel A conducted a public hearing on this application. The Board delayed action on this application until their next public hearing to be held on March 22, 2016.

February 22, 2016: The Board Administrator wrote the applicant a letter that provided the board's action; and the March 2nd deadline to submit additional evidence for staff to factor into their analysis; and the March 11th deadline to submit additional evidence to be incorporated into the Board's docket materials.

March 8, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Interim Building Official, 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, 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: 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)

BOARD OF ADJUSTMENT ACTION: MARCH 23, 2016

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Cannon

I move that the Board of Adjustment, in request No. **BDA 156-012**, **deny** this request **without prejudice**.

SECONDED: Bartos

AYES: 4 –Hounsel, Brannon, Cannon, Bartos

NAYS: 0 –

MOTION PASSED 4 – 0 (unanimously)

FILE NUMBER: BDA156-026(SL)

BUILDING OFFICIAL’S REPORT: Application of Barry Brewer for a variance to the side yard setback regulations at 1132 Ballard Avenue. This property is more fully described as Lot 8, Block 17/3339, and is zoned PD-468 (Subdistrict A, Tract 1) RTN, which requires a 10 foot side yard setback. The applicant proposes to construct and maintain a structure and provide a 5 foot side yard setback, which will require a 5 foot variance to the side yard setback regulations.

LOCATION: 1132 Ballard Avenue

APPLICANT: Barry Brewer

REQUEST:

A request for a variance to the side yard setback regulations of 5’ is made to complete and maintain a two-story “manor house”/two-unit structure that is located 5’ from the site’s southern side property line or 5’ into the site’s 10’ southern side 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, lot coverage, floor area for structures accessory to single family uses, height, minimum sidewalks,

off-street parking or off-street loading, or landscape regulations provided that 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:

- Staff concluded that the applicant has not substantiated how the variance was 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 it cannot be developed in a manner commensurate with the development upon other parcels of land with the same PD 468 (Subdistrict A, Tract 1) RTN zoning. (The applicant had not provided any information that established how the proposed two-story, “manor house”/two-unit structure with an approximately 2,700 square foot building footprint (or with approximately 4,000 square foot of total living area) was commensurate with the development upon other parcels of land in the same zoning district).
- While the site is relatively flat, approximately 7,800 square feet in area with three mature trees, and somewhat irregular in shape (163’ on the north, 151’ on the south; and 50’ on the east and west), the applicant had not documented how any of these features created hardship to warrant the requested side yard variance, or why the side yard setback could not be provided on the subject site in developing it with a residential manor house/residential use due to the lot’s restrictive area, shape, or slope.

BACKGROUND INFORMATION:

Zoning:

Site: PD 468 (Subdistrict A, Tract 1) RTN (Planned Development)
North: PD 468 (Subdistrict D, Tract 5) WMU-5 (Planned Development)
South: PD 468 (Subdistrict A, Tract 1) RTN (Planned Development)
East: PD 468 (Subdistrict D, Tract 5) WMU-5 (Planned Development)
West: PD 468 (Subdistrict A, Tract 1) RTN (Planned Development)

Land Use:

The subject site is under development. The area to the north is a surface parking lot, the area to the east is developed with retail uses; the area to the south is developed with what appears to be a single family use; and the area to the west is developed as a school (James S. Hogg Elementary School).

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 two-story, “manor house”/two-unit structure with an approximately 2,700 square foot building footprint (or with approximately 4,000 square foot of total living area) in the site’s 10’ southern side yard setback.
- The subject site is zoned PD 468 (Subdistrict A, Tract 1) RTN. PD 468 was created in 1997 and revised in March of 2015. Prior to the creation of PD 468, the property had been zoned MF-2(A) – a district that requires a 5’ side yard setback for duplex structures and a 10’ side yard setback for multifamily structures).
- PD 468 states that district regulations of Subdistrict A must comply with the RTN regulations and development standards in Article X111: Form Districts.
- Article XIII: Form Districts provides for “Residential Transition (RTN)” district. This district “provides single-family and duplex living intended to serve as a land use transition between more intense WMU or WR districts and established single-family neighborhoods.” It states that “This RTN district is intended to accommodate a limited set of development types with up to two dwelling units per lot.”
- PD 468 (Subdistrict A, Tract 1) RTN requires different side yard setbacks based on the type of development proposed on a property and whether the property is adjacent to an “abutting single-family district”, an “abutting multifamily, nonresidential district,” or an “abutting alley”.
- The Building Official has determined that the two-unit structure proposed on the subject site is categorized in the development types listed in Article XIII as a “manor house.” Article XIII defines a manor house as a development type with two to five attached dwelling units consolidated in a single structure. (Article XIII defines a townhouse as a development type with three or more attached dwelling units consolidated in a single structure).
- Structures on lots zoned PD 468 (Subdistrict A, Tract 1) RTN are required to provide a minimum side yard setback of 10’ if adjacent to an “abutting single-family district” and 5’ if adjacent to an “abutting multifamily, nonresidential district”.
- The submitted site plan indicates that the proposed structure is located 5’ from the side property line on the south – property to the south is zoned PD 468 (Subdistrict A, Tract 1) RTN or “abutting a single-family district” where a 10 side yard setback is required, hence a variance of 5’ is requested for the structure that is 5’ into this required 10’ side yard setback.
- The submitted site plan indicates that proposed structure is located 16’ from the side property line on the north - property to the north zoned PD 468 (Subdistrict D, Tract

- 5) WMU-5, “abutting multifamily, nonresidential district” where a 5’ side yard setback is required, hence no variance is requested into this required 5’ side yard setback.
- The subject site is relatively flat, somewhat irregular in shape (163’ on the north, 151’ on the south; and 50’ on the east and west), and approximately 7,800 square feet in area. The subject site is zoned PD 468 (Subdistrict A, Tract 1) RTN.
 - The site plan denotes the location of three, “100 year old, 8’ round Live Oak trees” on the property.
 - According to DCAD records, there are “no improvements” at 1132 Ballard Avenue.
 - According to calculations taken by the Board Administrator from the submitted site plan, the area of the proposed structure to be located in the site’s 10’ side yard setback is approximately 540 square feet in area or approximately 20 percent of the approximately 2,700 square foot building footprint.
 - The applicant has the burden of proof in establishing the following:
 1. That granting the variance to the side yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 2. The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD 468 (Subdistrict A, Tract 1) RTN zoning classification.
 3. 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 PD 468 (Subdistrict A, Tract 1) RTN zoning classification.
 - If the Board were to grant the variance request, and impose the submitted site plan as a condition, the structure in the side yard setback would be limited to what is shown on this document which in this case is a structure located 5’ from the site’s southern side property line (or 5’ into this 10’ side yard setback).

Timeline:

- January 19, 2016: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- February 9, 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 29, 2016: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).

March 8, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Interim Building Official, 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, and the Assistant City Attorneys to the Board.

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

BOARD OF ADJUSTMENT ACTION: MARCH 23, 2016

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Bartos**

I move that the Board of Adjustment, in request No. **BDA 156-026**, **deny** this request **without prejudice** as staff has determined that this variance is not necessary.

SECONDED: **Cannon**

AYES: 4 –Hounsel, Brannon, Cannon, Bartos

NAYS: 0 –

MOTION PASSED 4 – 0 (unanimously)

MOTION: **Hounsel**

I move to adjourn this meeting.

SECONDED: **Cannon**

AYES: 4 –Hounsel, Brannon, Cannon, Bartos

NAYS: 0 –

MOTION PASSED 4 – 0 (unanimously)

1:09 P.M. Board Meeting adjourned for **March 23, 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.