

**BOARD OF ADJUSTMENT, PANEL A  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, COUNCIL CHAMBERS  
TUESDAY, OCTOBER 17, 2017**

MEMBERS PRESENT AT BRIEFING: Peter Schulte, vice-chair, Elizabeth Nelson, regular member, John Jones, regular member, Jay Narey, regular member, and Gary Sibley, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Chief Planner, Kanesia Williams, Asst. City Atty., Todd Duerksen, Development Code Specialist, Lloyd Denman, Asst. Director of Engineering, Phil Erwin, Chief Arborist, and Trena Law, Board Secretary

MEMBERS PRESENT AT HEARING: Peter Schulte, vice-chair, Elizabeth Nelson, regular member, John Jones, regular member, Jay Narey, regular member, and Gary Sibley, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT HEARING: Steve Long, Chief Planner, Kanesia Williams, Asst. City Atty., Todd Duerksen, Development Code Specialist, Lloyd Denman, Asst. Director of Engineering, Phil Erwin, Chief Arborist, and Trena Law, Board Secretary

**11:05 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **October 17, 2017** docket.

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**1:06 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 September 19, 2017 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: OCTOBER 17, 2017**

MOTION: None

The minutes were approved without a formal vote.

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**MISCELLANEOUS ITEM NO. 2**

Approval of the Board of Adjustment Panel A's 2018 Public Hearing Calendar.

**BOARD OF ADJUSTMENT ACTION: OCTOBER 16, 2017**

Approval of the Board of Adjustment Panel A's 2018 Public Hearing Calendar.

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**FILE NUMBER:** BDA167-107(SL)

**BUILDING OFFICIAL'S REPORT:** Application of Jeff Bosse for a special exception to the tree preservation regulations at 9301 Sandyland Boulevard. This property is more fully described as Lots 1-14, Block 4/8495, Lots 15-28, Block 5/8495, and Lots 53-59. Block 1/8495, and is zoned R-10(A), which requires mandatory landscaping and tree mitigation. The applicant proposes to construct and maintain a residential subdivision and provide an alternate tree mitigation plan, which will require a special exception to the tree preservation regulations.

**LOCATION:** 9301 Sandyland Boulevard

**APPLICANT:** Jeff Bosse

**October 17, 2017 Public Hearing Notes:**

- The Board Administrator circulated additional information from applicant to the Board members at the briefing.

**REQUEST:**

A request for a special exception to the tree preservation regulations is made as it relates to removing trees on the property being development as a single family subdivision, and to not fully meet tree preservation regulations, more specifically, to seek a reduction of the overall tree replacement, and an extension of time to complete amended mitigation requirements through the completion of Phase IV of the subdivision.

**STANDARD FOR A SPECIAL EXCEPTION TO THE TREE PRESERVATION REGULATIONS:**

The board may grant a special exception to the 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 conditions:

1. Compliance with an alternate tree replacement plan submitted to and approved by the Chief Arborist prior to the October 17<sup>th</sup> public hearing is required.
2. All required tree mitigation in Phase III and Phase IV must be finished with the completion of final residential lot in Phase IV prior to the final certificate of completion, or within four years of Board approval, whichever is sooner.

Rationale:

- The Chief Arborist recommends approval of the request because in his opinion, strict compliance with the requirements of the code will unreasonably burden the use of the property, and the special exception will not adversely affect neighboring property.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-10(A) (Single family residential 10,000 square feet)  
North: R-10(A) (Single family residential 10,000 square feet)  
South: R-10(A) (Single family residential 10,000 square feet)  
East: R-10(A) (Single family residential 10,000 square feet)  
West: R-10(A) (Single family residential 10,000 square feet)

**Land Use:**

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

**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 for a special exception to the tree preservation regulations focuses on removing trees on the property being developed as a single family subdivision, and seeking a reduction of the overall tree replacement, and an extension of time to complete amended mitigation requirements through the completion of Phase IV of the subdivision.
- The Dallas Development Code requires full compliance with the Tree Preservation Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet.
- The Dallas Development Code states that the Tree Preservation, Removal, and Replacement division of Article X applies to all property in the city except for: 1) lots smaller than two acres in size that contain single-family or duplex uses; and 2) lots in a planned development district with landscaping and tree preservation regulations that vary appreciably from those in the article, as determined by the building official.
- The Tree Preservation Regulations of the Dallas Development Code states that if a tree removal application is approved, one or more healthy replacement trees must be planted in accordance with among other things quantity - the total caliper of replacement trees must equal or exceed the total caliper of protected trees removed or seriously injured.
- The Tree Preservation Regulations of the Dallas Development Code states that a property owner can comply with tree preservation regulations by mitigating the removed trees if the building official determines that, due to inhospitable soil conditions or inadequate space, it would be impracticable or imprudent for the responsible party to plant a replacement tree on the lot where the protected tree was removed or seriously injured, in any of the alternative methods provided for in Article X: donating trees to the Park Department, planting replacement trees on other property within one mile of the tree removal property, making payment into the Reforestation Fund, and/or granting a conservation easement area.

- The City of Dallas Chief Arborist submitted a memo regarding the applicant's request (see Attachment A).
- The Chief Arborist's memo states the following with regard to "request":
  - The applicant is requesting a special exception to the tree preservation regulations of Article X. Specifically, the request would be to consider factors of development and Article X regulations, and 1) to seek a reduction of the overall tree replacement for this phase of construction (10.134(1)); and 2) request an extension of time to complete their amended mitigation requirements (10.134(5)) through the completion of Phase IV of the subdivision.
- The Chief Arborist's memo states the following with regard to "provision":
  - The applicant is developing Phase III of the Sandyland Subdivision which has a mitigation requirement of 1,090 inches. In the 7-acre phase, four specific individual lots held 999 inches of the protected trees. The owner plans to plant 315 inches of new trees in the individual lots which meet or exceed landscape requirements, and would retain 126 inches of trees within the phase. In addition, the owner plans to install about 360 inches of trees in the future Phase IV, adjacent to Phase III, which is currently under review. No protected tree removal is required in Phase IV. The applicant is also asking for consideration of their history in fully completing mitigation in Phases I and II.
- The Chief Arborist's memo states the following with regard to "deficiencies":
  - The applicant proposes to plant 315 inches of 3" trees which meet Article X landscape requirements.
  - $1090" - 315" = 775"$  (Phase III landscaping)]
  - $775" - 360" = 415"$  (Phase IV landscaping) – needs time extension for completion.
  - 415 inches, or 38% of tree mitigation, is still due. The applicant requests this amount be waived.
- The Chief Arborist's memo states the following with regard to "factors":
  - Trees which are within the platted areas of public street development are not subject to permit or replacement.
  - The nearly 5,000 inches of protected trees to the east, in phases I and II, were mitigated by planting trees on individual lots (10.134), and alternative methods of compliance (10.135), including the provision of a conservation easement, and planting trees on City parks.
  - A four lot segment of the new Phase III held a significant concentration of 999 protected inches of trees (of 1,090") within a relatively small area of the overall development. Contiguous trees in the residential lots to the east of Phase III were previously removed for the development and engineering of the lots, and the construction of homes. The existing plat design, which includes phases III and IV, is a continuation of a westward-expanding and approved subdivision design form where previous tree removal has been mitigated. The applicant has indicated that the engineering of development around the 4 lot area restricted the ability of the site to be retained for conservation purposes within the center of the pre-designed platted subdivision.
- The Chief Arborist's memo states the following with regard to "recommendation":
  - Based on the central location of protected trees in the engineered subdivision, and the mitigation progression of the overall subdivision through previous phases, the chief arborist recommends approval of the alternate tree

replacement plan of waiver and extension for Phase III, because strict compliance with the requirements of this article will unreasonably burden the use of the property, and the special exception will not adversely affect neighboring property.

- As a condition, all required tree mitigation in Phase III and Phase IV must be finished with the completion of final residential lot in Phase IV prior to the final certificate of completion, or within four years of Board approval, whichever is sooner.
- The applicant has the burden of proof in establishing the following:
  1. Strict compliance with the requirements of the Tree Preservation Regulations of the Dallas Development Code will unreasonably burden the use of the property.
  2. The special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose the staff suggested conditions to the request, the site would be provided exception from the overall tree replacement, and time in which to mitigate removed trees on the subject site.

### **Timeline:**

August 2, 2017: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

September 12, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

September 12, 2017: 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 September 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the October 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

October 3, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Assistant Director of Sustainable Development and Construction, the Sustainable Development and Construction Assistant Director of Engineering, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

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

October 6, 2017: The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment A).

**BOARD OF ADJUSTMENT ACTION: OCTOBER 17, 2017**

**APPEARING IN FAVOR:** No one

**APPEARING IN OPPOSITION:** No one

**MOTION:** **Narey**

I move to grant that the Board of Adjustment grant application **BDA 167-107(SL)** 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 alternate tree replacement plan that has been submitted to and approved by the Chief Arborist prior to this public hearing is required.
- All required tree mitigation in Phase III and Phase IV must be finished with the completion of final residential lot in Phase IV prior to the final certificate of completion, or within four years of Board approval, whichever is sooner.

**SECONDED:** **Nelson**

**AYES:** 5 – Schulte, Nelson, Jones, Narey, Sibley

**NAYS:** 0 -

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

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**FILE NUMBER:** BDA167-115(SL)

**BUILDING OFFICIAL’S REPORT:** Application of Tom Persch, represented by Michael Kendall of Kendall Landscape Architecture, for a special exception to the landscape regulations at 1919 McKinney Avenue. This property is more fully described as Lot 1A, Block A/358, and is zoned PD-193 (HC), which requires mandatory landscaping. The applicant proposes to construct and/or maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

**LOCATION:** 1919 McKinney Avenue

**APPLICANT:** Tom Persch  
Represented by Michael Kendall of Kendall Landscape Architecture

**REQUEST:**

A request for a special exception to the landscape regulations is made to obtain a building permit for a surface parking lot on site developed with an office structure/use -

a structure that according to DCAD was built in the 1920's prior to the landscape ordinance adopted in the mid 80's, and to not fully provide required landscaping on the subject site, more specifically to not provide street trees, sidewalks, and screening of off-street parking along Cedar Springs Road, and sections of St. Paul and McKinney Avenue.

**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:

- The City of Dallas Chief Arborist recommends approval of the applicant's request because the special exception will not compromise the spirit and intent of the PD 193 landscape regulations.
- In making this conclusion, staff considered that the following facts:
  - The property was developed prior to initiation of PD 193.
  - The revised landscape plan consolidates all landscaping areas on one drawing.
  - The applicant has provided for two new red oak trees in proximity to an existing sweetgum tree along McKinney Avenue.

**BACKGROUND INFORMATION:**

Site: PD 193 (HC) (Planned Development, Heavy Commercial)  
North: PD 193 (PDS 50) (Planned Development, Planned Development)  
South: PD 193 (PDS 24) (Planned Development, Planned Development)  
East: PD 193 (PDS 66) (Planned Development, Planned Development)  
West: PD 193 (HC) (Planned Development, Heavy Commercial)

**Land Use:**

The subject site is developed with an office structure/use (HKS). The areas to the north, east, south, and west are developed with a mix of land uses.

**Zoning/BDA History:**

1. BDA134-086, Property at 1919 McKinney Avenue (the subject	On September 16, 2014, the Board of Adjustment Panel A granted a special
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site)	<p>exception to the landscape regulations and imposed the submitted alternate landscape plan as a condition.</p> <p>The case report stated the request was made to construct and maintain a surface parking lot on site developed with an office structure/use (HKS) - a structure that according to the application was developed prior to the landscape ordinance adopted in the mid 80's.</p>
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2. BDA 967-300, Property at 1907 McKinney Avenue (a portion of the subject site)

On October 28, 1997, the Board of Adjustment Panel A was informed that the originally submitted request for a special exception to the landscape regulations was removed from the docket since it had been determined by staff that the request originally heard on September 23, 1997 was not required.

**GENERAL FACTS/ STAFF ANALYSIS:**

- This request for a special exception to the landscape regulations focuses on obtaining a building permit for a surface parking lot on site developed with an office structure/use - a structure that according to DCAD was built in the 1920's prior to the landscape ordinance adopted in the mid 80's, and not fully provide required landscaping on the subject site, and not fully providing required landscaping on the subject site, more specifically, not providing street trees, sidewalks, and screening of off-street parking along Cedar Springs Road, and sections of St. Paul and McKinney Avenue.
- The applicant's representative had originally stated that this was a reapplication of a BDA approval in 2014 in which a building permit was not secured within the required 180 days; that the plan for the parking lot was identical; and that the only plan revision was several trees within the courtyard have died and were removed. However, on October 6, 2017, the applicant's representative submitted a revised alternate landscape plan to staff (see Attachment B).
- Note that the Board of Adjustment Panel B granted a request for a special exception to the landscape regulations on the subject site in September of 2014: BDA134-086, and imposed the submitted alternate landscape plan as a condition to this request. The case report stated the request was made to construct and maintain a surface parking lot on a site developed with an office structure/use.
- The Dallas Development Code states the applicant shall file a building permit or certificate of occupancy within 180 days from the date of the favorable action of the board; and that if the applicant fails to file an application within the time period, the request is automatically denied without prejudice.
- The applicant's representative further states that Lot 2 is a sub-lot of Lot 1A. Lot 2 will be developed as a parking lot; that all landscape requirements for Lot 2 can be

met on Lot 2; the balance of Lot 1A is existing; and that they are requesting a landscape exception to requirements along the existing portions of St. Paul and Cedar Spring Road where these edges were developed prior to the landscape ordinance and the sidewalk area is too narrow to physically accommodate the required landscaping.

- 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 submitted a memo regarding the applicant's request (see Attachment C).
- The Chief Arborist's memo states the following with regard to "request":
  - The applicant is requesting a special exception to the landscape regulations of PD 193 (HC). The revised landscape plan is amended to demonstrate the specific landscape conditions for the parking lot at McKinney and St. Paul. The property had not obtained a building permit within 180 days of the previous Board hearing.
- The Chief Arborist's memo states the following with regard to "provision":
  - The new parking lot is a portion of the single property. PD 193 requires that the landscape regulations apply to the full property when it is applicable. The plan calls for compliant landscape conditions in the area of the parking lot and two landscape tree additions on McKinney. The courtyard on Cedar Springs is amended from the previously approved plan.
- The Chief Arborist's memo states the following with regard to "deficiencies":
  - Properties with PD 193 (HC) conditions require street trees, sidewalks, and screening of off-street parking. Existing building and parkway conditions restrict application of required conditions along Cedar Springs Road, and sections of St. Paul and McKinney Avenue. The previously approved plan indicated three new red oaks along McKinney Avenue and the new plan has two red oaks.
- The Chief Arborist's memo states the following with regard to "factors":
  - The property was developed prior to initiation of PD 193.
  - The revised landscape plan consolidates all landscaping areas on one drawing.
  - The applicant has provided for two new red oak trees in proximity to an existing sweetgum tree along McKinney Avenue.
- The City of Dallas Chief Arborist recommends approval of the revised alternate landscape plan because the special exception will not compromise the spirit and intent of the PD 193 landscape regulations.
- 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 trees, sidewalks, and screening of off-street parking requirements of the PD 193 landscape requirements) 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 revised alternate landscape plan as a condition, the site would be granted exception from full compliance to street trees, sidewalks, and screening of off-street parking requirements of the PD 193 landscape requirements of the Oak Lawn PD 193 landscape ordinance.

**Timeline:**

August 15, 2017: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

September 12, 2017: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, “If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case”.

September 12, 2017: 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 September 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the October 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.

September 27, 2017: The applicant’s representative submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

October 3, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Assistant Director of Sustainable Development and Construction, the Sustainable Development and Construction Assistant Director of Engineering, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

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

October 6, 2017: The applicant's representative submitted additional information to staff beyond what was submitted with the original application (see Attachment B).

October 6, 2017: The City of Dallas Chief Arborist submitted a memo regarding this application (see Attachment C).

**BOARD OF ADJUSTMENT ACTION: OCTOBER 17, 2017**

APPEARING IN FAVOR: Michael Kendall, 6976 Santa Barbara, Dallas, TX  
Thomas Persch, 1919 McKinney Ave., Dallas, TX

APPEARING IN OPPOSITION: Richard Brink, 1999 McKinney Ave., Dallas, TX

**MOTION: Sibley**

I move that the Board of Adjustment, in Appeal No. **BDA 167-115**, on application of Tom Persch, represented by Michael Kendall of Michael Kendall Landscape Architecture, **grant** the request of this applicant for a special exception to the landscaping requirements contained in PD 193, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that this special exception will not compromise the spirit and intent of Section 51P-193.126 of the Dallas Development Code. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

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

**SECONDED: Narey**

AYES: 5 – Schulte, Nelson, Jones, Narey, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

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**FILE NUMBER:** BDA167-072(SL)

**BUILDING OFFICIAL'S REPORT:** Application of Grant Schmidt for a variance to the off-street parking regulations at 7103 Mumford Court. This property is more fully described as Lot 45, Block 10/8758, and is zoned R-7.5(A), which requires off-street parking to be provided. The applicant proposes to construct and/or maintain a structure for a church use, and provide 0 of the required 27 off-street parking spaces, which will require a 27 space variance to the off-street parking regulations.

**LOCATION:** 7103 Mumford Court

**APPLICANT:** Grant Schmidt

**October 17, 2017 Public Hearing Notes:**

- The applicant submitted additional information to the Board members at the hearing.

**REQUEST:**

A request for a variance to the off-street parking regulations of 27 spaces is made to obtain a Certificate of Occupancy/maintain an existing approximately 3,000 square foot church use (Congregation Toras Chaim), and provide 0 of the 27 required off-street parking spaces.

**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.

**ORIGINAL STAFF RECOMMENDATION (June 20, 2017):**

Denial

Rationale:

- Staff had concluded that the applicant had not substantiated how granting this variance to the off-street parking regulations of 27 spaces was not contrary to public interest (the Sustainable Development Department Assistant Director of Engineering has submitted a review comment sheet marked “Recommends that this be denied”), had not substantiated how the variance to the off-street parking regulations 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 R-7.5(A) zoning district, and had not substantiated how granting this variance to the off-street parking regulation is not needed to relieve a self-created hardship.
- While staff had recognized that the subject site has two front yard setbacks atypical of most lots zoned R-7.5(A), staff concluded this unique feature does not preclude the applicant from developing the flat, rectangular in shape, approximately 12,500 square foot subject site (where lots are typically 7,500 square feet in area) in a manner commensurate with the development upon other parcels of land with the same R-7.5(A) zoning.

**UPDATED STAFF RECOMMENDATION (August 15, 2017):**

Denial

Rationale:

- Staff had concluded after factoring the new information submitted by the applicant at the June 20<sup>th</sup> public hearing that the applicant had not substantiated how granting this variance to the off-street parking regulations of 27 spaces was not contrary to public interest (the Sustainable Development Department Assistant Director of Engineering has submitted a review comment sheet marked “Recommends that this be denied”), had not substantiated how the variance to the off-street parking regulations 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 R-7.5(A) zoning district, and had not substantiated how granting this variance to the off-street parking regulation is not needed to relieve a self-created hardship.
- While staff recognized that the subject site had two front yard setbacks atypical of most lots zoned R-7.5(A), staff concluded this unique feature does not preclude the applicant from developing the flat, rectangular in shape, approximately 12,500 square foot subject site (where lots are typically 7,500 square feet in area) in a manner commensurate with the development upon other parcels of land with the same R-7.5(A) zoning.

**UPDATED STAFF RECOMMENDATION (October 17, 2017):**

Denial

Rationale:

- Staff concluded from the information submitted by the applicant at the time of the October 3<sup>rd</sup> staff review team meeting that the applicant had not substantiated how granting this variance to the off-street parking regulations of 27 spaces was not contrary to public interest (the Sustainable Development Department Assistant Director of Engineering has submitted a review comment sheet marked “Recommends that this be denied”), had not substantiated how the variance to the off-street parking regulations 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 R-7.5(A) zoning district, and had not substantiated how granting this variance to the off-street parking regulation is not needed to relieve a self-created hardship.
- While staff recognized from the information submitted by the applicant at the time of the October staff review team meeting that the subject site has two front yard setbacks atypical of most lots zoned R-7.5(A), staff concluded this unique feature does not preclude the applicant from developing the flat, rectangular-shaped, approximately 12,500 square foot subject site (where lots are typically 7,500 square feet in area) in a manner commensurate with the development upon other parcels of land with the same R-7.5(A) zoning.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: R-7.5(A) (Single family residential 7,500 square feet)  
North: PD 173 (Planned Development)  
South: R-7.5(A) (Single family residential 7,500 square feet)  
East: R-7.5(A) (Single family residential 7,500 square feet)  
West: R-7.5(A) (Single family residential 7,500 square feet)

### **Land Use:**

The subject site is developed with an existing approximately 3,000 square foot church use (Congregation Toras Chaim). The areas to the north, south, east, and west are developed with single family residential uses.

### **Zoning/BDA History:**

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| 1. Miscellaneous Item 2, BDA167-072, Property at 7103 Mumford Court (the subject site) | On June 20, 2017, the Board of Adjustment Panel A denied a request to reimburse filing fee made in conjunction with this application. |
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## **GENERAL FACTS/STAFF ANALYSIS:**

- This request for a variance to the off-street parking regulations of 27 spaces focuses on obtaining a Certificate of Occupancy/maintaining an existing approximately 3,000 square foot church use (Congregation Toras Chaim), and providing 0 of the 27 required off-street parking spaces.
- The site is zoned R-7.5(A) and is bounded by three streets: Frankford Road on the north, Mumford Court on the south, and Meandering Way on the west. The site has two 25' front yard setbacks 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 Dallas Development Code requires the following off-street parking requirement for "church" use:
  - One space per 333 square feet in floor area if a church has less than 5,000 square feet of floor area and is located in a shopping center with more than 20,000 square feet in floor area, otherwise one space for each four fixed seats in the sanctuary or auditorium. If fixed benches or pews are provided, each 18 inches of length of the fixed bench or pew constitutes one fixed seat for purposes of this paragraph. If portions of seating areas in the sanctuary or auditorium are not equipped with fixed seats, benches, or pews, the parking requirement for those portions is one space for each 28 square feet of floor area.
  - Definitions. For purposes of this subsection, "remote parking" means required off-street parking provided on a lot not occupied by the main use. "Shared

- parking” means the use of the same off-street parking stall to satisfy the off-street parking requirements for two or more uses.
- Reconciliation with Divisions 51A-4.300 et seq. Except as otherwise expressly provided in this subsection, the off-street parking regulations in Divisions 51A-4.300 et seq. apply to this use. In the event of a conflict between this subsection and Divisions 51A-4.300 et seq., this subsection controls.
  - Remote and shared parking. A church may use remote and/or shared parking to satisfy up to 50 percent of its off-street parking requirement, provided that the remote and/or shared parking is on a lot that is:
    - (aa) dedicated to parking use by an instrument filed with the building official and approved by the city attorney’s office;
    - (bb) located in a non-residential district; and
    - (cc) located within 600 feet (including streets and alleys) of the lot occupied by the church. The distance measured is the shortest distance between the lots.
  - Distance extension with shuttle service. A remote parking lot for a church may be located up to one and one-half miles (including streets and alleys) from the lot occupied by the church if a shuttle service is provided to transport persons between the church and the remote parking lot. The shuttle service route must be approved by the traffic engineer.
  - Remote parking agreement. An agreement authorizing a church to use remote parking may be based on a lease of the remote parking spaces if:
    - (aa) the lease is for a minimum term of three years; and
    - (bb) the agreement provides that both the owner of the lot occupied by the church and the owner of the remote lot shall notify the city of Dallas in writing if there is a breach of any provision of the lease, or if the lease is modified or terminated.
- The Building Inspection Senior Plans Examiner/Development Code Specialist stated that a plan review of the seating areas in the sanctuary or auditorium that are not equipped with fixed seats, benches, or pews, was conducted on the property whereby it was determined with the parking requirement for those portions being 1 space for each 28 square feet of floor area that 27 off-street parking spaces were required for the use on the subject site.
  - The applicant submitted a document that states among other things that no parking analysis or traffic study has been provided because church members generally do not drive to worship.
  - The applicant must seek this parking reduction request as a variance since the maximum reduction authorized by this code for a special exception to off-street parking regulations 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).
  - According to Collin CAD records, the “total improvement main area” for property addressed at 7103 Mumford Court is a “residential” improvement with 3,572 square feet constructed in 1986.
  - The subject site is flat, rectangular in shape, and (according to the application) is 0.29 acres (or approximately 12,500 square feet) in area. The site is zoned R-7.5(A) where most lots in this zoning district are 7,500 square feet in area.



- The site has two front yard setbacks and two side yard setbacks. Most lots in this zoning district have one front yard setback, one rear yard setback, and two side yard setbacks.
- On June 9, 2017, the Sustainable Development Department Assistant Director of Engineering submitted a review comment sheet marked “Recommends that this be denied” commenting “Original use had two off-street parking spaces. The other home lots also have two off-street parking spaces.”
- The Board of Adjustment Panel A conducted a public hearing on this application on June 20, 2017. The applicant submitted additional written documentation to the Board at this public hearing which in this case was a paper copy of the applicant’s power point show presented to the board at this hearing (see Attachment B). The Board delayed action on this application until their next public hearing to be held on August 15, 2017.
- On July 28, 2017, the applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application and at the June 20<sup>th</sup> public hearing (see Attachment C). The new documentation included a letter that stated among other things: 1) “we respectfully request a continuance beyond the August meeting, so that we may obtain the proper permits, discuss and respond to the City’s forthcoming proposals, recommendations, or suggestions, and determine whether the variance application is still necessary”; and 2) “we would like to submit a new request for reimbursement of the filing fee given the procedural issue/technical error that arose at the June hearing.” (Included in Attachment C is the Board Administrator’s August 1<sup>st</sup> response to the applicant on these two issues).
- On August 2, 2017, the Sustainable Development Department Assistant Director of Engineering submitted a review comment sheet marked “Recommends that this be denied” commenting “Original use had two off-street parking spaces. The other home lots also have two off-street parking spaces.”
- The Board of Adjustment Panel A conducted a public hearing on this application on August 15, 2017. The Board delayed action on this application until their next public hearing to be held on October 17, 2017.
- While the applicant had not submitted any additional information on this application between the August hearing and the October 3<sup>rd</sup> staff review team meeting, he did submit additional information on October 6, 2017 (see Attachment D). This information was not factored into the staff recommendation since it was submitted after the October 3<sup>rd</sup> staff review team meeting. however, staff intends to provide an updated assessment of the information provided by the applicant at the October 17<sup>th</sup> public hearing.
- On October 5, 2017, the Sustainable Development Department Assistant Director of Engineering submitted a review comment sheet marked “Recommends that this be denied” commenting “Original use had two off-street parking spaces. The other home lots also have two off-street parking spaces.”
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the off-street parking 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-7.5(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-7.5(A) zoning classification.
- If the Board were to grant this request for a variance to the off-street parking regulations of 27 spaces, the applicant would be meeting one aspect of obtaining a Certificate of Occupancy for a church use on the subject site.

**Timeline:**

February 24, 2017: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

May 9, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

May 9, 2017: The Board Administrator emailed the applicant the following information:

- a copy of the application materials including the Building Official’s report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the May 31<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the June 9<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

May 31, 2017: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

June 6, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director of Engineering, the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

- June 9, 2017: The Sustainable Development Department Assistant Director of Engineering submitted a review comment sheet marked "Recommends that this be denied" commenting "Original use had two off-street parking spaces. The other home lots also have two off-street parking spaces".
- June 20, 2017: The Board of Adjustment Panel A conducted a public hearing on this application. The applicant submitted additional written documentation to the Board at the public hearing which in this case was a paper copy of the applicant's power point show presented to the board at this hearing (see Attachment B). The Board delayed action on this application until their next public hearing to be held on August 15, 2017.
- June 22, 2017: The Board Administrator wrote the applicant a letter of the board's action; the July 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the August 4<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials.
- July 28 & August 1, 2017: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application and at the June 20<sup>th</sup> public hearing (see Attachment C). The new documentation included a letter that stated among other things: 1) "we respectfully request a continuance beyond the August meeting, so that we may obtain the proper permits, discuss and respond to the City's forthcoming proposals, recommendations, or suggestions, and determine whether the variance application is still necessary"; and 2) "we would like to submit a new request for reimbursement of the filing fee given the procedural issue/technical error that arose at the June hearing." (Attachment C includes the Board Administrator's response to the applicant on these two issues).
- August 1, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director of Engineering, the Board of Adjustment Chief Planner, the Sustainable Development and Construction Interim Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.
- August 2, 2017: The Sustainable Development Department Assistant Director of Engineering submitted a review comment sheet marked "Recommends that this be denied" commenting "Original use had

two off-street parking spaces. The other home lots also have two off-street parking spaces.”

August 15, 2017: 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 October 17, 2017.

August 22, 2017: The Board Administrator wrote the applicant a letter of the board’s action; the September 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the October 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials.

October 5, 2017: The Sustainable Development Department Assistant Director of Engineering submitted a review comment sheet marked “Recommends that this be denied” commenting “Original use had two off-street parking spaces. The other home lots also have two off-street parking spaces.”

October 6, 2017: The applicant submitted additional documentation to staff (see Attachment D). Note that this information was not factored into the staff recommendation since it was submitted after the October 3<sup>rd</sup> staff review team meeting, however, staff intends to provide an updated assessment of the information provided by the applicant at the October 17<sup>th</sup> public hearing.

**BOARD OF ADJUSTMENT ACTION: JUNE 20, 2017**

**APPEARING IN FAVOR:** Grant Schmidt, 2501 N Harwood St., Dallas, TX  
Chulsey Youman, 1000 Plano Pkwy, Plano, TX

**APPEARING IN OPPOSITION:** David Schneider, 7035 Mumford, Dallas, TX  
Robert Colmery, 7123 Mumford, Dallas, TX  
Kevin Arligton, 7003 Mumford, Dallas, TX

**MOTION #1: Schulte**

I move that the Board of Adjustment suspend its rules and accept the evidence that is being presented today.

**SECONDED: Agnich**

**AYES:** 4 – Schulte, Gibson, Nelson, Agnich

**NAYS:** 0 -

**MOTION PASSED:** 4 – 0 (unanimously)

**2:51 P.M.: Executive Session Begins**

**3:08 P.M.: Executive Sessions Ends**

**MOTION #2: Agnich**

I move that the Board of Adjustment, in request No. **BDA 167-072(SL)**, hold this matter under advisement until **August 15, 2017**.

**SECONDED: Nelson**

**AYES:** 4 – Schulte, Gibson, Nelson, Agnich

**NAYS:** 0 -

**MOTION PASSED:** 4 – 0 (unanimously)

**BOARD OF ADJUSTMENT ACTION: AUGUST 15, 2017**

**APPEARING IN FAVOR:** Grant Schmidt, 2501 N. Harwood, Dallas, TX

**APPEARING IN OPPOSITION:** No one

**APPEALRING FOR THE CITY:** Kristen Monkhouse, 1500 Marilla St., Dallas, TX

**MOTION #1: Schulte**

I move that the Board of Adjustment, in request No. **BDA 167-072**, hold this matter under advisement until **September 19, 2017**.

**SECONDED:** No one

\*Motion Failed for lack of a second.

**MOTION #2: Agnich**

I move that the Board of Adjustment, in request No. **BDA 167-072**, hold this matter under advisement until **October 17, 2017**.

**SECONDED: Sibley**

**AYES:** 5 – Schulte, Agnich, Sibley, Lewis, Sahuc

**NAYS:** 0 -

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

**BOARD OF ADJUSTMENT ACTION: OCTOBER 17, 2017**

**APPEARING IN FAVOR:** Grant Schmidt, 2501 N Harwood, Dallas, TX  
Rabbi Rich, 7119 Brementon Ct., Dallas, TX

**APPEARING IN OPPOSITION:** Maura Schpeier Fleming, 7028 Judi St., Dallas, TX  
Dawn Coates, 7112 Mumford CT., Dallas, TX  
Marilyn Frey, 7116 Mumford CT., Dallas, TX  
Robert Colmery, 7108 Mumford CT., Dallas, TX  
Kevin Arlington, 7003 Mumford CT., Dallas, TX

**MOTION #1: Sibley**

I move that the Board of Adjustment suspend its rules and accept the evidence that is being presented today.

**SECONDED: Nelson**

**AYES:** 5 – Schulte, Nelson, Jones, Narey, Sibley

**NAYS:** 0 -

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

**MOTION #2: Sibley**

I move that the Board of Adjustment, in request No. **BDA 167-072**, on application of Grant Schmidt, **DENY** the off-street parking regulations variance **without prejudice** because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant, and/or that it is not a restrictive 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/or is a self-created or personal hardship.

**SECONDED: Narey**

**AYES:** 5 – Schulte, Nelson, Jones, Narey, Sibley

**NAYS:** 0 -

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

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**FILE NUMBER:** BDA167-108(SL)

**BUILDING OFFICIAL’S REPORT:** Application of Robert Baldwin for special exceptions to the visual obstruction regulations at 6347 Lupton Drive. This property is more fully described as Lot 13, Block D/5481, and is zoned R-10(A), which requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to locate and maintain items in required visibility triangles, which will require special exceptions to the visual obstruction regulations.

**LOCATION:** 6347 Lupton Drive

**APPLICANT:** Robert Baldwin

**REQUESTS:**

Requests for special exceptions to the visual obstruction regulations are made on a site being developed with a single family home:

1. to construct, locate, and maintain 4' high stone columns in the two, 20' visibility triangles on both sides of the driveway into the site from Lupton Avenue;
2. to construct, locate, and maintain a 4' high wrought iron fence/gate in the two, 20' visibility triangles on both sides of the driveway into the site from Edgemere Road.

**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 Department Assistant Director of Engineering recommends that these requests be denied.
- Staff concluded that requests for special exceptions to the visual obstruction regulations should be denied because the applicant had not substantiated how the items proposed to be located in the visibility triangles do not constitute a traffic hazard.

**Zoning:**

Site: R-10(A) (Single family residential 10,000 square feet)  
North: R-10(A) (Single family residential 10,000 square feet)  
South: R-10(A) (Single family residential 10,000 square feet)  
East: R-7.5(A) (Single family residential 7,500 square feet)  
West: R-10(A) (Single family residential 10,000 square feet)

**Land Use:**

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

**Zoning/BDA History:**

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

**GENERAL FACTS/STAFF ANALYSIS:**

- These requests for special exceptions to the visual obstruction regulations focus on constructing, locating, and maintaining 4' high stone columns in the two, 20' visibility triangles on both sides of the driveway into the site from Lupton Avenue; and a 4' high wrought iron fence/gate in the two, 20' visibility triangles on both sides of the

driveway into the site from Edgemere Road on a site being developed with a single family home.

- 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).
- A site plan/elevation have been submitted indicating portions of 4' tall stone columns in the two, 20' visibility triangles on both sides of the driveway into the site from Lupton Avenue; and portions of a 4' high wrought iron fence/gate in the two, 20' visibility triangles on both sides of the driveway into the site from Edgemere Road.
- The Sustainable Development Department Assistant Director of Engineering has submitted a review comment sheet marked "Recommends that this be denied" with the following comment: "The gates are too close to the street (both Lupton and Edgmere) so that waiting traffic will obstruct the flow of traffic" and photographs taken of the subject site (see Attachment A).
- The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulations to construct, locate, and maintain 4' tall stone columns in the two, 20' visibility triangles on both sides of the driveway into the site from Lupton Avenue; and a 4' high wrought iron fence/gate in the two, 20' visibility triangles on both sides of the driveway into the site from Edgemere Road do not constitute a traffic hazard.
- Granting these requests with a condition imposed that the applicant complies with the submitted site plan/elevation would limit the items located in these 20' drive approach visibility triangles to that what is shown on this document – 4' high solid stone columns in the Lupton Drive driveway visibility triangles and a 4' high wrought iron fence and gate in the Edgemere Road driveway visibility triangles.

### **Timeline:**

July 28, 2017: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

September 12, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

September 12, 2017: The Board Administrator emailed the applicant following information:

- a copy of the application materials including the Building Official's report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the September 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;



and the October 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;

- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

October 3, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Assistant Director of Sustainable Development and Construction, the Sustainable Development and Construction Assistant Director of Engineering, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

October 5, 2017: The Sustainable Development Department Assistant Director of Engineering has submitted a review comment sheet marked "Recommends that this be denied" with the following comment: "The gates are too close to the street (both Lupton and Edgemere) so that waiting traffic will obstruct the flow of traffic" and photographs taken of the subject site (see Attachment A).

**BOARD OF ADJUSTMENT ACTION: OCTOBER 17, 2017**

APPEARING IN FAVOR: Robert Baldwin, 3904 Elm St., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Schulte**

I move that the Board of Adjustment, in Appeal No. **BDA 167-108**, on application of Robert Baldwin, **grant** the requests to maintain items in the visibility triangle at the drive approaches as a special exception to the visual obstruction regulations contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan/elevation is required.
- Automatic gates are required to be used.

SECONDED: **Narey**

AYES: 5 – Schulte, Nelson, Jones, Narey, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

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**FILE NUMBER:** BDA167-109(SL)

**BUILDING OFFICIAL'S REPORT:** Application of Brady K. Wood for a special exception to the off-street parking regulations and a variance to the side yard setback regulations at 4931 W. Lovers Lane. This property is more fully described as Lots 1 & 2, Block 1/5001, and is zoned PD-326 (Area B), which requires off-street parking to be provided, and requires a 5 foot side yard setback. The applicant proposes to construct and/or maintain a structure for a restaurant without drive-in or drive-through service use and provide 29 of the required 31 parking spaces, which will require a 2 space special exception to the off-street parking regulations, and to construct and/or maintain a structure and provide a 0 foot side yard setback, which will require a 5 foot variance to the side yard setback regulations.

**LOCATION:** 4931 W. Lovers Lane

**APPLICANT:** Brady K. Wood

**October 17, 2017 Public Hearing Notes:**

- A person representing citizens opposing the requests submitted information to the Board members at the public hearing.

**REQUESTS:**

The following requests are made on a site that is developed with a 3,100 square foot restaurant use/ structure (Jose):

- A variance to the side yard setback regulations of 5' is made to maintain a dumpster structure near the site's northern side property line or 5' into this 5' required side yard setback.
- A special exception to the off-street parking regulations of 2 spaces is made to retain a Certificate of Occupancy for the structure/use (whereby two off-street parking spaces were recently eliminated to provide an ingress/egress way into the site from Briarwood Lane), and provide 29 (or 94 percent) of the 31 required off-street parking spaces on the subject site.

**STANDARD FOR A VARIANCE:**

The Dallas Development Code Section 51A-3.102(d)(10) specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, 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.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(A). For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 75 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). For the office use, the maximum reduction authorized by this section is 35 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). Applicants may seek a special exception to the parking requirements under this section and an administrative parking reduction under Section 51A-4.313. The greater reduction will apply, but the reduction may not be combined.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
  - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
  - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
  - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
  - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
  - (E) The availability of public transit and the likelihood of its use.
  - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
  - (A) Establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
  - (B) Impose restrictions on access to or from the subject property; or
  - (C) Impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.

- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
  - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
  - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

**STAFF RECOMMENDATION (variance):**

Denial

- Staff concluded that while granting this variance would not appear to be contrary to public interest in that the only structure requested to be in a setback is an approximately 30 square foot dumpster structure located within an enclosed/fenced area; the request should be denied because the applicant had not substantiated how any feature of the flat, rectangular-shaped site precluded it from being developed in a manner commensurate with the development upon other parcels of land with the same PD 326 (Area B) zoning district.

**STAFF RECOMMENDATION (special exception):**

Approval, subject to the following condition:

- The special exception of 2 spaces shall automatically and immediately terminate if and when the restaurant use is changed or discontinued.

Rationale:

- The Sustainable Development Department Assistant Director of Engineering indicated that he has no objections to the applicant's request.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 326 (Area B) (Planned Development)  
North: R-7.5(A) (Single family district 7,500 square feet)  
South: PD 771 (Planned Development)  
East: CR (Community Retail)  
West: PD 326 (Area A) (Planned Development)

**Land Use:**

The subject site is developed with a restaurant use/structure (Jose). The area to the north is developed with single family uses, the area to the east is developed with office and retail uses, the area to the south is developed as church, and the area to the west is undeveloped.

### **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 (variance):**

- The request for a variance to the side yard setback regulations of 5' focusing on maintaining an approximately 30 square foot dumpster structure near the site's northern side property line or 5' into this 5' required side yard setback on a site developed as a restaurant use/structure (Jose).
- The subject site is zoned PD 326 (Area B)(Neighborhood Service/Single Family Area) which requires a minimum 15' front yard setback and a minimum 5' side and rear yard setback for other permitted structures other than single family structures.
- The subject site is located at the northwest corner of W. Lovers Lane and Briarwood Lane). The site has 15' front yard setbacks on both street frontages, and 5' side yard setbacks on the west and north.
- The originally submitted site plan denoted a dumpster structure located approximately 1' from the site's side property line on the north (or approximately 4' into this 5' side yard setback), and an "existing building" located approximately 2' from the site's side property line on the west (or approximately 3' into this 5' side yard setback).
- While DCAD records state the "improvement" for property addressed at 4931 W. Lovers Lane is structure built in 2016 with 3,100 square feet, the applicant has stated that the structure was constructed in the early 80's, and that because of this and the fact that the zoning prior to the creation of PD 326 in 1989 appears to have been NS (Neighborhood Service) which required a side yard setback of 0 feet, the "existing building" noted on the site plan is a nonconforming structure.
- The code defines nonconforming structure as a structure that does not conform to the regulations of the code, but which was lawfully constructed under the regulations in force at the time of construction.
- The code states that the right to rebuild a nonconforming structure ceases if the structure is destroyed by the intentional act of the owner or the owner's agent.
- The code states that a person may renovate, remodel, repair, rebuild, or enlarge a nonconforming structure if the work does not cause the structure to become more nonconforming as to the yard, lot, and space regulations.
- The applicant has chosen to seek variance for the dumpster structure located in the 5' northern side yard setback, and not for variance for the existing structure located in the 5' western side yard setback.
- A revised site plan was submitted to staff on October 3, 2017 (see Attachment A). The applicant represented that "the new plan is very close to the same but we adjusted some parking space widths to comply with current standards".

- The site is flat, rectangular in shape (approximately 138' x 114'), and according to the application is 0.37 acres (or approximately 16,000 square feet) in area. The site has two 15' front yard setbacks and two 5' side yard setbacks which is typical of any lot with two street frontages not zoned single family, duplex, or agricultural district.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the side yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance to side yard setback regulations is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD 326 (Area B) zoning classification.
  - The variance to the side yard setback regulations would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD 326 (Area B) zoning classification.
- If the Board were to grant the request, and impose the submitted revised 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 the approximately 30 square foot dumpster structure located in the site's 5' required side yard setback on the north.
- Granting this request and imposing the submitted revised site plan as a condition will not provide relief for the existing nonconforming structure in the site's side yard setback on the west since the applicant chose to not include this in his application/request for side yard variance.

**GENERAL FACTS/STAFF ANALYSIS (special exception):**

- This request for a special exception to the off-street parking regulations of 2 spaces focuses on retaining a Certificate of Occupancy for the existing 3,100 square foot restaurant use/structure and providing 29 (or 94 percent) of the 31 required off-street parking spaces on the subject site.
- The Dallas Development Code requires the following off-street parking requirement:
  - Restaurant use: As a main use, 1 space per 100 square feet of floor area.
- The Sustainable Development Department Assistant Director of Engineering has submitted a review comment sheet marked "Has no objections".
- The applicant has the burden of proof in establishing the following:
  - The parking demand generated by the "restaurant" use on the site does not warrant the number of off-street parking spaces required, and
  - The special exception of 2 spaces (or 6 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 2 spaces shall automatically and immediately terminate if and when the restaurant use is changed or discontinued, the applicant could retain the Certificate

of Occupancy for the existing 3,100 square foot restaurant use/structure, and provide 29 (or 94 percent) of the 31 required off-street parking spaces.

**Timeline:**

August 1, 2017: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

September 12, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

September 12, 2017: The Board Administrator emailed the applicant the following information:

- a copy of the application materials including the Building Official’s report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the September 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the October 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the definition of nonconforming structure and the provision from the Dallas Development Code related to nonconforming structures (51A-4.704(c);
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

October 3, 2017: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

October 3, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Assistant Director of Sustainable Development and Construction, the Sustainable Development and Construction Assistant Director of Engineering, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

October 5, 2017: The Sustainable Development Department Assistant Director of Engineering submitted a review comment sheet marked “Has no objections”.

**BOARD OF ADJUSTMENT ACTION: OCTOBER 17, 2017**

APPEARING IN FAVOR: Brady Wood, 4931 W. Lovers Lane, Dallas, TX

APPEARING IN OPPOSITION: Michael Coker, 3111 Canton, Dallas, TX

**MOTION #1: Sibley**

I move that the Board of Adjustment suspend its rules and accept the evidence that is being presented today.

**SECONDED: Jones**

AYES: 5 – Schulte, Nelson, Jones, Narey, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

**MOTION #2: Sibley**

I move that the Board of Adjustment, in Appeal No. **BDA 167-109**, on application of Brady Wood, **grant** the five feet variance to the side yard setback regulations requested by this applicant 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 revised site plan is required.

**SECONDED: Jones**

AYES: 5 – Schulte, Nelson, Jones, Narey, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

**MOTION #3: Jones**

I move that the Board of Adjustment, in Appeal No. **BDA 167-109**, on application of Brady Wood, **grant** the request of this applicant to provide 29 off-street parking spaces to the off-street parking regulations contained in the Dallas Development Code which require 31 off-street parking spaces, because our evaluation of the property use and the testimony shows that this special exception will not increase traffic hazards or increase traffic congestion on adjacent or nearby streets, and the parking demand generated by the use does not warrant the number of required parking spaces. This special exception is granted for a restaurant without drive-in/drive-through service use only. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:



- The special exception of two spaces shall automatically and immediately terminate if and when the restaurant without drive-in/drive-through service use is changed or discontinued.

**SECONDED: Sibley**

**AYES:** 5 – Schulte, Nelson, Jones, Narey, Sibley

**NAYS:** 0 -

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

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**MOTION: Nelson**

I move to adjourn this meeting.

**SECONDED:**

**AYES:** 5 – Schulte, Nelson, Jones, Narey, Sibley

**NAYS:** 0 -

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

**1:06 P. M.:** Board Meeting adjourned for **October 17, 2017**

\_\_\_\_\_  
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.