

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, 6ES
TUESDAY, MAY 21, 2013**

MEMBERS PRESENT AT BRIEFING: Robert Moore, Vice Chair, Jordan Schweitzer, regular member, Scott Hounsel, regular member, Clint Nolen, regular member and Jim Gaspard, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Tammy Palomino, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Kim Haynie, Lloyd Denman, Asst. Director of Engineering, and Trena Law, Board Secretary

MEMBERS PRESENT AT HEARING: Robert Moore, Vice Chair, Jordan Schweitzer, regular member, Scott Hounsel, regular member, Clint Nolen, regular member and Jim Gaspard, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Tammy Palomino, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Kim Haynie, Lloyd Denman, Asst. Director of Engineering, and Trena Law, Board Secretary

11:09 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **May 21, 2013** docket.

1:00 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 A **April 16, 2013** public hearing minutes as amended.

BOARD OF ADJUSTMENT ACTION: MAY 21, 2013

MOTION: Hounsel

I move **approval** of the Tuesday, **April 16, 2013** public hearing minutes as amended.

SECONDED: Schweitzer

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Gaspard

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 123-039

BUILDING OFFICIAL’S REPORT: Application of Cary Albert, represented by Mardy Brown of Texas Development Services, for a special exception to the off-street parking regulations at 3903 Gaston Avenue. This property is more fully described as Lot 1, Block A/765 and is zoned PD-298 (Subarea 12), which requires that off-street parking be provided. The applicant proposes to construct and maintain a structure for a restaurant with drive-in or drive-through service use and provide 27 of the required 32 parking spaces, which will require a special exception to the off-street parking regulations of 5 spaces.

LOCATION: 3903 Gaston Avenue

APPLICANT: Cary Albert
Represented by Mardy Brown of Texas Development Services

REQUEST:

A special exception to the off-street parking regulations of 5 parking spaces (or a 16 percent reduction of the 32 required off-street parking spaces) is made in conjunction with constructing and maintaining an approximately 3,200 square foot “restaurant with drive-in or drive- through service” use (Schlotzky’s) on a site that is currently undeveloped. The applicant proposes to provide 27 (or 84 percent) of the required 32 off-street parking spaces in conjunction with constructing and maintaining a structure of this size with this use.

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:

Approval, subject to the following condition:

- The special exception of 5 spaces shall automatically and immediately terminate if and when the “restaurant with drive-in or drive-through service” use is changed or discontinued.

Rationale:

- The applicant has substantiated how the parking demand generated by the proposed “restaurant with drive-in or drive-through service” use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- The Sustainable Development and Construction Department Engineering Division Assistant Director has indicated that he with no objections to this request.

BACKGROUND INFORMATION:

Zoning:

Site: PD 298 (Subarea 12) (Planned Development)
North: PD 298 (Subarea 12) (Planned Development)
South: PD 298 (Subarea 12) (Planned Development)
East: PD 298 (Subarea 12) (Planned Development)
West: PD 298 (Subarea 12) (Planned Development)

Land Use:

The subject site is currently undeveloped. The areas to the north, east, south, and west are developed a mix of office, medical office, and retail uses.

Zoning/BDA History:

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

Timeline:

January 29, 2013: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

- April 16, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- April 17, 2013: The Board Administrator contacted the applicant's representative and shared the following information via email:
- an attachment that provided the public hearing date and panel that will consider the application; the May 1st deadline to submit additional evidence for staff to factor into their analysis; and the May 10th 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 7, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Sustainable Development and Construction Department Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- May 10, 2013: The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked "Has no objections."
- May 12, 2013: The applicant's representative submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining an approximately 3,200 square foot "restaurant with drive-in or drive-through service" use (Schlotzky's) on a site that is currently undeveloped and providing 27 (or 84 percent) of the required 32 off-street parking spaces.
- The Dallas Development Code requires the following off-street parking requirement:
 - Restaurant with drive-in or drive-through service use: 1 space per 100 square feet of floor area.

The applicant has submitted a site plan that represents a 3,102 square foot restaurant with drive-in or drive-through service use. While the site plan denotes that 28 of 32 off-street parking spaces are provided, the application states that 27 of 32 off-street parking spaces are provided hence the special exception request of 5 spaces.

- The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked “Has no objections.”
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the “restaurant with drive-in or drive-through” use on the site does not warrant the number of off-street parking spaces required, and
 - The special exception of 5 spaces (or a 16 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, and impose the condition that the special exception of 5 spaces shall automatically and immediately terminate if and when the “restaurant with drive-in or drive-through” use is changed or discontinued, the applicant would be allowed to construct/maintain the approximately 3,200 square foot restaurant with drive-in or drive-through use on the undeveloped site and provide 27 of the 32 code required off-street parking spaces.

BOARD OF ADJUSTMENT ACTION: MAY 21, 2013

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Schweitzer**

I move that the Board of Adjustment grant application **BDA 123-039** 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 conditions be imposed to further the purpose and intent of the Dallas Development Code:

- The 5 parking spaces shall automatically and immediately terminate if and when the restaurant with drive-in or drive-through service use is changed or discontinued.

SECONDED: **Nolen**

AYES: 5– Moore, Schweitzer, Housel, Nolen, Gaspard

NAYS: 0 -

MOTION PASSED: 5– 0(unanimously)

FILE NUMBER: BDA 123-042

BUILDING OFFICIAL’S REPORT: Application of Jordon Musser for a special exception to the fence height regulations and a variance to the front yard setback regulations at 6300 Villa Road (AKA: 19104 Wind Mill Lane). This property is more fully described as Lot 30, Block H, and is zoned R-10(A), which limits the height of a fence in the front yard to 4 feet and requires a front yard setback of 30 feet. The applicant proposes to construct and maintain a 6-foot high fence, which will require a special

exception to the fence height regulations of 2 feet. The applicants also propose to construct and maintain a structure and provide a 10 foot front yard setback, which will require a variance to the front yard setback regulations of 20 feet.

LOCATION: 6300 Villa Road (AKA: 19104 Wind Mill Lane)

APPLICANT: Jordon Musser

REQUESTS:

The following appeals have been made on a site that is currently undeveloped:

1. A variance to the front yard setback regulations of 20' is made in conjunction with constructing and maintaining a single family home structure, part of which would be located in the one of the site's two 30' front yard setbacks (Wind Mill Lane).
2. Special exceptions to the fence height regulations of 2' are made in conjunction with constructing and maintaining a 6' high fence most of which to be of horizontal wood board material in the site's Wind Mill Lane and Villa Road front yard setbacks.

STANDARD FOR A VARIANCE:

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

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STAFF RECOMMENDATION (front yard setback variance):

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The subject site is unique and different from most lots zoned R-10(A) in that it is an irregularly-shaped lot with two 30' front yard setbacks. The atypical two front yard setbacks on this irregular-shaped lot preclude the applicant from developing it in a manner commensurate with development on other similarly zoned properties that are of regular shape and have the typical one front yard, two side yard, and one rear yard setbacks.
- The applicant has provided information that shows how the proposed structure on his property would be consistent and align with the only other house on the east side of Wind Mill Lane between Villa Road and Windmill Circle - a house that is in its location because of a 10' platted building line along its Wind Mill Lane frontage.

STAFF RECOMMENDATION (fence height special exceptions):

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

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA 967-320, Property at 6339 Windmill Circle (the property immediately north of the subject site)

On October 20, 1997, the Board of Adjustment Panel C denied a request for a special exception to the fence height regulations of 2' without prejudice and denied a request for a variance to the front yard setback regulations of 24' without prejudice. The case report stated that the requests were made in conjunction with maintaining an approximately 320 square foot game room structure, and constructing and maintaining a 6' high solid wood fence along Wind Mill Lane to screen the game room.

Timeline:

February 24, 2013: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

April 16, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

April 17, 2013: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the May 1st deadline to submit additional evidence for staff to factor into their analysis; and the May 10th 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.

April 30, 2013: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application, and the Building Inspection Senior Plans Examiner/Development Code Specialist forwarded a revised Building Official's Report on this application (see Attachment A).

May 1, 2013: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment B).

May 7, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Sustainable Development and Construction Department Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

GENERAL FACTS/STAFF ANALYSIS (front yard variance):

- This request focuses on constructing and maintaining a single family home on the undeveloped site, part of which would be located in one of the site's two 30' front yard setbacks: Wind Mill Lane.
- Structures on lots zoned R-10(A) are required to provide a minimum front yard setback of 30'.

- The subject site is located at the intersection of Wind Mill Lane and Villa Road. Regardless of how the proposed single family structure is to be oriented, the subject site has two 30' front yard setbacks along both streets.
- A site plan has been submitted denoting a portion of the proposed single family home located as close as 10' from the site's front property line along Wind Mill Lane (or 20' into this 30' front yard setback).
- No part of the proposed home is to be located in the site's Villa Road 30' front yard setback. No information is available on this property from DCAD given that it is located in Collin County.
- The subject site is flat, irregular in shape, and approximately 13,000 square feet in area. The site is zoned R-10(A) where lots are typically 10,000 square feet in area. The site has two 30' front yard setbacks; and two 6' side yard setbacks; most residentially-zoned lots have one front yard setback, two side yard setbacks, and one rear yard setback.
- According to calculations taken by the Board Administrator from the submitted site plan, the area of the proposed home to be located in the site's Wind Mill Lane 30' front yard setback is approximately 120 square feet in area or approximately 5 percent of the approximately 2,200 square foot building footprint.
- The applicant has provided information that shows how the proposed structure on his property would be consistent and align with the only other house on the east side of Wind Mill Lane between Villa Road and Windmill Circle - a house that is in its location because of a 10' platted building line along its Wind Mill Lane frontage.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations along Wind Mill Lane 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-10(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-10(A) zoning classification.
- If the Board were to grant the variance request and impose the submitted site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document- which is a structure to be located as close as 10' from the site's Wind Mill Lane front property line (or as much as 20' into this 30' front yard setback).

GENERAL FACT /STAFF ANALYSIS (fence height special exceptions):

- These requests focus on constructing and maintaining mainly a 6' high solid horizontal wood board fence in the site's two 30' front yard setbacks along Wind Mill Lane and Villa Road.

- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The applicant had submitted a scaled site plan and elevations that shows the proposal in the front yard setbacks reaches a maximum height of 6'.
- The following additional information was gleaned from the submitted site plan:
 - With regard to the Villa Road proposal: approximately 100' in length (approximately 80' to be of wood material and approximately 20' to be of stucco material) parallel to the street (and approximately 5' in length perpendicular on the east side of the site in this front yard setback), approximately 25' from front property line or approximately 36' from the pavement line where two homes would have direct frontage to the proposal - homes with no fences in their front yards.
 - With regard to the Wind Mill Lane proposal: approximately 55' in length (all of which to be of wood material) parallel to the street (and approximately 30' in length perpendicular on the north side of the site in this front yard setback), approximately 8' from front property line or approximately 16' from the pavement line where one home would have direct frontage to the proposal – a home with no fence in its front yard.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences higher than 4' in the immediate area.
- As of May 13, 2013, one letter had been submitted in support and no letters had been submitted in opposition to the request.
- The applicant has the burden of proof in establishing that the special exceptions to the fence height regulations (whereby the proposal that would reach 6' in height) will not adversely affect neighboring property.
- Granting this special exception of 2' with a condition imposed that the applicant complies with the submitted site plan and elevations would require the proposal exceeding 4' in height in the Wind Mill Lane and Villa Road front yard setbacks to be constructed/maintained in the location and of the heights and materials as shown on these documents.

BOARD OF ADJUSTMENT ACTION: MAY 21, 2013

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Schweitzer

I move that the Board of Adjustment grant application **BDA 123-042** 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 conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plans and elevations is required.

SECONDED: Nolen

AYES: 5– Moore, Schweitzer, Hounsel, Nolen, Gaspard

NAYS: 0 -

MOTION PASSED: 5– 0(unanimously)

FILE NUMBER: BDA 123-045

BUILDING OFFICIAL’S REPORT: Application of Robert Reeves of Robert Reeves and Associates for a variance to the side yard setback regulations at 5810 Meadowcrest Drive. This property is more fully described as Lot 1, Block C/6384, and is zoned R-16(A), which requires a side yard setback of 10 feet. The applicant proposes to construct and/or maintain structures and provide a 3 foot 9 inch side yard setback, which will require a variance to the side yard setback regulations of 6 feet 3 inches.

LOCATION: 5810 Meadowcrest Drive

APPLICANT: Robert Reeves of Robert Reeves and Associates

REQUEST:

A variance to the side yard setback regulations of 6’ 3” is requested in conjunction with maintaining an “open-air pavilion/covered patio area” and “fountain” structures on a site developed with a single family home, part and/or all of which is located in the site’s western 10’ 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, coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

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

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted revised site plan/elevation is required.

Rationale:

- The lot's irregular shape precludes the applicant from developing it in a manner commensurate with other developments found on similarly-zoned R-16(A) lots that are regular in shape.
- Granting this variance with the revised site plan/elevation being imposed as a condition does not appear to be contrary to the public interest since the variance would only allow about 1/3 (or approximately 150 square feet) of an approximately 480 square foot "open-air pavilion/covered patio area" building footprint, and three, 4 square foot, 4' high "fountain" structures in the site's 10' side yard setback on the west side of the property.

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 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.

Timeline:

- March 21, 2013: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- April 16, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- April 17, 2013: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the May 1st deadline to submit additional evidence for staff to factor into their analysis; and the May 10th 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 1, 2013: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

May 7, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Sustainable Development and Construction Department Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on an “open-air pavilion/covered patio area” and “fountain” structures on a site developed with a single family home, part and/or all of which is located in the site’s western 10’ side yard setback.
- Structures on lots zoned R-16(A) are required to provide a minimum side yard setback of 10’. (Note that this site has a 20 foot platted building line along Jamestown Road that the applicant is requesting the City Plan Commission to remove hence the request for a variance to the 10’ side yard setback required on this property zoned R-16(A)).
- A revised site plan/elevation document has been submitted denoting a portion of the approximately 480 square foot “open-air pavilion/covered patio area” and all three of the approximately 4 square foot, 4 foot high “fountain” structures located in the 10’ side yard setback on the west side/Jamestown Road side of the subject site. The nearest of these structures is located as close as 3.8’ from the site’s side property line or as much as 6.2’ into the 10’ side yard setback.
- It appears from calculations taken from the submitted revised site plan/elevation document by the Board Administrator that approximately 1/3 (or approximately 150 square feet) of the approximately 480 square foot “open-air pavilion/covered patio area” building footprint, and each of the approximately 4 square foot, 4’ high “fountain” structures are located in the site’s 10’ side yard setback on the west side of the property.
- According to DCAD records, the “main improvements” at 5810 Meadowcrest Drive is a structure built in 2007 with 6,588 square feet of living area and 6,588 square feet of total area. According to DCAD records, the “additional improvements” at 5810 Meadowcrest Drive is an 894 square foot attached garage and a pool.
- The subject site is irregular in shape (approximately 137’ on the north; approximately 42’ on the south; approximately 181’ on the east; and approximately 206’ on the

west), flat, and according to the application, is 19,282 square feet in area. The site is zoned R-16(A) where lots are typically 16,000 square feet in area.

- 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 is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-16(A) zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-16(A) zoning classification.
- If the Board were to grant the variance request and impose the submitted revised site plan/elevation as a condition, the structures in the side yard setback would be limited to what is shown on this document– which are structures located as close as 3’ 9” from the site’s western side property line (or as much as 6’ 3” into the 10’ side yard setback).

***Member Nolen recused himself and did not hear or vote on this matter.**

BOARD OF ADJUSTMENT ACTION: MAY 21, 2013

APPEARING IN FAVOR: Robert Reeves, 900 Jackson St., Ste 160, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Hounsel**

I move that the Board of Adjustment, in Appeal No. **BDA 123-045**, hold this matter under advisement until **June 18, 2013**.

SECONDED: **Gaspard**

AYES: 4– Moore, Schweitzer, Hounsel, Gaspard

NAYS: 0 -

MOTION PASSED: 4– 0(unanimously)

MOTION: **Gaspard**

I move to adjourn this meeting.

SECONDED: **Hounsel**

AYES: 5– Moore, Schweitzer, Hounsel, Gaspard

NAYS: 0 -

MOTION PASSED: 5– 0(unanimously)

3:12 P. M. - Board Meeting adjourned for **May 21, 2013.**

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.