

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN AUDITORIUM
TUESDAY, AUGUST 19, 2014**

MEMBERS PRESENT AT BRIEFING: Clint Nolen, Vice Chair, Larry French, regular member, Lindsey Williams, regular member Mark Rieves, regular member, and Hector Leija, regular member

MEMBERS ABSENT FROM BRIEFING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator
Jamilah Way, Asst. City Attorney,
Donna Moorman, Chief Planner, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief, Arborist Ali Hatefi, Engineer and Trena Law, Board Secretary

MEMBERS PRESENT AT HEARING: Clint Nolen, Vice Chair, Larry French, regular member, Lindsey Williams, regular member Mark Rieves, regular member, and Hector Leija, regular member

MEMBERS ABSENT FROM HEARING: No one

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

11:10 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **August 19, 2014** docket.

1:03 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 **June 24, 2014** public hearing minutes.

BOARD OF ADJUSTMENT ACTION: AUGUST 19, 2014

MOTION: Rieves

I move **approval** of the Tuesday, **June 24, 2014** public hearing minutes.

SECONDED: Nolen

AYES: 5 – Nolen, French, Williams, Rieves, Leija

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

The City Attorney’s Office will brief on certain Dallas Development Code standards regarding applications to the Board of Adjustment and procedures of the Board of Adjustment.

***This was not an action item.**

FILE NUMBER: BDA 134-069

BUILDING OFFICIAL’S REPORT: Application of Michael Marcyniak for a special exception to the single family use regulations at 4915 Wedgewood Lane. This property is more fully described as Lot 1, Block 5545, and is zoned R-1ac(A), which limits the number of dwelling units to one. The applicant proposes to construct/modify and maintain an additional dwelling unit, which will require a special exception to the single family use regulations.

LOCATION: 4915 Wedgewood Lane

APPLICANT: Michael Marcyniak

REQUEST:

A special exception to the single family use development standard regulations is made to modify and maintain an existing two-story vacant additional dwelling unit structure on a site currently developed with a one-story dwelling unit/single family home structure.

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

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

STAFF RECOMMENDATION:

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

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

Zoning:

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

Land Use:

The subject site is developed with a single family use – a main dwelling unit structure and an accessory structure that are both vacant and under renovation. The areas to the north, south, east, and west are developed with single family uses.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on modifying and maintaining an existing two-story vacant additional dwelling unit structure on a site currently developed with a one-story dwelling unit/single family home structure.
- The site is zoned R-1ac (A) where the Dallas Development Code permits one dwelling unit per lot.

- The single family use regulations of the Dallas Development Code state that only one dwelling unit may be located on a lot, and that the board of adjustment may grant a special exception to this provision and authorize an additional dwelling unit on a lot when, in the opinion of the board, the special exception will not: 1) be contrary to the public interest; or 2) adversely affect neighboring properties.
- The Dallas Development Code defines “single family” use as “one dwelling unit located on a lot;” and a “dwelling unit” as “one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms.”
- A site plan has been submitted denoting the locations of two building footprints, the larger of the two denoted as “one story stone & frame” and the smaller of the two denoted as “new interior 2 story stair well addition”- a structure that has been deemed by Building Inspection given what is denoted on a submitted floor plan/elevation as an additional dwelling unit. The site plan represents the sizes and locations of the two building footprints relative to the entire lot.
- The submitted floor plan of the accessory structure shows the first floor to include “living,” “bath,” “kitchen,” “bath,” and “mechanical” spaces; the second floor includes “bedroom,” “bath,” “dressing,” and “closet” spaces.
- Building Inspection staff has reviewed the submitted floor plan of the accessory structure and deemed it to be a dwelling unit - that is per Code definition: “one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms.”
- This request appears to center on the function of what is proposed to be located inside the existing vacant accessory structure on the site. The applicant stated in a July 22nd email to the Board Administrator (Attachment A) that he can represent that if the board were to deny this request, the structure could be modified and maintained with merely modifications to the function/use inside it (or to the floor plan) since the structure as it is represented on his submitted site plans complies with the all other applicable zoning code development standards since no application has been made for variance to setbacks or any other zoning code provision.
- It appears that if certain notations were removed from the floor plan of the accessory structure (elimination of the “kitchen” notation of the accessory structure’s first floor) the structure then could be modified and maintained by right.
- DCAD records indicate that the property at 4915 Wedgewood Lane has the following improvements:
 - “main improvement:” a structure built in 1959 with 6,271 square feet of living and total area; and
 - “additional improvement:” a pool, a 675 square foot cabana, a 604 square foot detached servants quarters, and a 1,056 square foot attached garage.
- As of August 11, 2014, no letters had been submitted to staff in support or in opposition to the application.
- The applicant has the burden of proof in establishing that the additional dwelling unit will not be used as rental accommodations (by providing deed restrictions, if approved) and will not adversely affect neighboring properties.

- If the Board were to approve this request, the Board may want to impose a condition that the applicant comply with the submitted site plan to ensure that the special exception will not adversely affect neighboring properties. But granting this special exception request will not provide any relief to the Dallas Development Code regulations other than allowing an additional dwelling unit on the site (i.e. development on the site must meet all required code requirements including setback and lot coverage requirements).
- The Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

Timeline:

June 11, 2014: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

July 15, 2014: The Interim Assistant Director of Sustainable Development and Construction acting on behalf of the Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

July 15, 2014: The Board Administrator contacted the representative and emailed him the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the July 30th deadline to submit additional evidence for staff to factor into their analysis; and the August 8th 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.

July 22, 2014: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

August 5, 2014: 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 Chief Planner, the Assistant Building Official, the Board Administrator, Building Inspection Senior Plans Examiners/Development Code Specialists, the Sustainable Development and Construction Department Senior Engineer, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: AUGUST 19, 2014

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Rieves

I move that the Board of Adjustment grant application **BDA 134-069** 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 applicant must deed restrict the subject property to prevent the use of the additional dwelling unit from being used as rental accommodations.

SECONDED: French

AYES: 5 – Nolen, French, Williams, Rieves, Leija

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 134-076

BUILDING OFFICIAL’S REPORT: Application of Daniel Moon, represented by Steve Giovannini, for a special exception to the fence height regulations at 4545 Park Lane. This property is more fully described as Lot 1, Block C/5546, and is zoned R-10(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain a 10 foot 9 inch high fence, which will require a 6 foot 9 inch special exception to the fence height regulations.

LOCATION: 4545 Park Lane

APPLICANT: Daniel Moon
Represented by Steve Giovannini

REQUESTS:

Requests for special exceptions to the fence height regulations of 6’ 9” are made to construct and maintain the following on a site being developed with a single family home:

- In the Park Lane front yard setback: a 6’ high open wrought iron fence with 6’ 6” high stucco columns parallel to this street, and a 6’ high solid stucco fence with 6’ 6” high columns perpendicular to this street on the site’s west boundary.
- In the Rockbrook Drive front yard setback: a 6’ high open wrought iron fence and service gate with 6’ 6” high stucco columns parallel to this street, and a 6’ high solid stucco fence with 6’ 6” high columns perpendicular to this street on the site’s north;

and an entryway that includes a 10' 9" high open arched wrought iron entry gate with 10' high limestone or cast stone columns, and two approximately 8' high, 15' long solid limestone or cast stone wing walls.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STAFF RECOMMENDATION:

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

BACKGROUND INFORMATION:

Zoning:

Site: R-10(A) (Single family district 10,000 square feet)
North: R-1ac(A) (Single family district 1 acre)
South: R-10(A) (Single family district 10,000 square feet)
East: R-1ac(A) (Single family district 1 acre square feet)
West: R-10(A) (Single family district 10,000 square feet)

Land Use:

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

Zoning/BDA History:

1. BDA 89-018, Property at 4616 Park Lane (the lot immediately east of the subject site) On February 14, 1989, the Board of Adjustment granted a request for a special exception to the fence height regulations of 4' "to retain a fence 6 feet high with gates 8 feet high in front of the platted building line." The board imposed the following condition: subject to submitting a landscape plan showing the location of shrubbery, showing an irrigation system for the shrubs, and showing the light standards which describe the type of lights and the illumination of the lights. Implementation of the plans should be within 6 months after the Board's approval."

2. BDA 001-289, Property at 4531 Park Lane (the lot west of the subject site)

On November 12, 2001, the Board of Adjustment Panel C denied a request for a special exception to the fence regulations of 3' 6" without prejudice.

The case report stated that the request was made in conjunction constructing and maintaining a 6' high open metal fence with 7.5' high columns and metal gates in the front yard setback.

3. BDA 001-189, Property at 4428 Park Lane (the lot southwest of subject site)

On April 24, 2001, the Board of Adjustment Panel A granted a request for a special exception to the fence regulations of 2' and imposed the submitted revised elevation/site plan as a condition to the request.

The case report stated that the request was made in conjunction with constructing and maintaining a 6' high open iron fence with 6' high open iron gates and 6' high brick columns.

GENERAL FACTS/STAFF ANALYSIS:

- These requests focus on constructing and maintaining the following in the two front yard setbacks on a site located at the northwest corner of Park Lane and Rockbrook Drive being developed with a single family home:
 - in the Park Lane front yard setback: a 6' high open wrought iron fence with 6' 6" high stucco columns parallel to this street, and a 6' high solid stucco fence with 6' 6" high columns perpendicular to this street on the site's west boundary; and
 - in the Rockbrook Drive front yard setback: a 6' high open wrought iron fence and service gate with 6' 6" high stucco columns parallel to this street, and a 6' high solid stucco fence with 6' 6" high columns perpendicular to this street on the site's north; and an entryway that includes a 10' 9" high open arched wrought iron entry gate with 10' high limestone or cast stone columns, and two approximately 8' high, 15' long solid limestone or cast stone wing walls.

(Note that the applicant intends to remove an existing approximately 6' high brick fence that runs a portion of the length of the site along Rockbrook Drive).
- 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 site is located at the northwest corner of Park Lane and Rockbrook Drive. The site has a 30' front yard setback along Rockbrook Drive, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in a single-family zoning district. The site also has a 30' front yard setback along Park Lane, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where a 9' high fence is allowed by right. But the site's Park Lane frontage is a side yard treated as a front yard setback nonetheless to maintain the

continuity of the front yard setback established by the lots developed with single family homes west of the site that front/are oriented southward towards Park Lane.

- The applicant has submitted a site plan and elevation of the proposal in the front yard setbacks that reaches a maximum height of 10' 9".
- The following additional information was gleaned from the submitted site plan:
 - Along Park Lane: the fence is approximately 350' in length, approximately on the property line, and approximately 20' from the pavement line.
 - Along Rockbrook Drive: the fence is approximately 300' in length, approximately 0 – 30' from the property line, and approximately 25' – 65' from the pavement line.
- There are two single family homes south of the subject site that have direct frontage to the proposal on Park Lane, neither of which appear to have fences in their front yards; and two single family homes east of the subject site that would have direct frontage to the proposal on Rockbrook Drive, one of which has a fence in its front yard setback over 4' in height – an approximately 6' high open metal fence that appears to be a result of an approved fence height special exception request granted by the Board of Adjustment in 1989: BDA 89-018 (see the "Zoning/BDA History" section of this case report for additional details).
- The Board Administrator conducted a field visit of the site and surrounding area (approximately 300' north, south, east, and west of the subject site) and noted one other visible fence higher than 4' in a front yard setback other than the one previously mentioned above in this case report that is immediately east of the subject site. The other fence noted is an approximately 5.5' high open metal fence located southwest of the site that appears to be a result of an approved fence height special exception request granted by the Board of Adjustment in 2001: BDA 001-189 (see the "Zoning/BDA History" section of this case report for additional details).
- As of August 11, 2014, a petition signed by 9 owners/neighbors who support the requests had been submitted, and no letters had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exceptions to the fence height regulations of 6' 9" will not adversely affect neighboring property.
- Granting these special exceptions of up to 6' 9" with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding 4' in height in the front yard setbacks to be constructed and maintained in the location and of the heights and materials as shown on these documents.

Timeline:

- June 23, 2014: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 15, 2014: The Interim Assistant Director of Sustainable Development and Construction acting on behalf of the Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 15, 2014: 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 July 30th deadline to submit additional evidence for staff to factor into their analysis; and the August 8th 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.

August 5, 2014: 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 Chief Planner, the Assistant Building Official, the Board Administrator, Building Inspection Senior Plans Examiners/Development Code Specialists, the Sustainable Development and Construction Department Senior Engineer, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, and the Assistant City Attorney to the Board.

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

August 5, 2014: The applicant's representative submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

August 8, 2014: The applicant's representative submitted additional information to staff beyond what was submitted with the original application (see Attachment B).

BOARD OF ADJUSTMENT ACTION: AUGUST 19, 2014

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Rieves

I move that the Board of Adjustment grant application **BDA 134-076** 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 plan and elevation is required.

SECONDED: French

AYES: 5 – Nolen, French, Williams, Rieves, Leija

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 134-081

BUILDING OFFICIAL'S REPORT: Application of Jonathan G. Vinson for a special exception to the pedestrian skybridge standards at 5201 Harry Hines Boulevard, a property described as a 12.69 acre tract in Block 6056, zoned MU-3, and 5134 Harry Hines Blvd., a property described as Lot 1A, Block A/5748, zoned IR and IM, which requires that supports for a pedestrian skybridge must not be located within the public right-of-way. The applicant proposes to construct and maintain a pedestrian skybridge and locate a support in a public right-of-way, which will require a special exception to the pedestrian skybridge standards.

LOCATION: 5201 Harry Hines Boulevard

APPLICANT: Jonathan G. Vinson

REQUEST:

A request for a special exception to the mandatory pedestrian skybridge standards is made to construct and maintain a pedestrian skybridge with a support column located within the Harry Hines Boulevard public right-of-way and would connect one existing hospital use/structure (old Parkland Hospital) to another new hospital use (new Parkland Hospital).

STANDARD FOR A SPECIAL EXCEPTION TO THE MANDATORY PEDESTRIAN SKYBRIDGE STANDARDS:

Section 51A-4.217 of the Dallas Development Code states that the board of adjustment may grant a special exception to the pedestrian skybridge standards if the board finds that:

1. Strict compliance with the requirements will unreasonably burden the use of either of the properties;
2. The special exception will not adversely affect neighboring property; and
3. The special exception will not be contrary to the public interest.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to the pedestrian skybridge standards since the basis for this type of appeal is if the board finds that: strict compliance with the requirements will unreasonably burden the use of either of the properties; the special exception will not adversely affect neighboring property; and the special exception will not be contrary to the public interest.

BACKGROUND INFORMATION:

Zoning:

- Site: MU-3, IR, & IM (Mixed Use, Industrial/Research, Industrial/Manufacturing)
- North: MU-3, PD 386 (Mixed Use, Planned Development)
- South: PD 748 (Planned Development)
- East: PD 748 (Planned Development)
- West: MU-3 (Mixed Use)

Land Use:

The subject site is developed an existing hospital on the south (Parkland Memorial Hospital) and a hospital under development on the north (Parkland Hospital). The areas to the north, east, south, and west are developed with a mix of hospital related and retail uses.

Zoning/BDA History:

1. Z 134-117, (the lot subject site)

On March 26, 2014, the City Council approved an application for a specific use permit for a pedestrian skybridge on property zoned an IR and an MU-3 district for a permanent time period, subject to a site plan and conditions, with an ordinance to return at a later date.
2. BDA 989-179, Property at 1935 Motor Street (the area to the south of the subject site)

On February 23, 1999, the Board of Adjustment Panel A granted requests for variances to the front yard setback regulations, and special exceptions to the pedestrian skybridge and visual obstruction regulations. The Board imposed the submitted elevation as a condition to the special exception requests.

The case report stated that the requests were made in conjunction with maintaining an existing structure in the front yard setback along Medical Center Drive, and constructing and maintaining pedestrian skybridges in the front yard setback along Medicial Center Drive, two pedestrian skybridges in the same blockface, and portions of skybridge support columns in visibility triangles on a site .

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining: a pedestrian skybridge with a support column located within the Harry Hines Boulevard public right-of-way- a pedestrian skybridge that would connect one existing hospital use/structure (old Parkland Hospital) to another new hospital use (new Parkland Hospital).
- The Dallas Development Code provides 19 mandatory skybridge provisions of which the applicant seeks special exception from one: that being the provision which states that pedestrian skybridge supports must not be located within the public right-of-way.
- The applicant has submitted images (see Attachment A) showing one support proposed to be located in the median of Harry Hines Boulevard.
- The applicant states among other things that: 1) the support column is unobtrusive, represents no traffic hazard or any other adverse impact, is not detrimental in any way, and is absolutely necessary from an architectural and engineering standpoint to support the skybridge; 2) while a suspension skybridge was considered, it was determined to be much too expensive for a public project; and 3) building a non-suspension skybridge without the center column would make it much more expensive, larger, and heavy.
- The applicant has the burden of proof in establishing how strict compliance with the requirements (constructing/maintain a pedestrian skybridge without supports within the public right-of-way) will unreasonably burden the use of either of the properties; that the special exception (constructing/maintain a pedestrian skybridge with a support within the public right-of-way) will not adversely affect neighboring property; and the special exception (constructing/maintain a pedestrian skybridge with a support within the public right-of-way) will not be contrary to the public interest.

Timeline:

- June 27, 2014: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- July 31, 2014: The Board Administrator acting on behalf of the Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- July 31, 2014: The Board Administrator contacted the applicant and emailed him the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the August 8th 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.

August 5, 2014: 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 Chief Planner, the Assistant Building Official, the Board Administrator, Building Inspection Senior Plans Examiners/Development Code Specialists, the Sustainable Development and Construction Department Senior Engineer, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, and the Assistant City Attorney to the Board.

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

August 8, 2014: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

BOARD OF ADJUSTMENT ACTION: AUGUST 19, 2014

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Rieves

I move that the Board of Adjustment grant application **BDA 134-081** 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.

SECONDED: French

AYES: 5 – Nolen, French, Williams, Rieves, Leija

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 134-077

BUILDING OFFICIAL’S REPORT: Application of Barry Gardner for a special exception to the landscape regulations at 1831 S. Ewing Avenue. This property is more fully described as Lot 8, Block 7/3679, and is zoned CR, which requires mandatory landscaping. The applicant proposes to maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 1831 S. Ewing Avenue

APPLICANT: Barry Gardner

REQUEST:

A special exception to the landscape regulations is requested to maintain what appears to be a recently constructed vacant office use/structure on the site, and not fully meet the landscape regulations.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

The board may grant a special exception to the landscape 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:

Denial

Rationale:

- While the City's Chief Arborist does not believe that the special exception will adversely affect neighboring property if improvements to the site are properly maintained, he recommends denial of the applicant's request because the applicant has not demonstrated how strict compliance with the Article X requirements will unreasonably burden the use of the property. A plan was originally presented to indicate how the office site could comply with the mandatory and design standard provisions of the ordinance but the site has since been modified. The Arborist cannot find reason as to why the increased impervious surface/reduced landscape area is applicable to the office use on the property.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	CR (Community retail)
<u>North:</u>	TH-3(A) (Townhouse)
<u>South:</u>	R-7.5(A) (Single family residential 7,500 square feet)
<u>East:</u>	CR (Community retail)
<u>West:</u>	TH-3(A) (Townhouse)

Land Use:

The site is currently developed with what appears to be a recently constructed vacant office use/structure. The area to the north is undeveloped; the area to the east is developed with vacant retail use; the area to the south is developed as a surface parking lot; and the area to the west is developed with single family use.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on maintaining what appears to be a recently constructed vacant office use/structure on the site, and not fully meeting the landscape regulations. More specifically, according to the City of Dallas Chief Arborist, the site does not comply with the landscape regulations in that: 1) it only provides a 6' wide buffer along the south and west sides of the site when a 10' wide buffer is required; and 2) it provides no complete design standard when a minimum of two are required.
- The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period.
- The City of Dallas Chief Arborist submitted a memo regarding the applicant's request (see Attachment A). The memo states how this request is triggered by new construction of a 750 square foot office building with parking lot.
- The Chief Arborist's memo lists the following factors for consideration:
 1. The landscape plan provides for the minimum requirement for street trees, site trees, and parking lot trees.
 2. A building permit application was submitted May 16, 2013. The applicant submitted a site/landscape plan that complied with the minimum requirements of Article X, and a permit for construction was issued in October of 2013.
 3. During the process of construction, the applicant made changes to the structure and vehicular surfaces areas are not conforming to the original approved plans. The landscape was red-tagged during an inspection in May of 2014. The building

permit is currently under review for an addendum to authorize adjustments to the building and alterations which places impervious surface into the mandatory buffer. The current configuration of impervious surface and landscape area cannot be approved by staff, as built, under Article X standards.

4. The landscape plan makes good use of existing hackberry trees along Georgia Street and along the west buffer. New plantings, parking, or other items that create obstructions from 2.5' – 8' above the street grade at the property cannot be provided in the visibility triangle at Ewing and Georgia. Existing trees may be maintained to be in compliance with city regulations for site visibility and street clearance.
 5. The plan does not indicate the form of irrigation for new plants to be planted along the perimeter.
 6. The plan does not account for full Article X design standard options but it appears that space could be presented for addressing screening of off-street parking (by minimum 3-foot tall fence or shrub row) and/or foundation planting along one or two sides of the structure, if the owner is amenable to further site amendment.
- The City of Dallas Chief Arborist recommends denial of this request because the applicant has not demonstrated how strict compliance with the Article X requirements will unreasonably burden the use of the property. A plan was originally presented to indicate how the office site could comply with the mandatory and design standard provisions of the ordinance however the site has since been modified. In accounting for the reduced landscape area by the encroachment, he cannot explain how the increased impervious surface is applicable to the office use on the property. However, he does not believe that the special exception will adversely affect neighboring property if improvements are properly maintained.
 - The applicant has the burden of proof in establishing the following:
 - Strict compliance with the requirements of the landscape regulations of the Dallas Development Code will unreasonably burden the use of the property; and the special exception will not adversely affect neighboring property.
 - If the Board were to grant this request and impose the submitted landscape plan as a condition to the request, the site would be provided exception from full compliance with the perimeter landscape buffer width and design standard requirements of Article X.

Timeline:

- June 25, 2014: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- July 15, 2014: The Interim Assistant Director of Sustainable Development and Construction acting on behalf of the Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 15, 2014: 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 July 30th deadline to submit additional evidence for staff to factor into their analysis; and the August 8th 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.

August 5, 2014: 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 Chief Planner, the Assistant Building Official, the Board Administrator, Building Inspection Senior Plans Examiners/Development Code Specialists, the Sustainable Development and Construction Department Senior Engineer, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, and the Assistant City Attorney to the Board.

August 11, 2014: The City of Dallas Chief Arborist submitted a memo regarding the request (see Attachment A).

BOARD OF ADJUSTMENT ACTION: AUGUST 19, 2014

APPEARING IN FAVOR: Barry Gardner, 1831 S. Ewing, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: **Williams**

I move that the Board of Adjustment, in request No. **BDA 134-077**, on application of Barry Gardner, **grant** the request to provide an alternate landscape plan as a special exception to the landscape regulations in Article X of the Dallas Development Code because our evaluation of the property and the testimony shows that strict compliance with the requirements of Article X will unreasonable burden the use of the property and the special exception will not adversely affect neighboring property. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted landscape plan is required.

SECONDED: Leija

AYES: 2 – Williams, Leija

NAYS: 3 – Nole, French, Rieves

MOTION FAILED: 2 – 3

*Since the motion to grant did not get 4 concurring votes the motion failed and is therefore deemed denied with prejudice.

MOTION #2: Nolen

I move that the Board of Adjustment, in request No. **BDA 134-077**, on application of Barry Gardner, **deny** the requested special exception to the landscape regulations **without prejudice**, because our evaluation of the property and testimony shows that strict compliance with the requirements of Article X will not unreasonable burden the use of the property or the special exception will adversely affect neighboring property.

SECONDED: Rieves

AYES: 3 – Nolen, French, Rieves

NAYS: 2 – Williams, Leija

MOTION PASSED: 3– 2

MOTION: French

I move to adjourn this meeting.

SECONDED: Nolen

AYES: 5 – Nolen, French, Williams, Rieves, Leija

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

1:20 P. M.: - Board Meeting adjourned for **August 19, 2014.**

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.