

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM
WEDNESDAY, FEBRUARY 20, 2013**

MEMBERS PRESENT AT BRIEFING: Darlene Reynolds, Vice Chair, Sam Gillespie, Panel Vice Chair, Christian Chernock, regular member, David Wilson, regular member and Paula Leone, regular member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Darlene Reynolds, Vice Chair, Sam Gillespie, Panel Vice Chair, Christian Chernock, regular member, David Wilson, regular member and Paula Leone, regular member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, David Cossum, Asst. Director, Tammy Palomino, Asst. City Attorney, Bert Vandenberg, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist and Trena Law, Board Secretary

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

11:10 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **February 20, 2013 docket.**

1:05 P.M.

The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel B January 16, 2013 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 20, 2013

MOTION: Chernock

I move approval of the **Wednesday, January 16, 2013** Board of Adjustment Public Hearing minutes.

SECONDED: Leone

AYES: 5– Reynolds, Gillespie, Chernock, Wilson, Leone

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 123-008

BUILDING OFFICIAL’S REPORT:

Application of Gregg McGillis, represented by Robert Miklos, for a special exception to the sign regulations at 9779 Forest Lane. This property is more fully described as Lot 4 in Block 6/8421, and is zoned CR, which (1) limits the combined effective area of all signs attached to any window or any glass door to not more than 15 percent of the area of that window or that glass door; and (2) prohibits signs in the upper two-thirds of a window or glass door. The applicant proposes to install and/or maintain a sign attached to a window or glass door in a business zoning district that will (1) exceed 15 percent of the area of that window or glass door and (2) be located within the upper two-thirds of that window or glass door, which will require a special exception to the sign regulations.

LOCATION: 9779 Forest Lane

**APPLICANT: Gregg McGillis
 Represented by Robert Miklos**

REQUEST:

A special exception to the sign regulations is requested in conjunction with, according to the application, maintaining translucent vinyl graphics to cover a portion of the upper two-thirds of a window on a site currently developed with a retail use (DD’s Discounts).

STANDARD FOR A SPECIAL EXCEPTION TO THE SIGN REGULATIONS FOR A SIGN ATTACHED TO A WINDOW OR GLASS DOOR IN A BUSINESS ZONING DISTRICT TO EXCEED 15 PERCENT OF THE AREA OF THAT WINDOW OR GLASS DOOR OR TO BE LOCATED WITHIN THE UPPER TWO-THIRDS OF THAT WINDOW OR GLASS DOOR

The Board of Adjustment may, in specific cases and subject to appropriate conditions, authorize as a special exception to the sign regulations when the board has made a special finding from the evidence presented that strict compliance with the requirement of the sign regulations will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.

The Board of Adjustment may authorize signs attached to a window or glass door in a business zoning district to exceed 15 percent of the area of that window or glass door or to be located within the upper two-thirds of that window or glass door if the board finds that the proposed signs do not eliminate visibility into, or out from, the premise; and that a sign authorized by this provision: i) must be made of translucent or a similar material with at least a 65/35 perforation pattern (a maximum of 65 percent of the area is closed, a minimum of 35 percent of the area is open); and ii) may only have images; any text or characters on the sign are limited to 15 percent of the window area and are only permitted in the lower one-third of the window.

STAFF RECOMMENDATION:

Approval

Rationale:

- Staff has concluded that strict compliance with the requirement of the sign regulations will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations; and that signs attached to the window or glass door within the upper two-thirds of that window or glass door do not eliminate visibility into, or out from, the premise.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail)
North: MF-1(A) (Multiple family residential)
South: CR (Community Retail)
East: R-7.5(A) (Single family district 7,500 square feet)
West: CR (Community Retail)

Land Use:

The site is currently developed with a retail use (DD's Discounts). The areas to the north and west are developed with multifamily uses; and the area to the east is undeveloped; and the area to the south is developed with retail uses.

Zoning/BDA History:

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

Timeline:

December 17, 2012: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

January 14, 2013: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.

January 14, 2013: 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 January 30th deadline to submit additional evidence for staff to factor into their analysis; and the February 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.

January 23, 2013: The Board Administrator emailed the applicant’s representative the following:

- The actual ordinance that provides the provision that he is seeking exception from the board along with the standard in which the board will use in considering whether to grant your request.
- Notice that the file forwarded from Building Inspection included a full scale site plan with a notation of “storefront window sign location” on it but that a reduction of this full scale site plan was not included in the file.
- A request of a copy of a reduction of this site plan no later than January 30th if he wanted it to be included it in what is discussed at the staff review team meeting and in the docket that is forwarded to the board members about a week ahead of his hearing.
- Notice that the board can authorize signs attached to a window or glass door in a business zoning district to exceed 15 percent of the area of that window or glass door or to be located within the upper two-thirds of that window or glass door if the board finds that the proposed signs do not eliminate visibility into, or out from, the premise; and that a sign authorized by this provision: i) must be made of translucent or a similar material with at least a 65/35 perforation pattern (a maximum of 65 percent of the area is closed, a minimum of 35 percent of the

area is open); and ii) may only have images; any text or characters on the sign are limited to 15 percent of the window area and are only permitted in the lower one-third of the window.

- Question as to whether he could represent that the only aspect of how your sign that you want to maintain on this site is in noncompliance to this code provision is what you have stated on your application which is that the sign is not limited to the lower one-third of the window? (Or in other words, if he would be able to represent that the sign on the site that he wants to maintain IS in compliance with the translucent vinyl or similar material with at least a 65/35 perforation pattern.)
- The fact that there is no context of what is typically submitted with this type of application OR what is typically imposed as a condition by the board if they choose to grant this type of application, seeing that this is the first of its type made to the board. But even though the code provision states that once a special exception is approved, a business does not need to return to the board of adjustment to change out the images or words on a sign as long as the sign complies with the approved special exception,
- Question as to whether he would feel it would be beneficial to submit some type of elevation of the sign requiring the exception with an accurate representation of: 1) the dimensions of the sign in context with the window or door that it is not in compliance with; 2) notations of material of the sign; and 3) percentage of perforation pattern of the sign.

January 23, 2013: The applicant's representative emailed the Board Administrator a section document with certain notations of the "window graphic" dimension and materials (see Attachment A). (The Board Administrator had indicated certain features shown on this document that were not in compliance with the sign regulations, and not features that could be considered as part of the applicant's special exception request).

February 5, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

February 6, 2013: The applicant's representative emailed the Board Administrator a revised section document with certain notations of a "window graphic" dimension and materials that appeared to address

concerns regarding features shown on the submitted document of January 23rd (see Attachment B).

GENERAL FACTS/STAFF ANALYSIS:

- The request focuses on maintaining translucent vinyl graphics to cover a portion of the upper two-thirds of a window on a site currently developed with a retail use (DD's Discounts).
- The Dallas Development Code states that the Board of Adjustment may authorize signs attached to a window or glass door in a business zoning district to exceed 15 percent of the area of that window or glass door or to be located within the upper two-thirds of that window or glass door if the board finds that the proposed signs do not eliminate visibility into, or out from, the premise; and that a sign authorized by this provision: i) must be made of translucent or a similar material with at least a 65/35 perforation pattern (a maximum of 65 percent of the area is closed, a minimum of 35 percent of the area is open); and ii) may only have images; any text or characters on the sign are limited to 15 percent of the window area and are only permitted in the lower one-third of the window.
- The applicant has the burden of proof in establishing the following:
 - That strict compliance with the requirement of the sign regulations will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations; and
 - that the signs attached to a window or glass door located within the upper two-thirds of that window or glass door do not eliminate visibility into, or out from, the premise.
- Granting this special exception would not provide any relief to the sign regulations of the Dallas Development Code other than allowing a sign in the upper two-thirds of a window on a site developed with a retail use.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 20, 2013

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Leone**

I move that the Board of Adjustment grant application **BDA 123-008** 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: **Wilson**

AYES: 5– Reynolds, Gillespie, Chernock, Wilson, Leone

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 123-009

BUILDING OFFICIAL’S REPORT:

Application of Robert Baldwin for a variance to the front yard setback regulations at 9200 (AKA 9212) Guernsey Lane. This property is more fully described as Lot 5, Block 5558 and is zoned R-1ac(A), which requires a front yard setback of 40 feet. The applicant proposes to construct a structure and provide a 30 foot front yard setback, which will require a variance to the front yard setback regulations of 10 feet.

LOCATION: 9200 (AKA 9212) Guernsey Lane

APPLICANT: Robert Baldwin

REQUEST:

A variance to the front yard setback regulations of 10’ is requested in conjunction with constructing and maintaining a single family home on an undeveloped site, part of which would be located in the 40’ front 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 site plan is required.

Rationale:

- The lot's irregular shape and restrictive area (caused by most of the lot being located in floodplain) preclude its development in a manner commensurate with other developments found on similarly-zoned R-1ac(A) lots. In this case, according to the applicant's submittals, a single family home with a building footprint of about 3,900 square feet is proposed on the subject site. According to calculations taken by the Board Administrator from information submitted by the applicant, the size of the proposed home building footprint is near the approximately 4,000 square foot average of 17 other building footprints in the area.
- Granting this variance does not appear to be contrary to the public interest since according to from calculations taken the submitted site plan by the Board Administrator only approximately 2 percent (or approximately 110 square feet) of the proposed approximately 4,000 square foot building footprint is to be located in the site's 40' front yard setback

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is undeveloped. 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:

December 19, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

January 14, 2013: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.

January 14, 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 January 30th deadline to submit additional evidence for staff to factor into their analysis;

and the February 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.

January 29, 2013: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

February 5, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining a single family home on an undeveloped site, part of which is proposed to be located in the site's 40' front yard setback.
- Structures on lots zoned R-1ac(A) are required to provide a minimum front yard setback of 40'.
- A site plan has been submitted denoting a portion of the proposed single family home to be located as close as 30' from the site's front property line (or as much as 10' into the 40' front yard setback).
- It appears from calculations taken the submitted site plan by the Board Administrator that approximately 2 percent (or approximately 110 square feet) of the proposed approximately 4,000 square foot building footprint is to be located in the site's 40' front yard setback.
- There are no DCAD records for property located at 9212 Guernsey Lane.
- The subject site is irregular in shape and according to the application, is 1.003 acres in area. The site is zoned R-1ac(A) where lots are typically one acre in area. The zoning map and submitted site plan indicate that over half of the site lies in flood plain.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front 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 R1ac(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-1ac(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 30’ from the site’s front property line (or 10’ into the 40’ front yard setback).

BOARD OF ADJUSTMENT ACTION: FEBRUARY 20, 2013

APPEARING IN FAVOR: Robert Baldwin, 3904 Elm Street, Ste B, Dallas, TX

APPEARING IN OPPOSITION: Martha Burkert, 9205 Guernsey Lane, Dallas, TX
Theresa Daniel, 9211 Guernsey Lane, Dallas, TX

MOTION: Wilson

I move that the Board of Adjustment, in Appeal No. **BDA 123-009**, on application of Robert Baldwin, grant a 10 foot variance to the minimum front yard setback regulations because our evaluation of the property and the testimony shows that 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 site plan is required.

SECONDED: Chernock

AYES: 5– Reynolds, Gillespie, Chernock, Wilson, Leone

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 123-010

BUILDING OFFICIAL’S REPORT:

Application of Ronald M. and Sheila K. Kostelny for a variance to the front yard setback regulations at 6129 Prestondell Drive. This property is more fully described as Lot 6, Block 3/7418 and is zoned R-16(A), which requires a front yard setback of 35 feet. The applicant proposes to construct and maintain a structure and provide a 27 foot front yard setback, which will require a variance to the front yard setback regulations of 8 feet.

LOCATION: 6129 Prestondell Drive

APPLICANT: Ronald M. and Sheila K. Kostelny

REQUEST:

A variance to the front yard setback regulations of up to 8' is requested in conjunction with constructing and maintaining an addition to an existing attached garage, part of which would be located in one of the site's two 35' front yard setbacks (Prestondell Court) on a site that is currently developed with a single family home. (No request has been made in this application to construct/maintain any structure in the site's Prestondell Drive front 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:

- (D) 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;
- (E) 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
- (F) 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 site plan is required.

Rationale:

- The subject site is unique and different from most lots zoned R-16(A) in that it is a slightly irregularly-shaped corner lot with a restrictive area due to its shape and its two front yard setbacks. The atypical two front yard setbacks on the slightly irregularly-shaped lot precludes it from being developed in a manner commensurate with development on other similarly zoned properties - in this case, the development on the property with a single family home with what the applicant has shown to be a typically found three-car garage in the area/zoning district.
- The requested variance would not be necessary if the lot was similar to most R-16(A) zoned lots with just *one* 35', two 10' side yard setbacks, and one 10' rear yard setback.

- Granting this variance does not appear to be contrary to the public interest since according to calculations taken by the Board Administrator from the submitted site plan, the area of the proposed addition to be located in the site's Prestondell Court 35' front yard setback is approximately 160 square feet in area or approximately half of the approximately 325 square foot building footprint of the proposed addition or about 4 percent of the total building footprint.

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:

December 19, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

January 14, 2013: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.

January 14, 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 January 30th deadline to submit additional evidence for staff to factor into their analysis; and the February 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.

January 29 & 30, 2013: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachments A and B).

February 5, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, 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 constructing and maintaining an addition to an existing attached garage, part of which would be located in one of the two 35' front yard setbacks (Prestondell Court).
- Structures on lots zoned R-16(A) are required to provide a minimum front yard setback of 35'.
- The subject site is located at the northwest corner of Prestondell Drive and Prestondell Court. Regardless of how the existing single family structure is oriented southward to Prestondell Drive, the subject site has two 35' front yard setbacks along both streets. The site has a 35' front yard setback along Prestondell Court, 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 35' front yard setback along Prestondell Drive, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where only a 10' setback is required. But the site's Prestondell Drive frontage is deemed a front yard setback nonetheless to maintain the continuity of the established front yard setback established by the lot developed with a single family home to the west.
- A scaled site plan has been submitted indicating that the proposed addition would be located 27' – 33.4' from the Prestondell Court front property line or 8' – 1.6' into this 35' front yard setback. (No encroachment is proposed in the Prestondell Drive 35' front yard setback).
- According to DCAD records, the “main improvements” at 6129 Prestondell is a structure built in 1963 with 4,426 square feet of living area and 4,426 square feet of total area. According to DCAD records, the “additional improvements” at 6129 Prestondell is a 754 square foot attached garage and a pool.
- According to calculations taken by the Board Administrator from the submitted site plan, the area of the proposed addition to be located in the site's Prestondell Court 35' front yard setback is approximately 160 square feet in area or approximately half of the approximately 325 square foot building footprint of the proposed addition or about 4 percent of the total building footprint.

- The subject site is flat, somewhat irregular in shape, and approximately 231' on the northwest and southeast), and according to the application, 0.738 acres (or approximately 32,000 square feet) in area. The site has two 35' front yard setbacks; and two 10' side yard setbacks; most residentially-zoned lots have one front yard setback, two side yard setbacks, and one rear yard setback.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the Prestondell Court front 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 site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document– which in this case is a structure to be located as close as 27' from the Prestondell Court front property line (or as much as 8' into this Prestondell Court 35' front yard setback).

BOARD OF ADJUSTMENT ACTION: FEBRUARY 20, 2013

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Leone

I move that the Board of Adjustment grant application **BDA 123-010** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted site plan is required.

SECONDED: Wilson

AYES: 5– Reynolds, Gillespie, Chernock, Wilson, Leone

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 123-014

BUILDING OFFICIAL’S REPORT:

Application of Edward Harbour for a variance to the front yard setback regulations and a special exception to the fence height regulations at 2020 Lakeland Drive. This property is more fully described as Lot 6, Block 17/5244, and is zoned R-7.5(A), which requires a front yard setback of 25 feet and limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a structure and provide a 10 foot front yard setback, which will require a variance to the front yard setback regulations of 15 feet; and to construct an 8 foot 3 inch high fence, which will require a special exception to the fence regulations of 4 feet 3 inches.

LOCATION: 2020 Lakeland Drive

APPLICANT: Edward Harbour

February 20, 2013 Public Hearing Notes:

- The applicant submitted a revised site plan to the Board at the public hearing (see Attachment A).

REQUESTS:

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

1. a variance to the front yard setback regulations of 15’ is requested in conjunction with constructing and maintaining a single family home structure, part of which would be located in one of the site’s two 25’ front yard setbacks (Eustis Avenue); and
2. special exceptions to the fence height regulations of 4’ 3” are requested in conjunction with constructing and maintaining an 8’ 3” high solid wood fence in the site’s two 25’ front yard setbacks along Lakeland Drive and Eustis Avenue.

(No part of this application is made to construct and/or maintain a structure in the site’s Lakeland Drive front 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.

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-7.5(A) in that it is a corner lot with a restrictive area due to its two front yard setbacks. The atypical two front yard setbacks on this lot precludes it from being developed in a manner commensurate with development on other similarly zoned properties - in this case, the development on the property with a single family home.
- This site with the atypical two 25' front yard setbacks leaves only a 20' width of developable space on the 50' wide site once a 5' side yard setback and a 25' front yard setback would be accounted for.
- The requested variance would not be necessary if the lot was similar to most R-7.5(A) zoned lots with just *one* 25', two 5' side yard setbacks, and one 5' rear yard setback.

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.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5 (A) (Single family district 7,500 square feet)
North: R-7.5 (A) (Single family district 7,500 square feet)
South: R-10 (A) (Single family district 10,000 square feet)
East: R-7.5 (A) (Single family district 7,500 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 and south are undeveloped, and the areas to the east and west are developed with single family uses.

Zoning/BDA History:

1. BDA 112, 067, Property at 8610 Eustis Avenue (the lot directly southeast of the subject site)

On June 18, 2012, the Board of Adjustment Panel C granted a request for a variance to the front yard setback regulations of 15' and imposed the submitted site plan as a condition. The case report stated that the request was made in conjunction with constructing and maintaining a two-story single family home structure, part of which would be located in one of the site's two 25' front yard setbacks (Eustis Avenue) on a site that is currently undeveloped. (No request was made in this application to construct/maintain any structure in the site's Lakeland Avenue front yard setback).

1. BDA 101-124, Property at 8610 Eustis Avenue (the lot directly southeast of the subject site)

On December 12, 2011, the Board of Adjustment Panel C granted a request for a variance to the front yard setback regulations of 15' and imposed the submitted site plan as a condition. The case report stated that the request was made in conjunction with constructing and maintaining a two-story single family home structure, part of which would be located in one of the site's two 25' front yard setbacks (Eustis Avenue) on a site that is currently undeveloped. (No request was made in this application to construct/maintain any structure in the site's Lakeland Avenue front yard setback).

Timeline:

December 21, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

January 14, 2013: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.

January 14, 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 January 30th deadline to submit additional evidence for staff to factor into their analysis; and the February 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.

February 5, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

No additional 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 structure, part of which would be located in one of the site's two 25' front yard setbacks (Eustis Avenue).
- Structures on lots zoned R-7.5(A) are required to provide a minimum front yard setback of 25'.
- The subject site is located at the north corner of Lakeland Drive and Eustis Avenue. Regardless of how the proposed single family structure is to be oriented, the subject site has two 25' front yard setbacks along both streets. The site has a 25' front yard setback along Lakeland 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 25' front yard setback along Eustis Drive, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where only a 5' setback is required. But the site's Eustis Drive frontage is deemed a front yard setback nonetheless to maintain the continuity of the established front yard setbacks established by the lots developed with single family homes to the northeast along Eustis Drive that front southeastward.
- A site plan has been submitted denoting a portion of the proposed single family home located 10' from the site's front property line along Eustis Avenue (or 15' into this 25' front yard setback). (No encroachment is proposed in the Lakeland Drive 25' front yard setback).
- It appears from the submitted site plan that approximately 37 percent (or approximately 1,150 square feet) of the proposed approximately 3,150 square foot building footprint is to be located in the site's Eustis Avenue 25' front yard setback.
- DCAD records indicate "no main improvements" for the property at 2020 Lakeland Drive.
- The subject site is rectangular in shape (50' x 155') and is 7,750 square feet in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area. The site has two 25' front yard setbacks; and two 5' side yard setbacks; most

residentially-zoned lots have one front yard setback, two side yard setbacks, and one rear yard setback.

- Only a 20' width of developable space would remain on the 50' wide site once a 5' side yard setback and a 25' front yard setback would be accounted for.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front 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-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 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 in this case is a structure to be located 10' from the Eustis Avenue front property line (or 15' into this Eustis Avenue 25' front yard setback).

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

- These requests focus on constructing and maintaining an 8' 3" high solid wood fence in the site's Lakeland Drive and Eustis Avenue front yard setbacks.
- As described preciously in this case report, the subject site located at the north corner of Lakeland Drive and Eustis Street has two 25' front yard setbacks.
- If it were not for the lots immediately northeast of the subject site that actually front onto Eustis Drive, the proposed 8' 3" high fence proposed along Eustis Drive could be constructed/maintained by right since this frontage of the corner subject site is the longer of the subject site's two street frontages.
- 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/partial elevation that shows the proposal in the Lakeland Drive and Eustis Avenue front yard setbacks reaching a maximum height of 97 ½" or 8' 3".
- With regard to the proposed fence along Lakeland Drive, the following additional information was gleaned from the submitted site plan/elevation:
 - Approximately 45' in length parallel to the street (and 25' in length perpendicular on the sides of the site in the required front yard), approximately on the front property line or approximately 34' from the pavement line where no home has direct frontage to the proposal since the home directly across Lakeland Drive fronts Eustis Avenue.

- The Board Administrator conducted a field visit of the site and surrounding area and noted no other *front yard* fences higher than 4' in the immediate area.
- With regard to the proposed fence along Eustis Avenue, the following additional information was gleaned from the submitted site plan/elevation:
 - Approximately 26' in length parallel to the street (and 10' and 25' in length perpendicular on the sides of the site in the required front yard), approximately on the front property line or approximately 14' from the pavement line where no home would have direct frontage to the proposal since the property directly across Eustis Avenue is undeveloped).
 - The Board Administrator conducted a field visit of the site and surrounding area and noted two other fences higher than 4' northeast of the site. These two fences were approximately 6' high solid board fences, neither with recorded board of adjustment history.
- As of February 11, 2013, no letters had been submitted in support or in opposition to these requests.
- The applicant has the burden of proof in establishing that the special exceptions to the fence height regulations of 4' 3" (whereby the proposal that would reach 8' 3" in height) will not adversely affect neighboring property.
- Granting these special exceptions of 4' 3" with a condition imposed that the applicant complies with the submitted site plan/partial elevation would require the proposal exceeding 4' in height in these 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: FEBRUARY 20, 2013

APPEARING IN FAVOR: Edward Harbour, 1744 Meraposa , Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Gillespie**

I move that the Board of Adjustment, in Appeal No. **BDA 123-014**, hold this matter under advisement until **March 20, 2013**.

SECONDED: **Wilson**

AYES: 5– Reynolds, Gillespie, Chernock, Wilson, Leone

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

MOTION: Wilson

I move to adjourn this meeting.

SECONDED: Leone

AYES: 5– Reynolds, Gillespie, Chernock, Wilson, Leone

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

1:55 P.M. Board Meeting adjourned for **February 20, 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.