

**BOARD OF ADJUSTMENT, PANEL C  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, COUNCIL CHAMBERS  
MONDAY, FEBRUARY 13, 2012**

MEMBERS PRESENT AT BRIEFING: Robert Moore, Panel Vice-Chair, Joel Maten, regular member, Ross Coulter, regular member, Bob Richard, regular member, and Danny Alan Scott, alternate member

MEMBERS ABSENT FROM BRIEFING: Sharon Boyd, Vice-Chair

MEMBERS PRESENT AT HEARING: Robert Moore, Panel Vice-Chair, Joel Maten, regular member, Ross Coulter, regular member, Bob Richard, regular member, and Danny Alan Scott, alternate member

MEMBERS ABSENT FROM HEARING: Sharon Boyd, Vice-Chair

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Tammy Palomino, Asst. City Atty., David Cossum, Asst. Director, Todd Duerksen, Development Code Specialist, Clay Walker, Arborist, and Trena Law, Board Secretary

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**11:32 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **February 13, 2012** docket.  
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**12:27 P.M.: Executive Session Begins**  
**12:45 P.M.: Executive Session Ends**

**1:04 P.M.**

The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand

upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel C December 12, 2011 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 13, 2012**

**MOTION:** **Maten**

I move **approval** of the Monday, **December 12, 2011** public hearing minutes.

**SECONDED:** **Richard**

**AYES:** 5–Moore, Maten, Coulter, Richard , Scott

**NAYS:** 0 –

**MOTION PASSED:** 5– 0 (unanimously)

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**FILE NUMBER:** BDA 112-018

**BUILDING OFFICIAL'S REPORT:**

Application of James Schnurr for a special exception to the landscaping regulations at 10101 Royal Lane. This property is more fully described as Lot 1 in City Block C/8065 and is zoned LI, which requires mandatory landscaping. The applicant proposes to construct a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

**LOCATION:** 10101 Royal Lane

**APPLICANT:** James Schnurr

**REQUEST:**

- A special exception to the landscape regulations is requested in conjunction with constructing and maintaining an approximately 5,400 square foot convenience store/general merchandise or food store structure/use (QuikTrip) on a site developed with furniture store structure/use (Adam's Office Furniture) that the applicant intends to demolish, and not fully meeting the landscape regulations.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the revised landscape plan submitted on February 3, 2012 is required.

Rationale:

- The City's Chief Arborist recommends approval of this request whereby, if the submitted revised landscape plan is imposed as a condition, the special exception will not adversely affect neighboring property.
- The applicant has substantiated how strict compliance with the landscape regulations would unreasonably burden the use of the property in that the restrictive shape of the lot/subject site limits the width of required landscaping area that can be provided on the west side of the lot. The applicant's submitted revised plan, however, mitigates the reduced perimeter landscape buffer with an existing living screen with an enhanced fence structure that functions as an additional screening component between the proposed convenience store proposed to be located the subject site and the existing multifamily use immediately to the west.

**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.

**GENERAL FACTS:**

- 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. In this particular application, the applicant has submitted a revised alternate landscape plan (see Attachment B) – a plan in which the Chief Arborist states is

deficient of meeting the perimeter landscape buffer requirements of Article X: The Landscape Regulations (see Attachment C).

- The City of Dallas Chief Arborist memo states among other things how the applicant's revised landscape plan is deficient from meeting Article X: The Landscape Regulations in that the site does not fully provide the required 10' landscape buffer on the west side of the site nor fully provide the required landscape buffer groups in this required buffer area. The arborist's memo explains several "factors" related to the application, and recommends approval of the request, subject to the approval being conditioned to the revised landscape plan submitted on February 3, 2012 (see Attachment B).

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: LI (Light Industrial)  
North: LI (Light Industrial)  
South: CR (Community Retail)  
East: LI (Light Industrial)  
West: MF1(A) (Multifamily residential)

### **Land Use:**

The site is developed as a furniture store use (Adam's Office Furniture). The area to the north and east is a freeway (LBJ Freeway); the area to the south is developed with retail use; and the area to the west is developed with multifamily 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.

### **Timeline:**

November 30, 2011: 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 12, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

January 12, 2012: 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 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;

- and the February 3<sup>rd</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

January 25, 2012: The applicant submitted a revised landscape plan and related materials to staff/ the Board Administrator (see Attachment A).

January 31, 2012: 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 Sustainable Development and Construction Department Building Inspection Division Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

February 3, 2012: The applicant submitted a revised landscape plan and related email to staff/ the Board Administrator (see Attachment B).

February 3, 2012: The Chief Arborist submitted a reduced copy of a revised plan and a memo pertaining to the landscape special exception request to the Board Administrator (see Attachment C).

### **STAFF ANALYSIS:**

- This request focuses on constructing and maintaining an approximately 5,400 square foot convenience store/general merchandise or food store structure/use (QuikTrip) on a site developed with furniture store structure/use (Adam's Office Furniture) that the applicant intends to demolish, and not fully meeting the landscape regulations.
- A revised landscape plan was submitted on February 3, 2012, a plan in which the City of Dallas Chief Arborist has stated is deficient from meeting Article X: Landscape Regulations by not fully providing the perimeter landscape buffer and related buffer group landscape materials.
- The City of Dallas Chief Arborist recommends approval of the request, subject to the approval being conditioned to the revised landscape plan submitted on February 3, 2012. The Chief Arborist states how the restrictive shape of the lot as it extends northward forces extensive pavement coverage for the high traffic volume and maneuvering on the property which in turn limits the amount of required landscaping area that can be provided on the western side of the site. The plan mitigates the reduced perimeter landscape buffer and existing living screen with an enhanced fence structure as an additional screening component.

- 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 revised landscape plan submitted on February 3, 2012 as a condition to the request, the site would be granted exception from full compliance with the perimeter landscape buffer requirements of Article X: The Landscape Regulations.

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 13, 2012**

**APPEARING IN FAVOR:** No one

**APPEARING IN OPPOSITION:** No one

**MOTION:** Richard

I move that the Board of Adjustment grant application **BDA 112-018** 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 revised landscape plan submitted on February 3, 2012 is required.

**SECONDED:** Maten

**AYES:** 5– Moore, Maten, Coulter, Richard, Scott

**NAYS:** 0 –

**MOTION PASSED:** 5– 0(unanimously)

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**FILE NUMBER:** BDA 101-129

**BUILDING OFFICIAL’S REPORT:**

Application of Ethan Davis for a special exception to the fence height regulations at 15315 Leavalley Drive. This property is more fully described as Lot 12 in City Block 12/8188 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 9 foot high fence, which will require a special exception of 5 feet.

**LOCATION:** 15315 Leavalley Drive

**APPLICANT:** Ethan Davis

**REQUEST:**

- A special exception to the fence height regulations of 4' 6" (reduced from 5' originally requested in December of 2011) is requested in conjunction with constructing and maintaining an 8' 6" high Austin builders stone pedestrian archway with a 6' 3" high open wrought iron gate within it (at a total length of 9' 6") to be located in one of the site's two required front yards on a site developed with a single family home – Winterwood Lane. (No fence proposal is shown to be located in the site's Leavalley Drive required front yard).

### **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.

### **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.

### **GENERAL FACTS:**

- On December 12, 2011, the Board of Adjustment conducted a briefing/hearing on this application. The applicant submitted additional written documentation to the board at the public hearing (see Attachment B). The Board postponed action on this application until February 13, 2012.
- The Dallas Development Code provides for front yard provisions for residential districts, specifically stating that if a corner lot in a single family zoning district has two street frontages of unequal distance, the shorter frontage is governed by the front yard regulations, and the longer frontage is governed by the side yard regulations. But the code continues to state that notwithstanding this provision, the continuity of the established setback along street frontage must be maintained.
- The subject site is a property zoned R-10(A) located at the southwest corner of Winterwood Lane and Leavalley Drive. The property has street frontages of unequal distances – the property's frontage along Winterwood Lane is 136'; the property's frontage along Leavalley Drive is 120'.

This site has two required front yards - a 30' required front yard created by a platted building line along its shorter frontage (Leavalley Drive) and a 30' required front yard (created by another platted building line) along its longer frontage (Winterwood Lane). Regardless of how the site's Winterwood Lane frontage functions as a side yard on the property and is the longer of the property's street frontages (which is typically deemed a side yard where a fence can be erected by right at 9' in height), it is a front yard nonetheless in order to maintain continuity of the required front yards established by the lots west of the site fronting northward onto Winterwood Lane.

- The Dallas Development Code states that a person shall not erect or maintain a fence in a required yard more than 9’ above grade, and additionally 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 originally submitted a site plan and elevations indicating that the proposal in the 30’ Winterwood Lane required front yard reached a maximum height of 9’. The applicant’s revised site plan and elevation of January 2012 (see Attachment C) shows a proposal that reaches 8’ 6” in height.
- The following additional information was gleaned from the **originally** submitted site plan:
  - The original proposal to have been located in the Winterwood Lane required front yard over 4’ in height was approximately 80’ in length parallel to the street and approximately 30’ in length *perpendicular* and/or *diagonal* to Winterwood Lane on the east and west sides of the site in the required front yard. (Note that the submitted elevations showed that the proposed fence parallel to Winterwood Lane and on the west side of the site in the Winterwood Lane required front yard 6’ in height and of “treated cedar” and the proposed fence on the east side of the site in the Winterwood Lane required front yard to be 6’ in height with a 9’ high archway at a pedestrian opening and of “Austin builders stone (both sides) to match the house construction.”)
  - The original proposal was shown to have been located on the site’s Winterwood Lane front property line or 13’ from the curb line.
- The following additional information was gleaned from the **revised** submitted site plan (see Attachment C):
  - The revised proposal to be located in the Winterwood Lane required front yard over 4’ in height is an 8’ 6” high, 9’ 6” long Austin builder stone pedestrian archway (with 6’ 3” high open wrought iron gate) located perpendicular to Winterwood Lane.
  - The revised proposal to be located in the Winterwood Lane required front yard over 4’ in height is approximately 13’ from the Winterwood Lane front property line or about 26’ from the curb line.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachments A, B, and C).

**BACKGROUND INFORMATION:**

**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 developed with a single family home. The areas to the north, south, and west are developed with single family uses; and the area to the east is developed as a public park (Kiowa Parkway Park).

**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:**

October 21, 2011: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

November 9, 2011: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

November 11, 2011: 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 November 23<sup>rd</sup> deadline to submit additional evidence for staff to factor into their analysis; and the December 2<sup>nd</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

November 30, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing.

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

December 2, 2011: The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).

December 12, 2011: The Board of Adjustment conducted a briefing/hearing on this application. The applicant submitted additional written documentation to the board at the public hearing (see Attachment B). The Board conducted a public hearing at this time and postponed action on this application until February 13, 2012.

January 31, 2012: 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 Sustainable Development and Construction Department Building Inspection Division Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

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

January 29, 2012: The applicant submitted additional information to staff (see Attachment C).

### **STAFF ANALYSIS:**

- On January 29, 2012, the applicant submitted a revised elevation and revised site plan (see Attachment C). The revised submittals of January 2012 made significant revisions to what the applicant had requested of the Board in December of 2011.
- In December of 2011, the applicant had requested a special exception of 5' to construct and maintain a 6' high stone wall (with a 9' high arched pedestrian gateway/opening) and 6' high wood fence to be located in the site's Winterwood Lane required front yard; a 6' high fence proposed to have been approximately 80' length parallel to the street and approximately 30' length *perpendicular* and/or *diagonal* to Winterwood Lane on the east and west sides of the site in the required front yard. (Note that the applicant's revised site plan of January 29, 2012 notes "4' tall stone screening wall" in the locations of where the 6' high solid stone wall and wood fence had been shown on the originally submitted plans of December of 2011).
- This updated/revised request from what had been proposed to the Board in December of 2012 focuses on constructing and maintaining an 8' 6" high Austin builders stone pedestrian archway with a 6' 3" high open wrought iron gate within it (at a total length of 9' 6") to be located in one of the site's two required front yards on a site developed with a single family home – Winterwood Lane. (No fence proposal is shown to be located in the site's Leavalley Drive required front yard).
- The submitted revised site plan shows that the proposal over 4' in height located in a required front yard will be 9' 6" in length, approximately 13' from the Winterwood Lane front property line or about 26' from the curb line.
- One single family home is located directly north of the site – a home with no fence and a home that fronts eastward onto Leavalley Drive as does the home on the subject site.

- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences above four (4) feet high which appeared to be located in a front yard setback.
- A number of letters were submitted to the Board at the December 12, 2011 public hearing pertaining to the applicant's original proposal. However, as of February 6, 2012, no letters had been submitted in support or in opposition to the applicant's revised proposal of January 29, 2012.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' 6" (whereby the proposal would reach a maximum height of 8' 6" in the site's Winterwood Lane required front yard) would not adversely affect neighboring property.
- Granting this special exception of 4' 6" with a condition imposed that the applicant complies with the submitted revised site plan and revised elevation would assure that the proposal exceeding 4' in height in the Winterwood Lane required front yard would be constructed and maintained in the location and of the heights and materials as shown on these documents.

**BOARD OF ADJUSTMENT ACTION: DECEMBER 12, 2011**

APPEARING IN FAVOR: Ethan Davis, 15315 Leavalle Dr., Dallas, TX

APPEARING IN OPPOSITION: Jana Howser, 7420 Winterwood Lane, Dallas, TX  
Virginia Schmidt, 7321 Winterwood, Dallas, TX

MOTION #1: **Moore**

I move that the Board of Adjustment, in Appeal No. **BDA 101-129**, on application of Ethan Davis, **deny** the special exception requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECOND: **None**

**MOTION FAILED FOR LACK OF A SECOND.**

MOTION #2: **Maten**

I move that the Board of Adjustment in Appeal No. **BDA 101-129**, hold this matter under advisement until **February 13, 2011**.

SECONDED: **Moore**  
AYES: 5– Boyd, Moore, Maten, Coulter, Richard  
NAYS: 0 –  
MOTION PASSED: 5– 0(unanimously)

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 13, 2012**

APPEARING IN FAVOR: Ethan Davis, 15315 Leavalley Drive, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Richard**

I move that the Board of Adjustment, in Appeal No. **BDA 101-129**, on application of Ethan Davis, **grant** the request of this applicant to construct and maintain an 8-foot six-inch-high fence on the property as a special exception to the height requirement for fences in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: **Maten**  
AYES: 5– Moore, Maten, Coulter, Richard, Scott  
NAYS: 0 –  
MOTION PASSED: 5– 0(unanimously)

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**FILE NUMBER:** BDA 101-131

**ORIGINAL BUILDING OFFICIAL'S REPORT:**

Application of Tommy Mann, Winstead PC for variances to the front yard setback regulations at 3440 Dickason Avenue. This property is more fully described as Lot 2 in City Block A/1035 and is zoned PD-193 (O-2), which requires front yard setbacks of 20 feet. The applicant proposes to construct and maintain a structure and provide 5 foot front yard setbacks, which will require variances to the front yard setback regulations of 15 feet.

**REVISED BUILDING OFFICIAL'S REPORT:**

Application of Tommy Mann for variances to the front yard setback regulations at 3440 Dickason Avenue. This property is more fully described as Lot 2 in City Block A/1035 and is zoned PD-193 (O-2), which requires front yard setbacks of 20 feet. The applicant proposes to construct a structure and provide a 5 foot front yard setback, which will

require a 15 foot variance to the front yard setback regulations; provide a 15 foot front yard setback which will require a 5 foot variance to the front yard setback regulation; and provide a 0 foot front yard setback which will require a 20 foot variance to the front yard setback regulations.

**LOCATION:** 3440 Dickason Avenue

**APPLICANT:** Tommy Mann, Winstead PC

**February 13, 2012 Public Hearing Notes:**

- The Board Administrator circulated additional information submitted by the applicant on February 8, 2012 to the Board members at the briefing (see Attachment E). This information included a copy of a “memorandum of understanding” between the applicant’s client and the Renaissance at Turtle Creek described in this material as the property located directly across Cedar Springs Road from the property of the applicant’s client.

**REQUESTS:**

- Variances to the front yard setback regulations of up to 20’ (increased from 15’ originally requested in December of 2011) are requested in conjunction with constructing and maintaining (according to the submitted revised “development plan” dated 01-26-2012) a 239-unit structure with an approximately 51,000 square foot building area on vacant/undeveloped property, part of which would be located in the site’s 20’ front yard setbacks along Dickason Avenue, Sale Street, and Cedar Springs Road.

**STAFF RECOMMENDATION:**

Denial

Rationale:

- The applicant had not substantiated how the restrictive area, shape, or slope of the site/lot precludes it from being developed in a manner commensurate with development found on other PD. No. 193 (O-2) zoned lots.

**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:

- 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;
- 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
- 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.

**GENERAL FACTS:**

- On December 12, 2011, the Board of Adjustment conducted a briefing/hearing on this application. The Board Administrator circulated the applicant's December 8, 2011 email to the Board members at the briefing requesting that they postpone action on his application until February 13, 2012 (see Attachment B). The Board honored the applicant's request at the public hearing, postponing action on this application until February 13, 2012.
- On January 24, 2012, the applicant amended his application for front yard variance from 15' to 20' (see Attachment C for a copy of the revised Building Official's Report).
- The minimum front yard provisions of the Dallas Development Code states that the front yard setback is measured from the front lot line of the building site or the required right-of-way line as determined by the thoroughfare plan for all thoroughfares, whichever creates the greater setback. On minor streets, the front yard is measured from the front lot line of the building site or the existing right-of-way, whichever creates the greater setback. When the city council by ordinance establishes a specific right-of-way line for a street, the front yard setback is measured from that right-of-way line.
- PD No. 193 states that minimum front yard setback for permitted structures other than single-family structures or structures on residential development tracts on lots zoned O-2 is 20 feet.

The applicant had submitted a revised development plan/site plan prior to the December 2011 hearing indicating a structure that provided a 5' distance from the Dickason Avenue easement line on the southwest side of the site (or 15' into the 20' front yard setback), a 15' distance from the Sale Street easement line or northwest side of the site (or 5' into the 20' front yard setback), and a 5' distance from the Cedar Springs Road easement line on the northeast side of the site (or 15' into the 20' front yard setback).

On January 26, 2012, the applicant had submitted a revised development plan/site plan (see Attachment D). The applicant explained in a January 24<sup>th</sup> email that as a result of discussions finalized with the property owner immediately to our south, the applicant has agreed to move the building that is the subject of BDA 101-132 northward (i.e. away from the neighboring property), and that this change also necessitated reconfiguring the building that is the subject of BDA 101-131 to keep

the two buildings in the same relationship to Dickason. The applicant's email explains that he is now requesting 20' variances on Dickason on both cases as opposed to 15' variances. This plan represents a structure that provides a 0' distance from the Dickason Avenue street easement line on the southwest side of the site (or 20' into the 20' front yard setback), a 15' 5" distance from the Sale Street easement line or northwest side of the site (or 4' 7" into the 20' front yard setback), and a 5' distance from the Cedar Springs Road easement line on the northeast side of the site (or 15' into the 20' front yard setback).

- The site is slightly sloped, generally rectangular in shape, and according to the application, 2.004 acres in area. The site is zoned PD No. 193 (O-2). The site has three front yard setbacks which is typical of any lot that has two street frontages and is not zoned single family, duplex, or agricultural.
- DCAD records indicate that the "no improvements" at 3440 Dickason.

### **BACKGROUND INFORMATION:**

#### **Zoning:**

Site: PD No. 193 (O-2) Planned Development, Office)  
North: PD No. 193 (O-2) Planned Development, Office)  
South: PD No. 193 (O-2) Planned Development, Office)  
East: PD No. 193 (O-2) (Planned Development, Office)  
West: PD No. 193 (O-2) Planned Development, Office)

#### **Land Use:**

The subject site is undeveloped. The areas to the north, east, south, and west appear to be developed mostly as residential uses.

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

1. BDA 101-132, Property at 2918 Sale Street (the lot immediately west of the subject site)

On December 12 2011, the Board of Adjustment Panel C conducted a hearing on requests for variances to the front yard setback regulations of (at that time) up to 15' requested in conjunction with constructing and maintaining according to the submitted revised "development plan" a 117-unit approximately 38,000 square foot structure on vacant/undeveloped property, part of which would be located in the site's 20' front yard setbacks along Dickason Avenue and Sale Street. The Board held this application over until February 13, 2012.

## **Timeline:**

October 26, 2011: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

November 9, 2011: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

November 11, 2011: 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 November 23<sup>rd</sup> deadline to submit additional evidence for staff to factor into their analysis; and the December 2<sup>nd</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

November 22, 2011: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

November 30, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing.

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

December 12, 2011: The Board of Adjustment conducted a briefing/hearing on this application. The Board Administrator circulated the applicant's December 8, 2011 email to the Board members at the briefing requesting that they postpone action on his application until February 13, 2012 (see Attachment B). The Board honored the applicant's request at the public hearing, postponing action on this application until February 13, 2012.

January 24 & 26, 2012: The applicant amended his application from a variance to the front yard setback regulations of 15' to 20' (see Attachment C – the revised Building Official's Report) and submitted a revised site/development plan (see Attachment D).

January 31, 2012: 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 Sustainable Development and Construction Department Building Inspection Division Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

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

### **STAFF ANALYSIS:**

- The requests focus on constructing and maintaining (according to the submitted revised “development plan” dated 01-26-2012) a 239-unit approximately 51,000 square foot structure on vacant/undeveloped property, part of which would be located in the site’s 20’ front yard setbacks along Dickason Avenue, Sale Street, and Cedar Springs Road.
- The revised development plan/site plan dated 01-26-2012 indicates a structure that provides a 0’ distance from the Dickason Avenue easement line on the southwest side of the site (or 20’ into the 20’ front yard setback), a 15’ distance from the Sale Street easement line or northwest side of the site (or 5’ into the 20’ front yard setback), and a 5’ distance from the Cedar Springs Road easement line on the northeast side of the site (or 15’ into the 20’ front yard setback).
- The site is slightly sloped, generally rectangular in shape, and according to the application, 2.004 acres in area. The site is zoned PD No. 193 (O-2). The site has three front yard setbacks which is typical of any lot that has two street frontages and is not zoned single family, duplex, or agricultural.
- DCAD records indicate that the “no improvements” at 3440 Dickason.
- The applicant has the burden of proof in establishing the following:
  - That granting the variances to 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 variances are necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 193 (O-2) zoning classification.
  - The variances would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD No. 193 (O-2) zoning classification.
- If the Board were to grant the variance requests, and impose the submitted revised development plan/site plan dated 01-26-2012 as a condition, the structure

**BOARD OF ADJUSTMENT ACTION: DECEMBER 12, 2011**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 101-131**, hold this matter under advisement until **February 13, 2012**.

SECONDED: **Moore**

AYES: 5– Boyd, Moore, Maten, Coulter, Richard

NAYS: 0 –

MOTION PASSED: 5– 0(unanimously)

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 13, 2012**

APPEARING IN FAVOR: Kirk Williams, 5400 Renaissance, Dallas, TX  
Michael Jung, 4400 BOA Plaza, Dallas, TX  
Robert Thomas, 4637 Cherokee, Dallas, TX  
Frank Stich, 4224 N. Hall St., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 101-131**, on application of Tommy Mann, **grant** a 5-foot variance along Sale Street, a 15-foot variance along Cedar Springs Road, and a 20-foot variance along Dickason Avenue to the minimum front yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised development/site plan dated January 26, 2012 is required.
- A double row of 5 inch caliper live oak trees must be placed 25 feet on center along Cedar Springs Road.

SECONDED: **Richard**

AYES: 5– Moore, Maten, Coulter, Richard, Scott

NAYS: 0 –

MOTION PASSED: 5– 0(unanimously)

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FILE NUMBER: BDA 101-132

**ORIGINAL BUILDING OFFICIAL’S REPORT:**

Application of Tommy Mann, Winstead, PC, for variances to the front yard setback regulations at 2918 Sale Street. This property is more fully described as Lot 2 in City Block A/1031 and is zoned PD-193 (O-2), which requires front yard setbacks of 20 feet. The applicant proposes to construct and maintain a structure and provide 5 foot front yard setbacks, which will require variances to the front yard setback regulations of 15 feet.

**REVISED BUILDING OFFICIAL’S REPORT:**

Application of Tommy Mann for variances to the front yard setback regulations at 2918 Sale Street. This property is more fully described as Lot 2 in City Block A/1031 and is zoned PD-193 (O-2), which requires front yard setbacks of 20 feet. The applicant proposes to construct a structure and provide a 0 foot front yard setback, which will require a 20 foot variance to the front yard setback regulations; and provide a 15 foot front yard setback, which will require a 5 foot variance to the front yard setback regulations.

LOCATION: 2918 Sale Street

APPLICANT: Tommy Mann, Winstead PC

**February 13, 2012 Public Hearing Notes:**

- The Board Administrator circulated additional information submitted by the applicant on February 8, 2012 to the Board members at the briefing (see Attachment E). This information included a copy of a “memorandum of understanding” between the applicant’s client and the Renaissance at Turtle Creek described in this material as the property located directly across Cedar Springs Road from the property of the applicant’s client.

**REQUESTS:**

- Variances to the front yard setback regulations of up to 20’ (increased from 15’ originally requested in December of 2011) are requested in conjunction with constructing and maintaining (according to the submitted revised “development plan” dated 01-26-2012) a 113-unit approximately 35,000 square foot structure on vacant/undeveloped property, part of which would be located in the site’s 20’ front yard setbacks along Dickason Avenue and Sale Street.

## **STAFF RECOMMENDATION:**

Denial

Rationale:

- The applicant had not substantiated how the restrictive area, shape, or slope of the site/lot precludes it from being developed in a manner commensurate with development found on other PD. No. 193 (O-2) zoned lots.

## **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:

- 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;
- 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
- 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.

## **GENERAL FACTS:**

- On December 12, 2011, the Board of Adjustment conducted a briefing/hearing on this application. The Board Administrator circulated the applicant's December 8, 2011 email to the Board members at the briefing requesting that they postpone action on his application until February 13, 2012 (see Attachment B). The Board honored the applicant's request at the public hearing by postponing action on this application until February 13, 2012.
- On January 24, 2012, the applicant amended his application for front yard variance from 15' to 20' (see Attachment C for a copy of the revised Building Official's Report).
- The minimum front yard provisions of the Dallas Development Code states that the front yard setback is measured from the front lot line of the building site or the required right-of-way line as determined by the thoroughfare plan for all thoroughfares, whichever creates the greater setback. On minor streets, the front yard is measured from the front lot line of the building site or the existing right-of-way, whichever creates the greater setback. When the city council by ordinance

establishes a specific right-of-way line for a street, the front yard setback is measured from that right-of-way line.

- PD No. 193 states that minimum front yard setback for permitted structures other than single-family structures or structures on residential development tracts on lots zoned O-2 is 20 feet.

The applicant had submitted a revised development plan/site plan prior to the December 2011 hearing indicating a structure that provided a 15' 5" distance from the Sale Street easement line on the northwest side of the site (or 4' 7" into the 20' front yard setback) and a 5' distance from the Dickason Avenue easement line or northeast side of the site (or 15' into the 20' front yard setback).

On January 26, 2012, the applicant had submitted a revised development plan/site plan (see Attachment D). The applicant explained in a January 24<sup>th</sup> email that as a result of discussions finalized with the property owner immediately to our south, the applicant has agreed to move the building that is the subject of BDA 101-132 northward (i.e. away from the neighboring property), and that this change also necessitated reconfiguring the building that is the subject of BDA 101-131 to keep the two buildings in the same relationship to Dickason. The applicant's email explains that he is now requesting 20' variances on Dickason on both cases as opposed to 15' variances. This plan represents a structure that provides a 15' 5" distance from the Sale Street easement line on the northwest side of the site (or 4' 7" into the 20' front yard setback) and a 0' distance from the Dickason Avenue easement line or northeast side of the site (or 20' into the 20' front yard setback).

The site is slightly sloped, generally rectangular in shape, and according to the application, 2.004 acres in area. The site is zoned PD No. 193 (O-2). The site has two front yard setbacks which is typical of any lot that has two street frontages and is not zoned single family, duplex, or agricultural.

- DCAD records indicate that the "no improvements" at 2918 Sale.
- The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: PD No. 193 (O-2) Planned Development, Office)  
North: PD No. 193 (O-2) Planned Development, Office)  
South: PD No. 193 (O-2) Planned Development, Office)  
East: PD No. 193 (O-2) (Planned Development, Office)  
West: PD No. 193 (O-2) Planned Development, Office)

### **Land Use:**

The subject site is undeveloped. The areas to the north, east, south, and west appear to be developed mostly as residential uses.

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

1. BDA 101-131, Property at 3440 Dickason Avenue (the lot immediately east of the subject site)

On December 12 2011, the Board of Adjustment Panel C conducted a hearing on requests for variances to the front yard setback regulations of (at that time) up to 15' requested in conjunction with constructing and maintaining according to the submitted revised "development plan" a 230-unit approximately 54,000 square foot structure on vacant/undeveloped property, part of which would be located in the site's 20' front yard setbacks along Dickason Avenue, Sale Street, and Cedar Springs Road. The Board held this application over until February 13, 2012.

### **Timeline:**

- October 26, 2011: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- November 9, 2011: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- November 11, 2011: 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 November 23<sup>rd</sup> deadline to submit additional evidence for staff to factor into their analysis; and the December 2<sup>nd</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the requests; and
  - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- November 30, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing.
- November 22, 2011: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).
- November 30, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing.

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

December 12, 2011: The Board of Adjustment conducted a briefing/hearing on this application. The Board Administrator circulated the applicant's December 8, 2011 email to the Board members at the briefing requesting that they postpone action on his application until February 13, 2012 (see Attachment B). The Board honored the applicant's request at the public hearing, postponing action on this application until February 13, 2012.

January 24 & 26, 2012: The applicant amended his application from a variance to the front yard setback regulations of 15' to 20' (see Attachment C – the revised Building Official's Report) and submitted a revised site/development plan (see Attachment D).

January 31, 2012: 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 Sustainable Development and Construction Department Building Inspection Division Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

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

### **STAFF ANALYSIS:**

- The requests focus on constructing and maintaining (according to the submitted revised "development plan" dated 01-26-2012) a 113-unit approximately 35,000 square foot structure on vacant/undeveloped property, part of which would be located in the site's 20' front yard setbacks along Dickason Avenue and Sale Street.
- The revised development plan/site plan dated 01-26-2012 indicates a structure that provides a 15' 5" distance from the Sale Street easement line on the northwest side of the site (or 4' 7" into the 20' front yard setback) and a 0' distance from the Dickason Avenue easement line or northeast side of the site (or 20' into the 20' front yard setback).
- The site is slightly sloped, generally rectangular in shape, and according to the application, 2.004 acres in area. The site is zoned PD No. 193 (O-2). The site has two front yard setbacks which is typical of any lot that has two street frontages and is not zoned single family, duplex, or agricultural.

- DCAD records indicate that the “no improvements” at 2918 Sale.
- The applicant has the burden of proof in establishing the following:
  - That granting the variances to 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 variances are necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 193 (O-2) zoning classification.
  - The variances would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD No. 193 (O-2) zoning classification.
- If the Board were to grant the variance requests and impose the submitted revised development plan/site plan dated 01-26-2012 as a condition, the structure encroaching into the required front yard setbacks would be required to be maintained in the location and to the features shown on this document.

**BOARD OF ADJUSTMENT ACTION: DECEMBER 12, 2011**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 101-132**, hold this matter under advisement until **February 13, 2012**.

SECOND: **Moore**

AYES: 5– Boyd, Moore, Maten, Coulter, Richard

NAYS: 0 –

MOTION PASSED: 5– 0(unanimously)

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 13, 2012**

APPEARING IN FAVOR: Kirk Williams, 5400 Renaissance, Dallas, TX  
 Michael Jung, 4400 BOA Plaza, Dallas, TX  
 Robert Thomas, 4637 Cherokee, Dallas, TX  
 Frank Stich, 4224 N. Hall St., Dallas, TX

APPEARING IN OPPOSITION: No one



**MOTION: Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 101-132**, on application of Tommy Mann, **grant** a 5-foot variance along Sale Street and a 20-foot variance along Dickason Avenue to the minimum front yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised development/site plan dated January 26, 2012 is required.

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**MOTION: Maten**

I move to adjourn this meeting.

**SECONDED: Coulter**

**AYES: 5—Moore, Maten, Coulter, Richard, Scott**

**NAYS: 0 - None**

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

**1:50 P. M. - Board Meeting adjourned for February 13, 2012.**

\_\_\_\_\_  
CHAIRPERSON

\_\_\_\_\_  
BOARD ADMINISTRATOR

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BOARD SECRETARY

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**Note:** For detailed information on testimony, refer to the tape retained on file in the Department of Planning and Development.