

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM
MONDAY, APRIL 15, 2013**

MEMBERS PRESENT AT BRIEFING: Bruce Richardson, Chair, Joel Maten, regular member, Ross Coulter, regular member, Bob Richard, regular member, and Philip Lewis, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Bruce Richardson, Chair, Joel Maten, regular member, Ross Coulter, regular member, Bob Richard, regular member, and Philip Lewis, alternate member

MEMBERS ABSENT FROM HEARING: No one

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

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Tammy Palomino, Asst. City Atty., Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, Lloyd Denman, Chief Engineer and Trena Law, Board Secretary

11:05 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **April 15, 2013** docket.

1:10 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 C March 18, 2013 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: APRIL 15, 2013

MOTION: Maten

I move **approval** of the Monday, **March 18, 2013** public hearing minutes.

SECONDED: Richard

AYES: 5– Richardson, Maten, Coulter, Richard, Lewis

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 123-031

BUILDING OFFICIAL’S REPORT: Application of Robin Wilkins, represented by Audra Buckley, to restore a nonconforming use at 3409 Spring Avenue. This property is more fully described as Lot 10, Block 5/1789 and is zoned PD-595 (CC), which limits the legal uses in the zoning district. The applicant proposes to restore a nonconforming multifamily residential use, which will require a special exception to the nonconforming use regulations.

LOCATION: 3409 Spring Avenue

APPLICANT: Robin Wilkins
Represented by Audra Buckley

REQUEST:

- A special exception to reinstate nonconforming use rights is requested in conjunction with obtaining a Certificate of Occupancy (CO) for a “multifamily” use on the subject site even though this nonconforming use was discontinued for a period of six months or more.

STANDARD FOR A SPECIAL EXCEPTION TO OPERATE A NONCONFORMING USE IF THAT USE IS DISCONTINUED FOR SIX MONTHS OR MORE: The Dallas Development Code states that the Board may grant a special exception to operate a nonconforming use that has been discontinued for six months or more if the owner can show that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to operate a nonconforming use if that use is discontinued for six months or more since the basis for this type of appeal is based on whether the board determines that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 595(CC) (Planned Development, Community Commercial)
North: PD No. 595(CC) (Planned Development, Community Commercial)
South: PD No. 595(R-5(A)) (Planned Development, Single family 5,000 square feet)
East: PD No. 595(R-5(A)) (Planned Development, Single family 5,000 square feet)
West: PD No. 595(R-5(A)) (Planned Development, Single family 5,000 square feet)

Land Use:

The subject site is developed with what appears to be a multifamily structure that is vacant. The area to the north is developed with retail uses; and the areas to the east, south, and west appear to be developed with residential uses.

Zoning/BDA History:

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

Timeline:

- January 25, 2013: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- March 19, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- March 19, 2013: The Board Administrator contacted the applicant's representative and shared the following information via email:
- an attachment that provided the public hearing date and panel that will consider the application; the March 27th deadline to submit additional evidence for staff to factor into their analysis; and the April 5th 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;
 - the section from the Dallas Development Code pertaining to nonconforming uses and structures; and

- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

April 2, 2013:

The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April 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 Planner, 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 special exception request is made to restore nonconforming use rights (and obtain a Certificate of Occupancy) for a nonconforming “multifamily” use that has been discontinued for six months or more.
- The Dallas Development Code defines “nonconforming use” as “a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time.

The nonconforming use regulations state it is the declared purpose of the nonconforming use section of the code that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.

The nonconforming use regulations also states that the right to operate a nonconforming use ceases if the nonconforming use is discontinued for six months or more, and that the board of adjustment may grant a special exception to operate a nonconforming use that has been discontinued for six months or more if the owner can show that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

- The subject site is zoned PD No. 595 (CC) – a zoning district that does not permit a multifamily use.
- According to information from Dallas Central Appraisal District (DCAD), the “improvements” at 3409 Spring Avenue is developed with an “apartment” with 3,264 square feet built in 1961.
- Building Inspection has stated that these types of special exception request originate from when an owner/officer related to the property apply for a CO and Building Inspection sees that the use is a nonconforming use. Before a CO can be issued, the City requires the owner/officer related to the property to submit affidavits stating that the use was not abandoned for any period in excess of 6 months since the

issuance of the last valid CO. The owners/officers must submit documents and records indicating continuous uninterrupted use of the nonconforming use, which in this case, they could not.

- If the Board were to grant this request, the nonconforming “multifamily” use on the site would be subject to the possibility of an application that may be brought to the Board of Adjustment requesting that the board establish a compliance date as is the case with any other nonconforming use in the city.
- The multifamily use can obtain “conforming use” status with a change in zoning.
- The owner could develop the site with any use that is permitted by right in the site’s existing PD No. 595 (CC)(Community Commercial) zoning classification.
- A document has been included in the case file that states the following:
 1. The nonconforming use to be reinstated: 5 multifamily dwelling units.
 2. Reason the use is classified as nonconforming: Change is zoning from M-1 to PD 595.
 3. Date that the use became nonconforming: September 2001
 4. Date the nonconforming use was discontinued: February 2010
 5. Current zoning of the property on which the use is located: PD 595 (Sub CC)).
 6. Previous zoning of the property on which the use is located: M-1
- Copies of what appear to be Certificates of Occupancies for the properties at 3407, 3409, and 3411 Spring Avenue Avenue were submitted as part of the case file.
- The applicant has the burden of proof in establishing the following related to the special exception request:
 - There was a clear intent not to abandon the nonconforming “multifamily” use on the subject site even though the use was discontinued for six months or more.
- Granting this request would reinstate/restore the nonconforming multifamily use rights that were lost when the use was abandoned for a period of six months or more.
- If restored/reinstated, the nonconforming use would be subject to compliance with use regulations of the Dallas Development Code by the Board of Adjustment as any other nonconforming use in the city. (The applicant’s representative has been advised by staff of Section 51A-4.704 which is the provision in the Dallas Development Code pertaining to “Nonconforming Uses and Structures”).

BOARD OF ADJUSTMENT ACTION: APRIL 15, 2013

APPEARING IN FAVOR: Audra Buckley, 416 S. Ervay, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 123-031**, on application of Robin Wilkins, **grant** the special exception to the Dallas Development Code Section 51A-4.704(a)(2) providing that the right to operate a nonconforming use ceases if the nonconforming use is discontinued for six months or more, because the owner of the

property has shown that there was a clear intent not to abandon the use even though it was discontinued for six months or more.

SECONDED: Coulter

AYES: 5– Richardson, Maten, Coulter, Richard, Lewis

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 112-103

BUILDING OFFICIAL’S REPORT:

Application of Donna Woods, represented by Mark A. Mosley, for a special exception to the tree preservation regulations at 2800 Prichard Lane. This property is more fully described as Tract 4 in City Block 6118 and is zoned R-7.5(A), which requires mandatory landscaping and tree mitigation. The applicant proposes to construct and/or maintain a structure and provide an alternate plan for tree mitigation which will require a special exception to the tree preservation regulations.

LOCATION: 2800 Prichard Lane

APPLICANT: Donna Woods
Represented by Mark A. Mosley

REQUEST:

A special exception to the tree preservation regulations is requested in conjunction with the removal of trees on a site developed as a private school (Nova Academy), and not fully complying with the Chapter X: Tree Preservation Regulations of the Dallas Development Code.

STANDARD FOR A SPECIAL EXCEPTION TO THE TREE PRESERVATION REGULATIONS:

The board may grant a special exception to the tree preservation regulations of this article upon making a special finding from the evidence presented that:

- (1) strict compliance with the requirements of this article will unreasonably burden the use of the property;
- (2) the special exception will not adversely affect neighboring property; and
- (3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

In determining whether to grant a special exception, the Board shall consider the following factors:

- the extent to which there is residential adjacency;
- the topography of the site;

- the extent to which landscaping exists for which no credit is given under this article; and
- the extent to which other existing or proposed amenities will compensate for the reduction of landscaping.

STAFF RECOMMENDATION:

Denial

Rationale:

- The applicant has not substantiated:
 - how strict compliance with the requirements of the Tree Preservation Regulations of the Dallas Development Code will unreasonably burden the use of the property; and
 - that the special exception will not adversely affect neighboring property.
- The City’s Chief Arborist recommends denial of the request.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5(A)(SUP 1805) (Single family residential 7,500 square feet, Specific Use Permit)
North: R-7.5(A) (Single family residential 7,500 square feet)
South: R-7.5(A) (Single family residential 7,500 square feet)
East: CR (Community Retail)
West: R-7.5(A) (Single family residential 7,500 square feet)

Land Use:

The subject site is developed with a private school (Nova Academy). The areas to the north and west appear to be undeveloped; the area to the east is partially developed with multifamily use and partially undeveloped; and the area to the south is 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:

September 5, 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.

September 12, 2012: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

September 19, 2012: The Board Administrator emailed the applicant's representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the September 26th deadline to submit additional evidence for staff to factor into their analysis; and the October 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

October 2, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Building Inspection Senior Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

Staff concluded at this meeting that the application must be postponed until November given that no alternate tree preservation plan had been submitted to date.

November 27, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November 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 Building Inspection Senior Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

Staff concluded at this meeting that the application must be postponed until February given that no alternate tree preservation plan had been submitted to date.

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.

Staff concluded at this meeting that the application should be scheduled for February given the amount of time that had passed since the application was submitted in September of 2012.

February 6, 2013: The Board Administrator emailed the applicant's representative the following information:

- notice that his application would be scheduled for February 21st; and
- the February 8th deadline to submit additional evidence to be incorporated into the Board's docket materials.

February 8, 2013: The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment A).

February 21, 2013: The Board of Adjustment Panel C conducted a public hearing on this application. The applicant's representative provided testimony stating that his request to the Board was for a special exception to the tree preservation regulations was one where the applicant would fully comply with the tree preservation regulations with one exception: the timing in which the applicant would be required to fully mitigate. The Board held the request under advisement until April 15th.

March 1, 2013: The Board Administrator sent a letter to the applicant's representative noting the February 21st action of the Board, the March 27th deadline to submit any new information for staff review, and the April 5th deadline to submit additional evidence to be incorporated into the Board's docket materials.

April 2, 2013: At this time, no additional information had been submitted to the Board Administrator by the applicant's representative. The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April 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 Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

April 4, 2013: The City of Dallas Chief Arborist submitted an updated memo regarding this request (see Attachment B).

GENERAL FACTS/STAFF ANALYSIS:

- An application has for a “special exception of the Dallas Development Code Article X, Landscape and Tree Preservation Regulations through a Conservation Easement Grant” on property that is developed as a private school.
- The Dallas Development Code requires full compliance with the Tree Preservation Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet.
- On February 8, 2013, the City of Dallas Chief Arborist had submitted a memo regarding this request to the Board Administrator prior to the February 21st hearing (see Attachment A). The memo stated among other things how the request is triggered by new construction of an educational facility and removal of 2,005 caliper inches of trees to be mitigated.
- The Chief Arborist had stated that the property is currently under an active building permit with pending inspection for tree mitigation. The tree mitigation has not yet been resolved beyond a number of trees planted for compliance with the landscape requirements.
- The Chief Arborist had noted that a conservation easement did not exist; that the applicant had proposed but not produced a final document for approval that was acceptable by the City of Dallas; that in addition, the arborist noted that the property was heavily wooded in the western and southern portions which would have had limited impact from development, and that the land area found to be suitable for a conservation easement could provide for up to a 65 percent mitigation reduction if a recorded easement was completed. But lastly the arborist noted that an easement by ordinance would not resolve all tree mitigation requirements for the property.
- The Chief Arborist had recommended denial of the request.
- On April 4, 2013, the City of Dallas Chief Arborist submitted an updated memo regarding this request to the Board Administrator (see Attachment B). The memo stated among other things how the request is made to the timing requirements for completing tree mitigation and is triggered by new construction of an educational facility and removal of 2,005 caliper inches of trees to be mitigated.
- The Chief Arborist states that the property is currently under an active building permit with pending inspection for tree mitigation. The tree mitigation has not yet been resolved beyond a number of trees planted for compliance with the minimum landscape requirements.
- The Chief Arborist notes the following factors for consideration: 1) based on comments before the Board, and to him on March 28th, the applicant is requesting “the time to exercise the option(s)” to mitigate the tree removal per Article X methods of replacement. All methods of mitigation in Sections 51A-10.134 and 10.135 are currently available to the owners of the property; and 2) the mitigation requirements for protected trees removed or other disturbances have been codified in ordinance since 1994; the property was permitted for construction and tree removal in August of 2010.
- The Chief Arborist recommends denial of the request.
- The property owner can comply with tree preservation regulations by mitigating the removed trees in any of the alternative methods provided for in Article X: planting

- The applicant has the burden of proof in establishing the following:
 - Strict compliance with the requirements of the Tree Preservation Regulations of the Dallas Development Code will unreasonably burden the use of the property.
 - The special exception will not adversely affect neighboring property.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 21, 2013

APPEARING IN FAVOR: Mark Mosley, 1410 Avenue G, Plano, TX

APPEARING IN OPPOSITION: No one

MOTION: **Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 123-103**, hold this matter under advisement until **April 15, 2013**.

SECONDED: **Coulter**

AYES: 5– Richardson, Maten, Coulter, Richard, Agnich

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: APRIL 15, 2013

APPEARING IN FAVOR: Mark Mosley, 1410 Avenue G, Plano, TX

APPEARING IN OPPOSITION: No one

MOTION: **Coulter**

I move that the Board of Adjustment, in Appeal No. **BDA 123-103**, hold this matter under advisement until **May 20, 2013**.

SECONDED: **Maten**

AYES: 5– Richardson, Maten, Coulter, Richard, Lewis

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 123-026

BUILDING OFFICIAL’S REPORT: Application of Grayson Wafford for variances to the front yard setback regulations and a special exception to the fence height regulations at 6422 Sondra Drive. This property is more fully described as Lot 4 in City Block 5/4909 and is zoned R-7.5(A), Neighborhood Stabilization Overlay (NSO) No. 4, which requires

a front yard setback of 30 feet and limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain a single family structure and provide minimum front yard setbacks of 20 feet, which will require variances to the front yard setback regulations of up to 10 feet. The applicant also proposes to construct and maintain an 8-foot 6-inch-high fence in a required front yard, which will require a special exception to the fence height regulations of 4 feet 6 inches.

LOCATION: 6422 Sondra Drive

APPLICANT: Grayson Wafford

April 15, 2013 Public Hearing Notes:

- The applicant submitted a full scale revised site plan/elevation to the Board at the public hearing (see Attachment E).

ORIGINAL MARCH 18, 2013 REQUESTS:

The following appeals had been made on a site that is currently developed with a single family home structure, which the applicant intends to demolish:

1. A variance to the front yard setback regulations of 9' 6" was requested in conjunction with constructing and maintaining single family home structure part of which would be located in the site's 30' Sondra Avenue front yard setback.
2. A variance to the front yard setback regulations of 8' was requested in conjunction with constructing and maintaining a single family home structure, part of which would be located in the site's 30' Marquita Avenue front yard setback.
3. A special exception to the fence height regulations of 4' 6" was requested in conjunction with constructing an 8' 6" high solid wood fence in the site's Marquita Avenue front yard setback.

On March 18, 2013, the Board of Adjustment Panel C conducted a public hearing on this application, and took the following actions: (1) granted a 9 foot 6 inch variance along Sondra Avenue to the minimum front yard setback regulations and an 8 foot variance along Marquita Avenue to the minimum front yard setback regulations, with the site plan imposed as a condition; and (2) held the request for a special exception to the fence height regulations of 4' 6" until April 15th.

UPDATED APRIL 15, 2013 REQUEST:

A special exception to the fence height regulations of 4' 6" is requested in conjunction with constructing and maintaining an 8' 6" high combination solid masonry/open metal picket fence in the site's Marquita Avenue front yard setback on a site currently developed with a single family home that the applicant intends to replace with a new single family home.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STAFF RECOMMENDATION:

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

Zoning:

- Site: R-7.5(A) (NSO 4) (Single family district 7,500 square feet, Neighborhood Stabilization Overlay)
- North: R-7.5(A) (NSO 4) (Single family district 7,500 square feet, Neighborhood Stabilization Overlay)
- South: R-7.5(A) (NSO 4) (Single family district 7,500 square feet, Neighborhood Stabilization Overlay)
- East: R-7.5(A) (NSO 4) (Single family district 7,500 square feet, Neighborhood Stabilization Overlay)
- West: R-7.5(A) (NSO 4) (Single family district 7,500 square feet, Neighborhood Stabilization Overlay)

Land Use:

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

Zoning/BDA History:

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

Timeline:

January 25, 2013: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

February 13, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

February 13, 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 February 29th deadline to

submit additional evidence for staff to factor into their analysis; and the March 9th 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.

February 21, 2013: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

March 5, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March 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 Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

March 6, 2013: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment B).

March 8, 2013: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment C).

March 18, 2013: The Board of Adjustment Panel C conducted a public hearing on this application, and took the following actions: granted a 9 foot 6 inch variance along Sondra Avenue to the minimum front yard setback regulations and an 8 foot variance along Marquita Avenue to the minimum front yard setback regulations, and imposed the submitted site plan as a condition; and held the request for a special exception to the fence height regulations of 4' 6" until April 15th.

March 21, 2013: The Board Administrator sent a letter to the applicant noting the March 21st action of the Board, and the April 5th deadline to submit additional evidence to be incorporated into the Board's docket materials.

April 2, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April 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 Planner, 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.

April 5, 2013: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application and beyond what was submitted at the March 18th public hearing (see Attachment D).

GENERAL FACT /STAFF ANALYSIS:

- This request that remains in this application focuses constructing and maintaining an 8' 6" high combination solid masonry/open metal picket fence in the site's 30' front yard setback along Marquita Avenue. (No fence is proposed in the site's 30' front yard setback along Sondra Avenue).
- 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 originally submitted a scaled site plan and an elevation that showed the proposal in the Marquita Avenue front yard setback reaches a maximum height of 8' 6".
- The following additional information was gleaned from the originally submitted site plan:
 - Approximately 68' in length parallel to Marquita Avenue (and approximately 23 in length perpendicular on the sided of the site in this required front yard setback), approximately on this front property line or approximately 12' from the pavement line where two homes would have direct frontage to the proposal - homes with no fences in their front yards.
- On April 5, 2013, the applicant emailed reduction copies of a revised site plan and a revised partial elevation (see Attachment D). The applicant stated the following in the email that accompanied this revised plans:
 - The site plan attached includes NO changes to the size, shape or foot print of the home to be built on the lot. The only changes that have been made are to the fence.
 - The maximum height of the fence will be 8'6" at the top of the capstones at each pillar and the maximum height of the walls of the fence between pillars will be 8'.
 - The fence will be built 1' from the property line along Marquita Avenue.
 - The fence will be approximately 12' from the curb/pavement along Marquita Avenue.
 - Measuring from the edge of the home to the end of the pillar, the length of the wall located on the western property line is 22'.

- Measuring from the edge of the home to the end of the pillar, the length of the wall located on the eastern side of the lot, including the gate, is 21'.
- Measuring from pillar's edge to pillar's edge, the wall located along the Marquita Avenue property line is 63'.
- A 50 square foot circular planter has been added on the southwest corner of the fence.
- The board on board wooden fence has been changed to either masonry or metal material
- The metal portions of the fence will serve as lattice for creeping vines and climbing rose plants.
- The gate on the Marquita Avenue wall has been removed to eliminate any increased foot traffic and improve safety and aesthetic appeal.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences higher than 4' in the immediate area.
- As of April 8, 2013, no letters had been submitted in support or in opposition to the revised request that the applicant submitted on April 5, 2013.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal that would reach 8' 6" in height) will 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 require the proposal exceeding 4' in height in the Marquita Avenue front yard setback to be constructed/maintained in the location and of the heights and materials as shown on these documents.

BOARD OF ADJUSTMENT ACTION: MARCH 18, 2013

APPEARING IN FAVOR: Grayson Wafford, 6422 Sondra, Dallas, TX

APPEARING IN OPPOSITION: James Scott, 6427 Vanderbilt Ave., Dallas, TX
 Kerry Robichaux, 6431 Sondra Dr., Dallas, TX
 John Hamilton, 6441 Sondra, Dallas, TX
 Jonathan Phillips, 6428 Marquita Ave., Dallas, TX

MOTION #1: Maten

I move that the Board of Adjustment, in Appeal No. **BDA 123-026**, on application of Grayson Wafford, grant a 9 foot 6 inch variance along Sondra Avenue to the minimum front yard setback regulations and an 8 foot variance along Marquita Avenue 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: **Lewis**

AYES: 4–Maten, Coulter, Richard, Lewis

NAYS: 1 – Richardson,

MOTION PASSED: 4– 1

MOTION #2: **Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 123-026**, on application of Grayson Wafford, hold the fence height special exception under advisement until **April 15, 2013**.

SECONDED: **Coulter**

AYES: 5– Richardson, Maten, Coulter, Richard, Lewis

NAYS: 0 –

MOTION PASSED: 5– 0(unanimously)

BOARD OF ADJUSTMENT ACTION: APRIL 15, 2013

APPEARING IN FAVOR: Grayson Wafford, 6422 Sondra, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 123-026**, hold this matter under advisement until **May 20, 2013**.

SECONDED: **Coulter**

AYES: 5– Richardson, Maten, Coulter, Richard, Lewis

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 123-036

BUILDING OFFICIAL’S REPORT: Application of Ed Simons for a variance to the front yard setback regulations, a special exception to the landscape regulations, and a special exception and a variance to the off-street parking regulations at 5806 W. Lovers Lane. This property is more fully described as Lot 16A, Block 11/5688 and is zoned CR, which requires (1) a front yard setback of 15 feet; (2) mandatory landscaping, and (3) off-street parking. The applicant proposes to construct and/or maintain a structure with a general merchandise or food store greater than 3,500 square feet use and a nursery, garden shop or plant sales use and provide (1) a 0 foot front yard setback, which will require a 15 foot variance to the front yard setback regulations; (2) an alternate landscape plan, which will require a special exception to the landscape regulations; and 31 of the required 48 parking spaces, which will require a space special exception of 12 spaces and a variance of 5 spaces to the off-street parking regulations.

LOCATION: 5806 W. Lovers Lane.

APPLICANT: Ed Simons

April 15, 2013 Public Hearing Notes:

- The applicant submitted a full scale revised site plan/landscape to the Board at the public hearing. The City of Dallas Chief Arborist stated at the public hearing that he supported this revised site/landscape plan as it related to the applicant's request for a special exception to the landscape regulations.

REQUESTS:

The following appeals have been made on a site that is currently developed with a "general merchandise or food store greater than 3,500 square feet" and "nursery, garden shop, or plant sales" uses (Dr. Delphinium Design and Events):

1. A variance to the front yard setback regulations of 10' is made in conjunction with constructing and maintaining a "new greenhouse one story 2,367 s.f." structure, part of which is to be located on the Dallas North Tollway service road front property line, or 15' into this 15' front yard setback.
2. Variances to the front yard setback regulations of 10' are made in conjunction with remedying/addressing the nonconforming aspect of the existing nonconforming structures ("two story frame" and "one story stucco") that are located on the Dallas North Tollway service road front property line, or 15' into this 15' front yard setback.
3. Requests for both a variance to the off-street parking regulations of 5 spaces and a special exception to the off-street parking regulations of 12 spaces are made in conjunction with providing a total of 31 of the total 48 off-street parking required for the existing/proposed "general merchandise or food store greater than 3,500 square feet" and "nursery, garden shop, or plant sales" uses on the site.
4. A special exception to the landscape regulations is made in conjunction with the submission of an alternate landscape plan that varies from an approved landscape plan submitted in conjunction with a previous building addition permitted in 1993. (The new building addition proposed on the site does not trigger landscape requirements under the current Article X ordinance).

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 THE OFF-STREET PARKING REGULATIONS:

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
 - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
 - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
 - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
 - (E) The availability of public transit and the likelihood of its use.
 - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
 - (A) Establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
 - (B) Impose restrictions on access to or from the subject property; or
 - (C) Impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.

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

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

The board may grant a special exception to the landscape regulations of this article upon making a special finding from the evidence presented that:

- (1) strict compliance with the requirements of this article will unreasonably burden the use of the property;
- (2) the special exception will not adversely affect neighboring property; and
- (3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

In determining whether to grant a special exception, the Board shall consider the following factors:

- the extent to which there is residential adjacency;
- the topography of the site;
- the extent to which landscaping exists for which no credit is given under this article; and
- the extent to which other existing or proposed amenities will compensate for the reduction of landscaping.

STAFF RECOMMENDATIONS (front yard setback and off-street parking variances):

Denial

Rationale:

- The applicant has not substantiated how a literal enforcement of the code provisions related to front yard setback and off-street parking regulations would result in unnecessary hardship; how the variances are necessary to permit development of the subject site in that it is different from other parcels of land by its restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels with the same CR zoning district; nor how the variances are not needed to relieve a self-created or personal hardship, nor for financial reasons only.

- The applicant has not substantiated how the requested variances to the front yard setback and off-street parking regulations are necessary to permit its development (a site that is flat, virtually rectangular in shape (approximately 278' x 100'), and approximately 27,900 square feet in area in a manner commensurate with the development upon other parcels of land with the same CR zoning, or how with the physical features of the site preclude him from complying with front yard setback and off-street parking requirements for uses/structures with less square footage than what exists and/or is proposed.
- While the Sustainable Development and Construction Department Engineering Division Assistant Director has indicated "no objections" to the parking reduction request made by the applicant for requests for variance and special exception, staff recommends denial of this request because of the applicant's inability to fully address the variance standard.

STAFF RECOMMENDATION (off-street parking special exception):

Approval, subject to the following condition:

- The special exception of 12 spaces shall automatically and immediately terminate if and when the "general merchandise or food store greater than 3,500 square feet" and "nursery, garden shop, or plant sales" uses is changed or discontinued.

Rationale:

- The applicant has substantiated how the parking demand generated by the "general merchandise or food store greater than 3,500 square feet" and "nursery, garden shop, or plant sales" uses does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- The Sustainable Development and Construction Department Engineering Division Assistant Director has indicated that he has no objections to this request.

STAFF RECOMMENDATION (landscape special exception):

Denial

Rationale:

- The applicant has not substantiated how strict compliance with the requirements of the landscape regulations of the Dallas Development Code will unreasonably burden the use of the property, and that the special exception will not adversely affect neighboring property.
- The City's Chief Arborist recommends denial of this request.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail)
North: City of University Park
South: CR (Community Retail)
East: CR (Community Retail)
West: Dallas North Tollway

Land Use:

The subject site is developed with a “general merchandise or food store greater than 3,500 square feet” and “nursery, garden shop, or plant sales” uses (Dr. Delphinium Design and Events). The area to the north is developed with retail uses; the area immediately to the east is undeveloped; the area to the south is developed as an electrical substation; and the area immediately west is the Dallas North Tollway.

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:

February 22, 2013: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

March 19, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

March 19, 2013: The Board Administrator contacted the applicant’s representative and shared the following information via email:

- an attachment that provided the public hearing date and panel that will consider the application; the March 27th deadline to submit additional evidence for staff to factor into their analysis; and the April 5th 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.”

April 2, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April 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 Planner, the Building Inspection Senior Plans

Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

April 5, 2013: The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet regarding the applicant's request for a variance to the off-street parking regulations marked "Has no objections."

April 5, 2013: The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request for a special exception to the landscape regulations (see Attachment A).

GENERAL FACTS/ANALYSIS (front yard variances):

- Part of the variance request focuses on a "new greenhouse one story 2,367 s.f." structure, part of which is to be located on the Dallas North Tollway service road front property line, or 15' into this 15' front yard setback.
- Part of the variance request focuses on remedying/addressing the nonconforming aspect of the existing nonconforming structures ("two story frame" and "one story stucco") that are located on the Dallas North Tollway service road front property line, or 15' into this 15' front yard setback.
- The Dallas Development Code defines a nonconforming structure as a structure that does not conform to the regulations (other than the use regulations) of this chapter, but which was lawfully constructed under the regulations in force at the time of construction.
- The Dallas Development Code states that a person may renovate, remodel, repair, or enlarge a nonconforming structure if the work does not cause the structure to become more nonconforming as to the yard, lot, and space regulations; and that the right to rebuild a nonconforming structure ceases if the structure is destroyed by the intentional act of the owner or the owner's agent.
- The minimum front yard setback on a CR zoned lot is 15 feet.
- A site plan has been submitted showing the proposed and existing structures as close as on the Dallas North Tollway service road front property line.
- According to calculations taken from the submitted site plan by the Board Administrator, approximately 680 square feet (or about 1/3) of the "new greenhouse one story 2,367 s.f." structure is located in the Dallas North Tollway service road front yard setback; approximately 700 square feet (or about 1/3) of the existing approximately 2,500 square foot "two story frame structure is located in the Dallas North Tollway service road front yard setback; and approximately 800 square feet (or about 1/3) of the approximately 2,400 square foot "one story stucco" structure is located in the Dallas North Tollway service road front yard setback.
- DCAD records indicate that the improvements at 5806 W. Lovers Lane are a "free standing retail store" with 2,856 square feet built in 1940, and a "storage warehouse" with 1,748 square feet built in 1994.
- The site is flat, virtually rectangular in shape (approximately 278' x 100'), and according to the application, is 0.64 acres (or approximately 27,900 square feet) in

area. The site is zoned CR (Community Retail). The corner property with two street frontages has two front yard setbacks as any corner property with two street frontages would that is not zoned agricultural, single family, or duplex.

- The applicant has the burden of proof in establishing the following:
 - That granting the variances 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 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 CR 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 CR zoning classification.
- If the Board were to grant this front yard variance request, imposing a condition whereby the applicant must comply with the submitted site plan, the proposed and/or existing structures in the Dallas North Tollway service road front yard setback would be limited to what is shown on this plan.

GENERAL FACTS/ STAFF ANALYSIS (off-street parking variance):

- This request focuses on constructing and maintaining approximately 8,600 square feet of “general merchandise” use and approximately 2,400 square feet of “nursery” use on the site where the applicant proposes to provide 31 (or 65 percent) of the required 48 required off-street parking spaces in conjunction with constructing and maintaining these uses with these square footages on the site.
- The Dallas Development Code requires the following off-street parking requirement:
 - General merchandise or food store use greater than 3,500 square feet use: 1 space per 200 square feet of floor area.
 - Nursery, garden shop, or plant sales use: 1 space per 500 square feet of floor area.
- The applicant proposes to provide 31 (or 65 percent) of the required 48 off-street parking spaces in conjunction with the site being leased/maintained with the use mentioned above.
- The submitted site plan denotes the following:
 - parking required: General Merchandise Use- North Building: 8,665 s.f.(1/200 s.f.) = 43 spaces; Nursery Use- South Building: 2,367 s.f. (1/500 s.f.) = 5 spaces; Total Parking Required: 11,032 s.f. 48 spaces
- Dallas Development Code Section 51A-4.311(a)(1) states that the Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required *under this article* if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a

traffic hazard or increase traffic congestion on adjacent and nearby streets; and that the maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.

- Therefore, because the applicant's off-street parking requirement reduction requests exceeds more than 25 percent of the total number of off-street parking spaces required, he cannot seek his reduction request solely as a special exception. The applicant could have sought his reduction request solely as a variance but chose to divide his total parking reduction request into the maximum amount he can as a special exception (12 spaces or 25 percent of 48 total required) with the remaining amount as a variance (5 spaces or 10 percent of 48 total required).
- DCAD records indicate that the improvements at 5806 W. Lovers Lane are a "free standing retail store" with 2,856 square feet built in 1940, and a "storage warehouse" with 1,748 square feet built in 1994.
- The site is flat, virtually rectangular in shape (approximately 278' x 100'), and according to the application, is 0.64 acres (or approximately 27,900 square feet) in area. The site is zoned CR (Community Retail). The property with three street frontages has three front yard setbacks as any property with three street frontages would that is not zoned agricultural, single family, or duplex.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the off-street parking regulations of 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 CR 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 CR zoning classification.
- The Sustainable Development and Construction Department Engineering Division Assistant Director has submitted a review comment sheet marked "Has no objections."

GENERAL FACTS/STAFF ANALYSIS (off-street parking special exception):

- This request focuses on constructing and maintaining approximately 8,600 square feet of "general merchandise" use and approximately 2,400 square feet of "nursery" use on the site where the applicant proposes to provide 31 (or 65 percent) of the required 48 required off-street parking spaces in conjunction with constructing and maintaining these uses with these square footages on the site.
- The Dallas Development Code requires the following off-street parking requirement:

- General merchandise or food store use greater than 3,500 square feet use: 1 space per 200 square feet of floor area.
- Nursery, garden shop, or plant sales use: 1 space per 500 square feet of floor area.

The applicant proposes to provide 31 (or 65 percent) of the required 48 off-street parking spaces in conjunction with the site being leased/maintained with the use mentioned above.

- The submitted site plan denotes the following:
 - parking required: General Merchandise Use- North Building: 8,665 s.f.(1/200 s.f.) = 43 spaces; Nursery Use- South Building: 2,367 s.f. (1/500 s.f.) = 5 spaces; Total Parking Required: 11,032 s.f. 48 spaces
- Dallas Development Code Section 51A-4.311(a)(1) states that the Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required *under this article* if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets; and that the maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
- Therefore, because the applicant's off-street parking requirement reduction requests exceeds more than 25 percent of the total number of off-street parking spaces required, he cannot seek his reduction request solely as a special exception.
- The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections."
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the "general merchandise or food store greater than 3,500 square feet" and "nursery, garden shop, or plant sales" uses on the site does not warrant the number of off-street parking spaces required, and
 - The special exception of 12 spaces (or a 25 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, and impose the condition that the special exception of 12 spaces shall automatically and immediately terminate if and when the "general merchandise or food store greater than 3,500 square feet" and "nursery, garden shop, or plant sales" uses is changed or discontinued, the applicant would be allowed to lease/maintain the site with these specific uses and provide only 36 of the 48 code required off-street parking spaces. (Note that the applicant would also need to have his 5 space parking variance request granted also in order to lease/maintain the site with his proposed uses where only 31 of the 48 code required off-street parking spaces provided).

GENERAL FACTS/STAFF ANALYSIS (landscape special exception):

- This request focuses on varying from an approved landscape plan submitted in conjunction with a previous building addition permitted in 1993.

- The City of Dallas Chief Arborist states that the applicant is requested a special exception from all applicable mandatory and design standard provisions of Article X.
- The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period.
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator regarding the applicant's request (see Attachment A). The memo states how this application is for an alternate landscape plan that varies from the approved landscape plan for a previous building addition permitted in 1993, and that the new building addition to the property will not trigger landscape requirements under the current Article X ordinance.
- The City of Dallas Chief Arborist has stated in his memo among other things how the property currently does not have the required landscaping installed that was approved in plan review in 1993, and where the site is deficient the providing the mandatory landscape buffer strip along the southern perimeter of the property and the required design standard points.
- The City of Dallas Chief Arborist recommends denial of this request.
- The applicant has the burden of proof in establishing the following:
 - Strict compliance with the requirements of the Landscape Regulations of the Dallas Development Code will unreasonably burden the use of the property; and
 - The special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose the submitted site/landscape plan as a condition to the request, the site would be provided exception from full compliance with the mandatory landscape buffer strip along the southern perimeter of the property and the required design standard points of Article X: The Landscape Regulations.

BOARD OF ADJUSTMENT ACTION: APRIL 15, 2013

APPEARING IN FAVOR: Ed Simons, 901 Jackson Street, Dallas, TX
Roscoe White, 6409 Norway, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Maten

I move that the Board of Adjustment, in Appeal No. **BDA 123-036**, on application of Ed Simons, grant the 15 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 revised site plan/alternate landscape plan is required.

SECONDED: **Richard**

AYES: 5– Richardson, Maten, Coulter, Richard, Lewis

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

MOTION #2: **Coulter**

I move that the Board of Adjustment, in Appeal No. **BDA 123-036**, on application of Ed Simons, grant the requested variance of 5 parking spaces to the off-street parking 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.

SECONDED: **Maten**

AYES: 4 –Maten, Coulter, Richard, Lewis

NAYS: 1 – Richardson

MOTION PASSED: 4– 1

MOTION #3: **Richard**

I move that the Board of Adjustment, in Appeal No. **BDA 123-036**, on application of Ed Simons, grant the special exception to the landscape regulations in the Dallas Development Code because our evaluation of the property and the testimony shows that strict compliance with the requirements will unreasonably burden the use of the property and the special exception will not adversely affect neighboring property. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: **Ross**

AYES: 5– Richardson, Maten, Coulter, Richard, Lewis

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

MOTION #4: **Lewis**

I move that the Board of Adjustment, in Appeal No. **BDA 123-036**, on application of Ed Simons, grant the requested special exception of 12 spaces to the off-street parking regulations, because our evaluation of the property and the testimony shows that the parking demand generated by the use does not warrant the number of off-street parking

spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. 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 site plan/alternate landscape plan is required.
- The special exception of 12 spaces shall automatically and immediately terminate if and when the general merchandise or food store greater than 3,500 square feet or nursery, garden shop, or plant sales uses is changed or discontinued.

SECONDED: Maten

AYES: 5– Richardson, Maten, Coulter, Richard, Lewis

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

MOTION: Maten

I move to adjourn this meeting.

SECONDED: Coulter

AYES: 5– Richardson, Maten, Coulter, Richard, Lewis

NAYS: 0 -

MOTION PASSED: 5 – 0 (Unanimously)

2:45 P. M. - Board Meeting adjourned for **April 15, 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.