

**BOARD OF ADJUSTMENT, PANEL C  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM  
MONDAY, JUNE 17, 2013**

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

MEMBERS ABSENT FROM BRIEFING: Bob Richard, regular member

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

MEMBERS ABSENT FROM HEARING: Bob Richard, regular member

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

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

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**11:07 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **June 17, 2013** docket.

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**1:03 P.M.**

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

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel C May 20, 2013 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: JUNE 17, 2013**

**MOTION:** Agnich

I move **approval** of the Monday, **May 20, 2013** public hearing minutes.

**SECONDED:** Coulter

**AYES:** 5– Richardson, Maten, Coulter, Lewis, Agnich

**NAYS:** 0 –

**MOTION PASSED:** 5– 0 (unanimously)

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**FILE NUMBER:** BDA 123-054

**BUILDING OFFICIAL’S REPORT:** Application of Colesen C. Evans for a variance to the front yard setback regulations at 8000 Park Lane. This property is more fully described as Lot 1C, Block A/5456, and is zoned MU-3 (SAH), which requires a front yard setback of 35 feet for portions of a structure greater than 45 feet in height. The applicant proposes to construct a structure over 45 feet in height and provide a 15 foot 6 inch front yard setback for a portion of a structure over 45 feet in height, which will require a variance to the front yard setback regulations of 19 foot 6 inches.

**LOCATION:** 8000 Park Lane

**APPLICANT:** Colesen C. Evans

**REQUEST:**

A variance to the urban form front yard setback regulations of 19’ 6” is requested in conjunction with constructing and maintaining an approximately 80’ high mixed use (retail/restaurant/office) structure that would be located within the required 35’ front yard setback for the portion of it above 45’ in height along the I-75/North Central Expressway service road. The site is developed as a mixed use development (Park Lane).

**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:

- (A) 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;

- (B) the variance is 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) the variance is not granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted site plan and site section document is required.

Rationale:

- The subject site is restricted in its developable area given its multiple front yards, and an off-set at the corner of Park Lane and the north bound frontage road.
- The subject site in which the staff and Board of Adjustment found hardship for a similar urban form front yard setback variance in February of 2011 has not changed.
- Granting the variance to the urban form front yard setback regulations (with the suggested condition imposed) would not be contrary to the public interest since the portion of the proposed structure to be “varied” is:
  - A maximum 80’ in height or only 35’ above/beyond the 45’ height in which the additional 20’ urban form front yard setback begins; and
  - Located on a portion of the site that abuts the I-75/North Central Expressway service road where the property to the west is separated by over 300’ of public right-of-way.

**BACKGROUND INFORMATION:**

Site: MU-3(SAH) (Deed restricted)\* (Mixed Use, Standard Affordable Housing)  
North: RR (Regional Retail)  
South: GO(A) (General Office)  
East: MU-3 (Mixed Use)  
West: RR (Regional Retail)

- \* Note that the applicant acknowledged in an email to the Board Administrator on May 16, 2013 of the deed restrictions on the property. The applicant stated that these deed restrictions do not affect this application to the board since they only pertain to overall density.

**Land Use:**

The subject site is currently developed as a mixed use development (Park Lane). The areas to the north, south, east and west are development with mostly retail and office uses.

**Zoning/BDA History:**

1. BDA 101-019, Property at 8000 Park Lane ( the subject site)

On February 17, 2011, the Board of Adjustment Panel C granted requests for variances to the urban form front yard setback regulations of up to 10.75'. The board imposed the following condition: compliance with the submitted site plan is required. The case report stated that the requests were made in conjunction with constructing and maintaining an approximately 400 square foot 68' high sign "structure" that would not comply with the required 35' front yard setback for the portion of it above 45' in height along Blackwell Street and the I-75/North Central Expressway service road. It was noted that the site was developed as a mixed use development (Park Lane).
  
2. BDA 089-125, Property at 8070 Park Lane ( the subject site)

On December 14, 2009, the Board of Adjustment Panel C granted a request for a special exception to the tree preservation regulations requested in conjunction with not fully mitigating protected trees removed on a site that is currently being developed with a mixed use office/residential/dining/shopping project (Park Lane). The board imposed the following condition: All protected trees, as defined by Article X that remain on the Property following the date of the hearing, are considered to be protected and subject to the Article X tree preservation ordinance. Any protected tree that is determined to be removed, based on conditions as defined in Article X, must be subject to replacement.
  
3. BDA067-052, Property at 8070 Park Lane ( the subject site)

On May 14, 2007, the Board of Adjustment Panel C granted a request for a special exception to the off-street parking regulations of 374 spaces (or 5.67% of the required off-street parking) and imposed the following conditions: The special exception shall automatically and immediately terminate if and when the office uses on the

site are changed or discontinued to have less than 125,000 square feet of office use; and the applicant or property owner must submit a parking analysis of the site to the Department of Development Services engineer no later than December 31, 2011. Should the parking analysis show any parking deficiency, the applicant or property owner must immediately mitigate that deficiency as may be agreed between the applicant or property owner and the Department of Development Services. The case report stated that the request was made in conjunction with developing a 33-acre site with mixed-uses.

**Timeline:**

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

May 15, 2013: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, “If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case.”

May 15, 2013: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the May 29<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the June 7<sup>th</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.

June 4, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant

Director, the Sustainable Development and Construction Department Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

### **GENERAL FACTS/STAFF ANALYSIS:**

- This request focuses on constructing and maintaining an approximately 80' high mixed use (retail/restaurant/office) structure with an approximately 32,000 square foot building footprint that does not comply with the required 35' front yard setback (or additional 20' setback to the required 15' front yard setback) for that portion of the structure above 45' in height along the I-75/North Central Expressway service road. The site is developed as a mixed use development (Park Lane).
- Development on lots zoned MU-3 are required to provide a 15' front yard setback and an additional 20' setback for any portion of a structure above 45' in height.
- The applicant has submitted an overall site plan (that includes a "detail plan" and "site section" document indicating the portion of the proposed structure above 45' in height that is located as close as 15' 6" from the site's front property line along the I-75/North Central Expressway service road but as much as 19' 6" into the 35' front yard setback *for the portion of a structure over 45' in height*.
- The submitted "detail plan" denotes a hatched area that is the building area within the urban form setback; with average grade being about 579' with a new proposed tower height of approximately 658'.
- The applicant has submitted a "site section" document representing how the upper two stories of the proposed 5 story structure encroaches into the additional 20' front yard setback for the portion of the structure above 45' in height.
- Staff has interpreted that the additional 20' setback provision for structures or portions of structures higher than 45' in height was enacted to discourage a canyon effect that a structure may create once it exceeds a specific height, and that this additional front yard setback was enacted to ensure openness, light, and airflow between tower structures.
- According to the applicant, about 4 percent (or about 6,500 square feet) of the total area of the structure (approximately 160,000 square feet) encroaches into the urban form setback. The applicant states that there are 5 floors at approximately 32,000 each where portions of the 2 upper floors that intrude into the urban form setback.
- The subject site is somewhat sloped, slightly irregular in shape, and, according to the application, 33.32 acres in area. The site is zoned MU-3(SAH). The site encompasses an entire block whereby given this and its zoning, the site has 4 front yard setbacks.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the urban form front yard setback requested to construct and maintain an approximately 80' high structure 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 MU-3 zoning classification.
- The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same MU-3 zoning classification.
- If the Board were to grant the urban form front yard variance request of up to 19' 6", imposing a condition whereby the applicant must comply with the submitted site plan and site section document, the structure would be limited to what is shown on these documents – a structure that complies with setbacks 45' in height and below, but where 35' of the structure proposed to exceed 45' in height would be allowed to be located in the additional 20' setback along the I-75/North Central Expressway service road.

**\*Member Robert Agnich recused himself and did not hear or vote on this matter.**

**BOARD OF ADJUSTMENT ACTION: JUNE 17, 2013**

APPEARING IN FAVOR: Barry Knight, 2728N. Harwood, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 123-054**, hold this matter under advisement until **August 19, 2013**.

SECONDED: **Coulter**

AYES: 4– Richardson, Maten, Coulter, Lewis

NAYS: 0 –

MOTION PASSED: 4– 0 (unanimously)

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**FILE NUMBER:** BDA 123-063

**BUILDING OFFICIAL’S REPORT:** Application of Robert V. Hunt for a variance to the front yard setback regulations at 7326 La Vista Drive. This property is more fully described as Lot 29, Block A/2731 and is zoned R-7.5(A), which requires a front yard setback of 25 feet. The applicant proposes to construct and maintain a structure and provide a 3 foot front yard setback, which will require a variance to the front yard setback regulations of 22 feet

**LOCATION:** 7326 La Vista Drive

**APPLICANT:** Robert V. Hunt

**REQUEST:**

A variance to the front yard setback regulations of 22' is requested in conjunction with constructing and maintaining a single family home structure and detached accessory structure, part of which would be located in one of the site's two 25' front yard setbacks (Lucerne Street) on a site that is currently developed with a single family home structure that the applicant intends to demolish.

**STANDARD FOR A VARIANCE:**

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

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

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The subject site is unique and different from most lots zoned R-7.5(A) in that it is a corner lot with a restrictive area due to its size and its two front yard setbacks. The atypical two front yard setbacks on the 7,500 square foot lot precludes the applicant from developing it in a manner commensurate with development on other similarly zoned properties - in this case, the development on the property being the construction/maintenance of a single family home with an approximately 1,600 square foot building footprint and an accessory structure with an approximately 400 square foot building footprint. The site has a 20' width for development once a 25' front yard setback and a 5' side yard setback is accounted for on the 50' wide subject site.



## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: R-7.5(A) (Single family district 7,500 square feet)  
North: R-7.5(A) (Single family district 7,500 square feet)  
South: R-10(A) (Single family district 10,000 square feet)  
East: R-7.5(A) (Single family district 7,500 square feet)  
West: R-10(A) (Single family district 10,000 square feet)

### **Land Use:**

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

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

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

### **Timeline:**

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

May 15, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

May 15, 2013: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the May 29<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the June 7<sup>th</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.

June 4, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant

Director, the Sustainable Development and Construction Department Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

**GENERAL FACTS/STAFF ANALYSIS:**

- This request focuses on constructing and maintaining a single family structure, part of which would be located in one of the two 25' front yard setbacks (Lucerne Street) on a site that is currently developed with a single family home structure that the applicant intends to demolish.
- Structures on lots zoned R-7.5(A) are required to provide a minimum front yard setback of 25'.
- The subject site is located at the south corner of La Vista Drive and Lucerne Street. Regardless of how the proposed single-family structure is to be oriented, the subject site has two 25' front yard setbacks along both streets. The site has a 25' front yard setback along La Vista Drive, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in a single-family zoning district. The site also has a 25' front yard setback along Lucerne Street, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where only a 5' setback is required. But the site's Lucerne Street frontage is deemed a front yard setback nonetheless to maintain the continuity of the established front yard setback established by the lots developed with single family homes southwest of the site that front/are oriented northwestward onto Lucerne Street.
- The applicant has submitted a site plan that denotes a building footprint with a roof eave that is located 3 feet from the Lucerne Street front property line or 22' into this 25' front yard setback. No encroachment is proposed in the La Vista Drive 25' front yard setback).
- According to calculations taken by the Board Administrator from the submitted site plan, the area of the proposed main structure/ single family home to be located in the site's Lucerne Street 25' front yard setback is approximately 1,600 square feet in area or approximately 1/2 of the approximately 2,800 square foot building footprint.
- According to calculations taken by the Board Administrator from the submitted site plan, the area of the proposed accessory structure to be located in the site's Lucerne Street 25' front yard setback is approximately 400 square feet in area or approximately 90 percent of the approximately 460 square foot building footprint.
- According to DCAD records, the property at 7326 La Vista Drive has a "main improvement" of a structure with 548 square feet of living area and 548 square feet of total area and no "additional improvements".
- The subject site is flat, rectangular in shape (150' x 50'), and is 7,500 square feet in area. The site has two 25' front yard setbacks; and two 5' side yard setbacks; most residentially-zoned lots have one front yard setback, two side yard setbacks, and one rear yard setback.

- The site has a 20' width for development once a 25' front yard and a 5' side yard setback is accounted for on the 50' wide subject site.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the Lucerne Street front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.
  - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.
- If the Board were to grant the variance request, and impose the submitted site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document – which in this case is a structure to be located 3' (a roof eave) from the Lucerne Street front property line (or 22' into this 25' front yard setback).

**BOARD OF ADJUSTMENT ACTION: JUNE 17, 2013**

APPEARING IN FAVOR: Robert Hunt, 5811 Gaston Ave, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Coulter**

I move that the Board of Adjustment, in Appeal No. **BDA 123-063**, on application of Thomas Bowen Wright, **grant** a 22 foot variance to the minimum front yard setback regulations, because our evaluation of the property and the 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 site plan is required.

SECONDED: **Agnich**

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

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**FILE NUMBER:** BDA 123-057

**BUILDING OFFICIAL'S REPORT:** Application of Jim Tusing, represented by Bryan M. Burger, for a variance to the off-street parking regulations at 3826 Lemmon Avenue. This property is more fully described as Lot 6A, Block Q/1318 and is zoned PD-193 (GR), which requires off-street parking to be provided. The applicant proposes to construct and maintain a structure for a restaurant with drive-in or drive-through service use and provide 39 of the required 46 parking spaces, which will require a variance to the off-street parking regulations of 7 spaces.

**LOCATION:** 3826 Lemmon Avenue

**APPLICANT:** Jim Tusing  
Represented by Bryan M. Burger

**June 17, 2013 Public Hearing Notes:**

- The Board Administrator circulated a revised review comment sheet from Sustainable Development and Construction Department Engineering Division Assistant Director marked "Recommends that this be denied" to the Board at the briefing. This revised review comment sheet made the additional notation: "Proposed drive through would only increase the already high level of congestion in the parking lot. Observed take out volume did not agree with the application."

**REQUEST:**

A variance to the off-street parking regulations of 7 spaces is requested in conjunction with constructing and maintaining a 300 square foot building expansion and adding a drive-through lane to an existing approximately 4,300 square foot restaurant use (Panera Bread) where the applicant proposes to provide 39 (or 85 percent) of the required 46 required off-street parking spaces.

**STANDARD FOR A VARIANCE:**

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

- (A) not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;

- (B) necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and
- (C) not granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

**STAFF RECOMMENDATION:**

Denial

Rationale:

- While staff concluded that granting this variance may not be contrary to public interest given that the Sustainable Development and Construction Department Engineering Division Assistant Director has indicated with no objections, staff recommends denial of the request given that staff was unable to conclude how the parcel/subject site differs from other parcels of land by being of such restrictive area, shape, or slope that it cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD 193 (GR) zoning classification. The size, shape, and slope of the flat, rectangular, approximately ½ acre subject site have not precluded the applicant/owner from developing it with a restaurant use without drive-in service use.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 193 (GR) (Planned Development District, General retail)  
North: PD 193 (MF-2) (Planned Development District, Multifamily)  
South: PD 193 (GR) (Planned Development District, General retail)  
East: PD 193 (GR) (Planned Development District, General retail)  
West: PD 193 (GR) (Planned Development District, General retail)

**Land Use:**

The subject site is developed with a “restaurant without drive-in or drive-through service” use (Panera Bread). The area to the north is developed with residential uses; and the areas to east, south, and west are developed mostly as retail uses.

**Zoning/BDA History:**

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

**Timeline:**

- March 29, 2013: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- May 15, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- May 15, 2013: The Board Administrator emailed the applicant’s representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the May 29<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the June 7<sup>th</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.
- June 4, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Sustainable Development and Construction Department Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- June 7, 2013: The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked “Has no objections.”

**GENERAL FACTS/ STAFF ANALYSIS:**

- This request focuses on constructing and maintaining a 300 square foot building expansion and adding a drive-through lane to an existing approximately 4,300 square foot restaurant use (Panera Bread) where the applicant proposes to provide 39 (or 85 percent) of the required 46 required off-street parking spaces.
- The subject site is zoned PD 193 (GR). PD 193 states that the parking requirement for “restaurant” use to be one space per 100 square feet of floor area.
- 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.

- However, Dallas Development Code Section 51A-311(a)(6) states that the Board of Adjustment *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.
- Therefore, because PD 193 does not make references to the existing off-street parking regulations in Chapter 51 or Chapter 51(A), the applicant may only apply for a *variance* and only the variance standard applies on this request to reduce the off-street parking regulations for restaurant use in PD 193 even though the reduction request is 15 percent of the required off-street parking.
- A site plan has been submitted that indicates a building area of 4,613 square feet and a provision of 39 off-street parking spaces.
- The site is flat, rectangular in shape, and according to the application, is 0.55 acres (or approximately 24,000 square feet) in area. The site is zoned PD 193 (GR). 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.
- DCAD records indicate that the improvements at 3826 Lemmon are a “restaurant” with 3,919 square feet built in 2004.
- 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 PD 193 (GR) 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 PD 193 (GR) zoning classification.

The Sustainable Development and Construction Department Engineering Division Assistant Director has submitted a review comment sheet marked “Has no objections.”

**BOARD OF ADJUSTMENT ACTION: JUNE 17, 2013**

APPEARING IN FAVOR: Bryan Burger, 17103 Preston Dr, Ste 180N, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Lewis

I move that the Board of Adjustment, in Appeal No. **BDA 123-057**, hold this matter under advisement until **August 19, 2013**.

SECONDED: Maten

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

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FILE NUMBER: BDA 123-062

**BUILDING OFFICIAL’S REPORT:** Application of Juanita Couch for a special exception to the fence height regulations at. This property is more fully described as Lot 1, Block H/4978 and is zoned PD-455, 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 in a required front yard, which will require a special exception to the fence height regulations of 5 feet.

**LOCATION:** 8410 Blue Bonnet Road

**APPLICANT:** Juanita Couch

**June 17, 2013 Public Hearing Notes:**

- The applicant and opposing citizens submitted written documentation to the Board at the public hearing.

**REQUEST:**

A special exception to the fence height regulations of 5’ is requested in conjunction with maintaining a masonry wall in the site’s 30’ front yard setback on a site that is currently developed with a single family home – a wall that according to the applicant’s submittals averages 8’ 6” in height but ranges from 7’ 6” – 9’ given grade changes on the 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.

**STAFF RECOMMENDATION:**

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

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 455 (Planned Development)  
North: PD 455 (Planned Development)  
South: R-10(A) (Single family district 10,000 square feet)  
East: PD 455 (Planned Development)  
West: PD 455 (Planned Development)

**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:**

1. BDA 86-172, Property at 8410 Bluebonnet Road ( the subject site) On July 22, 1986, the Board of Adjustment granted a request to maintain an 8 foot fence on the property as a special exception to the height regulations for fences. The board imposed the following condition: The landscape plan be adhered to as submitted to the Board also including the existing sprinkler system not shown the plans.” The case report stated that the applicant was asking that he be permitted to erect a solid fence in the front yard along Bluebonnet Road, and that landscape plans submitted by the applicant reflect the existing vegetation, and the placement of the fence will be behind this vegetation, thereby, reducing the solidness of the fence.

## **Timeline:**

- April 29, 2013: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- May 15, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- May 15, 2013: The Board Administrator contacted the applicant and shared the following information via email:
- an attachment that provided the public hearing date and panel that will consider the application; the May 29<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the June 7<sup>th</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.”
- May 29, 2013: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).
- June 4, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Sustainable Development and Construction Department Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- June 7, 2013: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment B).

## **GENERAL FACTS/STAFF ANALYSIS:**

- This request focuses on maintaining a masonry wall in the front yard setback on a property developed with a single family home – a wall that according to the

applicant's submittals averages 8' 6" in height and ranges from 7' 6" – 9' in height given grade changes on the property.

- 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 has submitted a revised plot plan/site plan and a revised elevation document of the proposal in the front yard setback indicating that it reaches a maximum height of 9'.
- The following additional information was gleaned from the submitted revised plot plan/site plan:
  - The proposal in the front yard setback is represented as being approximately 120' in length parallel to the street and approximately 30' in length perpendicular to the street on the north side of the site in the front yard setback.
  - The proposal is represented as being located on the property line or about 13' from the pavement line.
- The following additional information was gleaned from the submitted revised elevation document:
  - Notation of "the front wall detail will include cable nail trellis with evergreen jasmine vines, the vines will be planted every 3'-0" along the wall. They will be planted as a 5 gallon plant."
- The proposal is located across from three single family homes none that appear to have fences in their front yards over 4' in height.
- The Board Administrator conducted a field visit of the site and surrounding area and noted one other fence that appeared to be above 4' in height and located in a front yard setback- an approximately 8' high wood fence/7' high brick fence located immediately south of the site with no recorded BDA history.
- As of June 10, 2013, nine letters/emails have been submitted in support of the request, and five letters/emails have been submitted in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 5' will not adversely affect neighboring property.
- Granting this special exception of 5' 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 front yard setback to be maintained in the location and of the heights and materials as shown on these documents.

### **BOARD OF ADJUSTMENT ACTION: JUNE 17, 2013**

**APPEARING IN FAVOR:** Juanita Couch, 8410 Bluebonnet Rd., Dallas, TX  
Danny Abdo, 8410 Bluebonnet Rd., Dallas, TX  
Mike Arrequin, 317 E. Jefferson, Dallas, TX  
Paul Shaw, 8411 Bluebonnet Rd., Dallas, TX  
Linda Maturey, 4405 Wildwood Rd., Dallas, TX

**APPEARING IN OPPOSITION:** Joe Werner, 4400 Bluffview, Dallas, TX  
Karam Marshall, 4225 Bluffview Blvd, Dallas, TX  
John Cranfill, 4403 Bluffview, Dallas, TX

Pat White, 4714 Wildwood Rd., Dallas, TX  
Nancy Kenty, 8723 Canyon Dr., Dallas, TX

**MOTION #1: Agnich**

I move that the Board of Adjustment, in Appeal No. **BDA 123-062**, on application of Juanita Couch, **grant** the request to maintain an 9 foot high fence in the front yard of 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: No One**  
**Motion Failed for Lack of a Second.**

**MOTION #2: Coulter**

I move that the Board of Adjustment, in Appeal No. **BDA 123-062**, hold this matter under advisement until **August 19, 2013**.

**SECONDED: No One**  
**Motion Failed for Lack of a Second.**

**MOTION #3: Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 123-062** on application of Juanita Couch, **deny** the special exception requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that this special exception would adversely affect neighboring property.

**SECONDED: Richardson**  
**AYES: 4– Richardson, Maten, Coulter, Lewis,**  
**NAYS: 1 – Agnich**  
**MOTION PASSED: 4-1**

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**MOTION: Maten**

I move to adjourn this meeting.

**SECONDED: Coulter**  
**AYES: 5– Richardson, Maten, Coulter, Lewis, Agnich**  
**NAYS: 0 -**  
**MOTION PASSED: 5 – 0 (Unanimously)**

**4:00 P. M.** - Board Meeting adjourned for **June 17, 2013.**

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CHAIRPERSON

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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.