

**BOARD OF ADJUSTMENT, PANEL C  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, L1FN AUDITORIUM  
MONDAY, JUNE 23, 2014**

MEMBERS PRESENT AT BRIEFING: Bruce Richardson, Chair, Ross Coulter, regular member, Joe Carreon regular member, and Marla Beikman, regular member

MEMBERS ABSENT FROM BRIEFING: Peter Schulte, regular member

MEMBERS PRESENT AT HEARING: Bruce Richardson, Chair, Ross Coulter, regular member, Joe Carreon regular member, Peter Schulte, regular member, and Marla Beikman, regular member

MEMBERS ABSENT FROM HEARING: No one

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

STAFF PRESENT AT HEARING: Steve Long, Board Administrator and Acting Board Secretary, Jamilah Way, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Ali Hatefi, Engineer, Phil Erwin, Chief Arborist

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**11:10 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **June 23, 2014** docket.

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**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.

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel C May 19, 2014 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: May 19, 2014**

MOTION: Schulte

I move **approval** of the Monday, May 19, 2014 public hearing minutes.

SECONDED: Coulter

AYES: 5– Richardson, Coulter, Carreon, Schulte, Beikman

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

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**MISCELLANEOUS ITEM NO. 2**

**FILE NUMBER:** BDA 134-037

**REQUEST:** To waive the two year limitation on a final decision reached by Board of Adjustment Panel C on April 21, 2014 - a request granted for a variance to the side yard setback regulations of 33' ½", subject to the applicant's submitted site plan.

**LOCATION:** 3000 Turtle Creek Plaza

**APPLICANT:** Ken Reese  
Represented by Robert Reeves of Robert Reeves and Associates, Inc.

**STANDARD FOR WAIVING THE TWO YEAR TIME LIMITATION ON A FINAL DECISION REACHED BY THE BOARD:**

The Dallas Development Code states that the board may waive the two year time limitation on a final decision reached by the board if there are changed circumstances regarding the property sufficient to warrant a new hearing.

**GENERAL FACTS/TIMELINE:**

April 21, 2014: The Board of Adjustment Panel C granted a request for variance to the side yard setback regulations of 33 feet, ½ inch and imposed the applicant's submitted site plan as a condition to the request. The case report stated that the request was made to construct/maintain a three-story, approximately 66' high, approximately 169,000 square foot office structure, part of which

would be located in the site's required 43' ½" side yard setback on the east side of the property.

June 6, 2014: The applicant's representative submitted a letter to staff requesting that the Board waive the two year limitation on waive the two year limitation on the request for a variance to the side yard setback regulations granted by Board of Adjustment Panel C on April 21, 2014 (see Attach A). This miscellaneous item request to waive the two year limitation was made in order for the applicant to file a new application for a side yard setback variance on the property.

Note that The Dallas Development Code states the following with regard to board action:

- Except as provided below, after a final decision is reached by the board, no further request on the same or related issues may be considered for that property for two years from the date of the final decision.
- If the board renders a final decision of denial without prejudice, the two year limitation is waived.
- The applicant may apply for a waiver of the two year limitation in the following manner:
  - The applicant shall submit his request in writing to the director. The director shall inform the applicant of the date on which the board will consider the request and shall advise the applicant of his right to appear before the board.
  - The board may waive the two year time limitation if there are changed circumstances regarding the property sufficient to warrant a new hearing. A simple majority vote by the board is required to grant the waiver. If a rehearing is granted, the applicant shall follow the process outlined in the code.

June 6, 2014: The Board Administrator emailed the applicant's representative information regarding his miscellaneous item request (see Attachment B).

June 11, 2014: The applicant's representative submitted additional information regarding this request to be included in the Board's docket (see Attachment C).

**BOARD OF ADJUSTMENT ACTION: JUNE 23, 2014**

APPEARING IN FAVOR: Robert Reeves

APPEARING IN OPPOSITION: No one

MOTION: Schulte

I move to waive the two year limitation on a final decision reached by Board of Adjustment Panel C on April 21, 2014 - a request granted for a variance to the side yard setback regulations of 33' 1/2", subject to the applicant's submitted site plan.

SECONDED: Coulter

AYES: 5 – Richardson, Coulter, Carreon, Schulte, Beikman

NAYS: 0 –

MOTION PASSED: 5 – 0 (unanimously)

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**FILE NUMBER:** BDA 134-053

**BUILDING OFFICIAL'S REPORT:** Application of Ryan Manns for a special exception to the fence height regulations at 9427 Thornberry Lane. This property is more fully described as Lot 7, Block 10/5085, and is zoned R-10(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct/maintain a 6 foot 9 inch high fence, which will require a 2 foot 9 inch special exception to the fence height regulations.

**LOCATION:** 9427 Thornberry Lane

**APPLICANT:** Ryan Manns

**REQUEST:**

A request for a special exception to the fence height regulations of 2' 6" is made to maintain a 6' high open iron fence with 6' high metal posts and a 6' 9" high open metal gate in the 30' front yard setback on a site that is developed with a single family home/use.

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:**

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

**STAFF RECOMMENDATION:**

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

## **BACKGROUND INFORMATION:**

### **Zoning:**

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

### **Land Use:**

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

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

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

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

- This request focuses on maintaining a 6' high open iron fence with 6' high metal posts and a 6' 9" high open metal gate in the 30' front yard setback on a site that is developed with a single family home/use.
- 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 site plan and elevation of the proposal in the front yard setback indicating that it reaches a maximum height of 6' 9".
- The following additional information was gleaned from the submitted site plan:
  - The proposal is represented as being approximately 75' in length parallel to the street and approximately 30' in length perpendicular to the street on the north and south sides of the site in the front yard setback.
  - The proposal is represented as being located on the front property line or about 20' from the pavement line.
- The Board Administrator conducted a field visit of the site and surrounding area and noted one other fence above 4 feet high which appeared to be located in a front yard setback – an approximately 6' high open metal fence located immediately south of the subject site with no recorded BDA history.
- One home fronts the proposal with no fence in its front yard.
- As of June 16<sup>th</sup>, no letters have been submitted in support of or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 2' 9" will not adversely affect neighboring property.

- Granting this special exception of 2' 9" with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding 4' in height in the front yard setback to be maintained in the location and of the heights and materials as shown on these documents.

**Timeline:**

April 3, 2014: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

May 19, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

May 19, 2014: The Board Administrator contacted the applicant and emailed him the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the May 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the June 13<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 10, 2014: 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 Interim Assistant Director of Sustainable Development and Construction, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Senior Engineer, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, and the Assistant City Attorney to the Board.

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

**BOARD OF ADJUSTMENT ACTION: JUNE 23, 2014**

APPEARING IN FAVOR: Ryan Manns, 9427 Thornberry Lane, Dallas, Texas  
Susan Austin, 4849 Northshore Drive, Frisco, Texas  
Coly Coward, 4208 Harvest Hill Ct, Carrollton, Texas

APPEARING IN OPPOSITION: No one

MOTION: Coulter

I move that the Board of Adjustment, in request No. **BDA 134-053**, on application of Ryan Manns, **grant** the request to construct and/or maintain a 6-foot, 9-inch high fence in the property's front yard as a special exception to the fence height requirements 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 site plan and elevation is required.

SECONDED: Schulte

AYES: 5 – Richardson, Coulter, Schulte, Beikman

NAYS: Carreon

MOTION PASSED: 4 – 1

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FILE NUMBER: BDA 134-056

**BUILDING OFFICIAL'S REPORT:** Application of Laura Hoffmann and Tommy Mann of Winstead for a special exception to the landscape regulations at 4725 Fairmount Street. This property is more fully described as Lot 1A, Block L/2313, and is zoned PD-193 (MF-2), which requires mandatory landscaping. The applicant proposes to construct/maintain a multifamily structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

**LOCATION:** 4725 Fairmount Street

**APPLICANT:** Laura Hoffmann and Tommy Mann of Winstead

**REQUEST:**

A special exception to the landscape regulations is requested in conjunction with maintaining a multifamily development, and not fully providing required landscaping.

(Note that this application is adjacent to a property to the northeast where the same applicant seeks a similar landscape special exception from Board of Adjustment Panel C on June 23rd: BDA 134-057).

**STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS IN OAK LAWN:**

Section 51P-193-126(a)(4) of the Dallas City Code specifies that the board may grant a special exception to the landscaping requirements of this section if, in the opinion of the

Board, the special exception will not compromise the spirit and intent of this section. When feasible, the Board shall require that the applicant submit and that the property comply with a landscape plan as a condition to granting the special exception.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted landscape plan is required.

Rationale:

- The applicant has substantiated how granting this request would not compromise the spirit and intent of the landscaping requirements of PD 193.
- The City of Dallas Chief Arborist supports the request because the applicant has demonstrated the features shown on the submitted landscape plan meet with the spirit and intent of PD 193 regulations.

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

The subject site is developed with a multifamily development. The areas to the north, east, and west appear to be developed mostly with residential uses; and the area to the south is developed with commercial/retail/nonresidential uses.

**Zoning/BDA History:**

- |                                                                                                   |                                                                                                                                                                                                                                                               |
|---------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. BDA 134-057, Property at 4730 Fairmount Street (the lot immediately northeast of subject site) | On June 23, 2014, the Board of Adjustment Panel C will consider a request for a special exception to the landscape regulations requested in conjunction with maintaining a multifamily development on the site, and not fully providing required landscaping. |
|---------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**GENERAL FACTS/ STAFF ANALYSIS:**

- This request focuses on maintaining a multifamily development, and not fully providing required landscaping.
- PD 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in



detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind.

- The City of Dallas Chief Arborist states in a memo (see Attachment A) that the request in this case and the related adjacent case (BDA 134-057) is triggered by new construction of multifamily developments.
- The Chief Arborist notes that the two sites (BDA 134-056 and BDA 134-057) are deficient in meeting the landscape requirements in that:
  - 1) both have locations along street frontages where the trees are not placed within the tree planting zone and not planted in sufficient quantities (BDA 134-056 provides 18 of 25 required trees, BDA 134-057 provides 72 of 78 required trees); and
  - 2) both have sidewalks not in the required setback of 5' to 10' from the back of curb.
- The Chief Arborist states that the applicant has indicated that the primary reason for relocation of the trees was due to utility easement conflicts which in turn led to the altered/noncompliant location of some of the sidewalks on the properties. The applicant has proposed additional trees to be placed along the perimeter of the sites (7 additional trees on the BDA 134-056 site; 8 additional trees on the BDA 134-057 site).
- The Chief Arborist notes that all other landscape standards are met on the sites and that he supports the requests because the applicant has demonstrated that the proposed landscaping meets the spirit and intent of the PD 193 regulations.
- The applicant has the burden of proof in establishing the following:
  - The special exception (where a site plan has been submitted that is deficient in meeting the sidewalk and tree requirements of the PD 193 landscape regulations) will not compromise the spirit and intent of Section 51P-193-126: Landscape, streetscape, screening, and fencing standards”.
- If the Board were to grant this request and impose the submitted landscape plan as a condition, the site would be granted exception from full compliance to sidewalk and tree requirements of the landscape requirements of the Oak Lawn PD 193 landscape ordinance.

**Timeline:**

April 23, 2014: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

May 19, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

May 19, 2014: The Board Administrator shared the following information via email:

- an attachment that provided the public hearing date and panel that will consider the application; the May 28th deadline to

submit additional evidence for staff to factor into their analysis; and the June 13th 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 Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence".

June 10, 2014: 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 Interim Assistant Director of Sustainable Development and Construction, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Senior Engineer, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, and the Assistant City Attorney to the Board.

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

June 13, 2014: The City of Dallas Chief Arborist submitted a memo regarding this application and the adjacent application – BDA 134-057 (see Attachment A).

#### **BOARD OF ADJUSTMENT ACTION: JUNE 23, 2014**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Coulter

I move that the Board of Adjustment grant application **BDA 134-056** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted landscape plan is required.

SECONDED: Carreon

AYES: 5 – Richardson, Coulter, Carreon, Schulte, Beikman

NAYS: 0 –

MOTION PASSED: 5 – 0 (unanimously)

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**FILE NUMBER:** BDA 134-057

**BUILDING OFFICIAL’S REPORT:** Application of Laura Hoffmann and Tommy Mann of Winstead for a special exception to the landscape regulations at 4730 Fairmount Street. This property is more fully described as Lot 11A, Block L/2313, and is zoned PD-193 (MF-2), which requires mandatory landscaping. The applicant proposes to construct/maintain a multifamily structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

**LOCATION:** 4730 Fairmount Street

**APPLICANT:** Laura Hoffmann and Tommy Mann of Winstead

**REQUEST:**

A special exception to the landscape regulations is requested in conjunction with maintaining a multifamily development, and not fully providing required landscaping.

(Note that this application is adjacent to a property to the southwest where the same applicant seeks a similar landscape special exception from Board of Adjustment Panel C on June 23rd: BDA 134-056).

**STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS IN OAK LAWN:**

Section 51P-193-126(a)(4) of the Dallas City Code specifies that the board may grant a special exception to the landscaping requirements of this section if, in the opinion of the Board, the special exception will not compromise the spirit and intent of this section. When feasible, the Board shall require that the applicant submit and that the property comply with a landscape plan as a condition to granting the special exception.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted landscape plan is required.

Rationale:

- The applicant has substantiated how granting this request would not compromise the spirit and intent of the landscaping requirements of PD 193.
- The City of Dallas Chief Arborist supports the request because the applicant has demonstrated the features shown on the submitted landscape plan meet with the spirit and intent of PD 193 regulations.

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

The subject site is developed with a multifamily development. The areas to the north, south, east, and west appear to be developed mostly with residential uses.

**Zoning/BDA History:**

- |                                                                                                                                                     |                                                                                                                                                                                                                                                                      |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li>1. BDA 134-057, Property at 4730 Fairmount Street (the lot immediately northeast of subject site)</li> </ol> | <p>On June 23, 2014, the Board of Adjustment Panel C will consider a request for a special exception to the landscape regulations requested in conjunction with maintaining a multifamily development on the site, and not fully providing required landscaping.</p> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**GENERAL FACTS/ STAFF ANALYSIS:**

- This request focuses on maintaining a multifamily development, and not fully providing required landscaping.
- PD 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind.
- The City of Dallas Chief Arborist states in a memo (see Attachment A) that the request in this case and the related adjacent case (BDA 134-056) is triggered by new construction of multifamily developments.
- The Chief Arborist notes that the two sites (BDA 134-056 and BDA 134-057) are deficient in meeting the landscape requirements in that:
  - 1) both have locations along street frontages where the trees are not placed within the tree planting zone and not planted in sufficient quantities (BDA 134-056 provides 18 of 25 required trees, BDA 134-057 provides 72 of 78 required trees); and
  - 2) both have sidewalks not in the required setback of 5' to 10' from the back of curb.
- The Chief Arborist states that the applicant has indicated that the primary reason for relocation of the trees was due to utility easement conflicts which in turn led to the altered/noncompliant location of some of the sidewalks on the properties. The applicant has proposed additional trees to be placed along the perimeter of the sites

(7 additional trees on the BDA 134-056 site; 8 additional trees on the BDA 134-057 site).

- The Chief Arborist notes that all other landscape standards are met on the sites and that he supports the requests because the applicant has demonstrated that the proposed landscaping meets the spirit and intent of the PD 193 regulations.
- The applicant has the burden of proof in establishing the following:
  - The special exception (where a site plan has been submitted that is deficient in meeting the sidewalk and tree requirements of the PD 193 landscape regulations) will not compromise the spirit and intent of Section 51P-193-126: Landscape, streetscape, screening, and fencing standards”.
- If the Board were to grant this request and impose the submitted landscape plan as a condition, the site would be granted exception from full compliance to sidewalk and tree requirements of the landscape requirements of the Oak Lawn PD 193 landscape ordinance.

**Timeline:**

April 23, 2014: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

May 19, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

May 19, 2014: The Board Administrator shared the following information via email:

- an attachment that provided the public hearing date and panel that will consider the application; the May 28th deadline to submit additional evidence for staff to factor into their analysis; and the June 13th 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 Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence”.

June 10, 2014: 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 Interim Assistant Director of Sustainable Development and Construction, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Senior Engineer, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, and the Assistant City Attorney to the Board.

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

June 13, 2014: The City of Dallas Chief Arborist submitted a memo regarding this application and the adjacent application – BDA 134-056 (see Attachment A).

**BOARD OF ADJUSTMENT ACTION: June 23, 2014**

**APPEARING IN FAVOR:** No one

**APPEARING IN OPPOSITION:** No one

**MOTION:** Couter

I move that the Board of Adjustment grant application **BDA 134-057** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted landscape plan is required.

**SECONDED:** Carreon

**AYES:** 5 – Richardson, Coulter, Carreon, Schulte, Beikman

**NAYS:** 0 –

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

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**FILE NUMBER:** BDA 134-059

**BUILDING OFFICIAL'S REPORT:** Application of John Moncure Henderson, IV for variances to the front and side yard setback regulations, and a variance to the off-street parking regulations at 2114 Clements Street. This property is more fully described as a part of Lot 5, Block 3/2097, and is zoned R-7.5(A), which requires a front yard setback of 25 feet, a side yard setback of 5 feet, and for a parking space to be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces or can be entered directly from the street. The applicant proposes to construct/maintain a structure and provide a 12 foot front yard setback, which will require a 13 foot variance to the front yard setback regulations, provide a 1 foot 3 inch side yard setback, which will require a 3 foot 9 inch variance to the side yard setback regulations, and to locate/maintain an enclosed parking space that faces and can be entered directly from the street at a distance of 13 feet, which will require a variance of 7 feet to the off-street parking regulations.

**LOCATION:** 2114 Clements Street

**APPLICANT:** John Moncure Henderson, IV

### **June 23, 2014 Public Hearing Notes:**

- The Sustainable Development and Construction Department Senior Engineer informed the Board at the briefing that he no longer felt that imposing the condition that a 15' clearance between the face of the proposed garage and the property line must be provided and maintained was necessary as long as the Board imposed the condition that at no time may the area in front of the garage be utilized for parking of vehicles.

### **REQUESTS:**

The following requests have been made in conjunction with constructing and maintaining a two-story (with finished attic) single family home structure on a site that is currently developed with a vacant one-story nonconforming single family structure/use that the applicant intends to demolish:

1. A variance to the front yard setback regulations of 13' is requested as the proposed structure (roof eave) would be located 12' from the site's front property line or 13' into the required 25' front yard setback.
2. A variance to the side yard setback regulations of 3' 9" is requested as the proposed structure and roof eaves would be located as close as 1' 3" from the site's southern side property line or 3' 9" into this required 5 side yard setback.
3. A variance to the off-street parking regulations of 7' is requested as the proposed home would have a parking space enclosed in a proposed attached garage that would be located 13' from the front property/right-of-way line or 7' into the required 20' distance from this street right-of-way.

### **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, lot 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 (front and side yard setbacks):**

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 only approximately 2,300 square feet in area or about 5,000 square feet less than the area of most lots in the R-7.5(A) zoning district that have 7,500 square feet.
- The applicant has provided information showing how his proposed development on this site (a single family home with about 2,300 square feet of living and garage space) is commensurate with other developments found on similarly zoned properties with an average approximately 2,900 square feet of living and garage space.
- Granting the variances would not appear to be contrary to public interest in that the proposed single family home would replace an existing nonconforming single family home that is noncompliant with front and side yard setbacks; and as it relates to the front yard variance request, the that fact that the subject site is the only lot in its blockface between Richmond Avenue and Prospect Street with a front yard in which to maintain.

**STAFF RECOMMENDATION (off-street parking variance):**

Approval, subject to the following conditions:

1. A 15' clearance between the face of the proposed garage and the property line must be provided and maintained.
2. Compliance with the submitted site plan is required.
3. An automatic garage door must be installed and maintained in working order at all times.
4. At no time may the area in front of the garage be utilized for parking of vehicles.

Rationale:

- The subject site is unique and different from most lots zoned R-7.5(A) in that it is only approximately 2,300 square feet in area or about 5,000 square feet less than the area of most lots in the R-7.5(A) zoning district that have 7,500 square feet.
- The applicant has provided information showing how his proposed development on this site (a single family home with about 2,300 square feet of living and garage space) is commensurate with other developments found on similarly zoned properties with an average approximately 2,900 square feet of living and garage space.
- Granting this variance with the staff suggested conditions imposed would not appear to be contrary to public interest in that Sustainable Development and Construction Department Senior Engineer has no objections on the condition that a 15' clearance is provided between the face of the proposed garage and the property line on this 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: CD 14 (Conservation District)  
East: R-7.5(A) (Single family district 7,500 square feet)  
West: R-7.5(A) (Single family district 7,500 square feet)

### **Land Use:**

The subject site is developed with a vacant one-story nonconforming single family home/use. The areas to the north, south, east, and west are developed with single family uses.

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

1. BDA 067-151, Property at 6141 Prospect Avenue (the lot immediately south of the subject site) On November 12, 2007, the Board of Adjustment Panel C granted a variance to the front yard setback regulations of 19'. The board imposed the following condition: compliance with the submitted site plan is required. The case report stated that the request was made in conjunction with constructing and maintaining a single family home structure in the site's Clements Street 25' front yard setback.

### **GENERAL FACTS/STAFF ANALYSIS (front yard variance):**

- This request focuses on constructing and maintaining a two-story (with finished attic) single family structure, part of which would be located in the site's 25' front yard setback on a property developed with a vacant one-story nonconforming single family structure/use 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 applicant has submitted a site plan that shows a structure located 12' from the front property line or 13' into the 25' front yard setback.
- The applicant has also submitted a plan that denotes the building footprint of the existing vacant house on the property that appears to be a nonconforming/ "grandfathered" structure in that it appears to be constructed in 1930's and that it is located 18.2' from the front property line or approximately 7' into the current 25' front yard setback. The Dallas Development Code states 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 applicant intends to destroy/demolish the existing nonconforming structure hence the request for variance to the front yard setback regulations to replace/relocate a new structure back into the 25' front yard setback.
- According to DCAD records, the "main improvement" for property at 2114 Clements Street is a structure built in 1933 with 440 square feet of living area and 440 square feet of total area; with "additional improvements" of a 200 square foot storage building.
- According to calculations taken from the submitted site plan by the Board Administrator, approximately 275 square feet (or 25 percent) of the total approximately 1,025 square foot building footprint is to be located in the 25' front yard setback.
- The subject site is rectangular in shape (approximately 60' x 38') and according to the application, is 0.052 acres (or approximately 2,300 square feet) in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.
  - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.
- If the Board were to grant the variance request, and impose the submitted site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document– which, in this case, is a structure to be located 12' from the front property line or 13' into the 25' front yard setback.

**GENERAL FACTS/STAFF ANALYSIS (side yard variance):**

- This request focuses on constructing and maintaining a two-story (with finished attic) single family structure, part of which would be located in the site's 5' side yard setback on the south side of the property developed with a vacant one-story nonconforming single family structure/use that the applicant intends to demolish.
- Structures on lots zoned R-7.5(A) are required to provide a minimum side yard setback of 5'.
- The applicant has submitted a site plan that shows the proposed structure and roof eaves located as close as 1' 3" from the site's southern side property line or 3' 9" into this required 5 side yard setback.
- The applicant has also submitted a plan that denotes the building footprint of the existing vacant house on the property that appears to be a nonconforming/

“grandfathered” structure in that it appears to be constructed in 1930’s and that it is located in the two 5’ side yard setbacks. The Dallas Development Code states 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 applicant intends to destroy/demolish the existing nonconforming structure hence the request for variances to the side yard setback regulations to replace/relocate a new structure back into the 5’ side yard setbacks.
- According to DCAD records, the “main improvement” for property at 2114 Clements Street is a structure built in 1933 with 440 square feet of living area and 440 square feet of total area; with “additional improvements” of a 200 square foot storage building.
- According to calculations taken from the submitted site plan by the Board Administrator, approximately 110 square feet (or 11 percent) of the total approximately 1,025 square foot building footprint is to be located in the southern 5’ side yard setback.
- The subject site is rectangular in shape (approximately 60’ x 38’) and according to the application, is 0.052 acres (or approximately 2,300 square feet) in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the side 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 this variance request, and impose the submitted site plan as a condition, the structure in the southern side yard setback would be limited to what is shown on this document– which, in this case, is a structure to be located as close as 3’ 9” into this 5’ side yard setback.

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

- The requests focuses on enclosing a parking space with a garage door in the proposed garage attached to the proposed single family home, where the parking space entered from Clements Street would be located less than the required 20’ distance from the street right-of-way line, more specifically where the enclosed parking space in the garage would be located 13’ from the right-of-way line or 7’ into the required 20’ distance from the Clements Street property line/right-of-way line.

- The Dallas Development Code states that a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in enclosed structure and if the space faces upon or can be entered directly from a street or alley.
- The submitted site plan and 1<sup>st</sup> floor plan denotes the location of an enclosed parking space in the proposed structure 13.1' from the Clements Street street right-of-way line or approximately 31' from the projected pavement line.
- The subject site is rectangular in shape (approximately 60' x 38') and according to the application, is 0.052 acres (or approximately 2,300 square feet) in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- According to DCAD records, the "main improvement" for property at 2114 Clements Street is a structure built in 1933 with 440 square feet of living area and 440 square feet of total area; with "additional improvements" of a 200 square foot storage building.
  
- The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet regarding the applicant's request marked "Has no objections if certain conditions are met" commenting "subject to provide 15' of clearance between the face of the proposed garage and the property line instead of 13.1 feet as shown on the site plan."
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the off-street parking 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, staff recommends imposing the following conditions:
  1. A 15' clearance between the face of the proposed garage and the property line must be provided and maintained.
  2. Compliance with the submitted site plan is required.
  3. An automatic garage door must be installed and maintained in working order at all times.
  4. At no time may the area in front of the garage be utilized for parking of vehicles. (These conditions are imposed to help assure that the variance will not be contrary to the public interest).

**Timeline:**

- April 24, 2014: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 19, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- May 19, 2014: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the May 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the June 13<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 requests; and
  - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- June 10, 2014: 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 Interim Assistant Director of Sustainable Development and Construction, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Senior Engineer, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, and the Assistant City Attorney to the Board.
- June 10, 2014: The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" commenting "subject to provide 15 feet of clearance between the face of the proposed garage and the property line instead of 13.1 feet as shown on the site plan."

**BOARD OF ADJUSTMENT ACTION: June 23, 2014**

**APPEARING IN FAVOR:** John. M. Henderson, IV, 4512 Abbott Ave, Dallas, Texas

**APPEARING IN OPPOSITION:** Nina J. Denny, 6140 Richmond Ave, Dallas, Texas

**MOTION:** Beikman

I move that the Board of Adjustment in Appeal No. **BDA 134-059**, hold this matter under advisement until **August 18, 2014**.

SECONDED: Schulte  
AYES: 4 – Richardson, Coulter, Schulte, Beikman  
NAYS: 1 - Carreon  
MOTION PASSED: 4 – 1

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MOTION: Schulte

I move to adjourn this meeting.

SECONDED: Coulter  
AYES: 5– Richardson, Coulter, Carreon, Schulte, Beikman  
NAYS: 0 -  
MOTION PASSED: 5 – 0 (Unanimously)

**3:40 P. M.** - Board Meeting adjourned for **June 23, 2014.**

\_\_\_\_\_  
CHAIRPERSON

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

\_\_\_\_\_  
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.