

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
TUESDAY, OCTOBER 20, 2009**

MEMBERS PRESENT AT BRIEFING: Rob Richmond, Chair, Jordan Schweitzer, Panel Vice-Chair, Ben Gabriel, regular member, Steve Harris, regular member and Scott Jackson, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Bert Vandenberg, Asst. City Attorney, Donnie Moore, Chief Planner, Kyra Blackston, Senior Planner, Todd Duerksen, Development Code Specialist, Jerry Svec, Project Engineer, Phil Erwin, Chief Arborist and Trena Law, Board Secretary

MEMBERS PRESENT AT HEARING: Rob Richmond, Chair, Jordan Schweitzer, Panel Vice-Chair, Ben Gabriel, regular member, Steve Harris, regular member and Scott Jackson, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Bert Vandenberg, Asst. City Attorney, Donnie Moore, Chief Planner, Kyra Blackston, Senior Planner, Todd Duerksen, Development Code Specialist, Jerry Svec, Project Engineer, Phil Erwin, Chief Arborist and Trena Law, Board Secretary

11:03 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **October 20, 2009** docket.

1:00 P.M.

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

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel A September 15, 2009 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: OCTOBER 20, 2009

MOTION: Schweitzer

I move **approval** of the Tuesday, **September 15, 2009** public hearing minutes as amended.

SECONDED: Gabriel

AYES: 5 – Richmond, Schweitzer, Gabriel, Harris, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 089-117(K)

BUILDING OFFICIAL'S REPORT:

Application of Ken Harris for a special exception to the fence height regulation at 1916 Grand Avenue. This property is more fully described as Lot 2 in City block 1/1123 and is zoned PD-595 (NC), which limits the height of a fence in a side or rear yard to 9 feet. The applicant proposes to construct and maintain a 12 foot fence in a required side and rear yard setback which will require a special exception of 3 feet to the fence regulations.

LOCATION: 1916 Grand Avenue

APPLICANT: Ken Harris

REQUESTS:

A special exception to the fence height regulations of 3 foot is requested to construct a fence that is 12 foot in a required side and rear yard.

STAFF RECOMMENDATION (fence height special exception):

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The site is zoned PD 595 (NC) Tract 2 which limits the maximum height of a fence in the side and rear yard to 9 feet.
- The applicant proposes to maintain a 12 foot high fence.
- According to DCAD the property is described as a vacant commercial property.

BACKGROUND INFORMATION:

Zoning:

Site: PD 595 (NC) Tract 2 (planned development district).
North: PD 595 (CC) Tract 2 (planned development district).
South: PD 595 (MF-2 (A)) (planned development district)
East: PD 595 (NC) Tract 2 (planned development district)
West: PD 595 (MF-2 (A)) (planned development district)

Land Use:

The subject site is currently undeveloped. The property to the west and south are undeveloped. The property to the north and east are developed with a non-residential use.

Zoning/BDA History:

1. BDA 089-052 1826 Sanger Ave, the board of adjustment panel A granted a special exception to the fence height regulation.

Timeline:

- June 29, 2009: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- September 17, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- September 21, 2009: The Board Senior Planner contacted the applicant's representative by telephone and email and the following information:
- the public hearing date and panel that will consider the application;
 - the criteria and standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the October 5th deadline to submit additional evidence for staff to factor into their analysis and recommendation;
 - the October 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the June public hearing after considering the information, evidence and testimony presented to them by the applicant and all other interested parties.
- October 6, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

STAFF ANALYSIS:

- The subject site is undeveloped; the properties in the immediate area are developed with non-residential uses.
- The applicant proposes to construct and maintain a solid fence in the required side and rear yard.

- The properties that are adjacent to the west and south are zoned MF-2, requiring a special exception to the fence height regulation of 3 feet to maintain the 12 foot high fence.
- The applicant has the burden of proof in establishing that granting the special exception to the fence height regulation will not adversely affect neighboring properties.
- If the Board grants the special exception to the fence height regulations, staff recommends imposing the submitted site plan and elevation as a condition.

BOARD OF ADJUSTMENT ACTION: OCTOBER 20, 2009

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Harris**

I move that the Board of Adjustment grant application **BDA 089-117** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

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

SECONDED: **Gabriel**

AYES: 5 – Richmond, Schweitzer, Gabriel, Harris, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 089-115(K)

BUILDING OFFICIAL’S REPORT:

Application of Bryan Wilburn represented by Mark Molthan for a special exception to the fence height regulations and a special exception to the visibility obstruction regulations at 4939 Manson Court. This property is more fully described as Lot 1A in City Block 1/5520 and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct an 11 foot fence in a required front yard setback, which will require a special exception of 7 feet to the fence height regulations and to construct a single family residential accessory fence structure in a required visibility obstruction triangle, which will require a special exception to the visibility obstruction regulations.

LOCATION: 4939 Manson Court

APPLICANT: Bryan Wilburn
Represented by Mark Molthan

REQUESTS:

A special exception to the fence height regulations of 7 foot is requested to construct a fence that is 11 foot in height in a required front yard and to construct a single family residential accessory fence structure in a required visibility obstruction triangle.

STAFF RECOMMENDATION (fence height special exception):

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STAFF RECOMMENDATION (visibility obstruction):

Approval with the following condition:

- No landscaping is permitted between 30 inches and 8 feet in height above the top of curb, in the 20' x20' visibility triangles.

Rationale:

- The Development Services Engineer has no objections to this case if certain conditions are met.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

The Board shall grant a special exception to the requirements of the visual obstruction regulations when, in the opinion of the Board, the item will not constitute a traffic hazard.

GENERAL FACTS:

- The site is zoned R 1ac(A) and has a front yard setback of 40 feet in the front yard.
- The applicant proposes to maintain a 11 foot high fence.

- The Dallas Development Code limits the height of fences in front yard setbacks to 4 feet in residential zoning.

BACKGROUND INFORMATION:

Zoning:

Site: R-1ac(A) (Single family residential 1 acre).
North: R-1ac(A) (Single family residential 1 acre).
South: R-1ac(A) (Single family residential 1 acre).
East: R-1ac(A) (Single family residential 1 acre).
West: R-1ac(A) (Single family residential 1 acre).

Land Use:

The subject site is developed with a single family structure. The properties to the north, south, and east are developed with single family structures.

Zoning/BDA History:

The is no Board of Adjustment history for this site.

Timeline:

- August 28, 2009: The applicant’s representative submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- September 17, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- September 21,2009: The Board Senior Planner contacted the applicant’s representative by telephone and email and the following information:
- the public hearing date and panel that will consider the application;
 - the criteria and standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the October 5th deadline to submit additional evidence for staff to factor into their analysis and recommendation;
 - the October 9th deadline to submit additional evidence to be incorporated into the Board’s docket materials;

- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the June public hearing after considering the information, evidence and testimony presented to them by the applicant and all other interested parties.

October 5, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

October 9, 2009 The Development Services P.E. submitted a comment sheet in conjunction with this case (see attachment).

STAFF ANALYSIS:

- The property is developed with a single family structure and the surrounding properties are developed with single-family structures.
- This property is located on a cul-de-sac at the end of Manson Court .
- The applicant proposes to construct and maintain a solid masonry fence with columns and decorative iron that is 9 feet in height. In addition the applicant is proposing to construct an 11 foot high gate at the entrance.
- The proposed fence runs approximately 140 feet parallel to the Manson Court front property line. The proposed solid fence will be setback between 1 and 15 feet from the front property line.
- The applicant seeks a special exception to the visibility obstruction regulations for the portions of the solid fence that are within the 20’x20’ visibility triangle.
- The Development Services P.E. has reviewed the submitted materials and has no objections to the visibility obstruction regulation with the following conditions, “ no landscaping is permitted between 30 inches and 8 feet in height above the top of the curb in the 20’ x 20’ visibility triangles.’
- The applicant has the burden of proof in establishing that granting the special exception to the fence height regulation will not adversely affect neighboring properties.
- If the Board grants the special exception to the fence height regulations, staff recommends imposing the submitted site plan and elevation as a condition.

BOARD OF ADJUSTMENT ACTION: OCTOBER 20, 2009

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION#1: Harris

I move that the Board of Adjustment, in Appeal No. **BDA 089-115**, on application of Bryan Wilburn represented by Mark Molthan, **grant** the request of this applicant to construct and maintain an 11-foot fence as a special exception to the height requirement for fences contained 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 elevation is required.

SECONDED: Gabriel

AYES: 5 – Richmond, Schweitzer, Gabriel, Harris, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION#2: Harris

I move that the Board of Adjustment, in Appeal No. **BDA 089-115**, on application of Bryan Wilburn represented by Mark Molthan, **grant** the request of this applicant to construct and maintain a fence in the drive approach visibility triangle as a special exception to the visibility obstruction regulation contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan and elevation is required.
- No landscaping is permitted between 30-inches and 8-feet in height above the top of the curb in the 20' x 20' visibility triangle.

SECONDED: Gabriel

AYES: 5 – Richmond, Schweitzer, Gabriel, Harris, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 089-111

BUILDING OFFICIAL'S REPORT:

Application of Jose Sosa, represented by Lucas Perez, for a variance to the front yard setback regulations, a variance to the side yard setback regulations, and a special exception to the landscape regulations at 4207 W. Illinois Avenue. This property is more fully described as Lot 3A in City Block 1/5172 and is zoned CR which requires a 15 foot front yard setback, a 20 foot side yard setback, and requires mandatory landscaping. The applicant proposes to construct a structure and provide a 5 foot front yard setback which will require a variance of 10 feet to the front yard setback regulations, provide a 12 foot 6 inch side yard setback, which will require a variance of 7 feet 6 inches to the side yard setback regulations, and provide an alternate landscape plan which will require a special exception to the landscape regulations.

LOCATION: 4207 W. Illinois Avenue

APPLICANT: Jose Sosa
Represented by Lucas Perez

REQUESTS:

- The following appeals have been made in this application on a site developed with a retail use (Lilian's Salon) that according to the submitted site plan is to "remain until new building is finished:"
 1. Variances to the front yard setback regulations of 10' along Andrews Drive and to the side yard setback regulations of 7' 6" are requested in conjunction with constructing and maintaining an approximately 4,000 square foot (100' x 40') mixed use (office/retail/restaurant) structure located in the site's 15' Andrews Street front yard setback along its eastern side and in the site's 20' side yard setback along its northern side.
 2. A special exception to the landscape regulations is requested in conjunction with constructing and maintaining the proposed mixed use structure mentioned above.

STAFF RECOMMENDATION (variances):

Denial

Rationale:

- There is no property hardship to the site or physical characteristic/feature of the site that warrants the requested front and side yard variances. The CR-zoned site is relatively flat, is generally rectangular in shape (approximately 140' x 102'), and is approximately 14,280 square feet in area. Even though the corner-lot site has two front yard setbacks, this is typical of any corner lot not zoned single family, duplex, or agricultural and does not preclude the applicant from developing the site with a structure that complies with setback requirements. Lastly, although the applicant has

referenced “exactings” by the City of Dallas of 10’ from the street right-of-way along Illinois Avenue, of 3’ from the street right-of-way along Andrews Street, and 7.5’ of right-of-way along the alley, the net 16 percent reduction in lot size does not preclude the applicant from developing the site with a structure of a size and in a location that complies with setback requirements.

STAFF RECOMMENDATION (landscape special exception):

Denial

Rationale:

- The City’s Chief Arborist recommends denial of this request.
- The applicant has not substantiated how strict compliance with the requirements of the Landscape Regulations of the Dallas Development Code (specifically related to its perimeter landscape buffer strip, parking lot tree, street tree, and design standard requirements) would unreasonably burden the use of the property, nor how the special exception will not adversely affect neighboring property.

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.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

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

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

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

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

GENERAL FACTS (related to the variances):

- The subject site is located at the northwest corner of Illinois Avenue and Andrews Street and is zoned CR (Community Retail). As a result, the subject site has two front yard setbacks (one along Illinois Avenue on its south, the other along Andrews Street on its east) and two side yard setback (one along it north, the other along the its west).
- The minimum front yard setback on a CR (Community Retail) zoned lot is 15 feet. The applicant has submitted a site plan indicating that the proposed approximately 4,000 square foot mixed use structure is located 5' from a right-of-way dedicated easement line along its east side along Andrews Street, or 10' into the 15' front yard setback along Andrews Street.
- The minimum side yard setback on a CR (Community Retail) zoned lot is 20 feet where adjacent to or directly across an alley from a single family, duplex, townhouse, or multifamily zoning district; or no minimum in all other cases. The subject site directly abuts to an R-5(A) (single family) zoning district to the north. The applicant has submitted a site plan indicating that the proposed approximately 4,000 square foot mixed use structure is located 12' 6" from a right-of-way dedicated easement line along its north side, or 7' 6" into the 20' side yard setback along the north side of the site.
- According to calculations taken by the Board Administrator from the submitted site plan, approximately 400 square feet (or 10 percent) of the proposed approximately 4,000 square foot mixed use structure is in the site's Andrews Street front yard setback on the east side of the lot, and approximately 750 square feet (or about 19 percent) of the proposed structure is in the site's side yard setback on the north side of the lot.
- The site appears to be relatively flat, is generally rectangular in shape (approximately 140' x 102'), and is approximately 14,280 square feet in area. The site is zoned CR (Community Retail) and because it is located on a corner with two street frontages, the site has two front yard setbacks which is a characteristic typical of any corner lot not zoned single family, duplex, or agricultural.
- According to DCAD records, the property is developed with a "converted residence" built in 1937 that is 1,044 square feet in area.

GENERAL FACTS (related to the landscape special exception):

- The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period.
A landscape plan has been submitted that according to the City of Dallas Chief Arborist is deficient from meeting perimeter landscape buffer strip, parking lot tree, and street tree requirements of the mandatory provisions of Section 51A-10.125 and design standard requirements (Section 51A10.126).
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Chief Board of Adjustment Planner (see Attachment A). The memo stated the following:
 - The applicant is requesting a special exception to the landscape requirements of Article X: The Landscape Regulations. More specifically, the request is for relief from 1) compliance with the perimeter landscape buffer strip, parking lot trees, and street trees of the mandatory provisions of Section 51A-10.125; and 2) compliance with the design standard requirements of Section 51A-10.126.
 - Trigger:
New construction on a re-platted lot.
 - Deficiencies:
The proposed landscape plan is deficient in the mandatory requirements for street trees, parking lot trees, and the required perimeter landscape buffer with plant group. No complete landscape design standard is applied.
 - Factors:
The plan identifies 8 site trees (4 are required) composed of two small species. None of the trees are considered canopy (shade) trees which would be required for parking lot requirements.
The new structure is proposed to be in the perimeter buffer landscape area on two sides with residential adjacency. A proposed dumpster containment area is set within the required buffer at the corner of Andrews and Illinois. The required amount of plant buffer groups (4 large canopy trees and additional plantings) in not attained.
Overhead utilities are set along the street perimeters on public property.
 - Recommendation
Denial

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail)
North: R-5(A) (Single family district 5,000 square feet)
South: LI (Light Industrial)
East: R-5(A) (Single family district 5,000 square feet)
West: CR (Community Retail)

Land Use:

The subject site is developed with a retail use – more specifically, a 950 square foot retail structure (Lilian’s Salon). The area to the north is developed with single family uses; the area to the east is developed as a church (Mountain View Church of Christ); the area to the south is developed with an institutional use (City of Dallas Police Department Southwest Substation); and the area to the west is developed with office 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:

August 28, 2009: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

Sept. 17, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

Sept. 17, 2009: The Board Administrator spoke with the applicant and emailed him the following information:

- an attachment providing the public hearing date and panel that will consider the application; the October 5th deadline to submit additional evidence for staff to factor into their analysis; the October 9th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

October 6, 2009 The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the October public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Chief Arborist, the Sustainable Development Department Project Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

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

October 12, 2009 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the landscape special exception component of the application (see Attachment A).

STAFF ANALYSIS (related to variances):

- The requests for variances to the front and side yard setback regulations focus on constructing and maintaining an approximately 4,000 square foot mixed use structure in the site's Andrews Drive front yard setback on the east and in the site's side yard setback on the north – a structure that would replace an approximately 950 square foot retail structure on the site that appears to be in compliance with setbacks.
- The submitted site plan indicates that the proposed approximately 4,000 square foot mixed use structure is located 5' from a right-of-way dedicated easement line along its east side along Andrews Street, or 10' into the 15' front yard setback along Andrews Street, and located 12' 6" from a right-of-way dedicated easement line along its north side, or 7' 6" into the 20' side yard setback along the north side of the site 3' from the site's western side property line, or 17' into the 20' side yard setback along the west side of the site.
- According to calculations taken by the Board Administrator from the submitted site plan, approximately 400 square feet (or 10 percent) of the proposed approximately 4,000 square foot mixed use structure is in the site's Andrews Street front yard setback on the east side of the lot, and approximately 750 square feet (or about 19 percent) of the proposed structure is in the site's side yard setback on the north side of the lot.
- The site appears to be relatively flat, is generally rectangular in shape (approximately 140' x 102'), and is approximately 14,280 square feet in area. The site is zoned CR (Community Retail) and because it is located on a corner with two street frontages, the site has two front yard setbacks which is a characteristic typical of any corner lot not zoned single family, duplex, or agricultural.
- The applicant has the burden of proof in establishing the following:
 - That granting the variances to the front and 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 variances are necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same CR (Community Retail) zoning classification.
 - The variances would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same CR (Community Retail) zoning classification.

- If the Board were to grant the variances to the front and side yard setback regulations, imposing a condition whereby the applicant must comply with the submitted site plan, the encroachments into these setbacks would be limited to what is shown on the submitted site plan which in this case is a structure that would be located as 5' from the Andrews Street dedicated easement line (or 10' into the 15' front yard setback), and 12' 6" from the right-of-way dedicated easement line along its north side (or 7' 6" into the 20' side yard setback).

STAFF ANALYSIS (related to the landscape regulations):

- This request focuses on obtaining leniency to the landscape regulations triggered by the applicant's proposal to construct and maintain an approximately 4,000 square foot mixed use structure on the site.
- An alternate landscape plan has been submitted whereby the applicant seeks an exception from the Code's landscape requirements by not fully complying with the perimeter landscape buffer strip, parking lot trees, and street trees of the mandatory provisions and the design standard requirements.
- The City of Dallas Chief Arborist recommends that this request be denied.
- The applicant has the burden of proof in establishing the following:
 - that strict compliance with the requirements of the Landscape Regulations of the Dallas Development Code will unreasonably burden the use of the property; and
 - that the special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted alternate landscape plan, the site would be "excepted" from full compliance with the perimeter landscape buffer strip, parking lot trees, and street trees of the mandatory provisions and the design standard requirements of Article X: The Landscape Regulations.

BOARD OF ADJUSTMENT ACTION: OCTOBER 20, 2009

APPEARING IN FAVOR: Jose Sosa, 4207 W. Illinois Ave, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: **Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 089-111**, on application of Jose Sosa, represented by Lucas Perez, **deny** the front and side yard setback variances requested by this applicant **without prejudice**, 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 NOT result in unnecessary hardship to this applicant.

SECONDED: **Harris**

AYES: 2 – Schweitzer, Harris,

NAYS: 3 - Richmond, Gabriel, Jackson

MOTION FAILED: 2– 3

MOTION #2: Jackson

I move that the Board of Adjustment, in Appeal No. **BDA 089-111**, on application of Jose Sosa, represented by Lucas Perez, **grant** the variance to the minimum front and side yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: Gabriel

AYES: 3 – Richmond, Gabriel, Jackson

NAYS: 2 - Schweitzer, Harris

MOTION FAILED: 3–2

MOTION #3: Schweitzer

I move that the Board of Adjustment, in Appeal No. **BDA 089-111**, on application of Jose Sosa, represented by Lucas Perez, **deny** the front and side yard setback variances requested by this applicant **without prejudice**, 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 NOT result in unnecessary hardship to this applicant.

SECONDED: Richmond

AYES: 5 – Richmond, Schweitzer, Gabriel, Harris, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION #3: Schweitzer

I move that the Board of Adjustment, in Appeal No. **BDA 089-111**, on application of Jose Sosa, represented by Lucas Perez, **deny** the special exception to the landscape requirements requested by this applicant **without prejudice**, because our evaluation of the property and testimony shows that strict compliance with the requirements will not unreasonably burden the use of the property; and the special exception will adversely affect neighboring property.

SECONDED: Harris

AYES: 5 – Richmond, Schweitzer, Gabriel, Harris, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION: Harris

I move to adjourn this meeting.

SECOND: Gabriel

AYES: 5– Richmond, Schweitzer, Gabriel, Harris, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

1:28 P.M. - Board Meeting adjourned for **October 20, 2009.**

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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