

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
TUESDAY, JUNE 14, 2011**

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

MEMBERS ABSENT FROM BRIEFING: Johnnie Goins, regular member

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

MEMBERS PRESENT AT HEARING: Rob Richmond, Chair, Jordan Schweitzer, Panel Vice-Chair, Scott Housel, regular member, Johnnie Goins, 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, Tammy Palomino, Asst. City Attorney, Donnie Moore, Chief Planner, Jennifer Hiromoto, Senior Planner, Todd Duerksen, Development Code Specialist, Jerry Svec, Traffic Engineer, Phil Erwin, Chief Arborist and Trena Law, Board Secretary

11:02 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **June 14, 2011** 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 **May 17, 2011** public hearing minutes.

BOARD OF ADJUSTMENT ACTION: JUNE 14, 2011

MOTION: Hounsel

I move **approval** of the Tuesday, **May 17, 2011** public hearing minutes.

SECONDED: Jackson

AYES: 5 – Richmond, Schweitzer, Hounsel, Goins, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 101-050

BUILDING OFFICIAL'S REPORT:

Application of Tom Bell, represented by Robert Howman, for a special exception to the fence height regulations at 2525 Frankford Road. This property is more fully described as Lot 1 in City Block A/8754 and is zoned R-7.5(A) which limits the height of a fence to 4 feet. The applicant proposes to construct a 6-foot high fence which will require a special exception of 2 feet.

LOCATION: 2525 Frankford Road

**APPLICANT: Tom Bell
Represented by Robert Howman**

REQUEST:

- A special exception to the fence height regulations of 2' is requested in conjunction with constructing and maintaining a 6' high chain link fence in the site's 25' Frankford Road front yard setback on a lot developed with a middle school (Dan Long Middle School). (The proposed fence is to border along the Frankford Road/street side of the existing football field/track on the western side of the subject site).

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The Dallas Development Code states that a person shall not erect or maintain a fence in a required yard more than 9’ above grade, and additionally states that in all residential districts except multifamily districts, a fence may not exceed 4’ above grade when located in the required front yard.
The applicant had submitted a site plan and elevation indicating that the proposal in the required front yard setback reaches a maximum height of 6’.
- The following additional information was gleaned from the submitted site plan:
 - The proposal is approximately 260’ in length parallel to Frankford Road and approximately 20’ in length *perpendicular* to the street on the east and west sides of the site in the front yard setback.
 - The fence proposal is shown to be located about 5’ from the front property line or about 15’ from the curb line.
- No single family home “fronts” to the proposal on the subject site given that the homes on the southern side of Frankford Road adjacent to the site are oriented southward onto Sunscape Lane.
- The Board Administrator conducted a field visit of the site and surrounding area (approximately 500’ east and west of the subject site) and noted no other fences above four (4) feet high which appeared to be located in a front yard setback.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5(A)(SUP 1347) (Single family district 7,500 square feet)(Specific Use Permit)
North: MF-1(A) (Multifamily district)
South: TH-1(A) (Townhouse)
East: MF-2(A) (Multifamily district)
West: City of Carrollton

Land Use:

The subject site is developed with a middle school (Dan Long Middle School). The areas to the north, east, south, and west are developed with single family uses.

Zoning/BDA History:

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

Timeline:

- April 21, 2011: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 18, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- May 19, 2011: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the May 26th deadline to submit additional evidence for staff to factor into their analysis; and the June 3rd 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 31, 2011: 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 Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorneys to the Board.
- June 2, 2011: The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments: "1. Comply with all C.O.D visibility requirements. 2. Do not restrict drainage flow." (Note that no item appears to be represented on the submitted site plan as being located in a visibility triangle).

STAFF ANALYSIS:

- This request focuses on constructing and maintaining a 6' high chain link fence in the site's 25' Frankford Road front yard setback on a lot developed with a middle school (Dan Long Middle School). (The proposed fence is to border along the Frankford Road/street side of the existing football field/track on the western side of the subject site).
- The submitted site plan and elevation documents the location, height, and material of the proposed fence over 4' in height in the required front yard setback. The site plan indicates that the proposal is about 260' in length parallel to the street and approximately 20' in length *perpendicular* to the street on the east and west sides of the site in the front yard setback. The plan shows the fence to be located approximately 5' from the site's front property line or about 15' from the curb line. The elevation shows the proposed fence to be made of chain link and 6' in height.
- No single family home "fronts" to the proposal on the subject site given that the homes on the southern side of Frankford Road adjacent to the site are oriented southward onto Sunscape Lane.
- The Board Administrator conducted a field visit of the site and surrounding area (approximately 500' east and west of the subject site) and noted no other fences above four (4) feet high which appeared to be located in a front yard setback.
- As of June 6, 2011, no letters had been submitted to staff in support 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' will not adversely affect neighboring property.
- Granting this special exception of 2' with a condition imposed that the applicant complies with the submitted site plan and elevation would provide assurance that the proposal exceeding 4' in height in the front yard setback would be constructed and maintained in the location and of the height and material as shown on these documents.

BOARD OF ADJUSTMENT ACTION: JUNE 14, 2011

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Jackson**

I move that the Board of Adjustment grant application **BDA 101-050** 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 plan and elevation is required.

SECONDED: **Goins**

AYES: 5 – Richmond, Schweitzer, Hounsel, Goins, Jackson
NAYS: 0 -
MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 101-028

BUILDING OFFICIAL’S REPORT:

Application of Ashley Ness for a variance to the rear yard setback regulations at 707 N. Windomere Avenue. This property is more fully described as Lot 2 in City Block 24/3475 and is zoned CD-1 which requires a rear yard setback of 3 feet. The applicant proposes to maintain a structure and provide a 0-foot rear yard setback which will require a variance of 3 feet.

LOCATION: 707 N. Windomere Avenue

APPLICANT: Ashley Ness

AMENDED REQUESTS:

- The following appeals have been made in this application in conjunction with maintaining a one-story accessory structure, part of which is located in the site’s 3’ rear yard setback on a site that is developed with a single family home:
 - A special exception to the rear yard setback regulations of 3’ for tree preservation; and/or
 - A variance to the rear yard setback regulations of 3’.

On May 17, 2011, the conducted a public hearing and heard testimony at the public hearing regarding the posting of the notification sign on the site and delayed action on this application until June 14th to allow the applicant to post the notification sign on the site.

The Board of Adjustment should determine if the applicant complied with the Dallas Development Code provision related to the posting of the notification sign on the subject site with the findings that:

- 1) The Dallas Development Code states that “the applicant shall post the required number of notification signs on the property within 14 days after an application is filed. The signs must be legible and remain posted until a final decision is made on the application. If the city plan commission, landmark commission, or board of adjustment determines that the applicant has failed to comply with the provisions of this section, it shall take no action on the application other than to postpone the public hearing for at least four weeks, or deny the applicant’s request, with or without prejudice. If the hearing is postponed, the required notification signs must be posted within 24 hours after the case is postponed and comply with all other requirements of this section.”

- 2) The Building Inspection Senior Plans Examiner/Development Code Specialist emailed the Board Administrator at 3:37 p.m. on May 18th the following: “Ashley Ness was just in and purchased her replacement notification sign at 3:27 pm. She acknowledged that she was late.”

On May 23rd, the Board Administrator emailed the applicant the following information:

- The 2008 ordinance that established the code provision related to the posting of notification signs.
- An account of how the board delayed action on her request in May until June 14th where they will determine at this June 14th public hearing whether she has complied with this provision; and that if the board determines that she has complied with this provision, they will be able to either grant, deny, or delay the special exception and variance requests; however, if the board determines that she has not complied with this provision, they will only be able to either deny or delay her special exception and variance requests.
- A document that provided deadlines for submittal of any additional information to staff/the board.

On May 31st, the applicant forwarded additional information to the Board Administrator (see Attachment E). This information included the following:

- A letter requesting continuance of her requests to the next board hearing beyond June 14th since she will be out of the country and unable to reschedule her trip, and providing an account as to her posting of the notification sign.
- An email that she has sent to Todd Duerksen (Building Inspection Senior Plans Examiner/Development Code Specialist) along with a photo of the temporary sign she had posted on her property.

ORIGINAL REQUEST (March 2011):

- A special exception to the rear yard setback regulations of 3’ for tree preservation had been requested in conjunction with maintaining a one-story accessory structure, part of which is located in the site’s 3’ rear yard setback on a site that is developed with a single family home.

STAFF RECOMMENDATION (special exception):

Denial

Rationale:

1. The City of Dallas arborist staff has investigated the trees on the property and have formed an opinion that the trees within proximity to the structure (that are the nature of this request) are not worthy of preservation for a building relocation from setback requirements.
2. In addition, the applicant has not substantiated how the requested special exception is compatible with the character of the neighborhood and that the value of the

surrounding properties will not be adversely affected by the granting of this special exception request.

STAFF RECOMMENDATION (variance):

Denial

Rationale:

- The applicant has not substantiated how either the restrictive area, shape, or slope of the site/lot preclude it from being developed in a manner commensurate with development found on other CD (Conservation District No 1) zoned lots.

STANDARD FOR A SPECIAL TO THE REAR YARD REGULATIONS FOR TREE PRESERVATION:

The Dallas Development Code specifies that the board may grant a special exception to the minimum rear yard requirements to preserve an existing tree. In determining whether to grant this special exception, the board shall consider the following factors:

- A) Whether the requested special exception is compatible with the character of the neighborhood.
- B) Whether the value of the surrounding properties will be adversely affected.
- C) Whether the tree is worthy of preservation.

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.

GENERAL FACTS (related to special exception):

- Structures on lots zoned CD No. 1 are required to provide a minimum rear yard setback of 5'. However, the Code states that in a residential district, a person need not provide a full rear yard setback for a structure accessory to a residential use if the structure does not exceed 15' in height. Where the rear yard is adjacent to an

alley, a three-foot setback must be provided. Where the rear yard is not adjacent to an alley, no setback is required.

The submitted site plan denotes an accessory structure adjacent to an alley that is located on the rear property line (or as much as 3' into the 3' rear yard setback).

- According to calculations taken from the site plan by the Board Administrator, about 60 square feet (or 1/10) of the existing approximately 600 square foot accessory structure is located in the site's 3' rear yard setback.
- DCAD records indicate that the site is developed a single family home in "good" condition built in 1923 with 1,530 square feet of living area.
- The applicant submitted information beyond what was submitted with the original application (see Attachments A, B, and D). This information included the following:
 - photographs of the subject site;
 - a petition signed by 6 owners/neighbors in support of the request;
 - a document stating that the block of N. Windomere on which the site is located has curbside trash pick-up; and
 - a document from a certified arborist stating among other things how "the trees located on your property would more than likely suffer adversely from being transplanted." (Note that this document was submitted after the Chief Arborist submitted his memo on this request, and after the staff had formed their recommendation of denial on this request).
- On March 7, 2011, the City of Dallas Chief Arborist submitted a memo to the Board Administrator pertaining to this request (see Attachment C). The memo stated the following:
 - The arborist staff has investigated the trees on the property and have formed an opinion that the trees within proximity to the structure (that are the nature of this request) are not worthy of preservation for a building relocation from setback requirements.
 - An Italian cypress and a plum tree appear to be within the influence of the probable building location if the structure was relocated within its current configuration but moved within the setback distance. Both trees are relatively young (approximately 3" caliper) and would be suitable for transplant to replacement. The trees are regarded as ornamental landscape trees of potential medium and small sizes, respectively.
 - The "preservation of large trees" is a fundamental purpose of the city's tree preservation ordinance that was established following an initial resolution by the City Council in 1990 to preserve large trees "which, once removed, can be replaced only after generations." Although the city arborists encourage citizens to protect all trees once planted in appropriate locations, the city arborists' opinion is that the preservation status is directed towards trees, if removed, that would no longer provide the significant financial value and environmental benefits to the owner *and the community* found in large established canopy trees native to, or adapted to, this region.
 - All trees on single family or duplex lots which are two acres or less in size with a residential use are not protected under city ordinance. Otherwise, only trees that are 8" in diameter or greater are protected. The city anticipates that some trees

must be removed for construction purposes and allows for this with building permits for construction.

- On March 15, 2011, the Board of Adjustment heard testimony on this matter at the public hearing and delayed action on this matter until May 17th in order for the applicant to have the opportunity to file a companion case seeking a variance for the rear yard setback rather than or in addition to a special exception.
- On April 11, 2011, the applicant submitted a revised application adding a variance request of 3' to the rear yard setback regulations in addition to the previously requested special exception request of 3' to the rear yard setback regulations to preserve a tree.
- On May 17, 2011, the conducted a public hearing and heard testimony at the public hearing regarding the posting of the notification sign on the site and delayed action on this application until June 14th to allow the applicant to post the notification sign on the site.

GENERAL FACTS (related to variance):

- Structures on lots zoned CD No. 1 are required to provide a minimum rear yard setback of 5'. However, the Code states that in a residential district, a person need not provide a full rear yard setback for a structure accessory to a residential use if the structure does not exceed 15' in height. Where the rear yard is adjacent to an alley, a three-foot setback must be provided. Where the rear yard is not adjacent to an alley, no setback is required.
The submitted site plan denotes an accessory structure adjacent to an alley that is located on the rear property line (or as much as 3' into the 3' rear yard setback).
- According to calculations taken from the site plan by the Board Administrator, about 60 square feet (or 1/10) of the existing approximately 600 square foot accessory structure is located in the site's 3' rear yard setback.
- DCAD records indicate that the site is developed a single family home in "good" condition built in 1923 with 1,530 square feet of living area.
- The subject site is flat, rectangular in shape (50' x 150'), and (according to the application) is 0.17 acres (or 7,405 square feet) in area. The site is zoned CD No. 1 where lots in this subarea of the zoning district had been zoned R-7.5(A) until the creation of the CD in 1988.
- On May 17, 2011, the conducted a public hearing and heard testimony at the public hearing regarding the posting of the notification sign on the site and delayed action on this application until June 14th to allow the applicant to post the notification sign on the site.

BACKGROUND INFORMATION:

Zoning:

Site: CD No 1 (Conservation district)
North: CD No 1 (Conservation district)
South: CD No 1 (Conservation district)

East: CD No 1 (Conservation district)
West: CD No 1 (Conservation district)

Land Use:

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

Zoning/BDA History:

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

Timeline:

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

February 14, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

February 14 & 22, 2011: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the February 28th deadline to submit additional evidence for staff to factor into their analysis; and the March 4th 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.

The email also included a suggestion that the application possibly submit photographs of the mid-part of the site that the Board Administrator could not photograph, an amended site plan showing the location of the tree or trees that the applicant feels justifies the request since typically an applicant making this type of application shows the location, species, and caliper inch of the tree or trees that the applicant feels is worthy of preservation.

Feb. 24 & 28, 2011: The applicant submitted additional information to the Board Administrator (see Attachments A and B).

March 1, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Assistant

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

- March 3, 2011: The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" commenting "Deny – no permit, setback or standards. Tree preservation not relevant in this case. If approved, recommend indemnity for the City if damage occurs to the building."
- March 7, 2011: The Chief Arborist submitted a memo to the Board Administrator (see Attachment C). This memo stated among other things that the trees within proximity to the structure (that are the nature of this request) are not worthy of preservation for a building relocation from setback requirements.
- March 7, 2011: The applicant submitted additional information to the Board Administrator (see Attachment D). (Note that this particular information was submitted after the Chief Arborist had submitted to the Board Administrator and after staff had formed their recommendation of denial of this application).
- March 15, 2011: The Board of Adjustment Panel A conducted a public hearing on this request and delayed action until their May 17th public hearing in order for the applicant to have the opportunity to file a companion case seeking a variance for the rear yard setback rather than or in addition to a special exception.
- April 18, 2011: The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded a revised application to the Board Administrator that added a request for a variance to the rear yard setback regulations of 3'.
- April 21, 2011: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the May 2nd deadline to submit additional evidence for staff to factor into their analysis; and the May 6th 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 3, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public

hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

- May 5, 2011: The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" commenting "Deny – no permit, setback or standards. Tree preservation (not relevant in this case). If approved, recommend indemnity for the City if damage occurs to the building."
- May 17, 2011: The Board of Adjustment Panel A conducted a public hearing heard testimony at the public hearing regarding the posting of the notification sign on the site and delayed action on this application until June 14th to allow the applicant to post the notification sign on the site.
- May 18, 2011: The Building Inspection Senior Plans Examiner/Development Code Specialist emailed the Board Administrator at 3:37 p.m. on May 18th the following: "Ashley Ness was just in and purchased her replacement notification sign at 3:27 pm. She acknowledged that she was late."
- May 23, 2011: The Board Administrator emailed the applicant the following information:
- The 2008 ordinance that established the code provision related to the posting of notification signs.
 - An account of how the board delayed action on her request in May until June 14th where they will determine at this June 14th public hearing whether she has complied with this provision; and that if the board determines that she has complied with this provision, they will be able to either grant, deny, or delay the special exception and variance requests; however, if the board determines that she has NOT complied with this provision, they will only be able to either deny or delay her special exception and variance requests.
 - A document that provided deadlines for submittal of any additional information to staff/the board.
- May 31, 2011: The applicant forwarded additional information to the Board Administrator (see Attachment E).
- May 31, 2011: 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 Board of Adjustment Chief Planner, the Board Administrator, the Board of

Adjustment Senior Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorneys to the Board.

June 2, 2011: The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" commenting "Deny – no permit, setback or standards. Tree preservation (not relevant in this case). If approved, recommend indemnity for the City if damage occurs to the building."

STAFF ANALYSIS (related to special exception):

- The Board of Adjustment should determine if the applicant complied with the Dallas Development Code provision related to the posting of the notification sign on the subject site with the findings that:
 - 1) The Dallas Development Code states that "the applicant shall post the required number of notification signs on the property within 14 days after an application is filed. The signs must be legible and remain posted until a final decision is made on the application. If the city plan commission, landmark commission, or board of adjustment determines that the applicant has failed to comply with the provisions of this section, it shall take no action on the application other than to postpone the public hearing for at least four weeks, or deny the applicant's request, with or without prejudice. If the hearing is postponed, the required notification signs must be posted within 24 hours after the case is postponed and comply with all other requirements of this section."
 - 2) The Building Inspection Senior Plans Examiner/Development Code Specialist emailed the Board Administrator at 3:37 p.m. on May 18th the following: "Ashley Ness was just in and purchased her replacement notification sign at 3:27 pm. She acknowledged that she was late."
- If the Board of Adjustment were to determine that the applicant did not comply with the Dallas Development Code provision related to the posting of the notification sign, it shall take no action on the application other than to postpone the public hearing for at least four weeks, or deny the applicant's request, with or without prejudice.
- If the Board of Adjustment were to determine that the applicant did comply with the Dallas Development Code provision related to the posting of the notification sign on the site, the Board could consider the special exception request as scheduled on June 14, 2011.
- The focus of this request is maintaining a one-story accessory structure, part of which is located in the site's 3' rear yard setback on a site that is developed with a single family home.
- The Dallas Development Code allows the Board of Adjustment to consider this (or any) proposed structure encroachment in a rear yard setback on CD No. 1 zoned lot either by an application for a variance to the rear yard setback regulations with a standard largely based on the demonstration of property hardship, or by an application for a special exception to the rear yard setback regulations to preserve an existing tree with a standard largely based on compatibility, property values, and

whether a tree located on a site that is worthy of preservation - not property hardship. The applicant in this case had originally made only an application for a *special exception* to the rear yard setback regulations for tree preservation but added a variance to the rear yard setback regulations as a result of testimony at the public hearing in March.

- This special exception request is made to maintain an approximately 60 square foot portion of an approximately 600 square foot accessory structure in the site's 3' rear yard setback. (Although staff suggested that the applicant denote the location, size and species of the tree or trees that she feels is worthy of preservation and in turn precludes her from locating an accessory structure in compliance with rear yard setbacks, no such denotation was made on any submitted plan). The site plan shows what is assumed to be the accessory structure on the property that is located on the rear property line or 3' into the required 3' setback – no tree is denoted on the site plan.
- The City's Chief Arborist has stated among other things that the trees that are the nature of this request (a relatively young Italian cypress and a plum tree approximately 3" caliper) within proximity to the structure in question are not worthy of preservation for a building relocation from setback requirements.
- The applicant has the burden of proof in establishing the following related to the front yard special exception request:
 1. Whether the requested special exception is compatible with the character of the neighborhood.
 2. Whether the value of the surrounding properties will be adversely affected.
 3. Whether the tree is worthy of preservation.
- If the Board were to grant the rear yard special exception request of 3', imposing a condition whereby the applicant must comply with the submitted site plan, the structure in the rear yard setback would be limited to that what is shown on this plan – which in this case is a portion of an accessory structure located on the rear property line (or as much as 3' into the site's 3' rear yard setback).
- If the Board chooses to grant this request, it should be noted that the submitted site plan does not denote the location, size or species of a tree (or trees) that the applicant contends is the tree (or trees) that is worthy of preservation, and in turn a tree that precludes her from relocating the accessory structure out of the required rear yard setback. If the Board feels that this type of documentation is relevant to the approval of this type of tree preservation application, they may request that the applicant amend the submitted site plan by adding this information on the site plan.

STAFF ANALYSIS (related to variance):

- The Board of Adjustment should determine if the applicant complied with the Dallas Development Code provision related to the posting of the notification sign on the subject site with the findings that:
 - 1) The Dallas Development Code states that “the applicant shall post the required number of notification signs on the property within 14 days after an application is filed. The signs must be legible and remain posted until a final decision is made on the application. If the city plan commission, landmark commission, or board of adjustment determines that the applicant has failed to comply with the provisions

of this section, it shall take no action on the application other than to postpone the public hearing for at least four weeks, or deny the applicant's request, with or without prejudice. If the hearing is postponed, the required notification signs must be posted within 24 hours after the case is postponed and comply with all other requirements of this section."

2) The Building Inspection Senior Plans Examiner/Development Code Specialist emailed the Board Administrator at 3:37 p.m. on May 18th the following: "Ashley Ness was just in and purchased her replacement notification sign at 3:27 pm. She acknowledged that she was late."

- If the Board of Adjustment were to determine that the applicant did not comply with the Dallas Development Code provision related to the posting of the notification sign, it shall take no action on the application other than to postpone the public hearing for at least four weeks, or deny the applicant's request, with or without prejudice.
- If the Board of Adjustment were to determine that the applicant did comply with the Dallas Development Code provision related to the posting of the notification sign on the site, the Board could consider the variance request as scheduled on June 14, 2011.
- The focus of this request is maintaining a one-story accessory structure, part of which is located in the site's 3' rear yard setback on a site that is developed with a single family home.
- The Dallas Development Code allows the Board of Adjustment to consider this (or any) proposed structure encroachment in a rear yard setback on CD No. 1 zoned lot either by an application for a variance to the rear yard setback regulations with a standard largely based on the demonstration of property hardship, or by an application for a special exception to the rear yard setback regulations to preserve an existing tree with a standard largely based on compatibility, property values, and whether a tree located on a site is worthy of preservation - not property hardship. The applicant in this case had originally only made an application for a *special exception* to the rear yard setback regulations for tree preservation but added a variance to the rear yard setback regulations as a result of testimony at the public hearing in March.
- This variance request is made to maintain an approximately 60 square foot portion of an approximately 600 square foot accessory structure in the site's 3' rear yard setback. The site plan shows what is assumed to be the accessory structure on the property that is located on the rear property line or 3' into the required 3' setback.
- DCAD records indicate that the site is developed with a single family home in "good" condition built in 1923 with 1,530 square feet of living area.
- The subject site is flat, rectangular in shape (50' x 150'), and (according to the application) is 0.17 acres (or 7,405 square feet) in area. The site is zoned CD No. 1 where lots in this subarea of the zoning district had been zoned R-7.5(A) until the creation of the CD in 1988.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the rear 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 CD No. 1 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 CD No. 1 zoning classification.
- If the Board were to grant the variance request, subject to the submitted site plan, the structure in the rear yard setback would be limited to what is shown on this document– which in this case is a structure located on the rear property line or 3' into the required 3' rear yard setback

BOARD OF ADJUSTMENT ACTION: MARCH 15, 2011

APPEARING IN FAVOR: Ashley Ness, 707 N. Windomere Ave., Dallas, TX
 Larry Ness, 2011 Cedar Springs Rd., Dallas, TX
 Stephanie Wooley, 1701 N. Collins Blvd., Ste 1100, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Harris

I move that the Board of Adjustment, in Appeal No. **BDA 101-028**, on application Ashley Ness, **grant** the request of this applicant for a special exception of 3 feet to the rear yard setback regulation to preserve an existing tree, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that this special exception is compatible with the character of the surrounding neighborhood, the value of surrounding properties will not be adversely affected, and the tree is worthy of preservation. 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: Richmond
AYES: 2 – Richmond, Harris
NAYS: 3 - Schweitzer, Housel, Goins
MOTION FAILED: 2– 3

MOTION #2: Schweitzer

I move that the Board of Adjustment in Appeal No. **BDA 101-028**, hold this matter under advisement until **April 19, 2011**.

SECONDED: Richmond
AYES: 4 – Richmond, Schweitzer, Harris, Housel,
NAYS: 1 - Goins
MOTION PASSED: 4– 1

BOARD OF ADJUSTMENT ACTION: MAY 17, 2011

APPEARING IN FAVOR: Ashley Ness, 707 N. Windomere Ave., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Hounsel**

Having fully reviewed the evidence in Appeal No. **BDA 101-028**, on application of Ashley Ness, and heard all the testimony and facts relating to the posting of the notification of the sign, I find that the required signs were not posted properly and I move that the Board of Adjustment in Appeal No. **BDA 101-028**, hold this matter under advisement until **June 14, 2011**.

SECONDED: **Schweitzer**

AYES: 5 – Richmond, Schweitzer, Hounsel, Goins, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: JUNE 14, 2011

APPEARING IN FAVOR: Craig Shields, 1701 N Collins Blvd., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Schweitzer**

Having fully reviewed the evidence in Appeal No. **BDA 101-028**, on application of Ashley Ness, and heard all the testimony and facts relating to the posting of the notification of the sign, I find that the required signs were not posted properly and I move that the Board of Adjustment in Appeal No. **BDA 101-028**, hold this matter under advisement until **August 16, 2011**.

SECONDED: **Hounsel**

AYES: 5 – Richmond, Schweitzer, Hounsel, Goins, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 101-046

BUILDING OFFICIAL’S REPORT:

Application of William Milligan of Merriman Associates Architects for a special exception to the off-street parking regulations at 6150 Sherry Lane. This property is more fully described as Lot 6 in City Block 1/ 5624 and is zoned PD-314 (Tract 6) which requires

parking to be provided. The applicant proposes to construct a structure for office use and provide 13 of the required 17 parking spaces which will require a special exception of 4 spaces.

LOCATION: 6150 Sherry Lane

APPLICANT: William Milligan of Merriman Associates Architects

June 14, 2011 Public Hearing Notes:

- The applicant submitted photographs of the site and surrounding area to the board at the public hearing.

REQUEST:

- A special exception to the off-street parking regulations of 4 parking spaces (or a 24 percent reduction of the 17 off-street parking spaces that are required) is requested in conjunction with constructing and maintaining a two-story, approximately 5,700 square foot “office” use (Bandera Ventures Headquarters) on a site that is currently undeveloped. The applicant proposes to provide 13 (or 76 percent) of the 17 off-street parking spaces that are required for the proposed approximately 5,700 square foot office use structure.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The special exception of 4 spaces shall automatically and immediately terminate when and if the office use is changed or discontinued.

Rationale:

- The Sustainable Development Department Project Engineer has no objections to this request.
- The applicant has substantiated how the parking demand generated by the proposed office 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. Five head-in parking spaces are provided immediately adjacent to the subject site which the City does not recognize as off-street parking spaces in that they are located and/or back into public right-of-way.

STANDARD FOR A SPECIAL EXCEPTION TO THE OFF-STREET PARKING REGULATIONS:

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds,

after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.

- 2) In determining whether to grant a special exception, the board shall consider the following factors:
 - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
 - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
 - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
 - (E) The availability of public transit and the likelihood of its use.
 - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
 - (A) establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
 - (B) impose restrictions on access to or from the subject property; or
 - (C) impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
 - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
 - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

GENERAL FACTS:

- The Dallas Development Code requires that office use provide 1 space per 333 square feet of floor area. The application requests a reduction of 4 spaces to the 17 spaces that would be required to that what is shown on the submitted site plan – a 5,723 square foot “office” use structure.
The applicant proposes to provide 13 (or 76 percent) of the required 17 off-street parking spaces in conjunction with the site being developed with the approximately 5,700 square foot “office” use/structure.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 314 (Planned Development)
North: PD No. 314 (Planned Development)
South: PD No. 314 (Planned Development)
East: PD No. 314 (Planned Development)
West: PD No. 314 (Planned Development)

Land Use:

The subject site is undeveloped. The areas to the north, east, south, and west appear to be developed with a mix of office and retail uses.

Zoning/BDA History:

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. BDA 056-052, Property at 6147 Sherry Lane (the property immediately north of the subject site) | <p>On December 12, 2005, the Board of Adjustment Panel C granted a request for a variance to the off-street parking regulations of 18 spaces (or 56 percent of the total 32 parking spaces required) and a special exception to the landscape regulations. The board imposed compliance with the submitted revised site plan as a condition to these requests. The case report stated that the requests were made in conjunction with constructing and maintaining a 5,600 square foot two-story retail use (Dee & Hattie’s Specialty Cleaners) and providing 14 of the required 28 off-street parking spaces and not fully providing required landscaping on the site.</p> |
|--|---|

Timeline:

- March 29, 2011: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- May 18, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- May 19, 2011: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the May 26th deadline to submit additional evidence for staff to factor into their analysis; and the June 3rd 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 31, 2011: 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 Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorneys to the Board.
- June 2, 2011: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Has no objections.”

STAFF ANALYSIS:

- This request focuses on constructing and maintaining a two-story, approximately 5,700 square foot “office” use (Bandera Ventures Headquarters) on an undeveloped site. The applicant proposes to provide 13 (or 76 percent) of the required 17 off-street parking spaces.
- The applicant states on his application that 5 head-in parking spaces are provided on the site which the City does not recognize spaces that can be counted towards the total off-street parking spaces provided for the site.
- The Sustainable Development and Construction Department Project Engineer has submitted a review comment sheet marked “Has no objections.”
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the proposed use does not warrant the number of off-street parking spaces required, and
 - The special exception of 4 spaces (or 24 percent reduction of the required off-street parking spaces) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

- If the Board were to grant this request, and impose the condition that the special exception of 4 spaces shall automatically and immediately terminate if and when the office use is changed or discontinued, the applicant would be allowed to construct and maintain the proposed approximately 5,700 square foot office structure/use and provide only 13 of the 17 required parking spaces.

BOARD OF ADJUSTMENT ACTION: JUNE 14, 2011

APPEARING IN FAVOR: William Milligan, 300 N. Field St., Dallas, TX
 Thomas Leiser, 3012 Hanover, St., Dallas, TX
 Pryor Blackwell, 8115 Preston Rd., Ste 415, Dallas, TX

APPEARING IN OPPOSITION: Bill Willingham, 8525 Ferndalle Rd, Ste 204, Dallas, TX
 David Banta, 6140 Sherry Lane, Dallas, TX

MOTION #1: Schweitzer

I move that the Board of Adjustment, in Appeal No. **BDA 101-046**, on application of William Milligan, **deny** the special exception to the off-street parking regulations requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that the use warrants the number of off-street parking spaces required, and the special exception would create a traffic hazard and increase traffic congestion on adjacent and nearby streets.

SECONDED: Goins

AYES: 2 – Schweitzer, Goins,

NAYS: 3 - Richmond, Hounsel, Jackson

MOTION FAILED: 2– 3

MOTION #2: Hounsel

I move that the Board of Adjustment, in Appeal No. **BDA 101-046**, on application of William Milligan, **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development Code by 4 parking spaces, because our evaluation of the property and the testimony shows that the parking demand generated by the proposed use on the site does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard nor increase traffic congestion on adjacent and nearby streets. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception shall automatically and immediately terminate if and when the office use is changed or discontinued.

SECONDED: Jackson

AYES: 5 – Richmond, Schweitzer, Hounsel, Goins, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 101-053(J)

BUILDING OFFICIAL’S REPORT:

Application of Baldwin Associates for a variance to the front yard setback regulations at 2828 Lemmon Avenue East. This property is more fully described as Lot 4D in City Block 1/634 and is zoned PD-193, O-2, which requires a front yard setback of 20 feet. The applicant proposes to construct and maintain a structure and provide a 16-foot 10-inch front yard setback which will require a variance of 3 feet 2 inches.

LOCATION: 2828 Lemmon Avenue East

APPLICANT: Baldwin Associates

REQUEST:

- A variance to the front yard setback regulations of 3’2” is requested in conjunction with constructing multifamily structure and providing a 16’ 10” front yard setback along Oak Grove Avenue where a 20’ front yard setback is required.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The applicant has substantiated how the variance is necessary to permit development of the site which is different from other lots by its irregular shape due to a partial street easement on Oak Grove Avenue.

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.

GENERAL FACTS:

- The minimum front yard setback for other permitted structures (other than single family or residential development tracks) for lots zoned an O-2 Office Subdistrict within PD 193 is 20 feet.
- The subject site is a lot that has street frontage on four sides.
- A site plan has been submitted showing the proposed multifamily structure providing a 16’10” setback and encroaching 3’2” into the 20’ required front yard setback on a portion of the Oak Grove Avenue site near the intersection with Lemmon Avenue West.
- The subject site appears to be flat, irregular in shape, and is approximately 3.06 acres in area.
- The applicant forwarded additional information beyond what was submitted with the original application (see Attachment A).

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 O-2 (Planned Development – Office subdistrict)
North: PD No. 201, PD No. 305, and PD No. 375 (Planned Development)
South: PD No. 193 O-2 (Planned Development – Office subdistrict) and PD No. 193 MF-2 (Planned Development – Multifamily subdistrict)
East: PD No. 375 (Planned Development)
West: PD No. 193 O-2 (Planned Development – Office subdistrict) and PD No. 193 PDS 6 (Planned Development)

Land Use:

The subject site is currently developed with a parking lot and a vacant hospital. The areas to the north and west appear to be developed with commercial/office uses; and the area to the south is developed with a hospital use. The area to the east is under construction. The area to the northeast is developed with mixed uses (commercial and residential).

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:

- April 21, 2011: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- May 18, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- May 25, 2011: The Board Senior Planner contacted the applicant and discussed the following information:
- the public hearing date and panel that will consider the application; and the June 3rd 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 31, 2011: 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 Board of Adjustment Chief Planner, the Board Senior Planner, the Board of Adjustment Senior Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorneys to the Board.
- June 2, 2011: The Sustainable Development Department Project Engineer submitted a review comment sheet marked “Has no objections if certain conditions are met” with the following comments: “Comply with all C.O.D visibility requirements.”
- June 3, 2011: The applicant submitted additional information (Attachment A).

STAFF ANALYSIS:

- The request focuses on constructing a multifamily structure and providing a 16’ 10” front yard setback along Oak Grove Avenue where a 20’ front yard setback is required.
- The subject site appears to be flat, irregular in shape, and is approximately 3.06 acres in area.
- A 5’ street easement exists on a portion of the request site on the Oak Grove Avenue frontage, near Lemmon Avenue West. Front yard setbacks are measured from the property line or right-of-way, whichever creates the greater setback. In the case of the request site, the setback line ranges from 20’ from the property line and 25’ from the property line where the street easement exists.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the Oak Grove Avenue front yard setback regulation 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 O-2 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 PD 193 O-2 zoning classification.

If the Board were to grant the variance request, subject to the submitted site plan, the structure in the front yard setback would be limited to what is shown on this document.

BOARD OF ADJUSTMENT ACTION: JUNE 14, 2011

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 101-053**, hold this matter under advisement until **August 16, 2011**.

SECONDED: **Hounsel**

AYES: 5 – Richmond, Schweitzer, Hounsel, Goins, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 101-057

BUILDING OFFICIAL’S REPORT:

Application of GHA Architects/Kristy Tornga for a special exception of the sign regulations at 7815 LBJ Freeway aka 7909 LBJ Freeway. This property is more fully described as Lot 2C in City Block C/7497 and is zoned MU-1 which requires detached expressway premise signs with a setback greater than 25 feet to have a maximum effective area of 400 square feet. The applicant proposes to construct and maintain a detached expressway premise sign with a minimum 25 foot setback and an effective area of 440 square feet which will require a special exception of an additional 10% of the effective area to the sign regulations.

LOCATION: 7815 LBJ Freeway aka 7909 LBJ Freeway

APPLICANT: GHA Architects/Kristy Tornga

June 14, 2011 Public Hearing Notes:

- The applicant submitted additional written documents to the board at the public hearing.

REQUEST:

- A special exception to the sign regulations of 40 square feet (or 10 percent) is requested in conjunction with erecting and maintaining a detached premise expressway sign for a “restaurant with drive-through service” use (In-N-Out Burger) with an effective area of 440 square feet (25’ 6” x 17’ 3”). The site is currently under development as a restaurant with drive-in or drive through service use (In-N-Out Burger).

STAFF RECOMMENDATION:

Denial

Rationale:

- The applicant had not substantiated how strict compliance with the 400 square foot effective area provision of the sign regulations would result substantial financial hardship or inequity to the applicant without corresponding benefit to the city and citizens in accomplishing the objectives of this article.

STANDARD FOR A SPECIAL EXCEPTION TO THE SIGN REGULATIONS FOR THE EFFECTIVE AREA OF A DETACHED PREMISE SIGN:

The Board of Adjustment may, in specific cases and subject to appropriate conditions, authorize a special exception to the sign regulations to permit a detached premise sign of up to 10 percent of the effective area and height of this article when the board has made a special finding from the evidence presented that strict compliance with this article would result in substantial financial hardship or inequity to the applicant without corresponding benefit to the city and citizens in accomplishing the objectives of this article.

GENERAL FACTS:

- The Dallas Development Code states that an expressway sign with a minimum setback of 25’ may have a maximum height of 40’ and a maximum effective area of 400 square feet.
- A site plan has been submitted indicating a “new pole sign” located approximately 60’ from the site’s LBJ Freeway front property line. An elevation has been submitted indicating the height of the “In-N-Out Burger” sign to be 50’ from grade, 25’ 6” long and 17’ 3” high. The elevation denotes the effective area of the sign is 439.9

square feet or 10 percent greater than the effective area allowed by the code at 400 square feet.

BACKGROUND INFORMATION:

Zoning:

Site: MU-1 (Mixed Use)
North: MU-1 (Mixed Use)
South: MU-1 (Mixed Use)
East: MU-1 (Mixed Use)
West: MU-1 (Mixed Use)

Land Use:

The site is currently under development as a restaurant with drive-in or drive-through service use (In-N-Out Burger). The areas to the north, east, and west are developed with retail uses; and the area to the south is developed with a freeway (LBJ Freeway).

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:

- April 25, 2011: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 18, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- May 19, 2011: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the May 26th deadline to submit additional evidence for staff to factor into their analysis; and the June 3rd 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 31, 2011: 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 Board

of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorneys to the Board.

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

STAFF ANALYSIS:

- This focus of this request is to erect and maintain a detached “restaurant with drive-through service” premise expressway sign (In-N-Out Burger) with an effective area of 440 square feet (25’ 6” x 17’ 3”) – a sign that would be 10 percent larger than the 400 square feet that is permitted by code.
- The applicant has the burden of proof in establishing the following:
 - That strict compliance with the requirement of the sign regulations (where in this case, the site would be permitted to erect and maintain a sign with an effective area of 400 square feet) will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.
- Granting this special exception with a condition imposed that the applicant complies with the submitted site plan and elevation would allow the sign to be erected and maintained on the site in the location and of the dimensions shown on these documents – a sign with an effective area that is 10 percent or 40 square feet larger than what is permitted by code.

BOARD OF ADJUSTMENT ACTION: JUNE 14, 2011

APPEARING IN FAVOR: Shinpei Kuo, 1410 Dallas Pkwy, Ste 100, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Jackson**

I move that the Board of Adjustment, in Appeal No. **BDA 101-057** on application of Kristy Tornga of GHA Architects, **grant** the 40 square foot special exception to the effective area requirement for detached premise signs, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that strict compliance with the provisions of Article VII of the Dallas Development Code will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the City of Dallas and its citizens in accomplishing the objectives of that article. I further move that the following condition be imposed to further the purpose and intent of Article VII of the Dallas Development Code:

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

SECONDED: Goins

AYES: 4 – Richmond, Schweitzer, Goins, Jackson

NAYS: 1 – Hounsel

MOTION PASSED: 4–1

FILE NUMBER: BDA 101-062(J)

BUILDING OFFICIAL’S REPORT:

Application of Leigh Ann Everett represented by Roger Albright for a special exception to the parking regulations at 8749 Southwestern Boulevard. This property is more fully described as Lot 1 in City Block D/5414 and is zoned MF-2(A), which requires parking to be provided. The applicant proposes to construct residential structures for multifamily use and provide 580 of the required 628 parking spaces which will require a special exception of 48 spaces (8% reduction).

LOCATION: 8749 Southwestern Boulevard

APPLICANT: Leigh Ann Everett
Represented by Roger Albright

REQUEST:

- A special exception to the off-street parking regulations of 48 parking spaces (or an 8 percent reduction of the 628 off-street parking spaces that are required) is requested in conjunction with constructing residential structures for a multifamily use containing 322 dwelling units with a 2,400 square foot accessory community center and providing 580 (or 92 percent) of the 628 required off-street parking spaces.

STAFF RECOMMENDATION:

- Denial

Rationale:

- The Sustainable Development Department Project Engineer submitted a review comment sheet stating “Recommends that this be denied (see comments below)” with the following comments: “inadequate information. Need parking study for review from a traffic registered professional engineer. No street parking is available at this site.”

STANDARD FOR A SPECIAL EXCEPTION TO THE OFF-STREET PARKING REGULATIONS:

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds,

after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.

- 2) In determining whether to grant a special exception, the board shall consider the following factors:
 - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
 - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
 - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
 - (E) The availability of public transit and the likelihood of its use.
 - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
 - (A) establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
 - (B) impose restrictions on access to or from the subject property; or
 - (C) impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
 - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
 - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

GENERAL FACTS:

- The Dallas Development Code requires the following off-street parking requirement:
 - Multifamily use: 1 space for 500 square feet of floor area. Not less than one space nor more than two and one half spaces are required for each dwelling unit in a multifamily structure 36 feet or less in height.
 - Accessory community center (private) use: 1 space for 100 square feet of floor area.
- The applicant proposes to provide 580 (or 92 percent) of the required 628 off-street parking spaces in conjunction with redevelopment of the request site with multifamily uses.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A).

BACKGROUND INFORMATION:

Zoning:

- Site: MF-2(A) (Multifamily)
- North: PD 742 (Planned Development District)
- South: MF-1(A) (Multifamily)
- East: MF-2(A) (Multifamily)
- West: MF-2(A) (Multifamily)

Land Use:

The subject site is currently developed with a multifamily use. The area to the north is under construction with retail and restaurant uses; the areas to the east, south, and west are developed with multifamily uses. A library is located at the north corner of Skillman Street and Southwestern Boulevard.

Zoning/BDA History:

BDA056-104
6061 Village Glen

On March 14, 2006, the Board of Adjustment approved a variance of 1'6" to the height regulations and a special exception to the parking regulations of 235 spaces or 24% for a proposed multifamily development requiring 970 off-street parking spaces.

BDA978-161
8603 Southwestern Boulevard

On April 28, 1998, the Board of Adjustment approved a variance of 11' to the height regulations, a special exception to the tree mitigation regulations, and a special exception of 101 spaces or 13% for a proposed multifamily development requiring 751

off-street parking spaces.

Timeline:

- April 29, 2011: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- May 18, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- May 25, 2011: The Board Senior Planner contacted the applicant and discussed the following information:
- the public hearing date and panel that will consider the application; and the June 3rd 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 31, 2011: 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 Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorneys to the Board.
- June 2, 2011: The Sustainable Development Department Project Engineer submitted a review comment sheet marked “Recommends denial (see comments below).”
- June 3, 2011: The applicant submitted additional information (Attachment A).

STAFF ANALYSIS:

- The proposed approximately 301,709 square foot structure for multifamily uses with an approximately 2,400 square foot accessory community center requires 628 off-street parking spaces of which the applicant proposes to provide 580 at 1 space per 500 square feet of floor area for the multifamily use and 1 space per 100 square feet of floor area for the accessory community center (private).
- On June 2, 2011, Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Recommends that this be denied (see comments below)” with the following comments: “inadequate information. Need parking study for review from a traffic registered professional engineer. No street parking is available at this site.”
- The applicant has the burden of proof in establishing the following:

- The parking demand generated by the existing and proposed uses does not warrant the number of off-street parking spaces required, and
- The special exception of 48 spaces (or 8 percent reduction of the required off-street parking spaces) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

If the Board were to grant this request, subject to the condition that the special exception of 48 spaces shall automatically and immediately terminate if and when the multifamily use are changed or discontinued, the applicant would be allowed to redevelop the site with multifamily use and provide only 580 of the 628 required off-street parking spaces.

BOARD OF ADJUSTMENT ACTION: JUNE 14, 2011

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Goins

I move that the Board of Adjustment, in Appeal No. **BDA 101-062**, on application of Leigh Ann Everett represented by Roger Albright, **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development Code by 48 parking spaces, because our evaluation of the property and the testimony shows that the parking demand generated by the proposed use on the site does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard nor increase traffic congestion on adjacent and nearby streets. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception shall automatically and immediately terminate if and when the multifamily use is changed or discontinued.

SECONDED: Schweitzer

AYES: 5 – Richmond, Schweitzer, Hounsel, Goins, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION: Goins

I move to adjourn this meeting.

SECOND: Jackson

AYES: 5– Richmond, Schweitzer, Hounsel, Goins, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

2:16 P.M. - Board Meeting adjourned for **June 14, 2011.**

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.