

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM
WEDNESDAY, MARCH 16, 2011**

MEMBERS PRESENT AT BRIEFING: Darlene Reynolds, Vice Chair, David Wilson, regular member, Paula Leone, regular member, Robert Agnich, alternate member and Matt Murrah, alternate member

MEMBERS ABSENT FROM BRIEFING: Sam Gillespie, Panel Vice Chair, Christian Chernock, regular member

MEMBERS PRESENT AT HEARING: Darlene Reynolds, Vice Chair, David Wilson, regular member, Paula Leone, regular member, Robert Agnich, alternate member and Matt Murrah, alternate member

MEMBERS ABSENT FROM HEARING: Sam Gillespie, Panel Vice Chair, Christian Chernock, regular member

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Bert Vandenberg, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Donnie Moore, Chief Planner, and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Bert Vandenberg, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Donnie Moore, Chief Planner, and Trena Law, Board Secretary

11:03 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **March 16, 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 B February 16, 2011 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: MARCH 16, 2011

MOTION: Leone

I move approval of the **Wednesday, February 16, 2011** Board of Adjustment Public Hearing minutes.

SECONDED: Agnich

AYES: 5– Reynolds, Wilson, Leone, Agnich, Murrah

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: BDA 101-116

REQUEST: To reimburse the filing fee to be submitted in conjunction with requests for a variance to the lot coverage requirements, and special exceptions to the off-street parking and visual obstruction regulations – BDA101-116

LOCATION: 813 Ryan Road

APPLICANT: E's Haven Academy
Represented by Sharon E. Harris

STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:

The Dallas Development Code states that the board may waive the filing fee for a board of adjustment application if the board finds that payment of the fee would result in substantial financial hardship to the applicant.

GENERAL FACTS:

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waivers/reimbursements:

- The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.
- The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board's miscellaneous docket for predetermination.
- If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.
- In making this determination, the board may require the production of financial documents.

Timeline:

Jan. 28 & Feb. 7, 2011: The applicant submitted a letter requesting a reimbursement of the filing fee (which according this letter is \$3,375.00) submitted in conjunction with BDA101-116 along with additional related documentation (see Attachment A).

January 28, 2011: The request was randomly assigned to Board of Adjustment Panel B.

February 14, 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.

BOARD OF ADJUSTMENT ACTION: MARCH 16, 2011

APPEARING IN FAVOR: Sharon Harris, 738 Ryan Road, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Wilson**

I move that the Board of Adjustment in Appeal No. **BDA 101-116** grant the request to **reimburse** the filing fee to be submitted in conjunction with requests for a variance to the lot coverage requirements, and special exceptions to the off-street parking and visual obstruction regulations.

SECONDED: **Agnich**

AYES: 5– Reynolds, Wilson, Leone, Agnich, Murrah

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

FILE NUMBER: BDA 101-024

BUILDING OFFICIAL’S REPORT:

Application of Terry Cahill, represented by Robert Baldwin, for a special exception to the fence height regulations at 9836 Hathaway Street. This property is more fully described as Lot 5 in City Block 5608 and is zoned R-1ac(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 6-foot 6-inch high fence which will require a special exception of 2 feet 6 inches.

LOCATION: 9836 Hathaway Street

APPLICANT: Terry Cahill
Represented by Robert Baldwin

REQUEST:

- A special exception to the fence height regulations of 2’ 6” is requested in conjunction with constructing and maintaining a 5’ high open picket fence with approximately 5’ 2” high brick columns, and a 6’ 6” high arched open picket entry gate/entry gate columns in the site’s 40’ front yard setback on a site currently developed with a single family home.

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 fence may not exceed 4’ above grade when located in the required front yard in all residential districts except multifamily districts.
The applicant has submitted a site plan/elevation document indicating a fence/column/gate proposal in the site’s front yard setback that would reach a maximum height of 6’ 6”.
- The following additional information was gleaned from the submitted site plan:

- The proposal is shown to be approximately 140' in length parallel to the street and approximately 40' in length perpendicular to the street on the north and south sides of the site in the front yard setback.
- The fence is shown to be located approximately on the property line and approximately 15' from the pavement line.
- The gate is shown to be located approximately 5' from the property line and approximately 20' from the pavement line.
- The proposal would be located on the site where no single family home would have frontage, since the home immediately west of the site fronts northward onto Edlen Drive.
- The Board Administrator conducted a field visit of the site and surrounding area along Hathaway Street (generally 500 feet north and south of the site) and noted the no other fences that appeared to be located in a front yard setback and higher than 4' in height.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

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 B.

February 14, 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.

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 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."

STAFF ANALYSIS:

- The request focuses on constructing and maintaining a 5' high open picket fence with approximately 5' 2" high brick columns, and a 6' 6" high arched open picket entry gate/entry gate columns in the site's 40' front yard setback on a site currently developed with a single family home.
- A site plan/elevation has been submitted indicating a fence/column/gate proposal that reaches a maximum height of 6' 6". The site plan indicates that the proposal is about 140' in length parallel to the street, approximately 40' in length perpendicular to the street on the north and south sides of the site in the front yard setback, with the fence approximately on the property line or about 15' from the pavement line.
- The proposal would be located on the site where no single family home would have frontage, since the home immediately west of the site fronts northward onto Edlen Drive.
- The Board Administrator conducted a field visit of the site and surrounding area along Hathaway Street (generally 500 feet north and south of the site) and noted the no other fences that appeared to be located in a front yard setback and higher than 4' in height.
- As of March 7, 2011, two letters had been submitted to staff in support of the request and no letters in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal that would reach 6' 6" in height) will not adversely affect neighboring property.
- Granting this special exception of 2' 6" with a condition imposed that the applicant complies with the submitted site plan/elevation would assure that the proposal would be constructed and maintained in the location and of the heights and materials as shown on this document.

BOARD OF ADJUSTMENT ACTION: MARCH 16, 2011

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Agnich**

I move that the Board of Adjustment grant application **BDA 101-024** 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/elevation is required.

SECONDED: **Wilson**

AYES: 5– Reynolds, Wilson, Leone, Agnich, Murrah

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 101-029

BUILDING OFFICIAL’S REPORT:

Application of Mike Farmer to restore a nonconforming use at 6625 C. F. Hawn Freeway. This property is more fully described as Lots 1, 12, 13, 14 and 15 in City Block 5/6252 and is zoned RR and PD-533 which limits the legal uses in a zoning district. The applicant proposes to restore a nonconforming vehicle display, sales and service use which will require a special exception.

LOCATION: 6625 C. F. Hawn Freeway

APPLICANT: Mike Farmer

REQUEST:

- A special exception to reinstate nonconforming use rights is requested in conjunction with obtaining a building permit for a “vehicle display, sales, and service” use on the subject site even though this nonconforming use was discontinued for a period of six months or more.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to operate a nonconforming use if that use is discontinued for six months or more since

the basis for this type of appeal is based on whether the board determines that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

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

GENERAL FACTS:

- The Dallas Development Code defines “nonconforming use” as “a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time.

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

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

- The subject site is developed with one use (vehicle display, sales, and service) that is bisected by a zoning line. The southern “half” is zoned RR (Regional Retail) - a zoning district that allows the “vehicle display, sales, and service” use by right; and the northern “half” of the site is zoned PD No. 533 (Planned Development) – a zoning district that do not permit does not permit “vehicle display, sales, and service” use without an SUP (Specific Use Permit) hence the nonconforming aspect of the vehicle display, sales, and service use on this northern “half” of the subject site.
- The nonconforming “vehicle display, sales, and service” use on the northern part of the site would be subject to the possibility of an application that may be brought to the Board of Adjustment requesting that the board establish a compliance date as is the case with any other nonconforming use in the city.
- The nonconforming “vehicle display, sales, and service” use on the site would be subject to the possibility of an application that may be brought to the Board of Adjustment requesting that the board establish a compliance date as is the case
- Given provisions set forth in the Dallas Development Code, the “vehicle display, sales, and service” use can obtain “conforming use” status on its northern “half” zoned PD No. 533 upon attaining a change from the current zoning district (in this case, an SUP) from the City Council.
- The owner of the site could develop the northern “half” of the site zoned PD No. 533 to any use that is permitted by right in this zoning classification.

- The Board Administrator has informed the applicant of the provisions set forth in the Dallas Development Code pertaining to nonconforming uses.
- Building Inspection has forwarded the following information about this request:
 - i. the “vehicle display, sales, and service” use is nonconforming on the northern “half” of the site zoned PD No. 533 because this use is only permitted in this zoning district with an SUP (Specific Use Permit) which this property does not have.
 - ii. the nonconforming “vehicle display, sales, and service” use was discontinued in October/November 2009.
 - iii. The nonconforming “vehicle display, sales, and service” use became nonconforming on February 10, 1999 the date in which PD No. 533 was created.
 - iv. The current zoning on which the property is located: PD No. 533 (Subdistrict 4).
 - v. The previous zoning on the property on which the use is located: RR (did not require SUP for use).
- Building Inspection has stated that these types of special exception request typically originate from when an owner/officer related to the property apply for a CO and Building Inspection sees that the use is a nonconforming use. Before a CO can be issued, the City requires the owner/officer related to the property to submit affidavits stating that the use was not abandoned for any period in excess of 6 months since the issuance of the last valid CO. The owners/officers need to submit documents and records indicating continuous uninterrupted use of the nonconforming use, which in this case, they could not.
- According to DCAD records, the property is developed with a “sales office” built in 1976 that is 936 square feet in area.
- The applicant submitted additional information to staff beyond what was submitted with his original application (see Attachment A). According to “table of contents,” this information included the following:
 1. timeline;
 2. affidavits;
 3. listing agreements;
 4. marketing materials;
 5. activity reports and potential buyers;
 6. leases, letter of intents and contract of sale;
 7. certification of vital records;
 8. former emails;
 9. board of adjustment public hearing minutes;
 10. aerials;
 11. building inspection application;
 12. fire safety registration.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 533 and RR (Planned Development and Regional Retail)
North: PD No. 533 (Planned Development)

South: R-7.5(A) (Single family 7,500 square feet)
East: PD No. 533 (Planned Development)
West: R-7.5(A) (Single family 7,500 square feet)

Land Use:

The subject site is developed with what appears to be vacant commercial structures. The areas to the north and east are a freeway (US Highway 175); and the areas to the south and west are developed with what appears to be single family uses.

Zoning/BDA History:

1. BDA090-093 978-116, Property at 826, 830 and 834 Fern Avenue and 825 Rayenell Avenue (the subject site) er 15, 2010, the Board of Adjustment Panel B considered an application of the City of Dallas for an interpretation of the intent of the Zoning District Map. The board moved to follow the staff's recommendation that a reasonable interpretation of the study area map attached to the 1989 ordinance is that the intention of the broad, hand-drawn line used to indicate the zoning boundary was to leave zoning south of the line as R-7.5(A), but to change the zoning of property on and under the line and north of the line to RR Regional Retail retaining the D-1 Dry Overlay.

Timeline:

- January 20, 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 9, 2011: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- February 9, 2011: The Board Administrator contacted the applicant and shared the following information via email:
- an attachment that provided the public hearing date and panel that will consider the application; the 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;

- the section from the Dallas Development Code pertaining to nonconforming uses and structures; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

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.

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

March 4, 2011: The applicant submitted additional information to staff on this application (see Attachment A).

STAFF ANALYSIS:

- This special exception request is made to restore nonconforming use rights for a nonconforming “vehicle display, sales, and service” use that has been discontinued for six months or more.
- The applicant has the burden of proof in establishing the following related to the special exception request:
 - There was a clear intent not to abandon the nonconforming “vehicle display, sales, and service” use on the subject site even though the use was discontinued for six months or more.
- Granting this request would reinstate/restore the nonconforming use rights that were lost when the “vehicle display, sales, and service” use was vacant for a period of six (6) months or more. Granting this request would restore the “vehicle display, sales, and service” use as legal nonconforming use but not as a legal *conforming* use. The applicant would have to make application for a change in zoning and obtain approval from City Council in order to make a “vehicle display, sales, and service” use on the site a legal conforming use.
- If restored/reinstated, the nonconforming use would be subject to compliance with use regulations of the Dallas Development Code by the Board of Adjustment as any other nonconforming use in the city. (The applicant has been advised by staff of Section 51A-4.704 which is the provision in the Dallas Development Code pertaining to “Nonconforming Uses and Structures”).

BOARD OF ADJUSTMENT ACTION: MARCH 16, 2011

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Agnich

I move that the Board of Adjustment grant application **BDA 101-029** 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.

SECONDED: Wilson

AYES: 5– Reynolds, Wilson, Leone, Agnich, Murrah

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 101-118

BUILDING OFFICIAL’S REPORT:

Application of Si Il Kim for a special exception to the parking regulations at 10550 Walnut Street. This property is more fully described as Lot 3 in City Block 8445 and is zoned CR which requires parking to be provided. The applicant proposes to construct/maintain a structure for a personal service use, restaurant without drive-in service use, and general merchandise or food store less than 3500 square foot use and provide 110 of the required 146 parking spaces which will require a special exception of 36 spaces.

LOCATION: 10550 Walnut Street

APPLICANT: Si Il Kim

REQUEST:

- A special exception to the off-street parking regulations of 36 parking spaces (or a 25 percent reduction of the required off-street parking) is requested in conjunction with leasing vacant square footage/space within an existing approximately 24,000 square foot retail strip center with certain uses, and providing 110 of the required 146 off-street parking spaces.

UPDATED STAFF RECOMMENDATION (March 2011):

Approval, subject to the following condition:

- The special exception shall automatically and immediately terminate if and when the personal service, restaurant without drive-in service, and general merchandise or food store less than 3,500 square foot use are changed or discontinued.

Rationale:

- The Sustainable Development Department Project Engineer supports the reduction request of 25 percent based on the applicant's submitted February 27, 2011 parking analysis-addendum document.
- The applicant has substantiated how the parking demand generated by the existing/proposed personal service, restaurant without drive-in service, and general merchandise or food store uses does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

ORIGINAL STAFF RECOMMENDATION (February 2011):

Denial

Rationale:

- The Sustainable Development Department Project Engineer recommends that this request be denied since there has not been adequate information provided by the applicant (including the recently submitted parking analysis study) to justify the requested parking reduction.
- The applicant has not substantiated how the parking demand generated by the existing/proposed general merchandise, personal service, and restaurant uses does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

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.

UPDATED GENERAL FACTS (March 2011):

- The Board Administrator circulated a February 15th email from the applicant's representative to the board members at their February 16th briefing (see Attachment C). This email requested a "couple of more weeks so we can get more detailed data set ready for the staff's review."
- The board conducted a public hearing on this application on February 16th, and delayed action until March 16th to allow the applicant's representative an opportunity to provide additional information to staff/the board.
- The Sustainable Development and Construction Department Project Engineer forwarded a "parking analysis-addendum" submitted by the applicant's representative (see Attachment D). (The City project engineer has indicated that he has no objections to this request given the information that was provided in this study).

GENERAL FACTS (February 2011):

- The Board Administrator circulated a January 14th email from the applicant's representative to the board members at their January 19th briefing (see Attachment A). This email requested a postponement of action on the application until February

16th to allow the applicant additional time to substantiate his parking reduction request.

- The Board of Adjustment Panel B conducted a public hearing on this application on January 19th, and delayed action until February 16th to allow the applicant's representative an opportunity to provide additional information to staff/the board.
- The Sustainable Development and Construction Department Project Engineer forwarded a parking analysis study submitted by the applicant's representative (see Attachment B). (The City project engineer has indicated that he still recommends denial of the request since counts/site specific information was not included as part of this study).

ORIGINAL GENERAL FACTS (January 2011):

- The Dallas Development Code requires the following off-street parking requirement:
 - General merchandise or food store 3,500 square feet or less: 1 space for 200 square feet of floor area.
 - Personal service use: 1 space per 200 square feet of floor area.
 - Restaurant without drive-in service use: 1 space per 200 square feet of floor areaThe applicant proposes to provide 110 (or 75 percent) of the required 146 off-street parking spaces in conjunction with the site being leased/maintained with a combination of the uses mentioned above.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail)
North: City of Garland
South: CR (Community Retail)
East: CR (Community Retail)
West: PD No. 255 (Planned Development)

Land Use:

The subject site is developed as a retail strip center. The areas to the north, east, and west are developed with retail uses; and the area to the south is developed with multifamily 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:

November 22, 2010: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

- December 15, 2010: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- December 17, 2010: The Board Administrator emailed the applicant's representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the January 3rd deadline to submit additional evidence for staff to factor into their analysis; and the January 7th 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.
- January 4, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January 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, and the Assistant City Attorney to the Board.
- January 6, 2011: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" with the following comments: "Inadequate information was provided to justify the requested parking reduction."
- January 19, 2011: The Board of Adjustment Panel B conducted a public hearing on this request and delayed action until their February 16th public hearing.
- January 25, 2011: The Board Administrator sent a letter to the applicant's representative informing him of the public hearing date and the January 31st deadline to submit additional evidence to staff and the February 4th deadline to submit additional evidence to be incorporated into the Board's docket materials.
- February 3, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, and the Assistant City Attorney to the Board.
- February 3, 2011: The Sustainable Development and Construction Department Project Engineer forwarded a parking analysis study submitted by the applicant's representative (see Attachment B). (The City project engineer has indicated to the Board Administrator that he

still recommends denial of the request since counts/site specific information was not included as part of this study).

February 16, 2011: The Board of Adjustment Panel B conducted a public hearing on this request and delayed action until their March 16th public hearing.

February 23, 2011: The Board Administrator sent a letter to the applicant's representative informing him of the public hearing date and the February 28th deadline to submit additional evidence to staff and the March 4th deadline to submit additional evidence to be incorporated into the Board's docket materials.

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 1, 2011: The Sustainable Development and Construction Department Project Engineer forwarded a parking analysis-addendum document submitted by the applicant's representative (see Attachment D).

March 8, 2011: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments: "Support 25% reduction provided maximum restaurant use of 5,700 s.f. as stated in the application and supported by the engineers' report by Kimley-Horn and Associates, Inc., dated Feb. 27, 2011."

STAFF ANALYSIS:

- This request focuses on leasing vacant square footage/space within an existing approximately 24,000 square foot retail strip center with certain uses (some of which require more off-street parking than what had existed previously on the site), and providing 110 (or 75 percent) of the required 146 off-street parking spaces.
- The applicant has stated that there are no proposed plans to increase the size of center, and that while there are three vacant premises on the site the property has enough parking spaces to serve the whole shopping center.
- The Sustainable Development Department Project Engineer has indicated that he supports the 25 percent reduction request based on the information presented in the applicant's February 27, 2011 parking analysis-addendum document.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the existing/proposed uses on the site does not warrant the number of off-street parking spaces required, and

- The special exception of 36 spaces (or a 25 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, subject to the condition that the special exception of 36 spaces shall automatically and immediately terminate if and when the general merchandise or food store 3,500 square feet or less, personal service, and/or restaurant without drive-in service uses are changed or discontinued, the applicant would be allowed to develop/lease/maintain the site with these specific uses and provide 110 of the 146 code required off-street parking spaces.

BOARD OF ADJUSTMENT ACTION: JANUARY 19, 2011

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Gillespie**

I move that the Board of Adjustment in Appeal No. **BDA 101-118**, hold this matter under advisement until **February 16, 2011**.

SECONDED: **Wilson**

AYES: 5– Reynolds, Gillespie, Chernock, Wilson, Duarte

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: FEBRUARY 16, 2011

APPEARING IN FAVOR: Scott Johnson, 12700 Park Central Dr., Ste 1800, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Chernock**

I move that the Board of Adjustment in Appeal No. **BDA 101-118**, hold this matter under advisement until **March 16, 2011**.

SECONDED: **Wilson**

AYES: 5– Reynolds, Gillespie, Chernock, Wilson, Agnich

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: MARCH 16, 2011

APPEARING IN FAVOR: Scott Johnson, 12700 Park Central Dr, Ste 1800, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Murrah**

I move that the Board of Adjustment, in Appeal No. **BDA 101-118**, on application of Si Il Kim, **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development Code by 36 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 general merchandise or food store 3,500 square feet or less, personal service, and/or restaurant without drive-in service uses, or combination of these uses, that would normally need no more than 146 required parking spaces, are changed or discontinued.

SECONDED: **Wilson**

AYES: 5– Reynolds, Wilson, Leone, Agnich, Murrah

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 101-022

BUILDING OFFICIAL’S REPORT:

Application of Angela Elizabeth Scheuerle, represented by Santos T. Martinez of Masterplan Consultants, for a variance to the front yard setback regulations at 9702 Vinewood Drive. This property is more fully described as Lot 19A in City Block D/ 7399 and is zoned R-7.5(A) which requires a front yard setback of 25 feet. The applicant proposes to construct and maintain a single family structure and provide a 19.7 foot front yard setback which will require a variance of 5.3 feet.

LOCATION: 9702 Vinewood Drive

APPLICANT: Angela Elizabeth Scheuerle
Represented by Santos T. Martinez

March 16, 2011 Public Hearing Notes:

- The applicant and an opposing property owner submitted additional written documentation to the board members at the public hearing.

REQUESTS:

- Variances to the front yard setback regulations of 5.3' are requested in conjunction with the following on a site developed with a single family home and a detached garage:
 1. maintaining an existing one-story garage, part of which is located in one of the site's two 25' front yard setbacks (Vinewood Drive); and
 2. completing and maintaining a second floor atop the existing garage, part of which is located in the same 25' Vinewood Drive front yard setback as is the existing garage.(No portion of the request is made in this application to construct/maintain any portion of a structure in the site's Oates Drive front yard setback).

STAFF RECOMMENDATION:

Denial

Rationale:

- Although the site is somewhat sloped, slightly irregular in shape, and with the unique characteristic (given its single family zoning) of having two 25' front yard setbacks, the applicant has not substantiated how these physical features of the property are of a restrictive enough nature that preclude him from being able to comply with the development standards in the Dallas Development Code including but not limited to front yard setbacks particularly since the subject site is (according to the application) 0.3 acres or approximately 13,000 square feet in area, or nearly twice the area of typical lot found in R-7.5(A) zoning at 7,500 square feet.

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.

UPDATED GENERAL FACTS (March 2011):

- On February 16, 2011, the Board Administrator circulated additional written documentation prepared by the applicant's representative to the board at their briefing (see Attachment D).
- The board heard testimony at the February 16th public hearing and delayed action on this application until March 16th. This delay would allow staff to confirm the existence of a CUD (Community Unit Development) on this property, and any affect it may have on required setbacks on the property other than what was originally conveyed to the board.
- On March 2, 2011, the Assistant Director of Sustainable Development and Construction's Current Planning Division emailed the Board Administrator with the following: "Steve, my conclusion is the CUD, whether it applies to this lot or not, has no impact on the Board Case. The structure is subject to the R-7.5(A) setback requirements. The only thing varied through the CUD, if it still is in it, is the reduced lot size. The CUD provisions talks about a uniformly reduced setback which was not part of this CUD."

ORIGINAL GENERAL FACTS:

- Single family structures on lots zoned R-7.5(A) are required to provide a minimum front yard setback of 25'.
The subject site is located at the northeast corner of Oates Drive and Vinewood Drive. Regardless of how the structures on the site may be oriented or addressed, the subject site has two 25' front yard setbacks along both streets. The site has a 25' front yard setback along Oates Drive (the shorter of the two frontages which is always deemed the front yard setback on a corner lot in a single family zoning district), and a 25' front yard setback along Vinewood Drive, the longer of the two frontages of this corner lot which would typically be regarded as a side yard where a 5' side yard setback is required. However, the site's Vinewood Drive frontage is deemed a front yard setback in order to maintain the continuity of the established front yard setback established by the lots north of the site that front/are oriented westward onto Vinewood Drive.
A revised scaled site plan (see Attachment A) has been submitted denoting a portion of the "existing detached 2 car garage & proposed second story addition" structure located in the 25' Oates Drive front yard setback. The application requests a variance of 5.3' which would make the structure 19.7' from the front property line or 5.3' into this 25' front yard setback. (No encroachment is proposed in the site's Oates Drive 25' front yard setback).
- According to calculations taken by the Board Administrator from the submitted revised site plan, the area of the structure footprint to be maintained and to be completed/maintained vertically with a 2nd floor in alignment with the 1st floor of the existing structure in the site's Vinewood Drive 25' front yard setback is approximately 120 square feet in area or approximately 1/5 of the approximately 670 square foot building footprint.
- According to DCAD records, the site is developed with the following:
 - a structure built in 1999 in "very good" condition with 2,648 square feet of living area;
 - a 725 square foot detached garage; and

- a 725 square foot room addition.
- The subject site is relatively flat, slightly irregular in shape (approximately 112' on the north; approximately 108' on the south; approximately 123' on the east; and approximately 119' on the west), and (according to the application) is "1/3" acre in area. Staff has determined from the submitted plat that the site is approximately 13,000 square feet in area. The site is zoned R-7.5(A) where lots in this zoning district are typically 7,500 square feet in area. This site has two 25' front yard setbacks; and two 5' side yard setbacks; most residentially-zoned lots have one front yard setback, two side yard setbacks, and one rear yard setback.
- The applicant's representative forwarded additional information beyond what was submitted with the original application (see Attachments A, B, and C).

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	R-7.5(A) (Single family district 7,500 square feet)
<u>North:</u>	R-7.5(A) (Single family district 7,500 square feet)
<u>South:</u>	R-7.5(A) (Single family district 7,500 square feet)
<u>East:</u>	R-7.5(A)(SUP 1256) (Single family district 7,500 square feet)(Specific Use Permit)
<u>West:</u>	R-7.5(A) (Single family district 7,500 square feet)

Land Use:

The subject site is developed with a single family home and a detached garage structure currently being modified with a second story atop. The areas to the north, south, and west are developed with single family uses; and the area to the east is developed with a private school (White Rock Montessori School).

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:

- December 27, 2010: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- January 19, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- January 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 January 31st deadline to submit additional evidence for staff to factor into their analysis;

- and the February 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.

January 24, 2011: The Board Administrator emailed the applicant's newly designated representative the information mentioned above that was forwarded to the applicant on January 19, 2011.

January 24 & 31 and February 4, 2011: The applicant's representative forwarded additional information on this application to staff (see Attachments A, B, and C).

February 3, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, and the Assistant City Attorney to the Board.

February 3, 2011: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments: "Must comply with all C.O.D visibility requirements."

February 16, 2011: The Board of Adjustment Panel B conducted a public hearing on this request and delayed action until their March 16th public hearing. (The applicant's representative submitted additional information at this hearing entitled in this case report as "Attachment D.")

February 23, 2011: The Board Administrator sent a letter to the applicant's representative informing him of the public hearing date and the February 28th deadline to submit additional evidence to staff and the March 4th deadline to submit additional evidence to be incorporated into the Board's docket materials.

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 2, 2011: The Assistant Director of Sustainable Development and Construction's Current Planning Division emailed the Board Administrator with the following: "Steve, my conclusion is the CUD, whether it applies to this lot or not, has no impact on the Board

Case. The structure is subject to the R-7.5(A) setback requirements. The only thing varied through the CUD, if it still is in it, is the reduced lot size. The CUD provisions talks about a uniformly reduced setback which was not part of this CUD.”

STAFF ANALYSIS:

- The requests focus on maintaining an existing one-story garage, part of which is located in one of the site’s two 25’ front yard setbacks (Vinewood Drive); and completing and maintaining a second floor atop this existing garage. (No portion of the request is made in this application to maintain and/or complete/maintain any portion of a structure in the site’s Oates Drive front yard setback).
- The structure (an existing one-story garage with a second floor to be completed/maintained atop) that is the issue of this request is located on a site that has two 25’ front yard setbacks. The structure that is the issue of this request is located 19.7’ from the Vinewood Drive front property line whereby a variance is requested to locate/maintain/complete a structure 5.3’ into the 25’ Vinewood Drive front yard setback.
- Regardless of how the existing main structure on the site may be oriented or addressed, the subject site has two 25’ front yard setbacks along both streets. The site has a 25’ front yard setback along Oates Drive (the shorter of the two frontages which is always deemed the front yard setback on a corner lot in a single family zoning district), and a 25’ front yard setback along Vinewood Drive, the longer of the two frontages of this corner lot which would typically be regarded as a side yard where a 5’ side yard setback is required. The site’s Vinewood Drive frontage is deemed a front yard setback nonetheless in order to maintain the continuity of the established front yard setback established by the lots north of the site that front/are oriented westward onto Vinewood Drive.
- According to calculations taken by the Board Administrator from the submitted revised site plan, the area of the structure footprint to be maintained and to be completed/maintained vertically with a 2nd floor in alignment with the 1st floor of the existing structure in the site’s Vinewood Drive 25’ front yard setback is approximately 120 square feet in area or approximately 1/5 of the approximately 670 square foot building footprint.
- According to DCAD records, the site is developed with the following:
 - a structure built in 1999 in “very good” condition with 2,648 square feet of living area;
 - a 725 square foot detached garage; and
 - a 725 square foot room addition.
- The subject site is relatively flat, slightly irregular in shape (approximately 112’ on the north; approximately 108’ on the south; approximately 123’ on the east; and approximately 119’ on the west), and (according to the application) is “1/3” acre in area. Staff has determined from the submitted plat that the site is approximately 13,000 square feet in area. The site is zoned R-7.5(A) where lots in this zoning district are typically 7,500 square feet in area. This site has two 25’ front yard setbacks; and two 5’ side yard setbacks; most residentially-zoned lots have one front yard setback, two side yard setbacks, and one rear yard setback.

- The site has approximately 90' x 80' of developable area left (or an approximately 7,200 square foot area) once its setbacks are accounted for as opposed to 90' x 100' of developable area left (or an approximately 9,000 square foot area) if the site were more typical with having just one front yard setback. The site's approximately 7,200 square feet of developable space is larger than the developable space found on a more typically sized R-7.5(A) zoned lot (150' x 50') with two front yard setbacks at approximately 3,600 square feet.
- The applicant has the burden of proof in establishing the following:
 - That granting the variances to the Vinewood Drive front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variances are necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) 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 R-7.5(A) zoning classification.
- If the Board were to grant either one or both of the variance requests, subject to the submitted revised site plan, the structure in the front yard setback would be limited to what is shown on this document– which in this case is a structure located 5.3' into the 25' Vinewood Drive front yard setback

BOARD OF ADJUSTMENT ACTION: FEBRUARY 16, 2011

APPEARING IN FAVOR: Dallas Cothrum, 900 Jackson St., #640, Dallas, TX

APPEARING IN OPPOSITION: Lily Arenas, 9714 Vinewood, Dallas, TX

MOTION: **Wilson**

I move that the Board of Adjustment, in Appeal No. **BDA 101-022**, hold this matter under advisement until **March 16, 2011**.

SECONDED: **Chernock**

AYES: 5– Reynolds, Gillespie, Chernock, Wilson, Agnich

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: MARCH 16, 2011

APPEARING IN FAVOR: Brook Brookes, 9736 Vinewood, Dallas, TX
Santos Martinez, 900 Jackson St., Dallas, TX
Dallas Cothrum, 900 Jackson St., Dallas, TX

APPEARING IN OPPOSITION: Lily Arenas, 9714 Vinewood, Dallas, TX
Micheal Coker, 2700 Swiss Ave, Dallas, TX

MOTION #1: **Agnich**

I move that the Board of Adjustment, in Appeal No. **BDA 101-022**, on application of Angela Elizabeth Scheurle, represented by Santos Martinez, **grant** the 5.3 foot variance to the minimum front yard setback regulations for the existing garage and for the second story 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: **Leone**

AYES: 3–Wilson, Leone, Agnich,

NAYS: 2 – Reynolds, Murrah

MOTION FAILED 3 – 2

MOTION #2: **Agnich**

I move that the Board of Adjustment, in Appeal No. **BDA 101-022**, on application of Angela Elizabeth Scheurle, represented by Santos Martinez, **deny** the front yard setback variance 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: **Murrah**

AYES: 2– Reynolds, Murrah

NAYS: 3 – Wilson, Leone, Agnich,

MOTION FAILED 2 – 3

2:33 P.M.: Executive Session Begins

2:47 P.M.: Executive Session Ends

MOTION #3: **Wilson**

I move that the Board of Adjustment, in Appeal No. **BDA 101-022**, hold this matter under advisement until **April 20, 2010**.

SECONDED: **Leone**

AYES: 1– Wilson

NAYS: 4 – Reynolds, Leone, Agnich, Murrah

MOTION FAILED 1 – 4

MOTION #4: Agnich

I move that the Board of Adjustment, in Appeal No. **BDA 101-022**, reconsider the previous motion made to **deny without** prejudice.

SECONDED: Leone

AYES: 4– Reynolds, Leone, Agnich, Murrah

NAYS: 1 –, Wilson

MOTION PASSED 4 – 1

MOTION #5: Agnich

I move that the Board of Adjustment, in Appeal No. **BDA 101-022**, on application of Angela Elizabeth Scheurle, represented by Santos Martinez, **deny** the front yard setback variance 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: Leone

AYES: 4– Reynolds, Leone, Agnich, Murrah

NAYS: 1 – Wilson

MOTION PASSED 4 – 1

FILE NUMBER: BDA 101-116

BUILDING OFFICIAL’S REPORT:

Application of Sharon E. Harris for a special exception to the parking regulations, a special exception to the visual obstruction regulations, and for a variance to the lot coverage regulations at 813 Ryan Road. This property is more fully described as Lot 53A in City Block 16/5976 and is zoned TH-3(A)(SUP 1581) which requires parking to be provided, a 20 foot visibility triangle at driveway approaches, and a maximum lot coverage of 25% for all structures. The applicant proposes to construct and maintain a child-care facility use/structure and provide 8 of the required 10 parking spaces which will require a 2 space special exception to the parking regulations; to locate and maintain an item in the required 20 foot visibility triangle at a drive approach which will require a special exception to the visual obstruction regulations; and to construct and maintain structures that provide a total lot coverage of 4,378 square feet or 28% of the 15,559 square foot lot which will require a 3% (or 489 square foot) variance to the maximum coverage regulations.

LOCATION: 813 Ryan Road

APPLICANT: Sharon E. Harris

REQUESTS:

- The following appeals had been made in this application requested in conjunction with expanding, completing, and maintaining an existing child-care facility use (E's Haven Academy) on the subject site:
 1. a special exception to the off-street parking regulations of 2 parking spaces (or a 20 percent reduction to the off-street parking requirement) is requested in conjunction with providing only 8 of the required 10 parking spaces;
 2. a special exception to the visual obstruction regulations is requested in conjunction with locating and maintaining a potential parked vehicle in a required 20' visibility triangle at a drive approach into the site from Ryan Road; and
 3. a variance to the coverage regulations of 489 square feet is requested in conjunction with expanding/maintaining a structure (and maintaining an existing storage building) with building footprints that cover a total of 4,378 square feet of the 15,559 square foot lot.

STAFF RECOMMENDATION (parking special exception):

Approval, subject to the following condition:

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

Rationale:

- The Sustainable Development Department Project Engineer supports this request stating that street parking should be available for overflow parking if needed.

STAFF RECOMMENDATION (visual obstruction special exception):

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The Sustainable Development Department Project Engineer supports this request stating that this request is merely to allow a vehicle that could be potentially parked in a drive approach visibility triangle.

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 TH-3(A) zoned lots.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
 - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
 - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
 - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
 - (E) The availability of public transit and the likelihood of its use.
 - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
 - (A) establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
 - (B) impose restrictions on access to or from the subject property; or
 - (C) impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
 - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or

(B) the regulations governing that specific district expressly authorize the board to grant the special exception.

STANDARD FOR A SPECIAL EXCEPTION TO THE 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.

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:

- (D) 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;
- (E) 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
- (F) 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 (parking special exception):

- The Dallas Development Code requires that a “child-care facility” use provide one space per 500 square feet of floor area.
The applicant proposes to provide 8 (or 80 percent) of the required 10 off-street parking spaces in conjunction with completing and maintaining an approximately 5,200 square foot child-care facility use on the site.

GENERAL FACTS (visual obstruction special exception):

- The Dallas Development Code states the following with regard to visibility triangles:
A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at intersections and 20-foot visibility triangles at drive approaches); and
 - between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).A site plan has been submitted that shows a parking space (with potentially a parked vehicle in it) located in one of four 20’ visibility triangles at a drive approach into the site from Ryan Road.

GENERAL FACTS (variance):

- The Dallas Development Code states that the maximum lot coverage is 25 percent for nonresidential structures zoned TH-3(A).
The applicant has submitted a site plan indicating a lot with “15,559 square feet” on which an “existing building” with 4,005 square feet and a “storage building” with 373 square feet is located. The total square footage of the structures on the site is 4,378 which cover 28 percent of the lot or 489 square feet beyond the 3,339 square feet the code allows to be covered on the 15,559 square foot property.
- According to DCAD records, the site is developed with the following:
 - a structure built in 1953 in “fair” condition with 1,689 total square feet ;
 - a 240 square foot storage building;
 - a 400 square foot detached carport; and
 - a 308 square foot room addition.
- The subject site is flat, virtually rectangular in shape (approximately 112’ on the northwest; approximately 130’ on the southeast; approximately 122’ on the northeast; and approximately 118’ on the southwest) and (according to the application) 0.36 acres or 15,682 square feet. The site is zoned TH-3(A).

BACKGROUND INFORMATION:

Zoning:

Site: TH-3(A) (Townhouse)
North: TH-3(A) (Townhouse)
South: TH-3(A) (Townhouse)
East: TH-3(A) (Townhouse)
West: TH-3(A) (Townhouse)

Land Use:

The subject site is being developed as a child-care facility use (E’ Haven Academy). The areas to the north, east, and west appear to be developed with residential uses.

Zoning/BDA History:

- | | |
|---|---|
| 1. Miscellaneous Item #2, Property at 813 Ryan Road (the subject site) | On March 16, 2011, the Board of Adjustment Panel B will consider reimbursing the filing fee submitted in conjunction with BDA 101-116 – requests for a variance to the coverage regulations, and special exceptions to the off-street parking and visual obstruction regulations. |
| 2. Z089-185, Property at 813 Ryan Road (the subject site) | On July 7, 2011, the City Plan Commission will consider a request for an SUP renewal for a child-care facility on the subject site. |

Timeline:

November 15, 2010: 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 assigned this case to Board of Adjustment Panel B.

February 14, 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.

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 and Construction Department Project Engineer submitted a review comment sheet marked “Has no objections if certain conditions are met” with the following comments: “1: Parking: Only two spaces – street parking should be available for overflow parking if needed; 2: Visibility: Part of one space in 20 x 20, condition no construction above 30” in the triangle; 3: Lot coverage: No comment.”

STAFF ANALYSIS (parking special exception):

- This request focuses on expanding, completing, and maintaining an existing child-care facility use (E’s Haven Academy) on the subject site and providing 8 (or 80 percent) of the required 10 off-street parking spaces.
- This request is triggered by an expansion of the existing child-care facility use underway whereby the facility would expand to roughly 5,200 square feet in area.

- The Sustainable Development Department Project Engineer supports the request stating that street parking should be available for overflow parking if needed.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the expanded existing use on the site does not warrant the number of off-street parking spaces required, and
 - The special exception of 2 spaces (or a 20 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, subject to the condition that the special exception of 2 spaces shall automatically and immediately terminate if and when the child-care facility use on the site is changed or discontinued, the applicant would be allowed to complete the expansion of the child-care facility use on the site and provide 8 of the 10 code required off-street parking spaces.

STAFF ANALYSIS (visual obstruction special exception):

- This request focuses on expanding, completing, and maintaining an existing child-care facility use (E's Haven Academy) on the subject site, specifically locating and maintaining a potential parked vehicle in a required 20' visibility triangle at a drive approach into the site from Ryan Road.
- The Sustainable Development Department Project Engineer supports the request stating that this request is merely to allow what would be potentially one parked vehicle to be located in a drive approach visibility triangle into the site from Ryan Road.
- The applicant has the burden of proof in establishing that granting the request for a special exception to the visual obstruction regulations will not constitute a traffic hazard.
- If the Board chooses to grant this request, subject to compliance with the submitted site plan, only the item shown on this plan (a potential parked vehicle) would be "excepted" into one 20' drive approach visibility triangle into the site from Ryan Road.
- Note that if the board were to grant this request and impose the submitted site plan as a condition, but deny the request for variance to the coverage regulations, notations would be made of such action on this submitted document.

STAFF ANALYSIS (variance):

- The request focuses on expanding/maintaining a structure (and maintaining an existing storage building) with building footprints that cover a total of 4,378 square feet of the 15,559 square foot lot on a site developed as a child-care facility.
- The submitted site plan indicates a lot with "15,559 square feet" on which an "existing building" with 4,005 square feet and a "storage building" with 373 square feet is located. The total square footage of the structures on the site is 4,378 which cover 28 percent of the lot or 489 square feet beyond the 3,339 square feet the code allows to be covered on the 15,559 square foot property.
- According to DCAD records, the site is developed with the following:
 - a structure built in 1953 in "fair" condition with 1,689 total square feet ;
 - a 240 square foot storage building;
 - a 400 square foot detached carport; and

- a 308 square foot room addition.
- The subject site is flat, virtually rectangular in shape (approximately 112' on the northwest; approximately 130' on the southeast; approximately 122' on the northeast; and approximately 118' on the southwest) and (according to the application) 0.36 acres or 15,682 square feet. The site is zoned TH-3(A).
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the coverage 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 TH-3(A) zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same TH-3(A) zoning classification.
- If the Board were to grant the variance request, subject to the submitted site plan, the structures would be allowed to be expanded of the sizes and in the locations as represented on this– which in this case are structures that cover 28 percent of the lot or 489 square feet beyond the 3,339 square feet the code allows to be covered on the 15,559 square foot property.
- Note that if the board were to grant this request and impose the submitted site plan as a condition, but deny the special exception to the visual obstruction regulations, notations would be made of such action on this submitted document.

BOARD OF ADJUSTMENT ACTION: MARCH 16, 2011

APPEARING IN FAVOR: Sharon Harris

APPEARING IN OPPOSITION: No one

MOTION #1:

I move that the Board of Adjustment, in Appeal No. **BDA 101-116**, on application of Sharon E. Harris, **grant** the request of this applicant for a special exception to the visual obstruction regulations 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 condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: **Agnich**

AYES: 5– Reynolds, Wilson, Leone, Agnich, Murrah

NAYS: 0 –

MOTION PASSED 5 – 0(unanimously)

MOTION #2: Wilson

I move that the Board of Adjustment, in Appeal No. **BDA 101-116**, on application of Sharon E. Harris, **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development Code by 2 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 child-care facility use is changed or discontinued.

SECONDED: Murrah

AYES: 5– Reynolds, Wilson, Leone, Agnich, Murrah

NAYS: 0 –

MOTION PASSED 5 – 0(unanimously)

MOTION #3: Wilson

I move that the Board of Adjustment, in Appeal No. **BDA 101-116**, on application of Sharon E. Harris, **grant** the 3% (489 square foot) variance to the lot coverage 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: Leone

AYES: 2 – Wilson, Leone

NAYS: 3 – Reynolds, Agnich, Murrah

MOTION FAILED 2 – 3

MOTION #4: Murrah

I move that the Board of Adjustment, in Appeal No. **BDA 101-116**, on application of Sharon E. Harris, **deny** the lot coverage variance 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: **Agnich**

AYES: 4 – Reynolds, Agnich, Leone, Murrah

NAYS: 1 – Wilson

MOTION PASSED 4 – 1

MOTION: **Wilson**

I move to adjourn this meeting.

SECONDED: **Murrah**

AYES: 5– Reynolds, Wilson, Leone, Agnich, Murrah

NAYS: 0 -

MOTION PASSED 5– 0 (unanimously)

3:07 P.M. - Board Meeting adjourned for **March 16, 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.