

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM
WEDNESDAY, JUNE 15, 2011**

MEMBERS PRESENT AT BRIEFING: Darlene Reynolds, Vice Chair, David Wilson, regular member, Paula Leone, regular member, and Jim Gaspard, 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, Jim Gaspard, alternate member and Robert Agnich, 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, Tammy Palomino, Asst. City attorney, John Rogers, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Donnie Moore, Chief Planner, Phil Erwin, Chief Arborist, Jerry Svec, Project Engineer 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, Phil Erwin, Chief Arborist and Trena Law, Board Secretary

11:05 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **June 15, 2011 docket.**

1:05P.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 May 18, 2011 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: JUNE 15, 2011

MOTION: Leone

I move approval of the **Wednesday, May 18, 2011** Board of Adjustment Public Hearing minutes.

SECONDED: Gaspard

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 101-049

BUILDING OFFICIAL'S REPORT:

Application of Sue Markwald for a special exception to the parking regulations at 2401 Walnut Ridge Street. This property is more fully described as a tract of land in City Block 2/6512 and is zoned IR which requires parking to be provided. The applicant proposes to maintain a structure with commercial cleaning, industrial (inside), and warehouse uses, and provide 46 of the required 56 parking spaces which will require a special exception of 10 spaces.

LOCATION: 2401 Walnut Ridge Street.

APPLICANT: Sue Markwald

REQUEST:

- A special exception to the off-street parking regulations of 10 parking spaces (or an 18 percent reduction of the 56 off-street parking spaces that are required) is requested in conjunction with leasing vacant space within an existing approximately 27,000 square foot structure partially occupied with industrial (inside) use (Advanced Beverage) with commercial cleaning or laundry plant and warehouse uses (Ocean Fresh Laundries). The applicant proposes to provide 46 (or 82 percent) of the required 56 off-street parking spaces in conjunction with the leasing of vacant space

with certain uses and the maintenance of existing space/certain uses within the existing structure.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The special exception of 10 spaces shall automatically and immediately terminate when and the industrial (inside), commercial cleaning or laundry plant, and warehouse uses on the site are 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 industrial (inside), commercial cleaning or laundry plant, and warehouse 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.

GENERAL FACTS:

- The Dallas Development Code requires the following off-street parking requirement:
 - Industrial (inside) use: 1 space for 600 square feet of floor area.
 - Commercial cleaning or laundry plant use: 1 space per 300 square feet of floor area.
 - Warehouse use: 1 space per 1,000 square feet of floor area up to 20,000 square feet, and one space per 4,000 square feet of floor area over 20,000 square feet.
 The applicant proposes to provide 46 (or 82 percent) of the required 56 off-street parking spaces in conjunction with the site being leased/maintained with a combination of the uses mentioned above.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A).

BACKGROUND INFORMATION:

Zoning:

Site: IR (Industrial Research)
North: IR (Industrial Research)
South: IR (Industrial Research)
East: IR (Industrial Research)
West: IR (Industrial Research)

Land Use:

The subject site is currently developed an approximately 27,000 square foot structure that is partially developed/leased with an “industrial (inside)” use (Advanced Beverage) and partially vacant. The vacant portion of the existing structure is proposed to be leased with “commercial laundry” and “warehouse” uses (Ocean Fresh Laundries). The area to the north is undeveloped; the areas to the east and south are developed with office/warehouse uses; and the area to the west is developed with a freeway (Stemmons 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 15, 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 B.
- 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 25, 2011: The applicant forwarded additional information beyond what was submitted with the original application (see Attachment A).
- 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 6, 2011: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Has no objections” with the following comments: “See attached email

dated June 6, 2011.” (A copy of this email has been included in this case report, and is entitled “Attachment B.”)

STAFF ANALYSIS:

- This request focuses on the applicant’s proposal to lease vacant space within an existing approximately 27,000 square foot structure partially occupied with industrial (inside) use (Advanced Beverage) with commercial cleaning or laundry plant and warehouse uses (Ocean Fresh Laundries), and to provide 46 (or 82 percent) of the required 56 off-street parking spaces.
- The Sustainable Development and Construction Department Project Engineer has submitted a review comment sheet marked “Has no objections” and references part of his approval on things mentioned in an email to him from the marketing/leasing director with the property stating that the proposed commercial cleaning or laundry plant/warehouse use will not take deliveries from third parties at the facility, and where its delivery trucks will generally be loaded around 5 a.m. in the morning, come back to the facility once during the day, and then return at the end of the day and parked on the facility overnight.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the existing and proposed industrial (inside), commercial cleaning or laundry plant, and warehouse uses does not warrant the number of off-street parking spaces required, and
 - The special exception of 10 spaces (or 18 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 10 spaces shall automatically and immediately terminate if and when the industrial (inside), commercial cleaning or laundry plant, and warehouse uses are changed or discontinued, the applicant would be allowed to lease/maintain the site with these specific uses and provide only 46 of the 56 code required off-street parking spaces.

BOARD OF ADJUSTMENT ACTION: JUNE 15, 2011

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Wilson

I move that the Board of Adjustment grant application **BDA 101-049** 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.

- The special exception shall automatically and immediately terminate if and when the industrial (inside), commercial cleaning or laundry plant, and warehouse uses are changed or discontinued.

SECONDED: Leone

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 101-051

BUILDING OFFICIAL’S REPORT:

Application of Kristy Tornga for a special exception to the landscape regulations at 12909 Midway Road. This property is more fully described as Tract 2 in City Block A/8391 and is zoned CR which requires mandatory landscaping. The applicant proposes to construct a structure and provide an alternate landscape plan which will require a special exception.

LOCATION: 12909 Midway Road

APPLICANT: Kristy Tornga

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with the constructing and maintaining an approximately 3,800 square foot “restaurant with drive-through service” use/structure (In-N-Out Burger) on a site currently developed as a vacant restaurant structure/shopping center use, and not fully meeting the landscape regulations.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan is required.

Rationale:

- The City’s Chief Arborist supports the request with the submitted alternate landscape plan imposed as a condition. The City’s Chief Arborist states that the low-level landscaping provided on the alternate landscape plan demonstrates significant compensation for the reduction of other required landscaping on the site.
- The applicant has substantiated how strict compliance with the requirements of the Landscape Regulations of the Dallas Development Code will unreasonably burden the use of the property, and that the special exception will not adversely affect neighboring property. In this case the applicant has submitted an alternate landscape plan with minimal deficiencies to the Landscape Regulations (whereby a few parking spaces on the site would not be within 120’ from a large canopy tree and

whereby 4 trees would be ½ inch smaller in caliper size than what the code requires) while meeting or exceeding all other landscape regulations on the site.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

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

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

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

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

GENERAL FACTS:

- The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period.
An alternate landscape plan has been submitted which according to the City of Dallas Chief Arborist is deficient from meeting the landscape requirements of Article X, more specifically, from the mandatory parking lot and site tree requirements.
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Chief Board of Adjustment Planner (see Attachment A). The memo stated the following:
 - The applicant is requesting a special exception to the landscape requirements of Article X: The Landscape Regulations, more specifically from the mandatory requirements 51A-10.125(b)(5) Parking lot trees and 51A-10.125(b)(3)(A) Site trees.
 - Trigger:
New construction on a previously developed site.
 - Deficiencies – the proposed landscape plan is deficient in compliance with Article X with the following exceptions:
 - Parking lot trees: No required parking space may be located more than 120 feet from the trunk of a large canopy tree. The proposed plan places crepe myrtle trees (small trees) in proximity of the parking spaces west of the primary structure. A Chinese pistache (large canopy tree) addresses

- compliance for many of the spaces. Only the western most groups of parking spaces (at least 5 spaces) are not in compliance to a large canopy tree.
- Site trees: One tree having a caliper of at least two inches must be provided for each 4,000 square feet of lot area. The proposed plan provides 5 trees at 3 inches, and 4 trees at 1.5 inches on the property. Five trees are in compliance with code requirements for number of site trees at the minimum size.
 - Factors for consideration:
 - The property is adjacent to a highway off-ramp that does not require street trees.
 - The property would be deficient the 10 required site trees by only one if the four crepe myrtles were 2 inches or greater in size. The use of crepe myrtles is requested to help maintain visibility of the property and adjacent lot signage.
 - Recommendation: Approval. Additional low-level landscaping demonstrates significant compensation for the reduction of other required landscaping.

BACKGROUND INFORMATION:

Zoning:

- Site: CR (Community Retail)
- North: CR (Community Retail)
- South: CR (Community Retail)
- East: CR (Community Retail)
- West: MF-1(A) (Multifamily district)

Land Use:

The site is currently developed with a vacant restaurant structure (China King) that is part of the property developed as a shopping center. The area to the north is developed with a freeway (LBJ Freeway), the area to the east is developed with retail use; and the areas to the south and west are 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:

- 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 B.

- 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: "Comply with all C.O.D visibility requirements."
- June 3, 2011: The Chief Arborist submitted a memo pertaining to the application to the Board Administrator and the Board of Adjustment Chief Planner (see Attachment A).

STAFF ANALYSIS:

- This request focuses on constructing and maintaining an approximately 3,800 square foot "restaurant with drive-through service" use/structure (In-N-Out Burger) on a site currently developed as a vacant restaurant structure/shopping center use, and not fully meeting the landscape regulations, more specifically parking lot and site tree requirements.
- The City of Dallas Chief Arborist supports the request (with the condition that the applicant comply with the submitted alternate landscape plan) largely given the additional low-level landscaping provided on the alternate landscape plan demonstrates significant compensation for the reduction of other required landscaping on the site.
- The applicant has the burden of proof in establishing the following:
 - Strict compliance with the requirements of the Landscape Regulations of the Dallas Development Code will unreasonably burden the use of the property; and
 - The special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose the submitted alternate landscape plan as a condition, the site would be minimally "excepted" from full compliance with the landscape buffer requirements of Article X: The Landscape Regulations (whereby a few parking spaces on the site would not be within 120' from a large

canopy tree and whereby 4 trees would be ½ inch smaller in caliper size than what the code requires) while meeting or exceeding all other landscape regulations on the site (in this case, with low-level landscaping that demonstrates significant compensation for the reduction of other required landscaping).

BOARD OF ADJUSTMENT ACTION: JUNE 15, 2011

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Wilson**

I move that the Board of Adjustment grant application **BDA 101-051** 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 alternate landscape plan is required.

SECONDED: **Leone**

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 101-047

BUILDING OFFICIAL’S REPORT:

Application of Walter Guillaume, represented by Jon Mindrup, for special exceptions to the visual obstruction regulations at 645 N. St. Paul Street. This property is more fully described as Lots 1, 2, 3, 4, 5 and 6 in City Blocks 238, 239 and 240 and is zoned CA-1(A) which requires a 30 foot visibility triangle at street intersections. The applicant proposes to construct and maintain items in required visibility obstruction triangles at street intersections which will require special exceptions.

LOCATION: 645 N. St. Paul Street

APPLICANT: Walter Guillaume
Represented by Jon Mindrup

June 15, 2011 Public Hearing Notes:

- The Board Administrator circulated additional written documentation to the board members at the briefing. This information included a revised site plan and elevations

submitted by the applicant, and an email from the Sustainable Development and Construction Department Project Engineer stating that he supported the applicant's revised proposal.

REQUESTS:

- Special exceptions to the visual obstruction regulations are requested in conjunction with constructing and maintaining a structure (First Baptist Church Dallas Worship Center) part of which is proposed to be located in the 30' visibility triangles at the intersections of Ervay Street and Federal Street on the southwest corner of the site, and St. Paul Avenue and Federal Street at the southeast corner of the site. The site is developed as a church campus (First Baptist Church Dallas).

STAFF RECOMMENDATION:

Denial

Rationale:

- The Sustainable Development and Construction Department Project Engineer recommends denial of these requests.
- The applicant had not substantiated how the location of the proposed structure in the 30' visibility triangles at the intersections of Ervay Street and Federal Street, and St. Paul Avenue and Federal Street does not constitute a traffic hazard.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

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

GENERAL FACTS:

- The 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 (30-foot visibility triangles at intersections and 20-foot visibility triangles at drive approaches on properties zoned central area districts); 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).Site plans and elevations have been submitted that show a portion of the proposed worship center structure to be located in the 30' visibility triangles at intersections of Ervay Street/Federal Street and St. Paul Avenue/Federal Street.

BACKGROUND INFORMATION:

Zoning:

Site: CA-1(A) (Central area district)
North: CA-1(A) (Central area district)
South: CA-1(A) (Central area district)
East: CA-1(A) (Central area district)
West: CA-1(A) (Central area district)

Land Use:

The subject site is developed/under development as a church campus use (First Baptist Church Dallas). The areas to the north, east, south, and west are developed mainly as office uses.

Zoning/BDA History:

1. BDA 089-051, Property at 4341 515 N. St. Paul Street & 608 N. St. Paul Street (a site that included a portion of the subject site) On April 15, 2009, the Board of Adjustment Panel B granted requests for special exceptions to the pedestrian skybridge regulations. The case report stated the requests were made in conjunction with locating a proposed pedestrian skybridge over St. Paul Street 166' from a historic overlay district -The Downtown US Post Office (134' closer than the required 300' distance), and constructing this skybridge with an interior passageway of 21' (or 1' wider than the 20' width allowed by code). The proposed skybridge would connect a proposed new sanctuary use to a proposed new children's education building. The site is currently developed with a church use (First Baptist Church of Dallas) on the southwest side of St. Paul Street and a surface parking lot on the northeast side of St. Paul Street.

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 assigned this case to Board of Adjustment Panel B.
- 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 23, 2011: The City of Dallas Historic Preservation Senior Planner emailed the staff the following: "The U.S. Post Office (a City of Dallas landmark) is across the street (Federal) from the proposed variance and new construction. No adverse effect is anticipated."

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 "With no minimal 30 x 30 triangle, not only will the visibility be reduced for traffic, but pedestrians will approach the corner of the building totally blind."

STAFF ANALYSIS:

- These requests focus on constructing and maintaining a structure (First Baptist Church Dallas Worship Center) part of which is proposed to be located in the 30' visibility triangles at the intersections of Ervay Street and Federal Street, and St. Paul Avenue and Federal Street. The site is developed as a church campus (First Baptist Church Dallas).
- According to the calculations taken from the submitted site plan by the Board Administrator, about a 10' length of the structure is proposed to be located in the 30' visibility triangle at the Ervay Street/Federal Street intersection, and about an 8' length of the structure is proposed to be located in the 30' visibility triangle at the St. Paul Avenue/Federal Street intersection.
- The Sustainable Development and Construction Department Project Engineer recommend denial of these requests, commenting "With no minimal 30 x 30 triangle, not only will the visibility be reduced for traffic, but pedestrians will approach the corner of the building totally blind."
- The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulations to locate and maintain approximately 8' – 10' lengths of a proposed structure in the 30' visibility triangles at the intersections of Ervay Street at Federal Street, and St. Paul Avenue at Federal Street will not constitute a traffic hazard.

- If the Board chooses to grant these requests, subject to compliance with the submitted site plan and elevations, the item shown on these documents (in this case, a portion of a worship center structure) would be “excepted” into the 30’ visibility triangles at the intersections of Ervay Street at Federal Street, and St. Paul Avenue at Federal Street.

BOARD OF ADJUSTMENT ACTION: JUNE 15, 2011

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION #1:

I move that Appeal No. **BDA 101-047** be moved to the uncontested docket.

SECONDED: Gaspard

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

MOTION #2: Wilson

I move that the Board of Adjustment grant application **BDA 101-047** 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 revised site plan and elevations is required.

SECONDED: Leone

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 089-083

BUILDING OFFICIAL’S REPORT:

Application of Larry and Jill Meletio for a special exception to the visual obstruction regulations at 4341 Beechwood Lane. This property is more fully described as lot 71 in City Block 5542 and is zoned R-10(A) which requires a 45 foot visibility triangle at street intersections. The applicant proposes to maintain items in the required visibility obstruction triangle which will require a special exception.

LOCATION: 4341 Beechwood Lane

APPLICANT: Larry and Jill Meletio

June 15, 2011 Public Hearing Notes:

- The Board Administrator circulated an updated property owner notification list and map to the board members at the briefing.

REQUEST:

- A special exception to the visual obstruction regulations is requested in conjunction with maintaining what is represented on the submitted application/site plan/elevation as three, 21' high trees located in the 45' visibility triangle at the intersection of Beechwood Lane and Crestline Avenue on a site developed with a single family home.

STAFF RECOMMENDATION:

Denial

Rationale:

- The Sustainable Development and Construction Department Project Engineer recommends denial of this request.
- The applicant has not substantiated how the location of the items in the 45' visibility triangle at the intersection of Beechwood Lane and Crestline Avenue does not constitute a traffic hazard.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

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

GENERAL FACTS:

- The 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 on properties zoned single family); 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 three circles assumed to be representative of trees mentioned on the application and that were observed on the site by the Board Administrator on a May 11, 2011 field trip located in the 45' visibility triangle at Beechwood Lane and Crestline Avenue. An elevation has been submitted that appears to be a representation of these trees. The submitted

elevation denotes the height of four coned-shaped trees to be 21' high. (Note that while the site plan and elevation denote 4 trees/circles, the submitted site plan represents that only 3 of the 4 are located in the 45' visibility triangle at Beechwood Lane and Crestline Avenue).

- The applicant submitted additional information beyond what was submitted with the original application (see Attachments A, B, C, and D).

BACKGROUND INFORMATION:

Zoning:

Site: R-10(A) (Single family district 10,000 square feet)
North: R-10(A) (Single family district 10,000 square feet)
South: R-10(A) (Single family district 10,000 square feet)
East: R-1ac(A) (Single family district 1 acre)
West: R-10(A) (Single family district 10,000 square feet)

Land Use:

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

Zoning/BDA History:

1. BDA 089-057, Property at 4341 Beechwood Lane (the subject site) On May 20, 2009, the Board of Adjustment Panel B denied requests for special exceptions to the visual obstruction regulations without prejudice. The case report stated the requests were made “in conjunction with maintaining vegetation in the properties 45 foot visibility triangle at the street intersection and 20 foot visibility triangles at driveway approaches.”

Timeline:

May 27, 2009: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

July 9, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, “If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case.”

- May 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 23 & 26, & June 3, 2011: The applicant forwarded additional information beyond what was submitted with the original application (see Attachments A, B, C, and D).
- 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 3, 2011: The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" commenting "The code requires a 45' x 45' visibility clip; we measured the existing clip to be 34' x 34' today with a substandard street. In the future, as the trees grow, the visibility clip will continue to be diminished."

STAFF ANALYSIS:

- This request for a special exception to the visual obstruction regulations focuses on maintaining (according to what is represented on the submitted application/site plan/elevation) three, 21' high trees located in the 45' visibility triangle at the intersection of Beechwood Lane and Crestline Avenue on a site developed with a single family home.
- The Sustainable Development and Construction Department Project Engineer recommends denial of this request stating that "the code requires a 45' x 45' visibility clip; we measured the existing clip to be 34' x 34' today with a substandard street. In the future, as the trees grow, the visibility clip will continue to be diminished."
- The applicant has the burden of proof in establishing how granting the request for a special exception to the visual obstruction regulations to maintain trees in the 45' visibility triangle at the intersection of Beechwood Lane and Crestline Avenue will not constitute a traffic hazard.
- If the Board chooses to grant this request, subject to compliance with the submitted site plan and elevation, the items shown on these documents (in this case, what is represented on the submitted application/site plan/elevation as three, 21' high trees)

Application of Karl A Crawley for a special exception to the tree preservation regulations at 3831 N. Prairie Creek Road. This property is more fully described as Lot 1 in City Block A/6780 and is zoned PD-836 which requires mandatory tree mitigation. The applicant proposes to construct a structure and provide an alternate tree mitigation plan which will require a special exception.

LOCATION: 3831 N. Prairie Creek Road.

APPLICANT: Karl A Crawley

June 15, 2011 Public Hearing Notes:

- The Board Administrator circulated additional written documentation to the board members at the briefing. The information included a revised proposal submitted by the applicant which stated that he was in agreement with the alternative proposed in the memo from the Chief Arborist.

REQUEST:

- A special exception to the tree preservation regulations is requested in conjunction with not fully mitigating protected trees removed/to be removed on a site being developed with (according to the application and attached document) an institutional/public middle school use (Ann Richards Middle School).

STAFF RECOMMENDATION:

Denial

Rationale:

- The applicant has not substantiated how strict compliance with the requirements of Tree Preservation Regulations will unreasonably burden the use of the property; and that the special exception will not adversely affect neighboring property.
- The City's Chief Arborist recommends denial of this request.

STANDARD FOR A SPECIAL EXCEPTION TO THE TREE PRESERVATION REGULATIONS:

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

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

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

- the extent to which there is residential adjacency;

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

GENERAL FACTS:

- The Dallas Development Code states that the Tree Preservation, Removal, and Replacement Regulations apply to all property in the city except for: a) lots smaller than two acres in size that contain single family or duplex uses; and b) lots in a planned development district with landscaping and tree preservation regulations that vary appreciably from those in the provisions set forth in Chapter 51A.
- The Dallas Development Code states that if a tree removal application is approved, one or more healthy replacement trees must be planted in accordance with the following requirements:
 1. Quantity. The total caliper of replacement trees must equal or exceed the total caliper of the protected trees removed or seriously injured.
 2. Species. A replacement tree must be one of the specific “approved replacement trees” listed, and no one species of tree may constitute more than 30 percent of the replacement trees planted on a lot or tract.
 3. Location. The replacement trees must be planted on the lot from which the protected tree was removed or seriously injured, except as otherwise allowed by the code as an “alternate method of compliance with tree replacement requirements.” Replacement trees may not be planted within a visibility triangle, a water course, or an existing or proposed street or alley.
 4. Minimum size. A replacement tree must have a caliper of at least two inches.
 5. Timing. Except as otherwise provided in the code, all replacement trees must be planted within 30 days after the removal or serious injury of the protected trees.

If the property owner provides the building official with an affidavit that all replacement trees will be planted within six months, the building official shall permit the property owner to plant the replacement trees during the six-month period.

If the property owner provides the building official with a performance bond or letter of credit in the amount of the total cost of purchasing and planting replacement trees, the building official may permit the property owner up to 18 months to plant the replacement trees with the following restrictions:

- For single family or multifamily developments, at least 50 percent of the total caliper of replacement trees must be planted before 65 percent of the development has received a final building inspection or a certificate of occupancy, and all replacement trees must be planted prior to the completion of the development; and
- In all other cases, the replacement trees must be planted prior to the issuance of a certificate of occupancy.

A replacement tree that dies within two years of the date it was planted must be replaced by another replacement tree that complies with the tree preservation regulations.

- The Dallas Development Code provides the following “alternate methods of compliance with tree replacement requirements” if the building official determines

that, due to inhospitable soil conditions or inadequate space, it would be impracticable or imprudent for the responsible party to plant a replacement tree on the lot where the protected tree was removed or seriously injured (the “tree removal property”):

1. Donate the replacement tree to the city’s park and recreation department.
 2. Plant the replacement tree on other property in the city that is within one mile of the tree removal property.
 3. Make a payment into the Reforestation Fund.
 4. Grant a conservation easement to the city.
- The applicant has stated on his application that prior to the construction of the middle school being developed on the site, it had been heavily wooded with the majority of trees being multi-trunk cedars where those that fell into the protected tree size range were approximately 4,400 caliper inches.
 - The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).
 - The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Chief Board of Adjustment Planner (see Attachment B). The memo stated the following:
 - The applicant is seeking a special exception to the tree mitigation regulations of Article X.
 - Trigger:
New construction of a new school campus
 - Deficiencies:
Staff has concluded the overall mitigation requirements is 5,710 caliper inches (not 5,868 inches reported by the applicant) after adjustments of trees determined by staff during plan review.
The mitigation was reduced further by credits through PD 836, Section 51P-836.113 (c), “Tree Preservation, Removal, and Replacement,” and with credit (reduction) of 1,119 caliper inches for a total mitigation requirement of 4,591 caliper inches.
After planting 752 caliper inches for landscaping and mitigation on the property, the overall mitigation requirement for the property will be 3,839 caliper inches, or 67.2 percent of the initial requirement.
 - Factors:
City Council approved PD 836 on January 5, 2011. The ordinance modified the provisions of Article X with the following:
“Except as provided in this section, tree preservation, removal, and replacement must be in accordance with Article X.”
Protected trees removed from an approved water detention area are not subject to the mitigation requirements in Sections 51A-10.134 (Replacement) and 51A-10.135 (Alternate Methods of Replacement).
- For a public school:
- i. replacement trees may be planted on any DISD site within five miles of the property – Article X limits other properties to one mile.
 - ii. Protected trees located in the conservation area shown on the development plan may be counted towards mitigation at a ratio of one inch of replacement tree for every two inches (1/2) of conserved protected tree within a 100-year flood plain; and

- iii. Protected trees located in the conservation area shown on the development plan may be counted towards mitigation at a ratio of one inch of replacement tree for every one inch of conserved protected tree not located in a 100 year floodplain. (- 1,119")

Historically, the site had been mostly use for agriculture. The majority of tree on the property are considered "pioneer" or early succession stage trees. These are fast growing and rapidly expansive trees that will cover a large area fairly quickly. Aerial imagery dating back to 1956 has shown the advanced tree cover was relatively young and dense. They were established on lands left without management once the agricultural use had ended. Most of the trees were bois-d'arc, cedar, and mesquite which are represented as non-protected in some circumstances in city ordinance. The other primary trees were hackberry and elm and a few select large trees. The larger trees were grouped in the northern and western fringes of the property near the creek. The areas of the most intense protected tree removal were in proximity of the ball fields on the north side nearest the creek. The areas of conservation are also included along the creek. The smaller cedar trees are derived from the larger parents.

The applicant has stated DISD is implementing significant green technologies including geo-thermal energy to reduce its impact of the community energy demands.

The applicant requests to reduce the mitigation to "a minimum of 1,850 inches of trees for the site." The amount is 32.4 percent of the overall mitigation prior t o PD reductions.

Calculations when removing all cedars:

5,710 – 4,035 = 1,675 caliper inches. Applicant proposes a minimum of 1,850 inches.

1,110 inches subtraction of conservation area (Planned Development)

752 inches for planting on site (Article C per building permit review)

- Recommendation

- Denial.

- The Council-approved Planned Development make no inference toward tree mitigation reduction by a species removal from the protected tree list but does specifically provide exemption for detention areas, credits for preserving trees, and an extension of an existing method of mitigation.

- Alternatively the Chief Arborist recommends exempting from mitigation all "cedar" trees 16 caliper inches or less (Article X protects trees 12 inches and greater). All exemptions and credits per PD 836 would apply.

- Calculations (for informational purposes):

5,710" – 1,868" = 3,842" (All protected cedars 17" and greater = 1,868").

1,119" subtraction for conservation area (Planned Development)

752" for planting on site (Article X per building permit review)

1,971" to complete per alternate methods under Article X, including PD amended 5-mile planting range.

- The exception would be for definition of protected tree only (51A-10.101).

BACKGROUND INFORMATION:

Zoning:

Site: PD 836 (Planned Development)
North: LI (Light Industrial)
South: R-7.5(A) (Single family 7,500 square feet)
East: R-7.5(A) (Single family 7,500 square feet)
West: R-7.5(A) (Single family 7,500 square feet)

Land Use:

The site is currently being developed with an institutional/public school use (Ann Richards Middle School). The areas to the north and west appear to be undeveloped; and the areas to the east and south are developed with single family uses.

Zoning/BDA History:

1. Z 045-304, Property at the northwest corner of Military Parkway and N. Prairie Creek Road (the subject site) On January 5, 2011, the City Council approved Planned Development District 836 on property that had been zoned LI (Light Industrial) and R-7.5(A) (Single family).

Timeline:

- April 22, 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 B.
- 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 26, 2011: The applicant forwarded additional information beyond what was submitted with the original application (see Attachment A).
- 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: "Comply with all C.O.D visibility and floodplain requirements."

June 6, 2011: The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment B).

STAFF ANALYSIS:

- The request focuses on not fully mitigating protected trees removed/to be removed on a site being developed with (according to the application and attached document) an institutional/public middle school use (Ann Richards Middle School).
- The applicant has the burden of proof in establishing the following:
 - Strict compliance with the requirements of the Tree Preservation Regulations of the Dallas Development Code will unreasonably burden the use of the property (in this case, a site that is currently under development as an institutional use (Ann Richards Middle School); and
 - The special exception will not adversely affect neighboring property.
- The City of Dallas Chief Arborist recommends denial of the request.
- If the Board were to grant this request, the site would be "excepted" from full compliance to the tree preservation regulations of the Dallas Development Code.

BOARD OF ADJUSTMENT ACTION: JUNE 15, 2011

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

APPEARING IN OPPOSITION: No one

MOTION: **Wilson**

I move that the Board of Adjustment, in Appeal No. **BDA 101-055**, on application of Karl Crawley, **grant** the request of this applicant for a special exception to the tree preservation requirements in the Dallas Development Code because our evaluation of the property and the testimony shows that strict compliance with the requirements will unreasonably burden the use of the property; the special exception will not adversely affect neighboring property; and the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with Article X is required except a protected tree includes an eastern red cedar tree that has a caliper of at least 17 inches.

SECONDED: **Leone**

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

MOTION: Gaspard

I move to adjourn this meeting.

SECONDED: Agnich

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

NAYS: 0 -

MOTION PASSED 5– 0 (unanimously)

2:26 P.M. - Board Meeting adjourned for **June 15, 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.