

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
MONDAY, APRIL 18, 2011**

MEMBERS PRESENT AT BRIEFING: Sharon Boyd, Vice-Chair, Robert Moore, Panel Vice-Chair, Joel Maten, regular member, Ross Coulter, regular member, and Bob Richard, regular member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Sharon Boyd, Vice-Chair, Joel Maten, regular member, Ross Coulter, regular member, Bob Richard, regular member and Scott Jackson, alternate member

MEMBERS ABSENT FROM HEARING: Robert Moore, Panel Vice-Chair

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

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

11:10 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **April 18, 2011** docket.

1:02 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.

12:01 P.M.: Executive Session Begins

12:07 P.M.: Executive Session Ends

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel C March 14, 2011 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: APRIL 18, 2011

MOTION: Coulter

I move **approval** of the Monday, **March 14, 2011** public hearing minutes.

SECONDED: Maten

AYES: 5–Boyd, Moore, Maten, Coulter, Richard

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: Unassigned

REQUEST: To waive the filing fee to be submitted in conjunction with a potential Board of Adjustment appeal

LOCATION: 2002 Idaho Avenue

APPLICANT: Ruby Taylor

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:

March 30, 2011: The applicant submitted a letter requesting a waiver of the filing fee to be submitted in conjunction with variance request that she may be submitting along with additional related documentation (see Attachment A).

March 30, 2011: The request was randomly assigned to Board of Adjustment Panel C.

March 30, 2011: The Board Administrator mailed a letter to the applicant that provided her details about her request (see Attachment B).

BOARD OF ADJUSTMENT ACTION: APRIL 18, 2011

APPEARING IN FAVOR: Steve Myers, 2002 Idaho, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Richard**

I move to **waive** the filing fee to be submitted in conjunction with a potential Board of Adjustment appeal.

SECONDED: **Moore**

AYES: 5–Boyd, Moore, Maten, Coulter, Richard

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 101-026

BUILDING OFFICIAL’S REPORT:

Application of Steve E. Stoner for a special exception to the off-street parking regulations at 5500 Greenville Avenue. This property is more fully described as City Block 1/5409, and is zoned MU-3 which requires parking to be provided. The applicant proposes to construct and/or maintain a structure for certain office and retail and personal service uses and provide 1,084 of the required 1,183 parking spaces which will require a special exception of 99 spaces.

LOCATION: 5500 Greenville Avenue

APPLICANT: Steve E. Stoner

REQUEST:

- A special exception to the off-street parking regulations of 99 parking spaces (or an 8 percent reduction of the 1,183 off-street parking spaces that are required) is requested in conjunction with (according to the applicant) initiating a new leasing program on a site developed with a mix of restaurant, retail, personal service, office and medical office uses (Old Town Village) – a leasing program that would include among other things replacing an existing 40,061 square foot bookstore (general merchandise use) with a 45,000 square foot health club/fitness center/ “personal service” use” with an added approximately 3,000 square foot mezzanine. The applicant proposes to provide 1,084 (or 92 percent) of the required 1,183 off-street parking spaces.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The special exception of 99 spaces shall automatically and immediately terminate when and if the property is no longer used for office uses, or retail and personal service uses permitted in the subject site’s MU-3 (Mixed Use) zoning district; with the combination of those uses not to exceed 1,183 required parking spaces.

Rationale:

- The Sustainable Development Department Project Engineer has no objections to this request given the applicant’s submitted parking analysis study.
- The applicant has substantiated how the parking demand generated by the existing/proposed office and retail and personal service 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 differing off-street parking requirements for the existing and proposed uses at the existing shopping center. The applicant has written in an email of the following uses that he wants the board to consider as part of his parking reduction request:
 - Certain office uses (uses permitted in the site's MU-3 zoning) with parking requirements ranging from 1 space per 200 square feet to 1 space per 333 square feet of floor area;

- Certain retail and personal service uses (uses permitted in the site's MU-3 zoning) with parking requirements ranging from 1 space per 100 square feet of floor area to 1 space per 500 square feet of floor area.

The applicant proposes to provide 1,084 (or 92 percent) of the required 1,183 off-street parking spaces in conjunction with the site being developed with a combination of the uses mentioned above with the combination of these uses not to exceed the 1,183 required parking spaces.

- The applicant submitted information beyond what was submitted with the original application (see Attachment A).

BACKGROUND INFORMATION:

Zoning:

Site: MU-3 (Mixed Use)
North: MU-3 (Mixed Use)
South: PD No. 610 (Planned Development)
East: MU-3 and MF-1(A) (Mixed Use and Multifamily)
West: MU-3 (Mixed Use)

Land Use:

The subject site is developed with a mix of restaurant, retail, personal service, office and medical office uses (Old Town Village). The areas to the north, south, and west are developed with retail uses; and the area to the east is developed with retail and multifamily uses.

Zoning/BDA History:

- | | |
|--|--|
| <p>1. BDA978-116, Property at 5500 Greenville Avenue (the subject site)</p> | <p>On January 27, 1998, the Board of Adjustment Panel C granted a request for a special exception to the off-street parking regulations of 119 spaces (or 10 percent of the total 1,163 parking spaces required). The board imposed no conditions as part of this request. The case report stated that the request was made in conjunction with plans to operate an increased square footage of restaurant space within the existing approximately 180,000 square foot shopping center (Old Town Village).</p> |
| <p>2. BDA101-027, Property at 5302 Greenville Avenue (the property to the south and west of the subject site)</p> | <p>On April 18, 2011, the Board of Adjustment Panel C will consider a request for a special exception to the off-street parking regulations of 6 spaces (or 24% of the</p> |

required off-street parking) in conjunction with a proposed leasing scenario and revised parking layout on this site developed with a general merchandise use and on the site/property located immediately to the north and east of this site – Old Town Village. Note that the applicant for BDA101-027 is the same as the applicant for BDA101-026.

Timeline:

January 27, 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 C. 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.”

February 9, 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.

February 11, 2011: The applicant requested that staff postpone the scheduling of this application until Panel C’s April hearing.

March 17, 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 April 4th deadline to submit additional evidence for staff to factor into their analysis; and the April 8th 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 21, 2011: The applicant forwarded additional information beyond what was submitted with the original application (see Attachment A).

April 5, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April 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, and the Assistant City Attorney to the Board.

April 7, 2011: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Has no objections” with the following comments: “Reviewed parking analysis.”

STAFF ANALYSIS:

- This request focuses on the applicant’s proposal to initiate a new leasing program on a site developed with a mix of restaurant, retail, personal service, office and medical office uses (Old Town Village) – a leasing program that would include among other things replacing an existing 40,061 square foot bookstore (general merchandise use) with a 45,000 square foot health club/fitness center/ “personal service” use with an added approximately 3,000 square foot mezzanine. The applicant proposes to provide 1,084 (or 92 percent) of the required 1,183 off-street parking spaces.
- The Sustainable Development and Construction Department Project Engineer has submitted a review comment sheet marked “Has no objections” with the following comments: “Reviewed parking analysis.”
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the existing and proposed uses does not warrant the number of off-street parking spaces required, and
 - The special exception of 99 spaces (or 8 percent reduction of the required off-street parking spaces) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, subject to the condition mentioned in the “Staff Recommendation” section of this case report, the applicant would be allowed to lease a mix of certain office and retail and personal services uses permitted in the site’s MU-3 zoning district and provide 1,084 parking spaces whereby the combination of these uses would not exceed 1,183 parking spaces.

BOARD OF ADJUSTMENT ACTION: APRIL 18, 2011

APPEARING IN FAVOR:

APPEARING IN OPPOSITION:

MOTION: Maten

I move that the Board of Adjustment grant application **BDA 101-026** 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 the intent of the Dallas Development Code:

- The special exception shall automatically and immediately terminate if and when the office and retail and personal services uses, or combination of these uses, that would normally need no more than 1,183 required parking spaces, are changed or discontinued.

SECONDED: Coulter

AYES: 5–Boyd, Moore, Maten, Coulter, Richard

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 101-027

BUILDING OFFICIAL’S REPORT:

Application of Steve E. Stoner for a special exception to the off-street parking regulations at 5302 Greenville Avenue. This property is more fully described as Lot 1 in City Block 1/5409 and is zoned MU-3 which requires parking to be provided. The applicant proposes to construct and/or maintain a structure for a general merchandise or food store greater than 3,500 square feet use and provide 19 of the required 25 parking spaces which will require a special exception of 6 spaces.

LOCATION: 5302 Greenville Avenue

APPLICANT: Steve E. Stoner

REQUEST:

- A special exception to the off-street parking regulations of 6 spaces (or a 24 percent reduction of the 25 off-street parking spaces that are required) is requested in conjunction with (according to the applicant) initiating a proposed leasing scenario and revised parking layout on this site developed with a general merchandise or food store use (Blockbuster Media), and on the site/property located immediately to the north and east of this site – Old Town Village. The applicant proposes to provide 19 (or 76 percent) of the required 25 off-street parking spaces.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The special exception shall automatically and immediately terminate if and when the general merchandise or food store less than 3,500 square feet use is changed or discontinued.

Rationale:

- The Sustainable Development Department Project Engineer has no objections to the reduction request of 24 percent based on the applicant's submitted parking study document.
- The applicant has substantiated how the parking demand generated by the existing/proposed general merchandise or food store greater than 3,500 square feet 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.

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 requirements:
 - General merchandise or food store greater than 3,500 square feet: 1 space for 200 square feet of floor area.
 The applicant proposes to provide 19 (or 76 percent) of the required 25 off-street parking spaces in conjunction with the site being leased/maintained with the use mentioned above.

BACKGROUND INFORMATION:

Zoning:

Site: MU-3 (Mixed Use)
North: MU-3 (Mixed Use)
South: PD No. 610 (Planned Development)
East: MU-3 and MF-1(A) (Mixed Use and Multifamily)
West: MU-3 (Mixed Use)

Land Use:

The subject site is developed with a retail/ "general merchandise" use (Blockbuster Media). The areas to the north, south, and west are developed with retail uses; and the area to the east is developed with retail and multifamily uses.

Zoning/BDA History:

1. BDA978-116, Property at 5500 Greenville Avenue (the site immediately north and east of the subject site)

On January 27, 1998, the Board of Adjustment Panel C granted a request for a special exception to the off-street parking regulations of 119 spaces (or 10 percent of the total 1,163 parking spaces required). The board imposed no conditions as part of this request. The case report stated that the request was made in conjunction with plans to operate an increased square footage of restaurant space within the existing approximately 180,000 square foot shopping center (Old Town Village).

2. BDA101-026, Property at 5500 Greenville Avenue (the property to the north and east of the subject site)

On April 18, 2011, the Board of Adjustment Panel C will consider a request for a special exception to the off-street parking regulations of 99 parking spaces (or an 8 percent reduction of the 1,183 off-street parking that are required) requested in conjunction with initiating a new leasing program on a site developed with a mix of restaurant, retail, personal service, office and medical office uses (Old Town Village) – a leasing program that would replace an existing 40,061 square foot bookstore (general merchandise use) with a 45,000 square foot health club/fitness center/ "personal service" use that will include an approximately 3,000 square foot mezzanine. The applicant proposes to provide 1,084 (or 92 percent) of the required 1,183 off-street parking spaces. Note that the applicant for BDA101-026 is the same as the applicant for BDA101-027.

Timeline:

- January 27, 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 C.
- February 9, 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.
- February 11, 2011: The applicant requested that staff postpone the scheduling of this application until Panel C’s April hearing.
- March 17, 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 April 4th deadline to submit additional evidence for staff to factor into their analysis; and the April 8th 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.
- April 5, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April 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, and the Assistant City Attorney to the Board.
- April 7, 2011: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Has no objections” with the following comments: “Reviewed parking study.”

STAFF ANALYSIS:

- This request focuses on initiating a proposed leasing scenario and revised parking layout on this site developed with a general merchandise or food store use (Blockbuster Media), and on the site/property located immediately to the north and east of this site – Old Town Village where the applicant proposes to provide 19 (or 76 percent) of the required 25 off-street parking spaces.
- The Sustainable Development and Construction Department Project Engineer has submitted a review comment sheet marked “Has no objections” with the following comments: “Reviewed parking analysis.”
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the existing/proposed use does not warrant the number of off-street parking spaces required, and
 - The special exception of 6 spaces (or 24 percent reduction of the required off-street parking spaces) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, subject to the condition that the special exception of 6 spaces shall automatically and immediately terminate if and when the general merchandise or food store greater than 3,500 square feet use is changed or discontinued, the applicant would be allowed to maintain the site with this specific use and provide 19 of the 25 code required off-street parking spaces.

BOARD OF ADJUSTMENT ACTION: APRIL 18, 2011

APPEARING IN FAVOR:

APPEARING IN OPPOSITION:

MOTION: **Maten**

I move that the Board of Adjustment grant application **BDA 101-027** 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 the intent of the Dallas Development Code:

- The special exception shall automatically and immediately terminate if and when the general merchandise or food store greater than 3,500 square feet use is changed or discontinued.

SECONDED: **Coulter**

AYES: 5–Boyd, Moore, Maten, Coulter, Richard

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 101-030

BUILDING OFFICIAL’S REPORT:

Application of Mark Danuser for special exceptions to the fence height and visual obstruction regulations at 11310 Crest Brook Drive. This property is more fully described as Lot 32 in City Block 11/6378 and is zoned R-16(A), which limits the height of a fence in the front yard to 4 feet and requires a 20-foot visibility triangle at driveway approaches. The applicant proposes to construct an 8-foot high fence which will require a 4-foot special exception to the fence height regulations, and to locate and maintain items in required visibility triangles which will require a special exception to the visual obstruction regulations.

LOCATION: 11310 Crest Brook Drive

APPLICANT: Mark Danuser

April 18, 2011 Public Hearing Notes:

- The applicant’s representative submitted additional written documentation to the board members at the public hearing.

REQUESTS:

- The following appeals had been made in this application on a site that is currently being developed with a single family home:
 1. a special exception to the fence height regulations of 4’ is requested in conjunction with constructing and maintaining primarily a 6’ high open iron fence and gate to be located in the one of the site’s two 40’ required front yards - Northaven Road. (An 8’ high wood fence is proposed to be constructed and maintained on the east side of the site, perpendicular to Northaven Road in this front yard setback), and
 2. special exceptions to the visual obstruction regulations are requested in conjunction with constructing and maintaining portions of the aforementioned 6’ high open iron fence to be located in the 20’ visibility triangles on either side (about 5’ of length) of the driveway from Northaven Road.

STAFF RECOMMENDATION (fence height special exceptions):

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.

STAFF RECOMMENDATION (visual obstruction special exceptions):

Denial

Rationale:

- The Sustainable Development and Construction Department Project Engineer recommends denial of these requests.
- The applicant has not substantiated how the location of the proposed 6' high open iron fence in the 20' visibility triangles on either side (about 5' of length) of the driveway from Northaven Road does not constitute a traffic hazard.

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.

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 (fence height special exception):

- The subject site a corner lot zoned R-16(A) with two street frontages of unequal distance. The site is located at the northeast corner of Crest Brook Drive and Northaven Road. Even though the Crest Brook Drive frontage of the subject site appears to function as its front yard and the Northaven Road frontage appears to function as its side yard, the subject site has two 40' front yard setbacks along both streets. The site has a 40' required front yard along Northaven Road (the shorter of the two frontages which is always deemed the front yard setback on a corner lot of unequal frontage distance in a single family zoning district), and a 40' required front yard setback along Crest Brook Drive (the longer of the two frontages of this corner lot of unequal frontage distance) which would typically be regarded as a side yard where a 9' high fence could be maintained by right). The site's Northaven Road frontage is deemed a front yard only because it is the longer of the site's street frontages. (If the Northaven Road frontage on this site were approximately 16' longer, the Northaven Road frontage would be a side yard where the owner of this site could maintain a 9' high fence by right without a need to apply to the board for a fence height special exception to maintain as requested in this application an 8' high fence).
- The Dallas Development Code states that a person shall not erect or maintain a fence in a required yard more than 9' above grade, and additionally states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
The applicant had submitted a site plan and elevation indicating that the proposal in the required front yard setback reaches a maximum height of 8'. (No fence is proposed to be constructed/maintained in the subject site's 40' Crest Brook Drive required front yard).
- The following additional information was gleaned from the submitted site plan:

- The proposal located in the Northaven Road front yard setback over 4' in height is approximately 114' in length parallel to the street and approximately 32' - 38' in length *perpendicular* to Northaven Road on the west and east sides (respectively) of the site in the required front yard.
- The proposal is shown to be located about 2' – 8' from the site's Northaven Road front property line or about 14' – 20' from the curb line.
- One single family home “fronts” to the proposed fence on the subject site – a property with no fence in its front yard.
- The Board Administrator conducted a field visit of the site and surrounding area and noted one other fence above four (4) feet high which appeared to be located in a front yard setback: an 8' high wood fence immediately east of the site – a fence that appears to be a result of an approved fence height special exception from December of 2010- BDA 101-004.
- On March 31, 2011, the applicant submitted a perspective image/drawing of the proposal (see Attachment A).

GENERAL FACTS (visual obstruction special exceptions):

- 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 and elevation has been submitted that shows a portion of the proposed 6' high open iron fence to be located in the in the 20' visibility triangles on either side of the driveway from Northaven Road.
- On March 31, 2011, the applicant submitted a perspective image/drawing of the proposal (see Attachment A).
- On April 8, 2011, the applicant submitted two photographs described as showing “that the distance we are requesting to install our fence is consistent with the neighbor fencing and in fact gives the person exiting the drive or ally on to Northaven plenty of visibility in both directions” (see Attachment B).

BACKGROUND INFORMATION:

Zoning:

Site: R-16(A) (Single family district 16,000 square feet)
North: R-16(A) (Single family district 16,000 square feet)
South: R-16(A) (Single family district 16,000 square feet)
East: R-1ac(A) (Single family district 1 acre)
West: R-16(A) (Single family district 16,000 square feet)

Land Use:

The subject site is being 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 101-004, Property at 11303 W. Ricks Circle (the lot immediately east of subject site) On December 13, 2010, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 4' and imposed the submitted site plan and elevations as a condition to the request. The case report stated that the request was made in conjunction with constructing and maintaining primarily a 5' 4" high open iron fence and gates with 7' high masonry stone columns to be located in the one of the site's two 40' front yard setbacks on a site being developed with a single family home - Northaven Road. (The case report additionally stated that an 8' high wood fence was proposed to be constructed and maintained on the west side of the site, perpendicular to Northaven Road in this front yard setback).

Timeline:

- January 18, 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.
- March 17, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- March 17, 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 April 4th deadline to submit additional evidence for staff to factor into their analysis; and the April 8th 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 30, 2011: The applicant forwarded additional information beyond what was submitted with the original application (see Attachment A).
- April 5, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April 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, and the Assistant City Attorney to the Board.
- April 7, 2011: The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" commenting "No comment on fence - recommend denial of reducing visibility requirements at driveway or alley." (Note the no item is represented on the submitted site plan as being located in the 20' visibility triangle at the Northaven Road/alley intersection).
- April 8, 2011: The applicant forwarded additional information beyond what was submitted with the original application and beyond what was discussed at the April 5th staff review team meeting (see Attachment B).

STAFF ANALYSIS (related to the fence height special exception):

- This request focuses on constructing and maintaining primarily a 6' high open iron fence and gate to be located in the one of the site's two 40' required front yards - Northaven Road on a site being developed with a single family home. (An 8' high wood fence is proposed to be constructed and maintained on the east side of the site, perpendicular to Northaven Road in this front yard setback).
- The submitted site plan and elevation documents the location, height, and materials of the fence over 4' in height in the required front yard. The site plan shows the proposal to be approximately 114' in length parallel to the street and approximately 32' - 38' in length *perpendicular* to Northaven Road on the west and east sides (respectively) of the site in the required front yard; and to be located about 2' - 8' from the site's Northaven Road front property line or about 14' - 20' from the curb line on the east and west sides of the site in the front yard setback.
- One single family home "fronts" to the proposed fence on the subject site - a property with no fence in its front yard.
- The Board Administrator conducted a field visit of the site and surrounding area and noted one other fence above four (4) feet high which appeared to be located in a front yard setback: an 8' high wood fence immediately east of the site - a fence that appears to be a result of an approved fence height special exception from December of 2010- BDA 101-004.

- As of April 11, 2011, no letters had been submitted to staff in support or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' will not adversely affect neighboring property.
- Granting this special exception of 4' with a condition imposed that the applicant complies with the submitted site plan and elevation would provide assurance that the proposal exceeding 4' in height in the required front yard would be constructed and maintained in the location and of the heights and materials as shown on these documents.
- Note that if the board were to grant this request and impose the submitted site plan and elevation as a condition, but deny the request for the special exceptions to the visual obstruction regulations, notations would be made of such action on the submitted plans whereby the location of the items in the visibility triangles would not be "excepted."

STAFF ANALYSIS (related to the visual obstruction special exceptions):

- These requests focus on constructing and maintaining portions of the aforementioned 6' high open iron fence to be located in the 20' visibility triangles on either side (about 5' of length) of the driveway from Northaven Road.
- The Sustainable Development and Construction Department Project Engineer recommends denial of these requests. (The applicant has responded to this conclusion by submitting photographs for the board's consideration – photos that he claims establish how his proposed fence in the visibility triangles gives ample visibility in both directions exiting the site onto Northaven- see Attachment B).
- 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 5' lengths of a proposed 6' open iron fence in the 20' visibility triangles on either side of the driveway into the site from Northaven Road will not constitute a traffic hazard.
- If the Board chooses to grant these requests, subject to compliance with the submitted site plan and elevation, the items shown on this document (approximately 5' lengths of a 6' high open iron fence) would be "excepted" into the 20' visibility triangles on either side of the driveway into the site from Northaven Road.
- Note that if the board were to grant these requests and impose the submitted site plan and elevation as a condition, but deny the request for a special exception to the fence height regulations, notations would be made of such action on the submitted document whereby the height of the fence higher than 4' in the front yard setback would not be "excepted."

BOARD OF ADJUSTMENT ACTION: APRIL 18, 2011

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

APPEARING IN OPPOSITION: No one

MOTION #1: **Coulter**

I move that the Board of Adjustment, in Appeal No. **BDA 101-030**, on application of Mark Danuser, **grant** the request of this applicant to construct and maintain an 8-foot high fence as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: **Maten**

AYES: 5–Boyd, Moore, Maten, Coulter, Richard

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

MOTION #2: **Coulter**

I move that the Board of Adjustment, in Appeal No. **BDA 101-030**, on application of Mark Danuser, **grant** the request of this applicant to maintain a fence in the 20' visibility triangles at the driveway approaches as special exceptions 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 and elevation is required.

SECONDED: **Maten**

AYES: 5–Boyd, Moore, Maten, Coulter, Richard

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 090-105

BUILDING OFFICIAL'S REPORT:

Application of Evelyn J. L. Braswell to require compliance of a nonconforming use at 14831 Seagoville Road. This property is more fully described as Tracts 68 A and B in City Block 8823 and is zoned R-10(A) which limits the legal uses in a zoning district. The applicant proposes to request that the board establish a compliance date for a nonconforming manufactured home park use.

LOCATION: 14831 Seagoville Road

APPLICANT: Evelyn J. L. Braswell

REQUEST:

- A request is made for the Board of Adjustment to establish a compliance date for a nonconforming “manufactured home park” use on the subject site.

COMPLIANCE REGULATIONS FOR NONCONFORMING USES: SEC. 51A-4.704. **NONCONFORMING USES AND STRUCTURES** of the Dallas Development Code provides the following provisions:

(a) Compliance regulations for nonconforming uses. It is the declared purpose of this subsection 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.

(1) Amortization of nonconforming uses.

(A) Request to establish compliance date. The city council may request that the board of adjustment consider establishing a compliance date for a nonconforming use. In addition, any person who resides or owns real property in the city may request that the board consider establishing a compliance date for a nonconforming use. Upon receiving such a request, the board shall hold a public hearing to determine whether continued operation of the nonconforming use will have an adverse effect on nearby properties. If, based on the evidence presented at the public hearing, the board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for the nonconforming use; otherwise, it shall not.

(B) Factors to be considered. The board shall consider the following factors when determining whether continued operation of the nonconforming use will have an adverse effect on nearby properties:

(i) The character of the surrounding neighborhood.

(ii) The degree of incompatibility of the use with the zoning district in which it is located.

(iii) The manner in which the use is being conducted.

(iv) The hours of operation of the use.

(v) The extent to which continued operation of the use may threaten public health or safety.

(vi) The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust, and odor.

(vii) The extent to which public disturbances may be created or perpetuated by continued operation of the use.

(viii) The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use.

(ix) Any other factors relevant to the issue of whether continued operation of the use will adversely affect nearby properties.

(C) Finality of decision. A decision by the board to grant a request to establish a compliance date is not a final decision and cannot be immediately

appealed. A decision by the board to deny a request to establish a compliance date is final unless appealed to state court within 10 days in accordance with Chapter 211 of the Local Government Code.

(D) Determination of amortization period.

- (i) If the board determines that continued operation of the nonconforming use will have an adverse effect on nearby properties, it shall, in accordance with the law, provide a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.
- (ii) The following factors must be considered by the board in determining a reasonable amortization period:
 - (aa) The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.
 - (bb) Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
 - (cc) Any return on investment since inception of the use, including net income and depreciation.
 - (dd) The anticipated annual recovery of investment, including net income and depreciation.

(E) Compliance requirement. If the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.

(F) For purposes of this paragraph, "owner" means the owner of the nonconforming use at the time of the board's determination of a compliance date for the nonconforming use.

GENERAL FACTS:

- City records indicate the "manufactured home park" use became nonconforming on April 1, 1978.
- The Dallas Development Code states that "nonconforming use" means "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 subject site is zoned R-10(A) (Single family district 10,000 square feet) that does not permit a "manufactured home park, manufactured home subdivision, or campground" use.
- The Dallas Development Code establishes the following provisions for "manufactured home park, manufacture home subdivision, or campground" use in Section 51A-4.209 (b) (4):
 - "Manufactured home park, manufactured home subdivision, or campground"
 - (A) Definition:

- (i) A manufactured home park is a unified development of transient stands arranged on a lot under single ownership.
 - (ii) A manufactured home subdivision is a plat designed specifically for manufactured home development
 - (iii) a campground is a lot used to accommodate recreation vehicles, tents, or manufactured homes on a rental basis for temporary camping purposes.
 - (B) Districts permitted: By right in the MH(A) district.
- The owner of the site could eliminate the nonconforming use status of the existing manufactured home park use by obtaining MH(A) (Manufactured Home district) zoning from City Council.
 - The owner of the site could transition the use of the site from manufactured home park use to any use that is permitted by right in the site's existing R-10(A) (Single family district 10,000 square feet) zoning classification.
 - The board determined at their December 13, 2010 hearing, that based on the evidence and testimony presented to them, that continued operation of the nonconforming "manufactured home park" use would have an adverse effect on nearby properties, and set a hearing date March 14, 2011 for the purpose of establishing a compliance date for this nonconforming use.
 - All information submitted by the applicant ("Attachment A") related to whether continued operation of the nonconforming "manufactured home park" use would have an adverse effect on nearby properties has been retained in the case file and is available for review upon request.
 - Photographs submitted by the owner of the nonconforming use (Rickey Gregory) at the December 13th public hearing have been retained in the case file and are available for review upon request.
 - On February 10, 2011, a subpoena duces tecum and interrogatories was delivered to the owner of the nonconforming "manufactured home park" use of the site/property (Rickey Gregory).
 - On February 28, 2011, the owner of the nonconforming use's newly designated representative forwarded a letter to the Board Administrator that stated among other things how the applicant was requesting an extension of 30 days to allow him to provide "complete answers to the Interrogatories and Requests for Admission and to obtain a proper amortization before March 14th." (See Attachment B).
 - On March 1, 2011, the Assistant City Attorney assisting with this application forwarded a letter to the Board Administrator that stated among other things how the City does not oppose and joins the applicant's February 28th 30 day extension request, and how "the Board and all parties will be better served if a continuance is granted." (See Attachment C).
 - The board conducted a public hearing on this application on March 14, 2011 where the board moved to delay final action on establishing a compliance date for the nonconforming use until April 18th per the requests of the applicant and the Assistant City Attorney assisting with this application.
 - On March 25, 2011, the owner of the nonconforming use's representative forwarded a response to the City's subpoena duces tecum and interrogatories (see Attachment D). This document states among other things that "Mr. Gregory believes it will take

at least twelve (12) years to recoup his investment in the Manufactured Home Park and would request as long as a period of time as possible in order to do so.”

- On April 8, 2011, the Assistant City Attorney assisting with this application forwarded a document to the Board Administrator entitled “City of Dallas’ Position Statement with Supporting Evidence and Authority” (see Attachment E). This document states among other things that “Mr. Gregory claims he needs twelve years to recover his investment and costs. However, his discovery responses establish that Mr. Gregory has fully recovered his investment and any compliance costs; and therefore, he is not entitled to any additional time to come into compliance with required zoning.”

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-7.5(A) (Single family district 7,500 square feet)
East: R-10(A) (Single family district 10,000 square feet)
West: R-10(A) (Single family district 10,000 square feet)

Land Use:

The site is currently developed with a “manufactured home park” use. The areas to the north, east, and west are developed with single family uses; and the area to the south appears to be undeveloped.

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:

- Sept. 17, 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.
- October 21, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- October 21, 2010: The Board Administrator wrote/sent the owner of the site/property (Rickey Gregory) a letter (with a copy to the applicant) that informed him that a Board of Adjustment case had been filed against his property. The letter included following enclosures:
- a copy of the Board of Adjustment application and related materials that had been submitted in conjunction with the application;

- a copy of the section of the Dallas Development Code that described the Board of Adjustment (Section 51A-3.102);
- a copy of the section of the Dallas Development Code that provides the definition of “nonconforming use” (Section 51A-2.102(90));
- a copy of the section of the Dallas Development Code that provides the purpose and main use permitted set forth for “R-10(A)” districts (Section 51A-4.122 (e));
- a copy of the section of the Dallas Development Code that provides the definition and provisions set forth for “manufactured home park” use (Section 51A-4.209 (b)(4));
- a copy of the section of the Dallas Development Code that provides provisions for “nonconforming uses and structures” (Section 51A-4.704);
- a copy of the section of the Dallas Development Code that provides provisions regarding the Board of Adjustment hearing procedures (51A-4.703);
- a copy of the City of Dallas Board of Adjustment Working Rules of Procedure; and
- A copy of the hearing procedures for board of adjustment amortization of a nonconforming use.

The letter also informed the owner of the property the date, time, and location of the briefing/public hearing, and provided a deadline of December 3rd to submit any information that would be incorporated into the board’s docket.

November 30, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for December public hearing. Review team members in attendance included: 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.

December 2, 2010: The applicant submitted additional information to the Board Administrator beyond what was submitted with the original application (see Attachment A).

December 13, 2010: The Board of Adjustment conducted a public hearing on this application and determined that based on the evidence and testimony presented to them, that continued operation of the nonconforming “manufactured home park” use would have an adverse effect on nearby properties, and set a hearing date March 14, 2011 for the purpose of establishing a compliance date for this nonconforming use.

- February 10, 2011: A subpoena duces tecum and interrogatories was delivered to the owner of the nonconforming “manufactured home park” use of the site/property (Rickey Gregory).
- February 28, 2011: The owner of the nonconforming use’s newly designated representative submitted additional information to the Board Administrator (see Attachment B).
- March 1, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.
- March 1, 2011: The Assistant City Attorney assisting with this application submitted additional information to the Board Administrator (see Attachment C).
- March 14, 2011: The Board of Adjustment conducted a public hearing on this application where the board moved to delay final action on establishing a compliance date for the nonconforming use until April 18th per the requests of the applicant and the Assistant City Attorney assisting with this application.
- March 25, 2011: The owner of the nonconforming use’s representative submitted additional information to the Board Administrator (see Attachment D).
- April 5, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April 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, and the Assistant City Attorney to the Board.
- April 8, 2011: The Assistant City Attorney assisting with this application submitted additional information to the Board Administrator (see Attachment E).

STAFF ANALYSIS:

- The “manufactured home park” use on the subject site is a nonconforming use. According to city records, the use became nonconforming on April 1, 1978.
- The Dallas Development Code states that it is the declared purpose of this subsection (Sec. 51A-4.704. Nonconforming Uses and Structures) 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 owner of the site could eliminate the nonconforming use status of the existing manufactured home park use by obtaining MH(A) (Manufactured Home district) zoning from City Council.
- The owner of the site could transition the use of the site from manufactured home park use to any use that is permitted by right in the site's existing R-10(A) (Single family district 10,000 square feet) zoning classification. Uses permitted by right in this zoning district.
- The board determined at their December 13, 2010 hearing, that based on the evidence and testimony presented to them, that continued operation of the nonconforming "manufactured home park" use would have an adverse effect on nearby properties, and set a hearing date March 14, 2011 for the purpose of establishing a compliance date for this nonconforming use.
- The purpose of the Board of Adjustment's April 18, 2011 public hearing is to establish a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period. (The Dallas Development Code states that for purposes of this paragraph, "owner" means the owner of the nonconforming use at the time of the board's determination of a compliance date for the nonconforming use).
- The Dallas Development Code states that following factors must be considered by the board in determining a reasonable amortization period:
 - The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.
 - Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
 - Any return on investment since inception of the use, including net income and depreciation.
 - The anticipated annual recovery of investment, including net income and depreciation.
- The Dallas Development Code additionally states that if the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.
- On March 25, 2011, the owner of the nonconforming use's representative forwarded a response to the City's subpoena duces tecum and interrogatories (see Attachment D). The document states among other things that "Mr. Gregory believes it will take at least twelve (12) years to recoup his investment in the Manufactured Home Park and would request as long as a period of time as possible in order to do so."
- On April 8, 2011, the Assistant City Attorney assisting with this application forwarded a document to the Board Administrator entitled "City of Dallas' Position Statement with Supporting Evidence and Authority" (see Attachment E). This document states among other things that "Mr. Gregory claims he needs twelve years to recover his

investment and costs. However, his discovery responses establish that Mr. Gregory has fully recovered his investment and any compliance costs; and therefore, he is not entitled to any additional time to come into compliance with required zoning.”

BOARD OF ADJUSTMENT ACTION: DECEMBER 13, 2010

APPEARING IN FAVOR: Evelyn Braswell, 14825 Seagoville Rd., Dallas, TX

APPEARING IN OPPOSITION: Rick Gregory, 14831 Seagoville Rd., Dallas, TX
Donald Downey, 14831 Seagoville Rd., Dallas, TX

MOTION #1: Moore

I move that the Board of Adjustment in Appeal No. **BDA 090-105**, suspend the rules and accept the evidence that is being presented to us today.

SECONDED: Maten

AYES: 5–Boyd, Moore, Maten, Coulter, Richard

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

MOTION #2: Richard

I move that the Board of Adjustment in Appeal No. **BDA 090-105**, based on the evidence presented at the public hearing find that continued operation of this nonconforming use will have an adverse effect on nearby properties, based on the following factors:

- The character of the surrounding neighborhood with the traffic in and out and non maintenance of high grass and appliances on the property.
- The degree of incompatibility of the use with the zoning district in which it is located is not properly zoned even though it’s grandfathered.
- The manner in which the use is being conducted as a business.
- The hours of operation of the use being all hours and not normal business hours.
- The extent to which continued operation of the use may threaten public health or safety.
- The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use in that access to the property is a serious contention to the two parties.
- And set a hearing date of **March 14, 2011** for the purpose of establishing a compliance date for this nonconforming use.

SECONDED: Moore

AYES: 5–Boyd, Moore, Maten, Coulter, Richard

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: MARCH 14, 2011

APPEARING IN FAVOR: Evelyn Braswell, 14825 Seagoville Rd., Dallas, TX

APPEARING IN OPPOSITION: Carol Warren, P.O. Box 360306, Dallas, TX

APPEARING FOR THE CITY: Charles Estee, 1500 Marilla St., 7DN, Dallas, TX

MOTION: **Moore**

I move that the Board of Adjustment in Appeal No. **BDA 090-105**, hold this matter under advisement until **April 18, 2011**.

SECONDED: **Maten**

AYES: 5–Boyd, Moore, Maten, Coulter, Richard

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: APRIL 18, 2011

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: Carol Warren, P.O. Box 360306, Dallas, TX
Rick Gregory, 14831 Seagoville Rd., Dallas, TX
Donald Downey, 14831 Seagoville Rd., Dallas, TX

APPEARING FOR THE CITY: Charles Estee, 1500 Marilla St., 7DN, Dallas, TX

2:12 P.M.: Break

2:15 P.M.: Resumed

MOTION #1: **Moore**

Evidence has been presented that this use may be an illegal use rather than a nonconforming use, but, we are operating under the assumption that this is a nonconforming use. If it is an illegal use it would be up to the building official to order it to cease operation immediately.

Therefore, I move that the Board of Adjustment, in Appeal No. **BDA 090-105**, provide a compliance date of **July 18, 2011** for the nonconforming manufactured home park, manufactured home subdivision, or campground use currently being operated on the property located at 14831 Seagoville Road, because the facts and testimony show that the owner's actual investment in the use, before the time that the use became nonconforming, can be amortized within this time period. I further move that the owner's certificate of occupancy for the manufactured home park, manufactured home subdivision, or campground use be revoked on **July 18, 2011**, unless the manufactured

home park, manufactured home subdivision, or campground use becomes a conforming use.

SECONDED: **Richard**

AYES: 3–Boyd, Moore, Richard

NAYS: 2 – Maten, Coulter

MOTION FAILED: 3– 2

MOTION #2: **Maten**

Evidence has been presented that this use may be an illegal use rather than a nonconforming use, but, we are operating under the assumption that this is a nonconforming use. If it is an illegal use it would be up to the building official to order it to cease operation immediately.

Therefore, I move that the Board of Adjustment, in Appeal No. **BDA 090-105**, provide a compliance date of **September 18, 2011** for the nonconforming manufactured home park, manufactured home subdivision, or campground use currently being operated on the property located at 14831 Seagoville Road, because the facts and testimony show that the owner’s actual investment in the use, before the time that the use became nonconforming, can be amortized within this time period. I further move that the owner’s certificate of occupancy for the manufactured home park, manufactured home subdivision, or campground use be revoked on **September 18, 2011**, unless the manufactured home park, manufactured home subdivision, or campground use becomes a conforming use.

SECONDED: **Coulter**

AYES: 5–Boyd, Moore, Maten, Coulter, Richard

NAYS: 0 –

MOTION PASSED: 5– 0(unanimously)

MOTION: **Maten**

I move to adjourn this meeting.

SECONDED: **Coulter**

AYES: 5–Boyd, Moore, Maten, Coulter, Richard

NAYS: 0 - None

MOTION PASSED: 5 – 0 (Unanimously)

2:25 P. M. - Board Meeting adjourned for **April 18, 2011**.

CHAIRPERSON

BOARD ADMINISTRATOR

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