

**REVISED
NOTICE FOR POSTING**

MEETING OF

BOARD OF ADJUSTMENT, PANEL A

TUESDAY, JUNE 12, 2007

Briefing: 10:00 A.M.

Public Hearing: 1:00 P.M.

**5/E/S
COUNCIL CHAMBERS**

Purpose: To take action on the attached agenda, which contains the following:

1. Zoning Board of Adjustment appeals of cases the Building Official has denied.
2. And any other business which may come before this body and is listed on the agenda.

***All meeting rooms and chambers are located in Dallas City Hall, 1500 Marilla,
Dallas, Texas 75201**

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06-12-2007

BOARD OF ADJUSTMENT, PANEL A
TUESDAY, JUNE 12, 2007
AGENDA

BRIEFING	5/E/S	10:00 A.M.
LUNCH		
PUBLIC HEARING	COUNCIL CHAMBERS	1:00 P.M.

Donnie Moore, Chief Planner
Steve Long, Board Administrator

MISCELLANEOUS ITEMS

	Approval of the Tuesday, May 15, 2007 Board of Adjustment Public Hearing Minutes	M1
BDA 067-087	5020 Lemmon Avenue REQUEST: Of Randy Krupala to reimburse the filing fee submitted in conjunction with a request for a special exception to the landscape regulations	M2

UNCONTESTED CASES

BDA 067-073	4818 N. Lindhurst Avenue REQUEST: Application of Lacie Crow for a special exception to the fence height regulations and for a special exception to the visibility obstruction regulations	1
BDA 067-081	5112 Palomar Lane REQUEST: Application of Michael Dees for a special exception to the fence height regulations	2
BDA 067-087	5020 Lemmon Avenue REQUEST: Application of Randy Krupala for a special exception to the landscape regulations	3

HOLDOVER CASE

BDA 067-050	13101 Preston Road REQUEST: Application of Shafer Property Company, represented by Masterplan, for a special exception to the parking regulations	4
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REGULAR CASES

BDA 067-091	3108 Flora Street REQUEST: Application of Wendell Delaney for a special exception to the landscape regulations	5
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BDA 067-094	3531 James Street REQUEST: Application of Chuck Quon for variances to the side yard setback regulations and for a variance to the floor area ratio regulations	6
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EXECUTIVE SESSION NOTICE

The Commission/Board may hold a closed executive session regarding any item on this agenda when:

1. seeking the advice of its attorney about pending or contemplated litigation, settlement offers, or any matter in which the duty of the attorney to the Commission/Board under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act. [Tex. Govt. Code §551.071]
2. deliberating the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.072]
3. deliberating a negotiated contract for a prospective gift or donation to the city if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.073]
4. deliberating the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or to hear a complaint or charge against an officer or employee unless the officer or employee who is the subject of the deliberation or hearing requests a public hearing. [Tex. Govt. Code §551.074]
5. deliberating the deployment, or specific occasions for implementation, of security personnel or devices.. [Tex. Govt. Code §551.076]
6. discussing or deliberating commercial or financial information that the city has received from a business prospect that the city seeks to have locate, stay, or expand in or near the city and with which the city is conducting economic development negotiations; or deliberating the offer of a financial or other incentive to a business prospect. [Tex. Govt. Code §551.086]

(Rev. 6-24-02)

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel A May 15, 2007 public hearing minutes.

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: BDA067-087

REQUEST: To reimburse the filing fee to be submitted in conjunction a request for a special exception to the landscape regulations

LOCATION: 5020 Lemmon Avenue

APPLICANT: Randy Krupala

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 waiver/s 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.
- The applicant submitted a letter to the Board Administrator requesting a reimbursement of the filing fee submitted in conjunction with the request for a special exception to the landscape regulations (see Attachment A).

Timeline:

June 8, 2007 The applicant faxed a letter requesting a reimbursement of the filing fee submitted in conjunction with the request for a special exception to the landscape regulations.

June 8, 2007: The Board Administrator wrote/faxed the applicant a letter in response to his request (see Attachment B). This letter included the following information:

- the public hearing date, time, and location;

- the criteria/standard that the board will use in their decision to approve or deny the request; and
- information related to the board's rule pertaining to "documentary evidence."

FILE NUMBER: BDA 067-073

BUILDING OFFICIAL'S REPORT:

Application of Lacie Crow for a special exception to the fence height regulations and for a special exception to the visibility obstruction regulations at 4818 N. Lindhurst Avenue. This property is more fully described as Lot 1 in City Block 2/5531 and is zoned R-1ac(A) which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct an 8 foot 6 inch fence in a required front yard setback which would require a special exception of 4 feet 6 inches to the fence regulations, and to construct and maintain items within required visibility triangles which would require a special exception to the visibility obstruction regulations.

LOCATION: 4818 N. Lindhurst Avenue

APPLICANT: Lacie Crow

REQUESTS:

- The following appeals have been made in this application:
 1. A special exception to the fence height regulations of 4' 6" * is requested in conjunction with constructing and maintaining an approximately 7' 6" high open iron fence with 8' high stone columns, and an approximately 7' 6" high open iron swing gate with 8' 3" high stone entry columns in the site's 40' front yard setback along Lennox Lane
 2. A special exception to the visibility obstruction regulations is requested in conjunction with locating two, 8' 3" high stone columns in the site's two 20' visibility triangles at the drive approach into the site from Lennox Lane.
(The site is developed with a single family home).

* Note that although the application and Building Official's Report state that a special exception of 4' 6" has been made to allow an 8' 6" high fence, the submitted site plan and elevation denotes no fence, gate, or column higher than 8' 3".

STAFF RECOMMENDATION (related to fence height special exception):

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

STAFF RECOMMENDATION (related to visibility obstruction special exception):

Approval, subject to the following condition:

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

Rationale:

- The City's Development Services Senior Engineer has indicated that he has no objections to the request since the items to be constructed/maintained in the visibility triangles are two columns on a 2-block long street with few homes fronting onto it.

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 VISIBILITY OBSTRUCTION REGULATIONS:

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

GENERAL FACTS (related to the fence height special exception):

- The subject site is located at the intersection of North Lindhurst Avenue and Lennox Lane. The site has a front yard setback along Lennox Lane and along North Lindhurst Avenue. The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
The applicant has submitted a revised scaled site plan and elevation indicating a fence/column/gate proposal that would reach a maximum height of 8' 3" in the site's Lennox Lane front yard setback. (No fence/column/gate is noted on the plan/elevation that would exceed 4' in height in the site's North Lindhurst Drive front yard setback).
- The revised submitted site plan and elevation indicate that the proposal in the site's Lennox Lane 40' front yard setback has the following additional characteristics:
 - approximately 140' in length parallel to Lennox Lane, approximately 39' perpendicular to Lennox Lane;
 - located about 1' from the site's front property line or about 15' from the pavement line; and
 - linear in design.
- There is no single family home that would have direct frontage to the proposal since the house immediately west of the site is oriented north to N. Lindhurst Drive as is the house on the subject site.
- The Board Administrator conducted a field visit of the site and surrounding area along Lennox Lane and noted no other fences above four (4) feet high which appeared to be located in the front yard setback.

GENERAL FACTS (related to the visibility obstruction special exception):

- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at intersections and 20-foot visibility triangles at drive approaches); and
 - between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
 The applicant has submitted a revised site plan that denotes two, 8' 3" high stone columns that are located in the two, 20' visibility triangles at the drive approach into the site from Lennox Lane.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is 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 067-015, 4818 N. Lindhurst Avenue (subject site)

On January 16, 2007, the Board of Adjustment Panel A granted a request for a special exception to the fence height regulations of 4' imposing the following condition to the request: Compliance with the submitted revised site plan and elevation is required. The case report stated that the request was made to construct/maintain a 6' high open decorative iron fence with 6.5' high stone columns, an 8' high arched open iron pedestrian gate with 7' high stone columns flanked by two, approximately 10' long, 6' high solid stone wing walls on North Lindhurst and a 6' high decorative iron fence with 6.5' high stone columns, 6' high open iron vehicular gates, and a 7' high stone wall with 8' high columns on Lennox. On May 15, 2007, the Board of Adjustment Panel A waived the two-year time limitation on this request granted in January of 2007.

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|---|---|
| 2. BDA 95-071, 4805 S. Lindhurst Avenue (the lot immediately south of the subject site) | On May 23, 1995, the Board of Adjustment denied a request for a fence height special exception of 2.5' without prejudice. The case report stated that the request was made to construct/maintain a 6' open metal fence with 6.5' high masonry columns in the site's South Lindhurst Avenue front yard setback. |
| 3. BDA 978-186, 4834 N. Lindhurst Avenue (the lot immediately east of the subject site) | On June 15, 1998, the Board of Adjustment Panel C granted a request for a fence height special exception of 4' and imposed the following conditions: 1) compliance with the submitted elevation plan and a revised landscape/site plan to be submitted to the Board Administrator indicating no more than a 2' high continuous hedge to be placed along the length of the N. Lindhurst Avenue side of the fence/wall in addition to the landscape materials indicated on the landscape plan dated April 20, 1998 is required; and 2) an intercom at the gate to be operable 24 hours a day, and when in operable, be repaired, is required. The case report stated that the request was made to construct/maintain a cast stone/open wrought iron picket fence, stucco or cast stone columns, and gates along North Lindhurst Avenue. |

Timeline:

- March 28, 2007: 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 17, 2007: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. 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 18, 2007: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the requests;

- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the May 25th deadline to submit additional evidence for staff to factor into their analysis;
- the June 1st deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 29, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Acting Building Official, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Acting Chief Arborist, and the Assistant City Attorney to the Board.

May 30, 2007 The applicant submitted a revised scaled site plan and elevation (see Attachment A).

May 31, 2007 The Development Services Senior Engineer submitted a Review Comment Sheet marked "Has no objections" commenting:

- 1) The site plan dated 5/30/07 shows 2 columns encroaching approximately 7' x 7' onto the 20' x 20' driveway visibility triangles.
- 2) Lennox Lane at this location is 2-block long, and has few homes fronting onto it.

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

- A revised scaled site plan has been submitted that documents the location of the proposed fence, columns, and gate relative to their proximity to the front property line and pavement line. (The fence is shown to be about 140' in length, located about 1' 2' from the Lennox Lane front property line and about 15' from the pavement line).
- A revised elevation has been submitted that provides a full elevation of the proposal on Lennox Lane. The elevation documents the heights and materials of the proposal - an approximately 7' 6" high decorative iron fence with 8' high stone columns, and an approximately 7' 6" high open iron swing gate with 8' 3" high stone entry columns.

- There is no single family home that would have direct frontage to the proposal since the house immediately west of the site is oriented north to N. Lindhurst Drive as is the house on the subject site.
- No other fences above four (4) feet high which appeared to be located in the front yard setback were noted in the surrounding area along Lennox Lane.
- As of June 4, 2007, no letters had been submitted 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' 6" (whereby the proposed fence, columns, and gate to exceed 4' in height in the site's Lennox Lane front yard setback) will not adversely affect neighboring property.
- Granting this special exception to the fence height regulations of 4' 6" with a condition imposed that the applicant complies with the submitted revised site plan and elevation document would provide assurance that the proposal would be constructed and maintained in the location and of the heights and materials as shown on these documents.

STAFF ANALYSIS (related to the visibility obstruction special exception):

- The Development Services Senior Engineer has commented that he has no objections to the request, specifically commenting that the revised site plan denotes 2 columns encroaching approximately 7' x 7' onto the 20' x 20' driveway visibility triangles on a street that is 2 blocks long with few homes fronting onto it.
- The applicant has the burden of proof in establishing the following:
 - Granting the special exception to the visibility obstruction regulations (whereby, according to the submitted revised site plan, two columns would be located/maintained in the two, 20' drive approach visibility triangles at the drive approach into the site from Lennox Lane) will not constitute a traffic hazard.
- If this request is granted, subject to compliance with the submitted revised site plan and elevation, two, 8' 3" high stone entry columns would be "excepted" into the two, 20' drive approach visibility triangles into the site from Lennox Lane.

FILE NUMBER: BDA 067-081

BUILDING OFFICIAL'S REPORT:

Application of Michael Dees for a special exception to the fence height regulations at 5112 Palomar Lane. This property is more fully described as Lot 1 in City Block D/5518 and is zoned R-1ac(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 10 foot 6 inch fence in a required front yard setback which would require a special exception of 6 feet 6 inches.

LOCATION: 5112 Palomar Lane

APPLICANT: Michael Dees

REQUEST:

- A special exception to the fence height regulations of 6' 6" is requested in conjunction with constructing and maintaining the following on a site being developed with a single family home:
 1. In the site's 40' front yard setback along Palomar Lane: a 6' high wrought iron fence and gate with approximately 6.5' high stone columns.
 2. In the site's 40' front yard setback along Inwood Road: a 6' high wrought iron fence and gate with approximately 6.5' high stone columns, and a 6' high solid stone wall with approximately 6.5' high stone columns.(Both the proposed fence and/or wall along Palomar Lane and Inwood Road are located, in places, atop a retaining wall that would reach up to 4' in height, hence the request for a special exception of 6' 6" to account for a fence/wall/column atop a retaining wall that reaches a total height of 10' 6").

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The subject site is located at the intersection of Palomar Lane and Inwood Road. The site has a front yard setback along Palomar Lane (since this frontage is the shorter of the site's two frontages) and along Inwood Road in order to maintain continuity of an established front yard setback on this street.
- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
The applicant has submitted an Inwood Road and Palomar Lane site plan/elevation that indicates a fence/wall/column/gate proposal that would reach a maximum height of 10' 6".
- The submitted Palomar Lane site plan/elevation indicates that the proposal in the site's Palomar Lane 40' front yard has the following additional characteristics:
 - Approximately 180' in length;
 - Located about 2' – 16' from the site's front property line or about 13' - 27' from the pavement line; and
 - Curving in design with a recessed ingress/egress point for vehicular traffic.
- The submitted Inwood Road site plan/elevation indicates that the proposal in the site's Inwood Road 40' front yard setback has the following additional characteristics:
 - Approximately 220' in length (of which about 170' will be solid stone, 50' will be open wrought iron);
 - Located about 18' from the site's front property line or about 30' from the pavement line; and
 - Generally linear in design with a recessed ingress/egress point for vehicular traffic.
- There is one single family home that would have direct frontage to the proposal to be located in the site's Palomar Lane front yard setback (with no fence), and one single family home that would have direct frontage to the proposal to be located in the site's Inwood Road front yard setback (with what appears to be no fence).
- The Board Administrator conducted a field visit of the site and surrounding area along both Palomar Lane and Inwood Road. No fences were noted along Palomar Lane, and three fences above four (4) feet high which appeared to be located in the front yard setback were noted along Inwood Road. An approximately 6' high solid fence/wall was noted immediately south of the site, and two, approximately 6' high open iron fences were noted west of the subject site.
- On May 30, 2007, the applicant's representative submitted a Palomar Lane site plan/elevation and photos of the site (see Attachment A).

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is 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:

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

- April 23, 2007: 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 17, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- May 17, 2007: The Board Administrator contacted with the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the May 25th deadline to submit additional evidence for staff to factor into their analysis and discuss at the staff review team meeting;
 - the June 1st deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- May 29, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Acting Building Official, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code

Specialist, the Acting Chief Arborist, and the Assistant City Attorney to the Board.

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

May 30, 2007

The applicant's representative submitted information beyond what was submitted with the original application and beyond what was discussed/considered at the May 29th staff review team meeting (see Attachment A).

STAFF ANALYSIS:

- Scaled site plans/elevations have been submitted that document the location of the proposed fence, fence/wall, columns, and gates relative to their proximity to the front property lines and pavement lines on Inwood Road and Palomar Lane. (Inwood Road: about 220' long, about 18' from the property line or 30' from the pavement line. Palomar Lane: about 180' long, about 2' – 16' from the property line or 12'- 27' from the pavement line).
- Scaled site plans/elevations have been submitted that provide full elevations of the proposals on Palomar Lane and Inwood Road. These elevations document the heights and materials of the proposal on Palomar Lane (a 6' high wrought iron fence and gate with approximately 6.5' high stone columns) and on Inwood Road (a 6' high wrought iron fence and gate with approximately 6.5' high stone columns, and a 6' high solid stone wall with approximately 6.5' high stone columns). Both the proposed fence and/or wall along Palomar Lane and Inwood Road are located, in places, atop a retaining wall that would reach up to 4' in height, hence the request for a special exception of 6' 6" to account for a fence/wall/column atop a retaining wall that reaches a total height of 10' 6".
- There is one single family home that would have direct frontage to the proposal to be located in the site's Palomar Lane front yard setback (with no fence), and one single family home that would have direct frontage to the proposal to be located in the site's Inwood Road front yard setback (with what appears to be no fence).
- No fences were noted along Palomar Lane, and three fences above four (4) feet high which appeared to be located in the front yard setback were noted along Inwood Road. An approximately 6' high solid fence/wall was noted immediately south of the site, and two, approximately 6' high open iron fences were noted west of the subject site.
- As of June 4, 2007, no letters had been submitted 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 6' 6" (whereby the proposed fence, fence/wall, columns, and gates, and wall to exceed 4' in height in the site's two front yard setbacks) will not adversely affect neighboring property.
- Granting this special exception to the fence height regulations of 6' 6" with conditions imposed that the applicant complies with the submitted site plans/elevations would provide assurance that the proposal would be constructed and maintained in the location and of the heights and materials as shown on these documents.

BOARD OF ADJUSTMENT

TUESDAY, JUNE 12, 2007

CITY OF DALLAS, TEXAS

FILE NUMBER: BDA 067-087

BUILDING OFFICIAL'S REPORT:

Application of Randy Krupala for a special exception to the landscape regulations at 5020 Lemmon Avenue. This property is more fully described as Lot 7A in City Block 2/2457 and is zoned PD-193 (LC) which requires mandatory landscaping. The applicant proposes to construct a nonresidential structure and provide an alternate landscape plan which would require a special exception to the landscape regulations.

LOCATION: 5020 Lemmon Avenue

APPLICANT: Randy Krupala

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with constructing and maintaining an approximately 990 square foot structure on a site development with an approximately 2,700 square foot commercial structure/use (Kwik Kar Lube & Tune).

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The applicant shall provide an additional 90 square feet of landscape site area on the site that is to be planted in accordance with provisions for a general planting area per PD 193, and maintained in a healthy, growing condition at all times.

Rationale:

- The City's Acting Chief Arborist supports the request in that if the special exception is granted (with the conditions mentioned above imposed), the special exception will not compromise the spirit and intent of the landscaping requirements of PD No. 193.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS IN OAK LAWN:

Section 26(a)(4) of Ordinance No. 21859, which establishes PD No. 193, specifies that the board may grant a special exception to the landscaping requirements of this section if, in the opinion of the Board, the special exception will not compromise the spirit and intent of this section. When feasible, the Board shall require that the applicant submit and that the property comply with a landscape plan as a condition to granting the special exception.

GENERAL FACTS:

- PD No. 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot is performed that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood tornado, riot, act of the public enemy, or accident of any kind.

The applicant has submitted two plans with the application: one plan is a "Landscape Plan" dated 08/06/01 that appears to denote the existing building footprint and existing landscaping on the site; the other plan is a "Site Layout Plan" dated 03-27-2007 that appears to denote the existing and proposed building footprints with no landscape materials noted. Although the Board Administrator encouraged the applicant to submit an alternate landscape plan that denoted the existing/proposed building footprints along with existing proposed landscape materials, no such plan has been submitted.

- On June 1, 2007, the applicant submitted additional information beyond what was submitted with the original application, and what was discussed at the May 29th staff review team meeting (see Attachment A). This information included the following a letter that provided additional details about the request.
- The Acting City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner (see Attachment B). The memo stated the following:
 - The applicant is requesting relief from the landscape requirements of PD 193, more specifically, relief from the square footage requirements for "landscape site area."
 - The special exception request is triggered by new construction.
 - Deficiencies:
 1. The applicant is required to provide 3 street trees and a 6' wide sidewalk between 5' – 10' from the back of curb.
The applicant is proposing to provide 4 street trees and a 4' wide sidewalk between 5' -12' from the back of curb.
 2. The applicant is required to designate 1,600 square feet as "landscape site area" within the required front yard.
The applicant is proposing to provide 1,120 square feet as "landscape site area" within the required front yard.
 - Factors for consideration:
 - The original building permit, with landscaping, was reviewed by staff and permitted in September, 2001. The final landscape inspection was completed on January 15, 2002, and approved by the city arborist. (The Certificate of Occupancy was issued on January 16, 2002).
 - The applicant recently requested a building permit for an additional structure on the lot where it was determined that the site was not in compliance with the landscape regulations. It was determined that the site has been deficient in meeting the landscape site area requirements since the time of the initial inspection, and that the applicant's originally submitted landscape plan (approved by the city arborist in 2001) was deficient in meeting the required landscape site area.

- Being that the site is now adding new floor area and further reducing the landscape site area, the property is now required to fully comply with the PD 193 mandatory regulations. The current review supersedes the previous site review for compliance measures when new improvements are made on the property.
 - The applicant has submitted a letter to the Board Administrator detailing three options for consideration to address landscaping instead of a drawn alternate landscape plan. In reference to the noted “solutions,” other than complying with the full conditions of PD 193, the site will remain deficient of the full landscape site area requirement.
- Recommendation:
- Approval of the applicant’s listed solution #2 addressed in the June 1st letter to the Board Administrator (i.e. provide an additional 90 square feet of open space) with staff conditions: Staff recommends approval of the suggested “additional 90 square feet” of landscape site area to accommodate what is removed from the current area provided on the site; the landscape site area is to be planted in accordance with the provisions for a general planting area per PD 193; and the landscape planting area is to be maintained in a healthy, growing condition at all times.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (LC Subdistrict) (Planned Development District, Light Commercial)
North: PD No. 193 (LC Subdistrict) (Planned Development District, Light Commercial)
South: PD No. 193 (LC Subdistrict) (Planned Development District, Light Commercial)
East: PD No. 193 (LC Subdistrict) (Planned Development District, Light Commercial)
West: PD No. 193 (LC Subdistrict) (Planned Development District, Light Commercial)

Land Use:

The subject site is developed with a commercial use (Kwik Kar Lube & Tune). The area to the north is undeveloped; and the areas to the east, south, and west are developed with commercial 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 26, 2007: 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 17, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- May 18, 2007: The Board Administrator met with the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the May 25th deadline to submit additional evidence for staff to factor into their analysis and discuss at the staff review team meeting;
 - the June 1st deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- May 29, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Acting Building Official, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Acting Chief Arborist, and the Assistant City Attorney to the Board.
- June 1, 2007 The applicant submitted additional information to the Board Administrator (see Attachment A). This information was submitted past the May 29th staff review team meeting.
- June 4, 2007 The Acting City of Dallas Chief Arborist submitted a memo that provided his comments regarding the special exception to the landscape regulations (see Attachment B).

STAFF ANALYSIS:

- The City of Dallas Acting Chief Arborist has stated that the applicant is seeking relief from the square footage requirements for “landscape site area” in PD No. 193 in conjunction with adding new construction on a site developed with a commercial use.
- The applicant has the burden of proof in establishing the following:
 - The special exception (where, according to the Acting Chief Arborist, the applicant is providing 1,120 of the required 1,600 square feet of landscape site area) will not compromise the spirit and intent of the section of the ordinance (Section 26: Landscape, streetscape, screening, and fencing standards).
- If the Board were to grant this request and impose a condition that the applicant provide an additional 90 square feet of landscape site area on the site (that is to be planted in accordance with provisions for a general planting area per PD 193, and maintained in a healthy, growing condition at all times), a final building permit and Certificate of Occupancy for the existing and proposed buildings on the site could be issued, where the site would be “excepted” from full compliance to the “landscape site area” requirements of the Oak Lawn PD landscape ordinance.

FILE NUMBER: BDA 067-050

BUILDING OFFICIAL'S REPORT:

Application of Shafer Property Company, represented by Masterplan, for a special exception to the parking regulations at 13101 Preston Road. This property is more fully described as Lot 1 in City Block A/7409 and is zoned LO-2 which requires parking to be provided. The applicant proposes to construct a nonresidential building and provide 189 parking spaces which would require a special exception of 57 spaces (23% reduction) to the parking regulations.

LOCATION: 13101 Preston Road

APPLICANT: Shafer Property Company
Represented by Masterplan

REQUEST:

- Originally a special exception to the off-street parking regulations of 57 spaces was requested in conjunction with constructing and maintaining a financial institution with drive-in window on a site currently developed with an office (Bankers Financial Mortgage). The applicant originally proposed to provide 189 (or 77%) of the total 246 spaces that were required for the existing and proposed office and financial institution uses/structures on the site.
- The Board of Adjustment conducted a public hearing on this matter on May 15, 2007, where the representative submitted additional information at the hearing (see Attachments E and F). The applicant's representative provided testimony that he had amended his request whereby the amount of spaces to be "special excepted" had been reduced from 57 spaces to 37 spaces, and that the special exception would only pertain to the existing office use on the site (i.e. that the proposed financial institution would be parked per code). The applicant testified at this hearing that 209 (or 85%) of the total 246 required spaces would be provided on the site for the existing and proposed uses/structures on the site.
- However, on June 1, 2007, the applicant's representative amended his amended request back to what was originally requested since staff had in turn become supportive of his original request of a 57 parking space reduction (see Attachment G).

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The special exception of 57 spaces automatically and immediately terminates if and when the "office" and "financial institution with drive-in window" uses on the site are changed or discontinued.

Rationale:

- The Development Services Senior Engineer has no objections to the request based on a parking study dated May 25, 2007.

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 parking requirements for, according to a document submitted with the application, the proposed “office” and “financial institution with drive-in window” uses on the subject site:
 - The applicant’s representative submitted a letter and a revised site plan on March 27, 2007 (see Attachment A) that were to replace documents and a site plan that were submitted with the original application.
 - The revised document and site plan denote an existing 77,600 square foot office building/use, and a 4,030 square foot financial institution with drive through building/use.
 - On May 8, 2007, the applicant’s representative submitted a letter and revised site plan (see Attachment E) that were to replace documents submitted on March 27, 2007. These documents established that the applicant was not proposing to provide 209 of the required 246 spaces hence requesting the board to “except” 37 off-street parking spaces.
 - On June 1, 2007, the applicant’s representative submitted a letter and site plan denoting that the request was for a 57 parking space reduction since 189 of the required 246 spaces were proposed to be provided (see Attachment G).
- The applicant’s representative submitted additional information beyond what was submitted with the original application (see Attachments A-F).
- The Board of Adjustment conducted a public hearing on this matter on April 17, 2007. The applicant’s representative submitted additional information at the hearing (see Attachment D). The board delayed action on this matter until May 15th to allow the applicant’s representative additional time to submit additional information to the Development Services Senior Engineer.
- The Board of Adjustment conducted a public hearing on this matter on May 15, 2007. The applicant’s representative submitted additional information at the hearing (see Attachments E and F). The applicant’s representative provided testimony that he had amended his request whereby the amount of spaces to be “special excepted” had been reduced from 57 spaces to 37 spaces and that the special exception would only pertain to the office use on the site (i.e. that the proposed financial institution would be parked per code).
- The board delayed action on this matter until June 12th hearing to allow the applicant’s representative additional time to submit additional information to the Development Services Senior Engineer.
- On June 1, 2007, the applicant’s representative submitted additional information beyond what was submitted with the original application and the May public hearing (see Attachment G). This information included the following:

- a letter that provides additional details about the requests;
- photos of the site and surrounding area;
- a revised site plan; and
- a “technical memorandum” (that included a May 25th parking study) regarding the request.

BACKGROUND INFORMATION:

Zoning:

Site: LO-2 (Limited Office)
North: RR (Regional Retail)
South: MU-1 (Mixed Use)
East: RR (Regional Retail)
West: RR (Regional Retail)

Land Use:

The subject site is developed with an office structure. The areas to the north, east, and west are developed with retail uses, and the area to the south is a freeway (LBJ Freeway).

Zoning/BDA History:

1. Z056-226, Preston Road and LBJ Freeway, northwest corner (the subject site)

On May 18, 2006, the City Plan Commission recommended approval of the applicant’s request for an MU-1 zoning district with deed restrictions on property zoned LO-2 in lieu of an MC-2 district. (The case report states that the applicant has not provided the executed volunteered deed restrictions required to schedule the case for City Council consideration. The deed restrictions limited the existing structure to its present height of 95 feet or six stories and the proposed building height to 45 feet or 3 stories). On December 21, 2006, the City Plan Commission granted a request for a 120 extension to schedule the application for City Council. This 120 day extension expired on April 21, 2007. Because the applicant had requested a parking special exception to the Board of Adjustment, staff was not forwarding the zoning case until action was taken by the board. However, on May 3, 2007, staff brought the zoning request back to the City Plan Commission where the commission granted a request for an additional 120

2. BDA 990-236, 13141 Preston Road (the area immediately north and west of the subject site)

extension to schedule the application for City Council.

On April 18, 2000, the Board of Adjustment Panel B granted a request for a special exception to the off-street parking regulations of 1,123 spaces (or 15% of the total parking requirement). The board imposed the following conditions: compliance with the submitted site plan is required, and the special exception automatically and immediately terminates if and when the retail and restaurant uses on the site area changed or discontinued; and that improvements to Dilbeck Lane access to the Valley View Center be put in place as soon as it is feasible. The case report stated that the request was made in conjunction with constructing a 20-screen theater (located in the Valley View Mall shopping center) and 25,000 square feet of restaurants to be located in the southwest corner of the subject site.

Timeline:

- Jan. 26, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Feb. 15, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Feb. 15, 2007: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the March 2nd deadline to submit additional evidence for staff to factor into their analysis/recommendation;
 - the March 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure

pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and

- that the board will take action on the matter at the March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

March 1, 2007 The applicant’s representative emailed the Board Administrator requesting that this application be delayed until Board of Adjustment Panel A’s April 17th agenda.

March 23, 2007: The Board Administrator contacted the applicant’s representative and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the March 30th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
- the April 6th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the April public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

March 27, 2007 The applicant’s representative submitted information beyond what was submitted with the original application (see Attachment A).

March 27, 2007 The Building Inspection Development Code Specialist forwarded a revised Building Official’s report pertaining to the application (see Attachment B).

April 2, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Acting Chief Arborist, and the Assistant City Attorney to the Board.

The District Manager of Code Compliance submitted a review comment sheet marked "No comments."

- April 3, 2007 The Development Services Senior Engineer submitted an unmarked review comment sheet with the following comments:
- "Cannot make any recommendation. The undated letter explanation/letter refers to a parking study; however, the parking study does not have the exhibit that may provide info. such as date of study, number of small prof. firms/employees, etc."
- April 6, 2007 The applicant's representative submitted information beyond what was submitted with the original application and discussed at the April 2nd staff review team meeting (see Attachment C).
- April 17, 2007: The Board of Adjustment conducted a public hearing on this matter, and delayed action until May 15, 2007. The applicant's representative submitted additional information at the hearing (see Attachment D).
- April 24, 2007: The Board Administrator wrote the applicant's representative a letter that conveyed the following information:
- the date in which the board delayed action on the request;
 - the April 27th deadline to submit additional information to staff to be circulated/discussed at the April 30th staff review team meeting; and
 - the May 4th deadline to submit additional information to staff to be incorporated into the board's docket.
- April 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Development Services Department Assistant Director for Current Planning, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Acting Chief Arborist, and the Assistant City Attorney to the Board.
- May 5, 2007 The Development Services Senior Engineer emailed the Board Administrator that he had NOT received any update from the applicant's representative therefore, his comments remain the same as what he had concluded in April: that no recommendation can be made given the information submitted by the applicant.
- May 15, 2007: The Board of Adjustment conducted a public hearing on this matter, and delayed action until June 12, 2007. The applicant's representative submitted additional information at the hearing (see Attachments E and F).
- May 29, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public

hearings. Review team members in attendance included: the Acting Building Official, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Acting Chief Arborist, and the Assistant City Attorney to the Board.

May 31, 2007 The Development Services Senior Engineer forwarded a revised Review Comment Sheet marked "Has no objections" commenting "based on parking study dated 5/25/07."

June 1, 2007 The applicant's representative submitted information beyond what was submitted with the original application and discussed at the May 15th public hearing and the May 29th staff review team meeting (see Attachment G).

STAFF ANALYSIS:

- 77 percent of the required off-street parking spaces are proposed to be provided in conjunction with constructing and maintaining a 4,030 square foot financial institution with drive-in window use on a site developed with a 77,600 square foot office tower (Bankers Financial Mortgage).
- Granting this request, subject to the condition that the special exception of 57 spaces automatically and immediately terminates if and when the proposed financial institution with drive-in window use and existing office use on the site are changed or discontinued, would allow the site to be developed with the proposed 4,030 square foot financial institution with drive-in window use along with the retention of the existing 77,600 square foot office tower.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the proposed financial institution with drive-in window use along with the existing office use does not warrant the number of off-street parking spaces required, and
 - The special exception of 57 spaces (or 23% of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- The Development Services Senior Engineer forwarded a Review Comment Sheet marked "Has no objections" commenting "based on 5/25/07 parking study."

BOARD OF ADJUSTMENT ACTION: APRIL 17, 2007

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

APPEARING IN OPPOSITION: No one

MOTION#1: Griggs

I move that the Board of Adjustment, in Appeal No. **BDA 067-050**, on application of Shafer Property Co., represented by Masterplan, **deny** the special exception to the off-street parking regulations requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that the use warrants the number of off-street parking spaces required, and the special exception would create a traffic hazard and increase traffic congestion on adjacent and nearby streets.

SECONDED: **No one**

AYES: 0 –

NAYS: 0 –

MOTION FAILED: *Motion failed for lack of a second.

MOTION #2: **Schweitzer**

I move that the Board of Adjustment in Appeal No. **BDA 067-050**, hold this matter under advisement until **May 15, 2007**.

SECONDED: **Griggs**

AYES: 4 – Richmond, Gabriel, Schweitzer, Griggs

NAYS: 0 –

MOTION PASSED: 4-0 (unanimously)

BOARD OF ADJUSTMENT ACTION: MAY 15, 2007

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

APPEARING IN OPPOSITION: No one

MOTION#1: **Scott**

I move that the Board of Adjustment, in Appeal No. **BDA 067-050**, on application of Shafer Property Co., represented by Masterplan, **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development Code by 37 parking spaces, because our evaluation of the property and the testimony shows that the parking demand generated by the proposed uses on the site does not warrant the number of off-street parking spaces required, and the special exception would NOT create a traffic hazard nor increase traffic congestion on adjacent and nearby streets. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception shall automatically and immediately terminate if and when the office and financial institution with drive-in window uses on the site are changed or discontinued.

SECONDED: No one

*MOTION FAILED FOR LACK OF A SECOND

MOTION#2: **Griggs**

I move that the Board of Adjustment, in Appeal No. **BDA 067-050**, on application of Shafer Property Co., represented by Masterplan, **deny** the special exception to the off-street parking regulations requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that the use warrants the number of off-street parking spaces required, and the special exception would create a traffic hazard and increase traffic congestion on adjacent and nearby streets.

SECONDED: Gabriel

AYES: 3 –Gabriel, Griggs, Jefferson

NAYS: 2 - Richmond, Scott

MOTION PASSED: 3– 2

MOTION #3: **Griggs**

I move that the Board of Adjustment, in Appeal No. **BDA 067-050**, reconsider the previous motion made on this matter to deny this request without prejudice.

SECONDED: Gabriel

AYES:4 – Richmond, Gabriel, Griggs, Scott

NAYS: 1 - Jefferson

MOTION PASSED: 4– 1

MOTION #4: **Griggs**

I move that the Board of Adjustment, in Appeal No. **BDA 067-050**, hold this matter under advisement until **June 12, 2007**.

SECONDED: Scott

AYES: 5 – Richmond, Gabriel, Griggs, Jefferson, Scott

NAYS: 0 -

MOTION PASSED: 5– 0

FILE NUMBER: BDA 067-091

BUILDING OFFICIAL'S REPORT:

Application of Wendell Delaney for a special exception to the landscape regulations at 3108 Flora Street. This property is more fully described as Lot 1 in City Block A/595 and is zoned PD-298, Subarea 1 which requires mandatory landscaping. The applicant proposes to maintain a multifamily residential structure and provide an alternate landscape plan which will require a special exception to the landscape regulations.

LOCATION: 3108 Flora Street

APPLICANT: Wendell Delaney

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with obtaining a final building permit on a site developed with three single family attached townhomes.

STAFF RECOMMENDATION:

Denial

Rationale:

- The City of Dallas' Acting Chief Arborist recommends denial of the request.
- The applicant has not substantiated how strict compliance with the requirements of this article (which in this case is a request to deviate from fulfilling the street tree, sidewalk width, and design standard requirements) will unreasonably burden the use of the property, or how the special exception (where a plan has been submitted that provides 0 of 2 required street trees, 0 of 2 required design standards, and a sidewalk 2' less in width than required) will not adversely affect neighboring property.

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 non-permeable coverage on a lot is increased by more than 2,000 square feet within a 24-month period, or when an application is made for a building permit for with new construction that increases the number of stories in a building on a lot, increases the combined floor areas of all buildings on a lot within a 24-month period more by more than 35 percent or 10,000 square feet (whichever is less). The applicant is proposing an alternate landscape plan that does not fully comply with the landscape regulations, specifically a landscape plan where, according to the City of Dallas' Acting Chief Arborist, the applicant is specifically requesting relief from the landscape provisions of PD No. 298.
- On June 4, 2007, the applicant submitted additional information beyond what was submitted with the original application, and what was discussed at the May 29th staff review team meeting (see Attachment A). This information included the following:
 - an amended alternate landscape plan and front elevation;
 - a letter that provided additional details about the request; and
 - photographs of the subject site.
- The Acting City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner (see Attachment B). The memo stated the following:
 - The applicant is requesting a special exception to the landscape requirements of PD No. 298.
 - The special exception request is triggered by new construction on the site.
 - Deficiency:
 1. Required 2, 4" caliper street trees.
Providing none. (The original review identified a large pecan tree to be counted as a street tree and site tree. The tree was removed. A 2nd 4" caliper tree that was identified on the plan along the street front was not planted).
 2. Required a 6' wide sidewalk.
Providing a 4' wide sidewalk. (The sidewalk was installed in line with the new parking area pavement and short of extending to both property lines by approximately 18" each side. There is no notification from Public Works that a 6' sidewalk cannot be accomplished).
 3. Required 2 design standards.
Providing none. (Enhanced vehicular pavement was shown on the approved plan but the installed pavement is consistent with the surrounding standard paved surfaces. Screening of off-street parking was proposed by use of the garage structure but this only screen 6 of the 9 required parking spaces. It is

not possible to screen the remaining 3 parking spaces due to ingress specifications. The design standards are incomplete).

- Factors for consideration:

- The original landscape plan was reviewed by staff and approved on November 11, 2005. The building permit was issued on December 6, 2005. The site is currently fully constructed and appears ready for occupancy. The applicant seeks the special exception to obtain the Certificate of Occupancy.
- The site meets the minimum requirements for site trees.
- The owner has submitted an alternate landscape plan and a front elevation plan for approval.
- The owner has proposed landscape changes that are deficient of the requirements of the ordinance but for a visual softening to the structure with planter landscaping on the balcony and at the ground level. Additions the owner seeks for consideration include the planting of one 3.5 caliper inch red oak tree, additional balcony plantings, and additional ornamental plantings beneath stairways, none of which meet a design standard requirement.
- The red oak tree that is now planted in the northwest corner of the lot is within 6' of an overhead utility line and a pole with a transformer, and located within the 20' visibility triangle. This is contrary to staff concerns for tree longevity and public safety. Although staff recognizes the attempt to bring the site closer into compliance, the large tree is planted in an area that is highly conflictive with public utilities.
- The applicant has stated that the City of Dallas Public Works required the approved drive approaches be altered during the construction process. The proposed location for one street tree was paved over to accommodate the new requirements. The applicant did not approach Building Inspection staff with this issue.
- The applicant has stated that the large pecan tree to be designated as a street and site tree was near the edge of the property and drive pavement. The tree was removed during the construction process. It is the Chief Arborist's understanding from the applicant that the tree was closer to the structure than the approved landscape plan had demonstrated.
- The only possible areas that are suitable in the front yard with an adequate planting area of 25 square feet to plant a new large street tree is in front of a stairwell area. The area is currently paved and is a direct walkway from the stairwell to the sidewalk. All other pavement areas are dedicated for vehicular use.
- There are no other design standards that are suitable to the completed project. The enhanced pavement option may only be minimally addressed by possibly staining the surface of the existing pavement. The effects are uncertain.
- 6 site trees are planted in the rear of the property. The trees are acceptable but are in direct competition with vegetation overhanging from adjacent properties.
- All tree mitigation is being resolved through Article X provisions.
- There is an inadequate amount of landscape space to plant the amount of site trees required under Article X for this project to maintain a long-term

healthy growing environment. The “alternate landscape plan” proposed by the applicant to address these insufficiencies has not been submitted to staff for review.

- Recommendation: Denial
 - The nearly 6,000 square foot site is developed with extensive floor area and pavement loaded heavily toward the front of the lot and cannot fully comply with any of the PD 298 requirements except site trees. PD 298 places significance in street frontage landscaping. A reduction in the impervious area in the front yard with new plantings and the implementation of an enhance pavement could bring the site closer into compliance with district requirements. The landscaping alternatives submitted for consideration by the applicant cannot be objectively reviewed by staff for adherence to the PD 298 ordinance since they do not address any mandatory or design standard provisions. The conditions for the decision are then subject solely to the impressions and opinions of the Board.
 - If the Board chooses to approve the request, the following conditions should be considered:
 - The red oak tree planted in the front yard corner must be removed. Only plants suitable to be within the visibility triangle should be planted near the utility pole.
 - Newly planted trees must be removed from directly conflicting vegetation by cutting back plant materials overhanging the rear property line.
 - The 4’ sidewalk must be made uniform to the property line to conform to future development for a continuous sidewalk.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 298 (Planned Development District)
North: MF-2 (A) (Multifamily)
South: PD No. 298 (Planned Development District)
East: PD No. 298 (Planned Development District)
West: PD No. 298 (Planned Development District)

Land Use:

The subject site is developed with three single family attached townhomes. The areas to the north, east, south, and west are 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:

April 26, 2007: 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 17, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

May 17, 2007: The Board Administrator contacted the applicant and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the May 25th deadline to submit additional evidence for staff to factor into their analysis;
- the June 1st deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 29, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Acting Building Official, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Acting Chief Arborist, and the Assistant City Attorney to the Board.

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

June 1, 2007 The applicant submitted additional information to the Board Administrator (see Attachment A). This information was submitted past the May 29th staff review team meeting.

June 4, 2007

The Acting City of Dallas Chief Arborist submitted a memo that provided his comments regarding the special exception to the landscape regulations (see Attachment B).

STAFF ANALYSIS:

- An alternate landscape plan has been submitted that, according to the Acting City of Dallas Chief Arborist, is not fully complying with the landscape requirements of PD No. 298, specifically the street tree, sidewalk, and design standard requirements.
- The landscape requirements on this site are not imposed by a site-specific landscape plan approved by the city plan commission or city council.
- The applicant has the burden of proof in establishing the following:
 - The special exception (where an alternate landscape plan has been submitted that provides 0 of the 2 required street trees, 0 of the 2 required design standards, and a 4' wide sidewalk rather than the required 6' wide sidewalk) 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 a condition that the applicant must comply with the submitted alternate landscape plan, a Certificate of Occupancy could be issued on the site, where the site would be "excepted" from full compliance to the street tree, sidewalk, and design standard requirements of PD No. 298.

FILE NUMBER: BDA 067-094

BUILDING OFFICIAL'S REPORT:

Application of Chuck Quon for variances to the side yard setback regulations and for a variance to the floor area ratio regulations at 3531 James Street. This property is more fully described as Lot 10 in City Block 22/5809 and is zoned R-7.5(A) which require a side yard setback of 5 feet, and that an accessory structure may not exceed 25% of the floor area of the main structure. The applicant proposes to maintain a residential main structure and an accessory structure and provide a 0 foot side yard setback which will require 5 foot variances to the side yard setback regulations, and to maintain a residential accessory structure with 795 square feet of floor area (or 48.5% of the floor area of the main structure) which will require a 385 square foot variance to the floor area ratio regulations.

LOCATION: 3531 James Street

APPLICANT: Chuck Quon

REQUESTS:

- The following appeals have been made in this application:
 1. variances to the side yard setback regulations of 5' are requested in conjunction with maintaining portions of an existing single family home in the site's two side yard setbacks;
 2. variances to the side yard setbacks regulations of 5' are requested in conjunction with maintaining portions of an accessory structure in the site's two side yard setbacks; and
 3. a variance to the FAR regulations is requested with maintaining the accessory structure on the site that is 795 square feet in area (or 48.5% of the floor area of the main building).

These appeals are the same appeals made to (and denied without prejudice by) the Board of Adjustment Panel A in February of 2007 with two exceptions:

1. The applicant is no longer requesting a variance to the rear yard setback regulations of 4' 6" since the board granted this variance; and
2. The applicant has amended the original variance request to the FAR regulations related to maintaining the accessory structure on the site that was referenced in the previous Building Official's report as 1,017 square feet in area (or 62% of the floor area of the main building) to a structure that is referenced in the Building Official's Report as 795 square feet in area (or 48.5% of the floor area of the main building). (The reduction is due to the fact that the Building Official has determined that the breezeway space of the accessory structure does not constitute floor area).

STAFF RECOMMENDATION:

Denial

Rationale:

- The need for variances to the side yard setback and to the FAR regulations to maintain portions of the existing single family home and accessory structure on the site have not been substantiated by the applicant. Although the site is sloped, this physical site constraint does not preclude the site from being developed with a comparably-sized house (and accessory structure) found in the same zoning district that could comply with setbacks and FAR requirements. In addition, the lot is not constrained by an irregular shape (the site is rectangular in shape) or a restrictive area (the site is over 9,000 square feet in area – larger in size than most lots in the R-7.5(A) zoning district that are typically 7,500 square feet in area).

STANDARD FOR A VARIANCE:

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area ratios, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations that will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done. The variance must be necessary to permit development of a specific parcel of land which differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same zoning classification. A variance may not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land in districts with the same zoning classification.

GENERAL FACTS:

- Lots located in an R-7.5(A) zoning district are required to provide a 5' side yard setback for the main structure and for an accessory structure over 15' in height, and to provide a 5' rear yard setback for an accessory structure over 15' in height. (The code states that if an accessory structure is located in the rear 30% of the lot and is less than 15' in height, no side or rear yard setback is required).
The applicant has submitted a site plan and elevations of the main structure and accessory structure that indicate that both the main structure and a 19' 1" high accessory structure are located on the east and west side property lines (or 5' into the 5' side yard setbacks), and that the accessory structure is located (according to the revised Building Official's Report) 6" from the rear property line (The portion of the accessory structure located in the rear yard setback was "varied" by the Board of Adjustment Panel A in February of 2007).
- The accessory structure provisions of the Dallas Development Code requires that the total floor area of any individual accessory structure on a lot, excluding floor area

used for parking, may not exceed 25% of the floor area for the main building on lots zoned R-7.5(A).

According the Building Official's Report, the floor area of the existing accessory structure on this site is 795 square feet or 48.5% of the floor area of the main building. (The Building Inspection Development Code Specialist has calculated the main structure to be 1,640 square feet in area).

- The subject site is sloped, rectangular in shape (150' x 61'), and 9,150 square feet in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- According to DCAD records, the site is developed with a single family home built in 1948 with 864 square feet of living area, and a 275 square foot attached garage.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5(A) (Single family district 7,500 square feet)
North: R-7.5(A) (Single family district 7,500 square feet)
South: R-7.5(A) (Single family district 7,500 square feet)
East: R-7.5(A) (Single family district 7,500 square feet)
West: LI (Light Industrial)(SUP 93) (Specific Use Permit for electric substation)

Land Use:

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

Zoning/BDA History:

1. BDA 067-027, 3531 James Street (the subject site)

On February 13, 2007, the Board of Adjustment Panel A denied requests for side yard variances and an FAR variance without prejudice, and granted a request for a 4.5' rear yard variance imposing the submitted site plan and elevation as conditions. The case report stated that the requests were made in conjunction with maintaining portions of an existing home in the site's two side yard setbacks, maintaining portions of an existing accessory structure in the site's two side yard setbacks and rear yard setback, and maintaining the existing accessory structure on the site that is 62% of the floor area of the main building.

Timeline:

April 27, 2007: 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 17, 2007: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. 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 18, 2007: The Board Administrator phoned the applicant with the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the May 25th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
- the June 1st deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 29, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Acting Building Official, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Acting Chief Arborist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The subject site is sloped, rectangular in shape (150' x 61'), and 9,150 square feet in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- The applicant has the burden of proof in establishing the following:
 - That granting the variances to the side yard setback and FAR regulations requested to maintain portions of an existing home and accessory structure in the side yard setbacks, and to maintain an accessory structure that is greater than 25% of the floor area of the main structure will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - Each of the 5 variances is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.
 - Each of the 5 variances would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.
- Depending on if the Board were to grant any or all of the 5 variance requests, and impose a site plan and/or elevation as a condition, the structures of any granted request would be limited to that what is shown on the submitted plan and elevation – where possibly the main structure could be maintained on the site's two side property lines (or 5' into the 5' side yard setbacks); where possibly the accessory structure could be maintained on the site's two side property lines (or 5' into the 5' side yard setbacks); and where possibly the 795 square foot accessory structure that is 48.5% of the floor area of the main building could be maintained on the site.