

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
TUESDAY, MAY 15, 2007**

MEMBERS PRESENT AT BRIEFING: Rob Richmond, Chair, Ben Gabriel, Panel Vice-Chair, Scott Griggs, regular member, Johnny Jefferson, alternate member and Carol Scott, alternate member

MEMBERS ABSENT FROM BRIEFING: Jordan Schweitzer, regular member

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Casey Burgess, Asst. City Attorney, Donnie Moore, Chief Planner, Todd Duerksen, Development Code Specialist, Chau Nguyen, Traffic Engineer, Phil Erwin, Acting Chief Arborist and Trena Law, Board Secretary

MEMBERS PRESENT AT HEARING: Rob Richmond, Chair, Ben Gabriel, Panel Vice-Chair, Scott Griggs, regular member, Johnny Jefferson, alternate member and Carol Scott, alternate member

MEMBERS ABSENT FROM HEARING: Jordan Schweitzer, regular member

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Casey Burgess, Asst. City Attorney, Donnie Moore, Chief Planner, Todd Duerksen, Development Code Specialist, Chau Nguyen, Traffic Engineer, Phil Erwi, Acting Chief Arborist and Trena Law, Board Secretary

10:30 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **May 15, 2007** docket.

1:00 P.M.

The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand

upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel A April 17, 2007 public hearing minutes as amended.

BOARD OF ADJUSTMENT ACTION: MAY 15, 2007

MOTION: Scott

I move to **approve** the Board of Adjustment Panel A April 17, 2007 public hearing minutes as amended.

SECONDED: Jefferson

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

NAYS: 0 -

MOTION PASSED: 5- 0 (unanimously)

FILE NUMBER: BDA 067-015

REQUEST: Of Rob Richmond to suspend Board of Adjustment Rule of Procedure, Section 12 (c), which says a motion to reconsider can only be made on the same day as the original vote; by the same makeup of the panel that made the original vote; and that the motion to reconsider can only be made by a member who voted on the prevailing side and Section 9(l), which says the Board may not change or modify a decision once the time for reconsideration has expired.

LOCATION: 4818 N. Lindhurst Drive

APPLICANT: Lacie Crow

GENERAL FACTS:

- On April 17, 2007, Board of Adjustment Panel A denied the applicant's request to waive the two year time limitation on a request for a special exception to the fence height regulations that was granted with conditions on January 16, 2007. (Public hearing minutes reflect that Members Gabriel, Schweitzer, Griggs moved in favor of Mr. Schweitzer's motion to deny the request, and that Chair Richmond moved in opposition to the motion to deny the request).
- On May 11, 2007, Rob Richmond, the Chairman of the Board of Adjustment, requested that staff place on Panel A's agenda a request to suspend Board of

Adjustment Rule of Procedure, Section 12 (c), which says a motion to reconsider can only be made on the same day as the original vote; by the same makeup of the panel that made the original vote; and that the motion to reconsider can only be made by a member who voted on the prevailing side and Section 9(l), which says the Board may not change or modify a decision once the time for reconsideration has expired.

BOARD OF ADJUSTMENT ACTION: MAY 15, 2007

MOTION: Richmond

I move to suspend Board of Adjustment Rule of Procedure, Section 12 (c), which says a motion to reconsider can only be made on the same day as the original vote; by the same makeup of the panel that made the original vote; and that the motion to reconsider can only be made by a member who voted on the prevailing side and Section 9(l), which says the Board may not change or modify a decision once the time for reconsideration has expired.

SECONDED: Scott

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MISCELLANEOUS ITEM NO. 3

FILE NUMBER: BDA 067-015

REQUEST: Of Rob Richmond to reconsider a decision made at the April 17, 2007 public hearing regarding a request of Lacie Crow to waive the two year time limitation on a special exception to the fence height regulations that was granted with conditions on January 16, 2007. **(No action will be taken on this item if M2 fails to receive four votes)**

LOCATION: 4818 N. Lindhurst Drive

APPLICANT: Lacie Crow

GENERAL FACTS:

- On April 17, 2007, Board of Adjustment Panel A denied the applicant's request to waive the two year time limitation on a request for a special exception to the fence height regulations that was granted with conditions on January 16, 2007. (Public hearing minutes reflect that Members Gabriel, Schweitzer, Griggs moved in favor of

Mr. Schweitzer's motion to deny the request, and that Chair Richmond moved in opposition to the motion to deny the request).

- On May 11, 2007, Rob Richmond, the Chairman of the Board of Adjustment, requested that staff place on Panel A's agenda a request to reconsider a decision made at the April 17, 2007 public hearing regarding a request of Lacie Crow to waive the two year time limitation on a special exception to the fence height regulations that was granted with conditions on January 16, 2007

BOARD OF ADJUSTMENT ACTION: MAY 15, 2007

MOTION: Richmond

I move that the Board of Adjustment **reconsider** a decision made at the April 17, 2007 public hearing regarding a request of Lacie Crow to waive the two year time limitation on a special exception to the fence height regulations that was granted with conditions on January 16, 2007.

SECONDED: Scott

AYES: 4 – Richmond, Gabriel, Jefferson, Scott

NAYS: 1 - Griggs,

MOTION PASSED: 4– 1

MISCELLANEOUS ITEM NO. 4

FILE NUMBER: BDA 067-015

REQUEST: To waive the two year limitation on a request for a special exception to the fence height regulations that was granted with conditions by Board of Adjustment Panel A on January 16, 2007

LOCATION: 4818 N. Lindhurst Drive

APPLICANT: Lacie Crow

STANDARD FOR WAIVING THE TWO YEAR TIME LIMITATION:

The Dallas Development Code states that the board may waive the two year time limitation on a final decision reached by the board if there are changed circumstances regarding the property sufficient to warrant a new hearing.

GENERAL FACTS:

- The Dallas Development Code states the following with regard to board action:

- Except as provided below, after a final decision is reached by the board, no further request on the same or related issues may be considered for that property for two years from the date of the final decision.
- If the board renders a final decision of denial without prejudice, the two year limitation is waived.
- The applicant may apply for a waiver of the two year limitation in the following manner:
 - The applicant shall submit his request in writing to the director. The director shall inform the applicant of the date on which the board will consider the request and shall advise the applicant of his right to appear before the board.
 - The board may waive the two year time limitation if there are changed circumstances regarding the property sufficient to warrant a new hearing. A simple majority vote by the board is required to grant the waiver. If a rehearing is granted, the applicant shall follow the process outlined in the code.
- On April 2, 2007, the applicant submitted a letter (see Attachment A) requesting a waiver of the two year time limitation on a special exception to the fence height regulations that was granted (subject to compliance with the submitted revised site plan and elevation) by Board of Adjustment Panel A on January 16, 2007. The case report stated that the special exception request was made in conjunction with constructing a 6' high open decorative iron fence with 6.5' high stone columns, an 8' high arched open gate with 7' high stone columns flanked by two, approximately 10' long, 6' high solid stone wing walls in the site's N. Lindhurst Drive front yard setback; 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 in the site's Lennox Lane front yard setback.
- On April 3, 2007, the Board Administrator responded back to the applicant's request in an email. The email provided additional details about her request (see Attachment B).
- On April 17, 2007, Board of Adjustment Panel A denied the applicant's request to waive the two year time limitation on a request for a special exception to the fence height regulations that was granted with conditions on January 16, 2007. (Public hearing minutes reflect that Members Gabriel, Schweitzer, Griggs moved in favor of Mr. Schweitzer's motion to deny the request, and that Chair Richmond moved in opposition to the motion to deny the request).

BOARD OF ADJUSTMENT ACTION: MAY 15, 2007

APPEARING IN FAVOR: Patrick Crow, 4818 N. Lindhurst, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Scott

I move that the Board of Adjustment **waive** the two year limitation on a request for a special exception to the fence height regulations that was granted with conditions by Board of Adjustment Panel A on January 16, 2007.

SECONDED: Jefferson

AYES: 4 – Richmond, Gabriel, Jefferson, Scott

NAYS: 1 - Griggs,

MOTION PASSED: 4– 1

MISCELLANEOUS ITEM NO. 5

FILE NUMBER: Unassigned

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

LOCATION: 930 Riverwood Road

APPLICANT: Igelsia Riverwood
Represented by Dora Ortiz

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 waiver of the approximately \$1,340.00 filing fee to be submitted in conjunction with a potential appeal to the Board of Adjustment (see Attachment A).

Timeline:

- April 2, 2007 The applicant submitted a letter requesting a waiver of the approximately \$1,340.00 filing fee for a Board of Adjustment application that may be submitted/requested at the address referenced above.
- April 3, 2007: The Board of Adjustment Secretary randomly assigned this request to Board of Adjustment Panel A.
- April 3, 2007: The Board Administrator contacted the applicant’s representative to determine if the applicant preferred this request being placed on Panel A’s April 17th or May 15th agenda. The applicant’s representative requested Panel A’s May 15th agenda.
- April 3, 2007: The Board Administrator wrote the applicant’s representative a letter that conveyed the following information:
- the public hearing date and panel that will consider the request (stating that the applicant’s attendance at this hearing is *strongly* encouraged);
 - 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 4th 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.

BOARD OF ADJUSTMENT ACTION: MAY 15, 2007

APPEARING IN FAVOR: Dora Ortiz, 930 Riverwood Road, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Griggs

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

SECONDED: Gabriel

AYES: 4– Richmond, Gabriel, Griggs, Scott

NAYS: 1 - Jefferson,

MOTION PASSED: 4– 1

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**

May 15, 2007 Public Hearing Notes:

- The applicant’s representative submitted additional evidence at the public 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.

REQUEST:

- A special exception to the off-street parking regulations of 57 spaces is 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 proposes to provide 189 (or 77%) of the total 246 spaces that are required for the existing and proposed uses/structures on the site.

STAFF RECOMMENDATION:

Denial

Rationale:

- The Development Services Senior Engineer has commented the he has not received any update from the applicant's representative since the April public hearing, therefore his comments remain the same as offered to the board in April: a recommendation cannot be made given the lack of information submitted by the applicant – specifically a parking study with an exhibit that provides information regarding the date of the study, the number of small professional firms/employees, etc.
- The applicant has not substantiated how 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.

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 document 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.
- The applicant’s representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included a revised site plan that correctly conveyed the number of off-street parking spaces required for the proposed development.
- On April 6, 2007, the applicant’s representative submitted additional information beyond what was submitted with the original application and what was discussed at the April 2nd staff review team meeting (see Attachment C). This information included photos of the site and surrounding area, and an exhibit related to parking on the site. (This information was not factored into the staff recommendation suggested to the board at the April 17th hearing since it was submitted after the March staff review team meeting).
- 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.

- As of May 7th, no additional information had been submitted by the applicant's representative since the April 17th public hearing.

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.

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 has reiterated his comments made to the board at the April 17th hearing: a recommendation on the request cannot be made given the lack of information that has been submitted by the applicant – specifically a parking study with an exhibit that provides information regarding the date of the study, the number of small professional firms/employees, etc. (The Development Services Senior Engineer has commented that he has NOT received any update from the applicant’s representative since the April 17th public hearing).

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 (unanimously)

FILE NUMBER: BDA 067-061

BUILDING OFFICIAL’S REPORT:

Application of Goody Goody Liquor, Inc., represented by James Schnurr, for special exceptions to the sign and visibility obstruction regulations at 7124 Greenville Avenue. This property is more fully described as Lot 4B in City Block 6/5199 and is zoned MU-3 which allows only one detached sign per street frontage other than expressways, and requires a 20 foot visibility triangle at a street and driveway intersection. The applicant proposes to construct a second additional detached premise sign, and to locate the proposed sign in a required visibility triangle which would require special exceptions to the sign and visibility obstruction regulations.

LOCATION: 7124 Greenville Avenue

APPLICANT: Goody Goody Liquor, Inc.
Represented by James Schnurr

REQUESTS:

- The following appeals have been made in this application:
 1. a special exception to the sign regulations; and
 2. a special exception to the visibility obstruction regulations.
 The special exceptions are requested to:

- locate and maintain an additional detached sign on a site, and to locate and maintain this additional sign less than the required 200' distance from an existing detached sign on the site; and
- locate and maintain this additional detached sign in the northern 20' drive approach visibility triangle into the site from Greenville Avenue.

The site is developed with a retail use (Goody Goody Liquor);

STAFF RECOMMENDATION (sign special exception):

Denial

Rationale:

- The applicant has not substantiated how strict compliance with the requirement of the sign regulations (i.e. the site having one sign on Greenville Avenue) will result in substantial financial hardship or inequity to the applicant.
- The applicant does not contend that an additional sign (in this case a proposed monument sign) is needed to see/locate the retail business on the site for those traveling southbound on Greenville Avenue, and although the applicant contends that an additional sign is needed to see/locate the retail business on the site for those traveling northbound on Greenville given an existing fence, shrubs, and sign located on the property immediately south of the subject site, the applicant has not provided information as to why one new sign could not be erected/located on the site that could be seen by those traveling northbound and southbound on Greenville Avenue at a height higher than the fence/shrubs and lower than the sign on the property immediately south of the subject site, and a sign that complies with the City's visibility obstruction regulations.
- A viable option is for the applicant to comply with the sign and visibility obstruction regulations by erecting one new sign on the site that is located outside of visibility triangles and at a height/location visible to those traveling northbound and southbound on Greenville Avenue.

STAFF RECOMMENDATION (visibility obstruction special exception):

Approval, subject to compliance with the submitted site plan/elevation

Rationale:

- The City's Development Services Senior Engineer has submitted review comment sheet marked "Has no objections."

STANDARD FOR A SPECIAL EXCEPTION TO THE SIGN REGULATIONS FOR AN ADDITIONAL DETACHED SIGN:

The Board of Adjustment may, in specific cases and subject to appropriate conditions, authorize one additional detached sign on a premise in excess of the number permitted by the sign regulations as a special exception to these regulations when the board has

made a special finding from the evidence presented that strict compliance with the requirement of the sign regulations will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.

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 sign special exception):

- The Dallas Development Code states that only one detached sign is allowed per street frontage other than expressways, and that detached signs on the same premise must be located at least 200 feet apart.
The applicant had originally only submitted a survey plat with revisions made on March 26th (see Attachment A) that denoted the location of the proposed sign approximately 45' away from the location of the existing sign on the subject site. The originally submitted survey plat did not clearly show the location of driveway and curb lines therefore staff had been unable to determine whether or not the proposed sign was located in a 20' visibility triangle at the site's drive approach.
On May 7, 2007, the applicant's representative submitted a site plan/elevation document (see Attachment E). This document included an elevation of the same originally submitted sign elevation and a site plan that denoted the proposed monument sign location on the subject site.
The elevation denotes that the proposed sign is 5' 10" high and 12' long. (An elevation of the existing sign has not been submitted).
The site plan shows the pavement and driveway lines on the subject site and the amount of the proposed sign that would be located in the site's northern 20' drive approach visibility triangle. The site plan additionally documents what had been described in letters: that the proposed sign is to be located 15' from the curb line.
- A plat map was submitted that shows that the site is irregular in shape with about 44' of frontage on Greenville Avenue on the west side of the site, broadening to a 250' width on its eastern boundary. The code allows one detached sign per frontage regardless of the length of a site's frontage.
- On March 29, 2007, the applicant's representative submitted additional information to staff regarding the request (see Attachment B). This information included the following:
 - a letter that provided additional details about the request; and
 - a copy of a sign permit for the sign currently on the subject site.
- On April 5, 2007, the applicant's representative submitted additional information to staff regarding the request beyond what was submitted with the original application and discussed at the April 2nd staff review team meeting (see Attachment D). This information included the following:

- a letter that provided additional details about the request; and
- photos of the site and surrounding area.
- The Board of Adjustment conducted a public hearing on this matter on April 17, 2007. 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, specifically, but not limited to, a scaled site plan that documented the location of the proposed sign in relation to property lines, driveway lines, and curb lines.
- On May 7, 2007, the applicant's representative submitted additional information to staff regarding the request beyond what was submitted with the original application, and discussed at the April 2nd and April 30th staff review team meetings (see Attachment E). This information included the following:
 - a letter that provided additional details about the requests; and
 - a scaled site plan of the site showing the sign's location relative to the city required visibility triangles.

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).
 On April 2, 2007, the applicant's representative added a request for a special exception to the visibility obstruction regulations after the staff review team meeting on this application which was originally submitted as only a request for a special exception to the sign regulations for an additional sign.
- On April 5, 2007, the applicant's representative submitted additional information to staff regarding the request beyond what was submitted with the original application and discussed at the April 2nd staff review team meeting (see Attachment D). This information included the following:
 - a letter that provided additional details about the request; and
 - photos of the site and surrounding area.
- The Board of Adjustment conducted a public hearing on this matter on April 17, 2007. 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, specifically, but not limited to, a scaled site plan that documented the location of the proposed sign in relation to property lines, driveway lines, and curb lines.
- On May 7, 2007, the applicant's representative submitted additional information to staff regarding the request beyond what was submitted with the original application, and discussed at the April 2nd and April 30th staff review team meetings (see Attachment E). This information included the following:

- a letter that provided additional details about the requests; and
- a site plan of the site showing the sign's location relative to the city required visibility triangles.

BACKGROUND INFORMATION:

Zoning:

Site: MU-3 (Mixed Use)
North: MU-3 (Mixed Use)
South: MU-3 (Mixed Use)
East: MF-1(A) (Multifamily)
West: PD No. 453 (Planned Development District)

Land Use:

The site is currently developed as a retail use (Goody Goody Liquor). The areas to the north, south, and west are developed with retail uses; and the area to the east is developed with multifamily uses.

Zoning/BDA History:

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

Timeline:

- Feb. 22, 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.
- March 22, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- March 22, 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 26, 2007: The Board Administrator encouraged the applicant’s representative to submit a site plan that indicates the curb and driveway lines of the subject site along with the actual location of the proposed sign in order for staff to determine that the proposed sign is in compliance with the visibility obstruction regulations.

March 29, 2007 The applicant’s representative submitted additional information beyond what was submitted with the original 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.

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

April 3, 2007 The Building Inspection Development Code Specialist forwarded a revised Building Official’s Report to the Board Administrator (see Attachment C). This amended report reflected an added appeal made after the staff review team meeting: a special exception to the visibility obstruction regulations.

April 4, 2007 The Development Services Senior Engineer submitted a review comment sheet marked “Has no objections if certain conditions are met” commenting:

1. The sign must be located outside the 20’ x 20’ driveway visibility triangles. (The site plan provides no info. on dimension, the letter dated March 29, 2007 indicated 15’ from the curb.)

April 5, 2007 The applicant’s representative submitted additional information beyond what was submitted with the original application and

beyond what was discussed at the April 2nd staff review team meeting (see Attachment D).

April 17, 2007: The Board of Adjustment conducted a public hearing on this matter, and delayed action until May 15, 2007.

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 4, 2007 The Development Services Senior Engineer submitted a revised review comment sheet marked "Has no objections."

May 7, 2007 The applicant's representative submitted additional information beyond what was submitted with the original application and beyond what was discussed at the April 2nd and April 30th staff review team meetings (see Attachment E).

STAFF ANALYSIS (related to the sign special exception):

- The subject site has about 44' of frontage onto Greenville Avenue, however, the amount of the site's frontage is of little relevance since the Dallas Development Code states that (other than sites with expressway frontage) only one detached sign is allowed per street frontage (regardless of the length of a site's frontage).
- The applicant proposes to retain an existing pole sign on the site, described as a large (400 square foot) detached premise sign, of which no elevation has been submitted, located (according to a submitted survey plat) about 30' from the Greenville Avenue front property line, and to add/maintain an approximately 61 square foot monument sign located (according to a submitted site plan) about 9' from the Greenville Avenue front property line or 15' from the curb line. The site plan indicates that the existing and proposed signs would be located about 45' apart – the proposed monument sign erected/maintained on the north side of the drive approach

into the site, the existing pole sign maintained on the south side of the drive approach into the site.

- A sign elevation of the proposed additional monument sign has been submitted indicating a sign that is 5' 10" high and 12' long. (A sign elevation of the existing sign has not been submitted).
- The applicant has the burden of proof in establishing the following:
 - That strict compliance with the requirement of the sign regulations (where in this case, the site would be limited to having only one sign on Greenville Avenue) will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.
- Granting this special exception (with conditions imposed that the applicant complies with the submitted site plan/elevation) would allow a 2nd sign to be located on the site but limited to the specific location and characteristics as shown of this site plan/elevation.

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

- The Development Services Senior Engineer has revised his original comments that the proposed additional sign must be located outside the 20' x 20' driveway visibility triangles (that the site plan provided no dimension and the letter dated March 29, 2007 indicated 15' from the curb) to "Has no objections."
- 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 site plan/elevation, an additional monument site located 15' from the curb line in the 20' visibility triangle at the northern drive approach into the site from Greenville Avenue) will not constitute a traffic hazard.
- Granting this special exception (with conditions imposed that the applicant complies with the submitted site plan/elevation) would "except" a 5' 10' high monument sign in the site's northern 20' drive approach visibility triangle into the site from Greenville Avenue but limited to the specific location and characteristics as shown of this site plan/elevation.

BOARD OF ADJUSTMENT ACTION: APRIL 17, 2007

APPEARING IN FAVOR: Jimmy Schnurr, 3400 Carlisle St., Dallas, TX

APPEARING IN OPPOSITION: No one

2:01 PM: Break

2:04 PM: Resumed:

MOTION: **Schweitzer**

I move that the Board of Adjustment in Appeal No. **BDA 067-061**, hold this matter under advisement until **May 15, 2007**.

SECONDED: **Gabriel**

AYES: 4 – Richmond, Gabriel, Schweitzer, Griggs

NAYS: 0 -

MOTION PASSED: 4–0 (unanimously)

BOARD OF ADJUSTMENT ACTION: MAY 15, 2007

APPEARING IN FAVOR: Jimmy Schnurr, 3400 Carlisle St., Dallas, TX
Joe Janson, 12312 Archdale Dr, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: **Scott**

I move that the Board of Adjustment, in Appeal No. **BDA 067-061**, on application of Goody Goody Liquor, Inc., represented by James Schnurr, **grant** the request of this applicant to allow one additional detached sign in excess of the number permitted on the premises as a special exception to the sign regulations contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that strict compliance with this requirement will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of Article VII. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: **Gabriel**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION #2: **Scott**

I move that the Board of Adjustment, in Appeal No. **BDA 067-061**, on application of Goody Goody Liquor, Inc., represented by James Schnurr, **grant** the request of this applicant to construct and maintain a sign in a visibility triangle as a special exception to the visibility obstruction regulation 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/elevation is required.

SECONDED: Gabriel

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 067-064

BUILDING OFFICIAL’S REPORT:

Application of Timothy Herfel for a special exception to the fence height regulations at 940 Kessler Parkway. This property is more fully described as Lot 2B in City Block 4700 and is zoned R-7.5(A), which limits the height of a fence in the rear yard to 9 feet. The applicant proposes to construct a 12 foot 6 inch fence in the rear yard which would require a special exception of 3 feet 6 inches.

LOCATION: 940 Kessler Parkway

APPLICANT: Timothy Herfel

May 15, 2007 Public Hearing Notes:

- Neighboring property owners submitted photographs of the site at the public hearing.

REQUEST:

- A special exception to the fence height regulations of 3’ 6” is requested in conjunction with maintaining a maximum 12.5’ high fence (an 8’- 9’ high solid cedar wood fence atop a 3” – 42” high lattice) located in the site’s 5’ rear yard setback. The site is developed with a single family home.

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The Dallas Development Code states that a person shall not erect or maintain a fence in a required yard more than 9’ above grade, and 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 has submitted site plan/elevation document that denotes a 12.5’ high fence/wall that is located in the site’s required 5’ rear yard setback.
- The submitted scaled site plan denotes the location of a “new 8’ wood fence” along the site’s southern boundary. This fence is about 1’ off the site’s southern property line.
- The submitted elevation (which is not to scale) denotes a 12’ 6” high “galv. posts cedar picket fence, treated lattice below.”
- The length of the fence above the 9’ height permitted by right in the site’s 5’ rear yard setback could not be determined from the submitted site plan/elevation document. However, a revised elevation submitted on April 30th notes that the length of the fence exceeding 9’ in height requiring the special exception is 81 feet. This elevation denotes a 9’ high fence atop “lattice work” that ranges from 3” – 42” in height.
- The existing fence/wall located in the site’s 5’ rear yard setback exceeding 9’ in height is located on a site where one single family home to the south has direct view.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences/walls exceeding 9’ in height that appeared to be located in a required side or rear yard setback.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a time line of how the fence progressed on the site;
 - an elevation of the fence “needing variance;” and
 - photos of the site and surrounding area with a legend/list of where the photos were taken.

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: R-7.5 (A) (Single family district 7,500 square feet)

Land Use:

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

Zoning/BDA History:

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

Timeline:

March 12, 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.

April 19, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

April 20, 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 April 27th deadline to submit additional evidence for staff to discuss at the staff review team meeting;
- the May 7th 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 May public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

April 30, 2007 The applicant submitted additional information to the Board Administrator (see Attachment A). This information was submitted immediately before the staff review team meeting.

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.

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

STAFF ANALYSIS:

- Plans have been submitted including a site plan/elevation and a revised elevation that document the characteristics of the existing fence over 9' in height. The plans show the maximum height of the fence to be 12.5', that the length of the fence over 9' in height to be 81' long, and that the materials of the fence are "cedar picket fence, treated lattice below."
- The existing fence over 9' in height appears to be located about 1' from the site's rear property line.
- The existing fence/wall is located on the site where one single family home has direct view.
- No other fences/walls were noted in the immediate area.
- As of May 7, 2007, 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 3' 6" (whereby the proposal that exceeds 9' in height) will not adversely affect neighboring property.
- Granting this special exception of 3' 6" with conditions imposed that the applicant complies with the submitted site plan/elevation document and revised elevation would assure that the fence would be maintained in the location and of the heights and materials as shown on these documents.

BOARD OF ADJUSTMENT ACTION: MAY 15, 2007

APPEARING IN FAVOR:

Tim Herfel, 940 Kessler Pkwy, Dallas, TX
Dallas Cothrum, 900 Jackson, #640, Dallas, TX
Patricia Melly, 956 Kessler, Dallas, TX

APPEARING IN OPPOSITION:

Peggy Victor, 910 Kessler Pkwy, Dallas, TX
Arvel Haley, 930 Kessler Pkwy, Dallas, TX

MOTION: Scott

I move that the Board of Adjustment, in Appeal No. **BDA 067-064**, on application of Timothy Herfel, **grant** the request of this applicant to construct and maintain a twelve-and-a-half-foot-tall fence on the property 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/elevation document and revised elevation is required.
- The applicant is required to provide some type of landscaping materials along the fence.

SECONDED: Gabriel

AYES: 4 – Richmond, Gabriel, Jefferson, Scott

NAYS: 1 - Griggs

MOTION PASSED: 4– 1

FILE NUMBER: BDA 067-076

BUILDING OFFICIAL’S REPORT:

Application of Peter Kavanagh of Zone Systems for a special exception to the single family regulations at 630 Mayrant Drive. This property is more fully described as Lot 14 in City Block 44/5973 and is zoned R-7.5(A), which limits the number of dwelling units to one. The applicant proposes to construct a second dwelling unit on a single family zoned lot which would require a special exception.

LOCATION: 630 Mayrant Drive

APPLICANT: Peter Kavanagh of Zone Systems

REQUEST:

- A special exception to the single family regulations is requested in conjunction with constructing and maintaining a second dwelling unit on a site developed with a single family home.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to authorize an additional dwelling unit in any single family zoning district since the basis for this type of appeal is *when in the opinion of the board*, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties. In granting a special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

STANDARD FOR A SPECIAL EXCEPTION TO THE SINGLE FAMILY USE REGULATIONS TO AUTHORIZE AN ADDITIONAL DWELLING UNIT IN A SINGLE FAMILY ZONING DISTRICT:

The board may grant a special exception within the single family use regulations to authorize an additional dwelling unit in any single family zoning district when, in the opinion of the board, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties. In granting a special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

GENERAL FACTS:

- The Dallas Development Code limits the number of dwelling units on a lot zoned R-7.5(A). In addition, the Dallas Development Code defines “single family” use as “one dwelling unit located on a lot;” and a “dwelling unit” as “one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms.”
The applicant has submitted a survey plat that denotes a structure labeled “New Build One Story” that is located in the southwest corner of the site. According to information submitted by the applicant, the additional dwelling unit is 744 square feet in area, and the existing residence (including extended roof cover at garage entrance, front porch, and rear porch) is 3,295 square feet.
The applicant has submitted elevations of the proposed dwelling unit structure that indicate a 1-story structure. (Its actual height cannot be detected given that no scale is provided).
The applicant has submitted a floor plan of the “pool cabana”/dwelling unit structure that is labeled as and indicates the following:
 - TV/Entertainment Room;
 - Game Room;
 - Snack Area; and
 - Bathroom.The applicant has submitted a document that describes style features that will match the proposed structure with existing structure (one-story, gable roof, roof pitch, roof overhang, roof trim details, double hung windows, porch, and paint color).
- The application states that the site is 15,200 square feet in area.
- The subject site is developed with, according to DCAD records, the following:
 - a single family home built in 1954 with 2,156 square feet of living area;
 - a 504 square foot attached garage; and
 - a pool.
- The site plan indicates that the additional “dwelling unit” structure is located near the southwest corner of the site, approximately 3’ away from the site’s western and southern property lines.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5(A) (Single Family Residential 7,500 square feet)
North: R-7.5(A) (Single Family Residential 7,500 square feet)
South: R-7.5(A) (Single Family Residential 7,500 square feet)
East: R-7.5(A) (Single Family Residential 7,500 square feet)
West: R-7.5(A) (Single Family Residential 7,500 square feet)

Land Use:

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

- March 30, 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.
- April 19, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- April 19, 2007: The Board Administrator left a message with the applicant's representative that conveyed 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 7th 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 May public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

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.

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

STAFF ANALYSIS:

- The site is zoned R-7.5(A) where the Dallas Development Code permits one dwelling unit per lot. The site is developed with a single family home/dwelling unit, and the applicant proposes to add a 2nd dwelling unit/“pool cabana” structure on the site.
- According to information submitted by the applicant, the additional dwelling unit is 744 square feet in area, and the existing residence (including extended roof cover at garage entrance, front porch, and rear porch) is 3,295 square feet.
- The proposed accessory structure appears to be in compliance with all development standards of the Dallas Development Code (i.e. setback, coverage, height requirements) except for its proposed function or use inside the structure.
- The applicant has the burden of proof in establishing that the additional dwelling unit will not be used as rental accommodations (by providing deed restrictions) and not adversely affect neighboring properties.
- As of May 7, 2007, no letters had been submitted to staff in support or in opposition to the request.
- If the Board were to approve the request for a special exception to the single family regulations, subject to imposing a condition that the applicant comply with the submitted survey plat/site plan and elevation, the “dwelling unit” structure would be restricted to the specific location, size, and height as shown on these plan and elevations.
- The Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

BOARD OF ADJUSTMENT ACTION: MAY 15, 2007

APPEARING IN FAVOR: Peter Kavanagh 1620 Handley, Dallas, TX
Johanna Edwards, 630 Mayrant, Dallas, TX
Belinda Sweeny, 630 Mayrant, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Jefferson**

I move that the Board of Adjustment, in Appeal No. **BDA 067-076** on application of Peter Kavanagh of Zone Systems, **grant** the request of this applicant to maintain an additional dwelling unit on the Property, because our evaluation of the property and testimony shows that the additional dwelling unit will not be used as rental accommodations nor adversely affect neighboring properties. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted survey plat/site plan and elevation is required.
- The property must be deed restricted to prohibit the additional dwelling unit on the site from being used as rental accommodations.

SECONDED: **Gabriel**

AYES: 4 – Richmond, Gabriel, Jefferson, Scott

NAYS: 1 - Griggs

MOTION PASSED: 4– 1

FILE NUMBER: BDA 067-069

BUILDING OFFICIAL’S REPORT:

Application of Jerry M. Ward for a variance to the front yard setback regulations at 5331 Richard Avenue. This property is more fully described as Lot 21 in City Block 21/1941 and is zoned CD 15, which requires a front yard setback of 25 feet. The applicant proposes to construct a single family residential structure and provide a 22 foot 6 inch front yard setback which would require a variance of 2 feet 6 inches.

LOCATION: 5331 Richard Avenue

APPLICANT: Jerry M. Ward

REQUEST:

- A variance to the front yard setback regulations of 2’ 6” is requested in conjunction with constructing and maintaining, according to the application, a “front egress” (or stairs) to be added to an existing single family structure.

STAFF RECOMMENDATION:

Denial

Rationale:

- The site is relatively flat, rectangular in shape (156' long, 50' wide), and 7,800 square feet in area. The site is zoned CD No. 15 where lots are typically 7,500 square feet in area.
- The site appears to be of no narrower width or lesser length than other lots immediately adjacent/in the same CD No. 15 zoning district.
- There is no physical site constraint that precludes this lot from being developed in a manner commensurate with other developments found on other lots in the same zoning district, and in compliance with all development standards including the front yard setback requirement.
- The applicant has not substantiated how the site's restrictive area, shape and/or slope warrant the proposed stairs to encroach into the site's 25' front yard setback.

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 zoned CD No. 15 are required to provide a minimum front yard setback that is the average of front yard setback of the contributing main buildings on the block face as listed in the ordinance. According to the ordinance that created CD No. 15, the front yard setback for the odd-numbered lots in the 5300 block of Richard Avenue is 25 feet. (This ordinance specifically referenced a 27' front yard setback provided at 5331 Richard – the subject site).

According to the application and the Building Official's Report, a request has been made to permit a "front egress to encroach in front yard setback which would require

a 30" (2' 6") variance," or to permit stairs that would be located 22' 6" from the front property line (or 2' 6" into the 25' front yard setback). A submitted revised elevation/section of the house on the site denotes 2 steps that are proposed to be located in the 25' front yard setback.

- The Dallas Development Code defines "structure" as "that which is built or constructed, an edifice or building of any kin, or any piece of work artificially built up or composed of parts joined together in some definite manner" – hence, the request in this case for a stair structure that would be located in the 25' front yard setback.
- The area amount of the "front egress" or stair structure located in the 25' front yard setback cannot be fully determined from the submitted site plan or elevations. But it appears from calculations taken from the submitted site plan by the Board Administrator, that the stair structure in the 25' front yard setback is approximately 2' wide and 12.5' long.
- Although the applicant refers to the steep grade of the site on his application, the site is relatively flat, rectangular in shape (156' long, 50' wide), and 7,800 square feet in area. The lot is zoned CD No. 15 where lots are typically 7,500 square feet in area since the zoning on the lot prior to the CD No. 15 (created in June of 2006) was R-7.5(A).
- DCAD records indicate that the site is developed with the following:
 - a single family home built in 1918 with 2,722 square feet of living space;
 - a 392 square foot detached garage; and
 - a 165 square foot deck.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included elevations/sections denoting the portion of the house in the 25' front yard setback as well as photographs of other homes/steps in the area.

BACKGROUND INFORMATION:

Zoning:

Site: CD No. 15 (Conservation District)
North: CD No. 15 (Conservation District)
South: CD No. 15 (Conservation District)
East: CD No. 15 (Conservation District)
West: CD No. 15 (Conservation District)

Land Use:

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

Zoning/BDA History:

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

Timeline:

March 29, 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.

April 19, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

April 19, 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 April 27th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
- the May 7th 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 May public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

April 27, 2007: The Building Inspection Development Code Specialist forwarded a revised Building Official's Report that altered the reference of the zoning on the site from R-7.5(A) to CD No. 15.

April 27, 2007: The applicant submitted information beyond what was submitted with the original application (see Attachment A).

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.

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

STAFF ANALYSIS:

- Although the applicant refers to the steep grade of the site on his application, the site is relatively flat, rectangular in shape (156' long, 50' wide), and 7,800 square feet in area. The lot is zoned CD No. 15 where lots are typically 7,500 square feet in area since the zoning on the lot prior to the CD No. 15 (created in June of 2006) was R-7.5(A).
- The area amount of the "front egress" or stair structure located in the 25' front yard setback cannot be fully determined from the submitted site plan or elevations. But it appears from calculations taken from the submitted site plan by the Board Administrator, that the stair structure in the 25' front yard setback is approximately 2' wide and 12.5' long.
- The applicant has the burden of proof in establishing the following related to the front yard variance request:
 - That granting the variance to the front yard setback regulations of 2' 6" requested in conjunction with constructing and maintaining stairs that would be attached to a single family home will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site (a site that is developed with a single family structure, and is relatively flat, rectangular in shape, and 7,800 square feet in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same CD No. 15 zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the CD No. 15 zoning classification.
- If the Board were to grant the front yard variance request of 2' 6", imposing a condition whereby the applicant must comply with the submitted site plan and revised elevation, the structure in the front yard setback would be limited to that shown on this plan and on the revised elevation – which in this case is a porch/stair structure located 22' 6" from the site's front property line (or 2' 6" into the site's 25' front yard setback).

BOARD OF ADJUSTMENT ACTION: MAY 15, 2007

APPEARING IN FAVOR: Jerry Ward, 5331 Richard, Dallas, TX

APPEARING IN OPPOSITION: Sylvia Perez, 533 Winding Ridge Ln, Rockwall, TX

MOTION: **Griggs**

I move that the Board of Adjustment, in Appeal No. **BDA 067-069**, on application of Jerry M. Ward, **grant** the two-and-a-half-foot variance to the front yard setback regulations because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: **Scott**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 067-077

BUILDING OFFICIAL’S REPORT:

Application of Richard Hale, represented by Rob Baldwin of Baldwin Associates, for a variance to the front yard setback regulations at 5107, 5111, 5121, & 5127 Belmont Avenue. This property is more fully described as Lots 3 through 8 in City Block C/1993 and is zoned MF-2(A) which requires a front yard setback of 15 feet. The applicant proposes to construct and maintain a residential structure and provide an 8 foot front yard setback which would require a variance of 7 feet.

LOCATION: 5107, 5111, 5121, & 5127 Belmont Avenue.

APPLICANT: Richard Hale
Represented by Rob Baldwin of Baldwin Associates

May 15, 2007 Public Hearing Notes:

- The applicant’s representative submitted a revised site plan at the hearing, and testified that he was only seeking a variance for stair structures that would encroach into the front yard setback at 5107 Belmont Avenue.

REQUEST:

- A variance to the front yard setback regulations of 7' is requested in conjunction with constructing and maintaining four stairwell structures to be added/attached on existing/proposed multifamily structures on the site.

STAFF RECOMMENDATION:

Denial

Rationale:

- The site is flat, virtually rectangular in shape (198' on the north, 200' on the south, 313' on the east, and 292' on the west), and 2.82 acres in area.
- There is no physical site constraint that precludes this lot from being developed in a manner commensurate with other developments found on other lots in the same zoning district, while complying with all development standards including the front yard setback requirement.
- The applicant has not substantiated how the site's restrictive area, shape and/or slope warrant the stairwell structures to encroach into the site's Belmont Avenue 25' front yard setback.

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 zoned MF-2(A) are required to provide a 15' front yard setback. A site plan has been submitted that denotes 4 stairway structures that are located 8' from the site's Belmont Street front property line (or 7' into the 15' front yard setback).
- The Dallas Development Code defines "structure" as "that which is built or constructed, an edifice or building of any kin, or any piece of work artificially built up or composed of parts joined together in some definite manner" – hence, the request

in this case for stair structures that would be located in the site's Belmont Street 15' front yard setback.

- The site is located at the corner of Belmont Avenue and Henderson Avenue and has two front yard setbacks which is a typical characteristic of any lot that has a street frontage and is not zoned single family, duplex, or agricultural. The variance in this application is only being requested for structures that are proposed to encroach into the site's Belmont Avenue front yard setback.
- According to calculations taken from the submitted site plan by the Board Administrator, each of the 4 staircase structures proposed to be located entirely in the 15' front yard setback is approximately 64' in area.
- The site is flat, virtually rectangular in shape (198' on the north, 200' on the south, 313' on the east, and 292' on the west), and 2.82 acres in area. The lot is zoned MF-2(A).

BACKGROUND INFORMATION:

Zoning:

Site: MF-2(A) (Multifamily)
North: PD 462 (Planned Development District)
South: MF-2(A) (Multifamily)
East: MF-2(A) (Multifamily) and PD 462 (Planned Development District)
West: MF-2(A) (Multifamily)

Land Use:

The 2.82-acre subject site is partially developed with multifamily structures that are almost to a point of completion. The areas to the south and east are developed with church and single family uses; the area to the west is developed with multifamily uses; and the area to the north is developed with single family uses.

Zoning/BDA History:

1. BDA 056-115, 5130 Belmont Avenue (the subject site)

On April 18, 2006, the Board of Adjustment Panel A granted a request for a special exception to the landscape regulations and imposed the following conditions: Thirty-one, 2-inch diameter site trees must be located anywhere within the development; sixteen, 3-inch diameter street trees must be located between 2 ½ and 10 feet from the back of curb; and twenty percent of the shared access development must be designated as landscape site area (any permeable area or concrete for pedestrian use only). The case

report stated that this request was made in conjunction with constructing and maintaining a shared access development on the site.

Timeline:

- March 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.
- April 19, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- April 19, 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 April 27th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
 - the May 7th 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 May public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- 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.

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

STAFF ANALYSIS:

- The site is flat, virtually rectangular in shape and 2.82 acres in area. The lot is zoned MF-2(A).
- According to calculations taken from the submitted site plan by the Board Administrator, the size of each of the 4 staircases proposed to be located entirely in the 15' front yard setback is approximately 64' in area.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations of 7' requested in conjunction with maintaining stairwell structures that would attach to multifamily structures will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same MF-2(A) zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the MF-2(A) zoning classification.
- If the Board were to grant the front yard variance request of 7', imposing a condition whereby the applicant must comply with the submitted site plan, the structures that would be allowed to encroach into the front yard setback would be limited to that shown on this plan – which in this case are 4 stairwell structures that would be located 8' from the site's Belmont Avenue front property line (or 7' into the site's Belmont Avenue 15' front yard setback).

BOARD OF ADJUSTMENT ACTION: MAY 15, 2007

APPEARING IN FAVOR: Rob Baldwin, 401 Exposition, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Jefferson**

I move that the Board of Adjustment, in Appeal No. **BDA 067-077**, on application of Richard Hale, represented by Rob Baldwin of Baldwin Associates, **grant** the seven-foot variance to the front yard setback regulations (at 5107 Belmont Avenue) because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development

Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan dated May 15, 2007 is required.

SECONDED: **Gabriel**

AYES: 4 – Richmond, Gabriel, Jefferson, Scott

NAYS: 1 - Griggs

MOTION PASSED: 4– 1

MOTION: **Gabriel**

I move to adjourn this meeting.

SECONDED: **Scott**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (Unanimously)

3:57 P.M. - Board Meeting adjourned for May 15, 2007.

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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