

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM
TUESDAY, JUNE 14, 2005**

MEMBERS PRESENT AT BRIEFING: Randall White, Chair, Peggy Hill, Vice-Chair, Ben Gabriel, regular member, Marla Beikman, regular member and Dave Neumann, alternate member

MEMBERS ABSENT FROM BRIEFING: Rev. H.J. Johnson, regular member

STAFF PRESENT AT BRIEFING: Donnie Moore, Chief Planner, Steve Long, Board Administrator, Trena Law, Board Secretary, Ileana Fernandez, Asst. City Attorney, Danny Sipes, Development Code Specialist and Jennifer Pitner, Senior Planner

MEMBERS PRESENT AT HEARING: Randall White, Chair, Peggy Hill, Vice-Chair, Ben Gabriel, regular member, Marla Beikman, regular member and Dave Neumann, alternate member

MEMBERS ABSENT FROM HEARING: Rev. H.J. Johnson, regular member

STAFF PRESENT AT HEARING: Donnie Moore, Chief Planner, Steve Long, Board Administrator, Trena Law, Board Secretary, Ileana Fernandez, Asst. City Attorney, Danny Sipes, Development Code Specialist and Jennifer Pitner, Senior Planner

10:10 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's June 14, 2005 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 May 17, 2005 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: June 14, 2005

MOTION: Hill

I move to approve the Board of Adjustment April 19, 2005 public hearing minutes.

SECONDED: Gabriel

AYES: 5 – White, Hill, Gabriel, Beikman, Neumann

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 045-196

BUILDING OFFICIAL'S REPORT:

Application of Robert Reeves, Robert Reeves & Assoc., Inc. for a variance to the height regulations at 2133 Olive Street (aka 2112 N. Harwood Street). This property is more fully described as a tract of land in City Block 525 and is zoned P.D. 193 HC which limits the height of a structure to 240 feet. The applicant proposes to construct a 370 foot building which would require a variance of 130 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102 (d) (10) of the Dallas Development Code, as amended, which states the power of the Board to variances.

LOCATION: 2133 Olive Street (aka 2112 N. Harwood Street)

APPLICANT: Robert Reeves
Robert Reeves & Assoc., Inc

June 14, 2005 Public Hearing Notes:

- The applicant submitted a letter to the Board of Adjustment at the June 14th briefing (see Attachment E). This letter requested an additional delay until August 16, 2005 “to enable his clients to further refine their development plans.”
- The board requested that staff incorporate all hearing letters submitted to date on this request as an attachment to the case report (see Attachment F).

REQUEST:

- A variance to the height regulations of 130' is requested to construct a 24-story, 370'-high office tower on site that is partially undeveloped and partially developed with office uses.

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:

- The maximum permitted height in the PD No. 193 (HC Subdistrict) is 240 feet.
- The submitted site plan indicates that the site will be developed with a 7-level parking garage and a 23-story, 507,000 square foot, 370'-high office building. (The applicant explained that the reference made in his letter about a "twenty-four story high-rise office building" accounts for a story/floor devoted for mechanical equipment atop 23 floors devoted for parking structure/office use).
- The submitted site plan indicates that only about 20% of the site would be devoted to the tower.
- The submitted site plan indicates that the tower building footprint is about 210' x 110' (or about 23,100 square feet per floor).
- The site is flat, irregular in shape (171' on the south, 737' on the east, 226' on the north, and 644' on the west), and approximately 2.90 acres in area.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - A letter that provides further details about the request and why it should be granted;
 - An aerial photo of the site and surrounding area;
 - Drawings of the tower in context with other existing buildings in the area;
 - An elevation of the proposed tower; and
 - An exhibit that identifies areas where the zoning allows buildings to exceed 240' in height.

- The Board held a public hearing on this matter on May 17, 2005. The following information was submitted at the public hearing:
 - A letter from the applicant requesting a delay of the matter until June 14, 2005, to enable his clients to finalize their preparations (Attachment B).
 - A document entitled “Empty Spaces: Are Texas Office Markets on the Road to Recovery?” from a person in opposition to the request (Attachment C).
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment D). This information included a revised exhibit that identifies areas where the zoning allows buildings to exceed 240’ in height.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 HC (Planned Development District, Heavy Commercial)
North: PD No. 334 (Planned Development District)
South: PD No. 145 (Planned Development District)
East: PD No. 193 HC (Planned Development District, Heavy Commercial)
West: PD No. 193 HC (Planned Development District, Heavy Commercial)

Land Use:

The subject site is partially undeveloped and partially developed with office uses. The area to the north is undeveloped; and the areas to the east, south, and west are developed with office uses.

Zoning/BDA History:

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| 1. BDA 967-292, 2100 McKinney Avenue (the lot northeast of the subject site) | On September 15, 1997, the Board of Adjustment Panel C granted a request for a variance to height regulations of 40’ in conjunction with constructing a 280’ high office tower. |
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Timeline:

- March 22, 2005: 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 21, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- April 21, 2005: The Board Administrator left a message with the applicant’s representative and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the April 29th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- that additional evidence submitted past this date should be brought to the public hearing, 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 29, 2005 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).

May 2, 2005: 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 Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

A review comment sheet was submitted from a District Manager from Code Compliance that indicated "Has no objections."

May 17, 2005: The Board of Adjustment Panel A conducted a public hearing on this appeal and delayed action until June 14, 2005, per the request of the applicant's representative.

May 27, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

June 2, 2005 The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment D).

STAFF ANALYSIS:

- The site is flat and approximately 2.90 acres in area.
- If the Board were to grant the height variance request of 130 feet (or 54% higher than what is permitted in PD No. 193 HC Subdistrict), subject to the submitted site plan and elevation, the site could be developed with a 24-story, 370'-high office tower that would occupy about 20% of the site's total 2.9-acre area.

BOARD OF ADJUSTMENT ACTION: May 17, 2005

APPEARING IN FAVOR: Richard Brink, 1999 McKinney, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Beikman**

I move that the Board of Adjustment in **Appeal No. BDA 045-196**, hold this matter under advisement until **June 14, 2005**.

SECONDED: **Gabriel**

AYES: 5 – White, Hill, Johnson, Gabriel, Beikman,

NAYS: 0–,

MOTION PASSED: 5–0 (unanimously)

BOARD OF ADJUSTMENT ACTION: June 14, 2005

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Hill**

I move that the Board of Adjustment in **Appeal No. BDA 045-196**, hold this matter under advisement until **August 16, 2005**.

SECONDED: **Beikman**

AYES: 5 – White, Hill, Gabriel, Beikman, Neumann

NAYS: 0–,

MOTION PASSED: 5–0 (unanimously)

FILE NUMBER: BDA 045-249

BUILDING OFFICIAL'S REPORT:

Application of Jason Bowman for a variance to the rear yard setback regulations at 7316 Lakewood Boulevard. This property is more fully described as a tract of land in City Block B/4416 and is zoned R 7.5 (A) which requires a 5 foot rear yard setback. The applicant proposes to construct an addition and provide a 3 inch rear yard setback which would require a variance of 4 feet 9 inches. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

LOCATION: 7316 Lakewood Blvd

APPLICANT: Jason Bowman

June 14, 2005 Public Hearing Notes:

- The applicant provided testimony at the hearing of his plans to possibly add a skylight on the roof of the proposed structure not shown on the submitted “east elevation” of this structure.

REQUEST:

- A variance to the rear yard setback regulations of 4’ 9” is requested in conjunction with lengthening a detached 1-story garage and adding a 2nd floor game room atop on a site that is developed with a single family home.

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:

- The Dallas Development Code states the following with regard to “rear yard provisions for residential districts:”
 - “In a residential district, a person need not provide a full rear yard setback for a structure accessory to a residential use if the structure does not exceed 15’ in height. Where the rear yard is adjacent to an alley, a three-foot setback must be provided. Where the rear yard is not adjacent to an alley, no setback is required.”
- A 5’-rear yard setback is required in this case since the proposal will reach approximately 18’ in height.
- According to the submitted site plan, the proposed expanded garage structure is 138 square feet larger than the existing garage located on the site. The existing garage is approximately 22’ x 18’ (or 396 square feet in area), and the game room proposed to be added atop the existing garage will be 445 square feet in area.
- The site plan indicates that the existing garage is located as close as 3” and as far as 3’ 9 ¼” from the rear property line given the slight irregular shape of the lot. The remodeled garage structure will expand towards Lakewood Boulevard and will not expand any closer to the rear property line.
- The site is moderately-sloped, slightly irregular in shape (74’ on the northwest, 160’ on the northeast, 69.9’ on the southeast, and 169.9’ on the southwest), and approximately 12,000 square feet in area.
- According to DCAD, the site is developed with the following:
 - a single family house with 2,683 square feet of living space in “very good” condition built in 1941;
 - a 360 square foot detached servants quarters; and
 - a 550 square foot detached garage.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is developed with a single family home with a detached garage. 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:

May 4, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

May 19, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

May 19, 2005: 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 June 1st deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 27, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; 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 moderately-sloped, slightly irregular in shape (74' on the northwest, 160' on the northeast, 69.9' on the southeast, and 169.9' on the southwest), and approximately 12,000 square feet in area.

- The existing garage is most likely a nonconforming structure in its current location (i.e. a structure that does not conform to the rear yard setback regulations but was lawfully constructed under the regulations in force at the time of constructions). A portion of the existing structure is located less than the required 3' distance that must be provided for a structure accessory to a residential use adjacent to an alley.
- The proposed expansion/addition to the existing detached garage would not involve a horizontal expansion (or lengthening) of the existing garage footprint into the rear yard setback but would involve a vertical expansion (a second floor) atop the existing garage structure footprint that is located in the rear yard setback.
- Elevations have been submitted with the appeal. The east elevation of the remodeled structure (the side of the structure that would abut the alley) shows this side of the structure with no windows.
- If the Board were to grant the rear yard variance request, subject to the submitted site plan and the east building elevation, the existing garage could be remodeled into an expanded garage/game room structure that (according to the site plan) will have about 140 square feet of expanded space added (towards Lakewood Boulevard) to the existing garage structure with a 445 square foot second floor atop (with no windows facing the alley and the house across the alley). The additional area shown on this plan that would encroach into the rear yard setback is an approximately 100 square foot portion of the 445 square foot 2nd floor, resulting in a rear yard setback ranging from 3" - 3' 9 1/4".

BOARD OF ADJUSTMENT ACTION: June 14, 2005

APPEARING IN FAVOR: Jason Bowman, 7316 Lakewood Blvd, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Beikman

I move that the Board of Adjustment **grant** application **BDA 045-249** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code and are consistent with its general purpose and intent of the Code. 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 east building elevation is required as modified by optional skylight to be placed on roof.

SECONDED: Gabriel

AYES: 5 – White, Hill, Gabriel, Beikman, Neumann

NAYS: 0–,

MOTION PASSED: 5–0 (unanimously)

FILE NUMBER: BDA 045-250

BUILDING OFFICIAL'S REPORT:

Application of Gregory Lee Farnsworth and David Charles Pucek for a special exception to allow an additional dwelling unit at 5433 Goodwin Avenue. This property is more fully described as part of Lots 53 and 54 in City Block 1/2074 and is zoned R-7.5 (A) which limits the property to one dwelling unit per lot. The applicant proposes to construct an additional dwelling unit would require a special exception. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 5433 Goodwin Avenue

APPLICANT: Gregory Lee Farnsworth and David Charles Pucek

REQUEST:

- A special exception to the single family use regulations is requested in conjunction with constructing an additional “dwelling unit” on a site developed with a single family home. The proposed additional “dwelling unit” in this appeal is a 2-story garage/guest house structure.

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:

- “Single family” use is defined in the Dallas Development Code as “one dwelling unit located on a lot,” however, the code allows the Board of Adjustment to grant a special exception to this provision to allow an additional dwelling unit when, in their opinion, the additional dwelling unit will not:
 - 1) be used as rental accommodations; or
 - 2) adversely affect neighboring properties.
- The subject site is 8,497 square feet in area and developed with, according to DCAD records, a single family home built in 1926 with 1,771 square feet of living area.

- The site plan indicates that the additional “dwelling unit” structure is L-shaped and has a building footprint of approximately 30’ x 22’ or is about 540 square feet in area.
- The site plan indicates that the additional “dwelling unit” structure will be located 5’ from the west side and rear property lines.
- The submitted elevation indicates that the 2-story additional “dwelling unit” structure will be approximately 18’ in height.
- Floor plans indicate the following spaces within the proposed detached 2-story additional “dwelling unit” structure on the site:
 - a 2-car garage on 1st floor; and
 - four unlabeled rooms and a deck on the 2nd floor.
- The Board of Adjustment has seen an increased number in special exceptions for additional dwelling units since November of 2004. This increase is most likely somewhat attributable to a memo that the Building Official wrote to city plan reviewers in September in 2004 (see Attachment A). This memo requested that plan reviewers carefully review applications for an addition or accessory structure on a lot zoned single family with regard for compliance with code-provisions related to the definitions of “dwelling unit,” “family,” and “single family.”
- On May 11, 2005, the City Council adopted an ordinance that amended the provisions set forth in the Dallas Development Code regarding single family accessory structures. This ordinance does not impact any special exceptions filed with the City of Dallas prior to May 11, 2005.
- At the time the application was submitted, the Dallas Development Code defined “dwelling unit” as “one or more rooms designed to accommodate one family and containing only one kitchen plus living, sanitary, and sleeping conditions.”
- The Dallas Development Code defines “family” as “individuals living together as a single housekeeping unit in which not more than four individuals are unrelated to the head of the household by blood, marriage, or adoption.”
- The Dallas Development Code defines “single family” use as “one dwelling unit located on a lot.”
- If this request is granted, a completed deed restriction stating that the additional dwelling unit on the site will not be used for rental accommodations must be submitted to the Board Administrator, approved by the City Attorney’s Office as to form, and filed in the deed records of the applicable county (in this case, Dallas County) before the applicable permits for this additional dwelling unit can be issued by the City.
- The applicant submitted a narrative explaining the purpose and intent of his application (see Attachment B).

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, south, east, and west are developed with single family uses.

Zoning/BDA History:

1. BDA 001-253 Property located at 5430 Vanderbilt Avenue On September 11, 2001, the Board of Adjustment granted a request for a variance of 2 feet to the side yard setback regulations in conjunction with maintaining a 2nd story addition.

Timeline:

- May 4, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 19, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- May 21, 2005: 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 June 1st deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 27, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, Senior Planner Pitner, the Development Services Department Transportation Engineer; and the Assistant City Attorney to the Board.

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

June 3, 2005 The applicant submitted a narrative indicating the intended use of the structure by request (see Attachment B).

STAFF ANALYSIS:

- The proposed 2-story “dwelling unit” structure meets all setback, lot coverage, and height regulations.
- The applicants have already received the building permits for the shell of the structure. As indicated in Attachment B, the plumbing and finishing of the 2nd story will be completed at a later date. The narrative indicated a bathroom, kitchenette, and an open room.
- If the Board were to approve the request, subject to imposing a condition that the applicant comply with the submitted elevation and site plan, the proposed “dwelling unit” structure would be restricted to the specific location, size, and height shown on the plans, which in this case is a 2-story garage/ guest house structure.
- As of June 6, 2005, no letters in support or opposition to this request had been submitted to staff.

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: June 14, 2005

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Beikman

I move that the Board of Adjustment **grant** application **BDA 045-250** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code and are consistent with its general purpose and intent of the Code.

I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Gabriel

AYES: 5 – White, Hill, Gabriel, Beikman, Neumann

NAYS: 0–,

MOTION PASSED: 5–0 (unanimously)

FILE NUMBER: BDA 045-221

BUILDING OFFICIAL'S REPORT:

Application of Javier and Patricia Flores for a special exception to the side yard setback regulations at 621 N. Madison Avenue. This property is more fully described as part of Lot 6 in City Block 2/3324 and is zoned P.D. 160 which requires a 5 foot side yard setback. The applicant proposes to maintain a carport and provide a 0 foot setback which would require a special exception of 5 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 621 N. Madison Avenue

APPLICANT: Javier and Patricia Flores

REQUEST:

- A special exception to the side yard setback regulations of 5' is requested in conjunction with maintaining a carport on a site developed with a single family home.

STANDARD FOR A SPECIAL EXCEPTION TO ALLOW A CARPORT IN THE SIDE YARD:

The Board of Adjustment may grant a special exception to the minimum side yard requirements to allow a carport for a single family or duplex use when, in the opinion of the Board, the carport will not have a detrimental impact on surrounding properties. In determining whether to grant a special exception, the Board shall consider the following:

- (1) Whether the requested special exception is compatible with the character of the neighborhood.
- (2) Whether the value of surrounding properties will be adversely affected.
- (3) The suitability of the size and location of the carport.
- (4) The materials to be used in construction of the carport.

(Storage of items other than motor vehicles is prohibited in a carport for which a special exception is granted in this section of the Code).

GENERAL FACTS:

- A 5'-side yard setback is required in the PD No. 160 zoning district.
- The existing carport is located on the site's southern side property line.
- The existing carport has the following characteristics:
 - 45'-long and about 13'-wide (or 585 square feet) in area
 - one-vehicle-wide, 2 to 3-vehicles-long

- constructed of metal materials
- 8' – 10' in height
- The subject site is 155' x 50' (or 7,500 square feet) in area.
- According to DCAD, the site is developed with the following:
 - a single family home in average condition built in 1998 with 1,920 square feet of living area;
 - a 210 square foot “det fr stg;”
 - a 360 square foot “living qtrs.”
- Building Inspection states that no permit was issued by the City for the existing carport on this site.
- The Dallas Development Code provides for the Board of Adjustment to consider special exceptions for *carports* in the side yard with a specific basis for this type of appeal. (Note that the Dallas Development Code does not provide a definition of “carport” however Building Inspection interprets a “carport” to be a structure that would cover a vehicle and be open on at least one side. Building Inspection has recently been interpreting what would appear to a layperson to be a garage without a garage door as a “carport”).
- The Dallas Development Code provides for the Board of Adjustment to consider *variances for structures* in the side yard setback with a different basis for appeal than that of *special exceptions for carports* in the side yard setback.
- The Dallas Development Code specifies that no side yard setback is required in residential districts for “a structure accessory to a residential use if the structure does not exceed 15 feet in height; and is located in the rear 30 percent of the lot.” In this case, the special exception is required since:
 - The “carport” structure can not be deemed “a structure accessory to a residential use” since it is attached to the main structure.
 - Even if the “carport” structure was detached from the main structure and could be deemed “a structure accessory to a residential use,” it is not located in the rear 30 percent of the 150'-long lot.
- No other carports were identified on the block in the field visit conducted by the Board Administrator.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 160 (Planned Development District 160)
North: PD No. 160 (Planned Development District 160)
South: PD No. 160 (Planned Development District 160)
East: PD No. 160 (Planned Development District 160)
West: PD No. 160 (Planned Development District 160)

Land Use:

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

Zoning/BDA History:

- | | |
|---|---|
| 1. Unassigned, 621 N. Madison
(the subject site) | On February 15, 2005, the Board of Adjustment Panel A waived the filing fee to be submitted in conjunction with a potential board appeal. |
|---|---|

Timeline:

- | | |
|----------------|--|
| April 11, 2005 | The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report. |
| May 19, 2005: | The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If any preliminary action is required on a case, including but not limited to a fee waiver or waiver of the two year waiting period, the case must be returned to the panel taking the preliminary action." |
| May 19, 2005: | The Board Administrator contacted the applicant and shared the following information: <ul style="list-style-type: none">• 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 June 1st deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;• that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and• that the board will take action on the matter at the June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties. |
| May 27, 2005: | The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public |

hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

May 31, 2005: The Board Administrator contacted the applicant and confirmed that she wished to have the board consider the request as a special exception to the side yard regulations for a carport (as opposed to a special exception for the handicapped).

STAFF ANALYSIS:

- Granting this special exception would allow the carport to remain in its current location which is on the side property line (or 5' into the required 5' side yard setback).
- The applicant has submitted a petition from neighbors/owners who support the request. (This petition has been included in the case report).
- Historically, staff has suggested that the Board impose conditions with this type of appeal. The following conditions would restrict the location and size of the carport's location in the side yard setback; would require the carport in the side yard setback to be retained in its current design, materials, and configuration; and would require the applicant to mitigate any water drainage related issues that the carport may cause on the lot immediately adjacent:
 1. Compliance with the submitted site plan and elevation is required.
 2. The carport structure must remain open at all times.
 3. There is no lot-to-lot drainage in conjunction with this proposal.
 4. All applicable building permits are obtained.

BOARD OF ADJUSTMENT ACTION: June 14, 2005

APPEARING IN FAVOR: Patricia Flores, 621 N. Madison, Dallas, TX

APPEARING IN OPPOSITION: Keith Jasiack, 718 Haines, Dallas, TX
Vicky Keene, 738 Cedar Hill, Dallas, TX

MOTION: Neumann

I move that the Board of Adjustment in **BDA 045-221**, on application of Javier and Patricia Flores, **deny** the special exception to the side yard requirements for a carport requested by these applicants **without prejudice**, because our evaluation of the property and testimony shows that the carport will have a detrimental impact on surrounding properties.

SECONDED: **Beikman**

AYES: 5 – White, Hill, Gabriel, Beikman, Neumann

NAYS: 0–,

MOTION PASSED: 5–0 (unanimously)

FILE NUMBER: BDA 045-226

BUILDING OFFICIAL'S REPORT:

Application of B. David Littleton- Halff Associates, Inc., for a request to enlarge a nonconforming use at 3014-16 Floyd Street. This property is more fully described as Lot 7 in City Block 493 and is zoned P.D. 298 which currently has a nonconforming commercial cleaning or laundry plant use on the property. The applicant purposes to expand an existing nonconforming use which would require Board of Adjustment approval. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(6) of the Dallas Development Code, as amended, which states the power of the Board to hear and decide requests for the enlargement of a nonconforming use.

LOCATION: 3014-16 Floyd Street

APPLICANT: B. David Littleton- Halff Associates, Inc.,

June 14, 2005 Public Hearing Notes:

- The applicant submitted a letter to the Board of Adjustment at the June 14th briefing that detailed commitments he made to the Meadows Foundation in connection with this Board of Adjustment case.

REQUEST:

- A request is made to enlarge a nonconforming “commercial cleaning or laundry plant” use (Premium Laundry and Linen Supply Company).

GENERAL FACTS:

- The Dallas Development Code states that the board has the power “to hear and decide requests for the enlargement of a nonconforming use.”

- A “commercial cleaning or laundry plant” use is a nonconforming use in PD No. 298.
- The Dallas Development Code defines a nonconforming use as “a use that does not conform to the use regulations of this chapter, but was lawfully established under regulations in force at the beginning of operation and has been in regular use since that time.”
- The structure on the site is a conforming structure.
- The Dallas Development Code defines a nonconforming structure as “a structure that does not conform to the regulations (other than use regulations) of this chapter, but which was lawfully constructed under the regulations in force at the time of construction.”
- The “commercial cleaning or laundry plant” use on the site could only become a conforming use once it has obtained a zoning classification from City Council that makes it a conforming use.
- The Board Administrator faxed the applicant a copy of the section of the Dallas Development Code pertaining to “Nonconforming Uses and Structures” which fully explains the purpose of how the purpose of this section of the code “that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code; and how nonconforming uses can be brought to the Board of Adjustment for amortization where if the board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for that nonconforming use - a compliance date that is provided under a plan whereby the owner’s actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.
- The request to the board is to enlarge a nonconforming *use*. The request is not to enlarge a nonconforming *structure*. The expanded commercial laundry plant use would be in compliance with development code standards such as setbacks, coverage requirements, height requirements, and parking requirements.
- A site plan has been submitted indicating that the use will be enlarged by adding a 4,887 square foot warehouse/laundry structure.
- The site is addressed at 3014-16 Floyd Street. According to DCAD, 3014 Floyd Street has “no improvements,” and 3016 Floyd Street is developed with a 4,440 square foot “retail strip” built in 1940.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - A revised site plan that provides more detailed descriptions as to the existing and proposed uses of the structures on the site; and
 - A document that stated the following:
 - The requested expansion of the nonconforming commercial laundry use is the result of a lease termination.
 - The laundry originally occupied approximately 11,300 square feet along Gaston Avenue.
 - The adjacent leased area of approximately 3,300 square feet was vacated in December of 2004.

- The new laundry/warehouse area of approximately 4,900 square feet is intended to replace the lost area.
- The new detached facility fronts onto Floyd Street and is in character with other facilities in the immediate area.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 298 (Planned Development District No. 298)
North: PD No. 298 (Planned Development District No. 298)
South: PD No. 298 (Planned Development District No. 298)
East: PD No. 298 (Planned Development District No. 298)
West: PD No. 298 (Planned Development District No. 298)

Land Use:

The subject site is partially undeveloped and partially developed with a commercial cleaning and laundry plant use (Premium Laundry and Linen Supply Company). The area to the north is developed with a park (Central Square Park) and commercial uses; the areas to the east and south are developed with surface parking lots; and the area to the west is developed with commercial/office uses.

Zoning/BDA History:

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

Timeline:

April 2005 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

May 19, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

May 23, 2005: 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 June 1st deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 27, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

June 1, 2005 The applicant submitted information beyond what was submitted with the original application (see Attachment A).

STAFF ANALYSIS:

- Granting this request, subject to compliance with the submitted revised site plan, would allow the existing "commercial cleaning or laundry plant" use to be expanded with a one-story, 4,887 square foot "new warehouse and laundry use" structure.
- Factoring that, according to the applicant, the laundry originally occupied about 11,300 square feet of area along Gaston Avenue but lost about 3,300 square feet in December of 2004, the net area of "commercial cleaning or laundry plant" use to be added if the request is granted is about 1,600 square feet— an area that would be shifted from leased area that had fronted Gaston Avenue to owned area that would front Floyd Street.

BOARD OF ADJUSTMENT ACTION: June 14, 2005

APPEARING IN FAVOR: Dave Littleton, 10024 Lardsbrook Cir, Dallas, TX

APPEARING IN OPPOSITION: Michael Jung, 901 Main Street, Dallas, TX

MOTION: Hill

I move that the Board of Adjustment in Appeal No. **BDA 045-226**, on application of David Littleton, **grant** the request for the renovation, remodeling, repair, rebuilding, or enlargement of the nonconforming use, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that the enlargement is consistent with the general purposes and intent of the Dallas Development Code, as amended, and is in accordance with all applicable rules contained therein. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan is required;
- The landscaping on and adjacent to the site, the adjacent metal storage building, and the corresponding parking lot will be substantially as shown on the June 13, 2005, landscape plan prepared by Brian D. Adams;
- The razor wire along the top of the chain link fences will be removed;
- All open storage will be removed or screened as required by the Dallas Development Code;
- No later than the issuance of the certificate of occupancy for the new building, the applicant will cause the sidewalk to be reconstructed along Floyd Street adjacent to the building and the metal storage building; and
- A copy of the landscape plan prepared by Brian D. Adams dated 6-13-05 is to be submitted to the Board Administrator.

SECONDED: Gabriel

AYES: 5 – White, Hill, Gabriel, Beikman, Neumann

NAYS: 0–,

MOTION PASSED: 5–0 (unanimously)

FILE NUMBER: BDA 045-245

BUILDING OFFICIAL'S REPORT:

Application of David Dillard, represented by Robert Reeves for a special exception to allow an additional dwelling unit at 4357 Shirley Drive. This property is more fully described as Lot 17 in City Block 2/5537 and is zoned R-16 (A) which limits the property to one dwelling unit per lot. The applicant proposes to construct an additional dwelling unit which would require a special exception. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 4357 Shirley Drive

APPLICANT: David Dillard
Represented by Robert Reeves

REQUEST:

- A special exception to the single family use regulations is requested in conjunction with constructing an additional “dwelling unit” on a site developed with a single family home. The proposed additional “dwelling unit” in this appeal is a 1-story guest house structure.

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:

- “Single family” use is defined in the Dallas Development Code as “one dwelling unit located on a lot,” however, the code allows the Board of Adjustment to grant a special exception to this provision to allow an additional dwelling unit when, in their opinion, the additional dwelling unit will not:
 - 1) be used as rental accommodations; or
 - 2) adversely affect neighboring properties.
- The subject site is 0.40 acres in area and developed with, according to DCAD records, a single family home that is in good condition, built in 1952 with 1,686 square feet of living area.
- The site plan indicates that the additional “dwelling unit” structure has a building footprint of approximately 20’ x 32’ or is about 640 square feet in area.
- The site plan indicates that the additional “dwelling unit” structure will be located 10’ from the nearest property line which in this case is the side property line on the east.
- Applicant conveyed over the phone that the 1-story additional “dwelling unit” structure will be approximately 15’ in height.
- Floor plans indicate the following spaces within the proposed detached 1-story additional “dwelling unit” structure on the site:
 - a guest quarters, bath, bar with a sink, and a garden shed.
- The Board of Adjustment has seen an increased number in special exceptions for additional dwelling units since November of 2004. This increase is most likely somewhat attributable to a memo that the Building Official wrote to city plan reviewers in September in 2004 (see Attachment A). This memo requested that plan reviewers carefully review applications for an addition or accessory structure on a lot zoned single family with regard for compliance with code-provisions related to the definitions of “dwelling unit,” “family,” and “single family.”
- On May 11, 2005, the City Council adopted an ordinance that amended the provisions set forth in the Dallas Development Code regarding single family

accessory structures. This ordinance does not impact any special exceptions filed with the City of Dallas prior to May 11, 2005.

- At the time the application was submitted, the Dallas Development Code defined “dwelling unit” as “one or more rooms designed to accommodate one family and containing only one kitchen plus living, sanitary, and sleeping conditions.”
- The Dallas Development Code defines “family” as “individuals living together as a single housekeeping unit in which not more than four individuals are unrelated to the head of the household by blood, marriage, or adoption.”
- The Dallas Development Code defines “single family” use as “one dwelling unit located on a lot.”
- If this request is granted, a completed deed restriction stating that the additional dwelling unit on the site will not be used for rental accommodations must be submitted to the Board Administrator, approved by the City Attorney’s Office as to form, and filed in the deed records of the applicable county (in this case, Dallas County) before the applicable permits for this additional dwelling unit can be issued by the City.
- The applicant submitted 10 letters of support for the request (see Attachment B).

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

April 29, 2005: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

May 19, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

May 21, 2005: 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 June 1st deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 27, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, Senior Planner Pitner, the Development Services Department Transportation Engineer; and the Assistant City Attorney to the Board.

June 1, 2005 The applicant submitted information beyond what was submitted with the original application (see **Attachment B**).

STAFF ANALYSIS:

- The proposed 1-story "dwelling unit" structure meets all setback, lot coverage, and height regulations.
- If the Board were to approve the request, subject to imposing a condition that the applicant comply with the submitted elevation and site plan, the proposed "dwelling unit" structure would be restricted to the specific location, and size shown on the plans, which in this case is a 1-story guest house structure.
- As of June 6, 2005, no letters in opposition and 10 letters of support to this request have been submitted to staff.

- 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: June 14, 2005

APPEARING IN FAVOR: David Dillard, 4357 Shirley Drive, Dallas, TX
Robert Reeves, 900 Jackson, Dallas, TX

APPEARING IN OPPOSITION: Colin Cahoon, 4346 Middleton Rd., Dallas, TX
Susan Cahoon, 4346 Middleton Rd., Dallas, TX

MOTION#1: Gabriel

I move that the Board of Adjustment in **Appeal No. BDA 045-245**, on application of David Dillard **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 site plan and revised submitted elevations dated 6-14-05 is required;
- The property must be deed-restricted to prohibit the additional dwelling unit on the site from being used as rental accommodations; and

SECONDED: Hill

AYES: 2 –Hill, Gabriel

NAYS: 3–, White, Beikman, Neumann

MOTION FAILED - 3-2

MOTION#2: Neumann

I move that the Board of Adjustment in Appeal No. **BDA 045-245**, on application of David Dillard, **deny** the request of this applicant to maintain an additional dwelling unit on the property **without prejudice**, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that the additional dwelling unit on the site will adversely affect neighboring properties.

SECONDED: Beikman

AYES: 3 – White, Beikman, Neumann

NAYS: 2–, Hill, Gabriel

MOTION PASSED: 3-2

FILE NUMBER: BDA 045-246

BUILDING OFFICIAL'S REPORT:

Application of Kenneth Ferrara, represented by Kyle Russell, for a variance to the floor area ratio regulations at 3404 Greenville Avenue. This property is more fully described as Lot 1 and 2 in City Block 4/2149 and is zoned LO-1 which allows a maximum floor area ratio of 1.0. The applicant proposes to construct a building and provide a floor area ratio of 1.5 which would require a variance of .5. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

LOCATION: 3404 Greenville Avenue

APPLICANT: Kenneth Ferrara
Represented by Kyle Russell

June 14, 2005 Public Hearing Notes:

- The Board Administrator informed the Board of Adjustment at the public hearing that what was thought to have been the front yard setback requirement of 25' to be provided along Morningside Avenue was incorrect. Upon further review of the CD No. 11 ordinance (specifically its provisions pertaining to front yard setbacks), staff had discovered after the morning briefing that the required front yard setback in the 5700 block of Morningside (the block in which the site is located) is 35'.
- The Board Administrator informed the Board of Adjustment that the applicant's representative had been informed of this discovery just prior to the beginning of the public hearing, and that the applicant's representative had indicated his interest in either having the case withdrawn or denied without prejudice.

REQUEST:

- A variance to the floor area ratio (FAR) regulations of 0.4* is requested in conjunction with constructing a 26'-high, 3-level, 18,000 square foot office structure on a site that is developed with an office. Two levels of the proposed office are to be above grade and one level of the proposed office and a 2-level parking garage are to be below grade.

* The original application was for a variance to the FAR regulations of 0.5 however, a revised site plan and section were submitted on June 3, 2005 (see Attachment A). The plan and section indicates a building that complies with the required 25'-front yard setback along Morningside Avenue, and simultaneously reduces the FAR variance request to 0.4.

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:

- The maximum floor area ratio in the LO-1 zoning district is 1.0 or 1:1.
- The Dallas Development Code defines floor area ratio as “the ratio of floor area to lot area.” The code states that a 1:1 FAR is stated as “1.0,” 2:1 is stated as “2.0,” 2.5:1 is stated as “2.5,” etc.
- The originally submitted site plan made the following notations:
 - PROPOSED OFFICE BUILDING
 - 6,389 SF BUILDING AREA AT 2 LEVELS = 12,778 SF
 - LOT 1 AREA = 12,920 SF AT 1.5 FAR = 19,380 SF MAX AREA
 - (2) 13’ H. LEVELS OF OFFICE ABOVE GRADE ON 1 LEVEL OF OFFICE
 - BELOW GRADE ON 2 STRUCTURED PARKING LEVELS BELOW GRADE
- The originally submitted proposed section made the following notations:
 - OFFICE LEVEL 3 = 6,389 SF
 - OFFICE LEVEL 2 = 6,389 SF
 - OFFICE LEVEL 1 = 6,389 SF
 - PARKING LEVEL 2
 - PARKING LEVEL 1
- The *revised* site plan makes the following notations:
 - PROPOSED OFFICE BUILDING
 - 6,002 SF BUILDING AREA AT 3 LEVELS = 18,006 SF
 - LOT 1 AREA = 12,920 SF AT **1.4 FAR** = 18,088 SF MAX AREA
 - (2) 13’ H. LEVELS OF OFFICE ABOVE GRADE ON 1 LEVEL OF OFFICE
 - BELOW GRADE ON 2 STRUCTURED PARKING LEVELS BELOW GRADE
- The *revised* proposed section makes the following notations:
 - OFFICE LEVEL 3 = 6,002 SF
 - OFFICE LEVEL 2 = 6,002 SF
 - OFFICE LEVEL 1 = 6,002 SF
 - PARKING LEVEL 2
 - PARKING LEVEL 1
- The site is flat, rectangular in shape (152’ x 85’), and 12,920 square feet in area.

- According to DCAD, the site is developed with a “medical office building” with 1,784 square feet in area built in 1956.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included a revised site plan and section that complied with the 25’-front yard setback along Morningside Avenue, and reduced the FAR variance need from 0.5 to 0.4.

BACKGROUND INFORMATION:

Zoning:

Site: LO-1 (Limited Office)
North: CR (Community retail)
South: CD No. 11 (Conservation District No. 11)
East: CD No. 11 (Conservation District No. 11)
West: CD No. 9 (Conservation District No. 9)

Land Use:

The subject site is developed with a one-story office building. The area to the north is developed with retail uses; the area to the east is developed with multifamily uses; and the areas to the 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:

- April 29, 2005: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- May 19, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- May 19, 2005: 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 June 1st deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 27, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

May 27, 2005: The Board Administrator contacted the applicant's representative and informed him that the building footprint on the submitted site plan did not appear to meet the front yard setback requirements along Morningside Avenue.

May 31, 2005: The Board Administrator contacted the applicant's representative who stated that he would be forwarding an amended site plan by June 3rd – a plan that would show a building footprint that adhered to the front yard setback requirements along Morningside Avenue.

June 3, 2005 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).

STAFF ANALYSIS:

- The site is flat, rectangular in shape (152' x 85'), and 12,920 square feet in area.
- If the Board were to grant the floor area ratio variance request, subject to the submitted revised site plan and revised section, the site could be developed with a 3-level, 18,000 square foot office structure (with a 2-level parking garage underneath), resulting in a structure with a 1.4 floor area ratio.

BOARD OF ADJUSTMENT ACTION: June 14, 2005

APPEARING IN FAVOR: Kyle Russell, 4205 Beltway, Addison, TX 75001

APPEARING IN OPPOSITION: Maxine Aaronson, 600 N. Pearl, Ste 2170, Dallas, TX

MOTION: Beikman

I move that the Board of Adjustment in Appeal No. **BDA 045-246**, on application of Kenneth Ferrara, **deny** the variance requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: Gabriel

AYES: 5 – White, Hill, Gabriel, Beikman, Neumann

NAYS: 0–

MOTION PASSED: 5–0 (unanimously)

MOTION: Hill

I move to adjourn this meeting.

SECONDED: Gabriel

AYES: 5 – White, Hill, Gabriel, Beikman, Neumann

NAYS: 0 -

MOTION PASSED: 5 – 0 (Unanimously)

2:41 P.M. - Board Meeting adjourned for June 14, 2005.

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.