

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
TUESDAY, AUGUST 14, 2007**

MEMBERS PRESENT AT BRIEFING: Rob Richmond, Chair, Ben Gabriel, Panel Vice-Chair, Jordan Schweitzer, regular member, Carol Scott, alternate member and Maria Gomez, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

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, Jordan Schweitzer, regular member, Carol Scott, alternate member and Maria Gomez, alternate member

MEMBERS ABSENT FROM HEARING: No one

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 Erwin, Acting Chief Arborist and Trena Law, Board Secretary

9:40 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **August 14, 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 June 12, 2007 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2007

MOTION: Scott

I move to **approve** the Board of Adjustment Panel A June 12, 2007 public hearing minutes.

SECONDED: Gabriel

AYES: 5 – Richmond, Gabriel, Schweitzer, Scott, Gomez

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 067-110

BUILDING OFFICIAL’S REPORT:

Application of Robert Reeves and Associates, Inc., represented by Robert Reeves, for a special exception to the single family district use regulations at 10210 Strait Lane. This property is more fully described as tract 7 in City Block 5529 and is zoned R-1ac(A) which requires that a lot for a single family use may be metered by not more than one electrical meter. The applicant proposes to install an additional electrical meter on a lot with a residential use which will require a special exception to the single family district use regulations.

LOCATION: 10210 Strait Lane

**APPLICANT: Robert Reeves and Associates, Inc.
Represented by Robert Reeves**

REQUEST:

- A special exception to the single family zoning district regulations is requested in conjunction with constructing and maintaining a second electrical meter that would serve a proposed pool and cabana 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 electric in any single family zoning district since the basis for this type of appeal is *when in the opinion of the board*, the special exception will: 1) not be contrary to the public interest; 2) not adversely affect neighboring properties; and 3) not be used to conduct a use not permitted in the zoning district.

STANDARD FOR A SPECIAL EXCEPTION TO THE SINGLE FAMILY ZONING DISTRICT REGULATIONS TO AUTHORIZE AN ADDITIONAL ELECTRICAL UTILITY SERVICE AND ELECTRICAL METER:

The board may grant a special exception to authorize more than one electrical utility service and more than one electrical meter on a lot in a single family zoning district when, in the opinion of the board, the special exception will: 1) not be contrary to the public interest; 2) not adversely affect neighboring properties; and 3) not be used to conduct a use not permitted in the zoning district.

GENERAL FACTS:

- The Dallas Development Code states that in R-1ac(A) zoning, a lot for a single family use may be supplied by not more than one electrical service, and metered by not more than one electrical meter.
The applicant has submitted a site plan that denotes a “new pad mounted transformer” located near the main structure/single family home on the site, and a “new transformer to serve adj. property and pool cabana” located near a proposed pool and cabana structure on the site.
- The application states that the site is 6.5 acres in area. The submitted site plan shows that the existing and proposed electrical meters are approximately 480’ apart, and are separated by a creekbed running north-south near the center of the subject site.
- The subject site is developed with, according to DCAD records, the following:
 - a single family home built in 1963 in unsound condition with 12,057 square feet of living area;
 - a 2,232 square foot basement;
 - a 900 square foot attached carport;
 - a 200 square foot storage building; and
 - a 1,521 square foot attached cabana.
- The applicant’s representative submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a letter that provided additional details about the request; and
 - site plans of the subject site noting the location of the existing and proposed meters on the site.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is 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:

1. BDA 93-063, 10349 Strait Lane (the subject site) On April 27, 1993, the Board of Adjustment followed the staff recommendation and granted a request for a special exception to the fence regulations of 4' requested in conjunction with constructing an 8' high fence. The Board granted a fence special exception "to maintain a 6' wrought iron fence with an 8' gate and columns of 6.5'."

Timeline:

- June 18, 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.
- July 17, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 17, 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 August 3rd 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 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 August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

July 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment 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.

STAFF ANALYSIS:

- The site is zoned R-1ac(A) where the Dallas Development Code states that lots may be supplied by not more than one electrical service, and metered by not more than one electrical meter. The 6.5 acre site is developed with a single family home with an electrical meter, and the applicant proposes to add a 2nd electrical meter about 480’ away and across a creek to serve a proposed pool and cabana.
- The applicant has the burden of proof in establishing that the additional electric meter will: 1) not be contrary to the public interest; 2) not adversely affect neighboring properties; and 3) not be used to conduct a use not permitted in the zoning district.

BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2007

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Gabriel

I move that the Board of Adjustment grant application **BDA 067-110** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas

Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD.

SECONDED: Schweitzer

AYES: 5 – Richmond, Gabriel, Schweitzer, Scott, Gomez

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 067-121

BUILDING OFFICIAL’S REPORT:

Application of David W. Spence for a special exception to the side yard setback regulations for tree preservation at 808 N. Bishop Avenue. This property is more fully described as Lot 2 in City Block 8/3330 and is zoned PD-160 (Tract IIa) which requires a side yard setback of 10 feet. The applicant proposes to construct a structure and provide a 1 foot side yard setback which will require a special exception of 9 feet.

LOCATION: 808 N. Bishop Avenue

APPLICANT: David W. Spence

REQUEST:

- A special exception to the side yard setback regulations for tree preservation of 9’ is requested in conjunction with constructing and maintaining a fire-egress stair structure that would serve the second floor of a 1920s duplex.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The applicant has substantiated through written evidence/documentation and photographs of the site and surrounding area how the requested special exception is compatible with the character of the neighborhood, and that the value of the surrounding properties will not be adversely affected by granting the exception.
- In addition, the City’s Acting Chief Arborist has stated that there is a tree on the site that is “highly worthy of preservation” where “all steps should be taken to encourage its protection.”

STANDARD FOR A SPECIAL TO THE SIDE YARD REGULATIONS FOR TREE PRESERVATION:

The Dallas Development Code specifies that the board may grant a special exception to the minimum side yard requirements to preserve an existing tree. In determining whether to grant this special exception, the board shall consider the following factors:

- A) Whether the requested special exception is compatible with the character of the neighborhood.
- B) Whether the value of the surrounding properties will be adversely affected.
- C) Whether the tree is worthy of preservation.

GENERAL FACTS:

- Other permitted structures (including the duplex structure on the site) on lots zoned PD No. 160 (Tract IIa) are required to provide a minimum side yard setback of 10'. A scaled site plan has been submitted that shows the proposed stairway structure on that is located 1' away from the site's northern side property line (or as much as 9' into the 10' side yard setback). The site plan illustrates how the proposed stairway extends into the setback around an existing 36" pecan tree.
Note that Building Inspection and the applicant were under the impression until a discovery was made after the July 30th staff review team meeting and after further review of the PD 160 ordinance, that the side yard setback on the site was 5' where the special exception need was 4'. (Attachment B is a copy of the revised Building Official's Report forwarded to the Board Administrator on August 1, 2007). Building Inspection has since determined that although the existing 1920's duplex is a nonconforming structure (and therefore permitted in the 10' side yard setbacks), the proposed stair structure proposed to be located in the northern side yard setback requires approval of the board.
- According to calculations taken from the site plan by the Board Administrator, about 90 square feet of the proposed 95 square foot stairwell is to be located in the site's northern 10' side yard setback. The existing structure's footprint appears to be approximately 1,700 square feet in area.
- Subarea IIa of PD No. 160 allows residential uses and all uses permitted in O-2 zoning.
- The applicant states that newly renovated living units have to be served by two fire exits.
- The applicant describes the tree that is intended to be preserved as a native pecan tree that has a trunk diameter of 3 feet, a height of about 60', and a canopy spread of 55'.
- The applicant states that because initial development of this historic neighborhood long predated zoning regulations, there are numerous original structures nearby that encroach into the side yard setback (such as stairs to second-floor apartments, carriage houses, servant's quarters, etc.)
- DCAD records indicate that the site is developed with a 2,352 square foot structure in very poor condition built in 1942. (According to the applicant and the City's Historic Preservation Senior Planner, the DCAD information pertaining to the construction date is incorrect. Both the applicant and planner agree in speculating that the structure was constructed in the 1920s).

- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a document providing additional details about the request;
 - photographs of the applicant's other projects;
 - site photos; and
 - press coverage of owner's work.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is currently being renovated as a duplex. The lot to the north (nearest the proposed stairway in the setback) is vacant; the area to the east is developed with what appears to be single family uses; the area to the south is developed with office uses; and the area to the west is developed with single family uses and vacant land.

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:

- June 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.
- July 17, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 18, 2007: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the 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 July 27th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
- the August 3rd 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 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 August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

July 23, 2007: The applicant submitted information beyond what was submitted with the original application (see Attachment A).

July 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment 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.

August 1, 2007: The Building Inspection Development Code Specialist forwarded a revised Building Official's Report to the Board Administrator (see Attachment B). This report altered the reference of a side yard setback requirement of 5' to a side yard setback requirement of 10'.

August 2, 2007: The Acting Chief Arborist submitted a memo to the Board Administrator (see Attachment C). This memo stated among other things that the 36" pecan tree in the side yard setback is highly worthy of preservation where all steps should be taken to encourage its protection.

STAFF ANALYSIS:

- This request is about constructing/maintaining a proposed stair structure proposed to be located in the subject site's 10' side yard setback on the north side of the lot.
- The Dallas Development Code allows the Board of Adjustment to consider this (or any) proposed structure encroachment either by an application for a variance to the side yard setback regulations with a standard largely based on the demonstration of

property hardship, or by an application for a special exception to the side yard setback regulations to preserve an existing tree with a standard largely based on compatibility, property values, and whether a tree is located on a site that is worthy of preservation (not property hardship). The applicant in this case as made an application for a *special exception* to the side yard setback regulations for tree preservation.

- According to calculations taken from the site plan, it appears that about 90 square feet of the proposed 95 square foot stairwell is to be located in the site’s northern 10’ side yard setback.
- The existing structure’s footprint appears to be approximately 1,700 square feet in area, and according to Building Inspection, is a nonconforming structure in the side yard setbacks where unless intentionally destroyed by the owner or the owner’s agent, can be rebuilt in its original footprint.
- The City’s Acting Chief Arborist has stated that there is a 32” pecan tree in the side yard setback that is “highly worthy of preservation” where “all steps should be taken to encourage its protection.”
- The applicant has the burden of proof in establishing the following related to the side yard special exception request:
 - Whether the requested special exception is compatible with the character of the neighborhood.
 - Whether the value of the surrounding properties will be adversely affected.
 - Whether the tree is worthy of preservation.
- If the Board were to grant the side yard special exception request of 9’, imposing a condition whereby the applicant must comply with the submitted site plan, the structure in the side yard setback would be limited to that shown on this plan – which in this case is a stair structure located 1’ from the site’s northern side property line (or 9’ into the site’s 10’ side yard setback).

BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2007

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Gabriel

I move that the Board of Adjustment grant application **BDA 067-121** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted site plan is required.

SECONDED: Schweitzer

AYES: 5 – Richmond, Gabriel, Schweitzer, Scott, Gomez

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 067-103

BUILDING OFFICIAL’S REPORT:

Application of T-Mobile Texas, LP, represented by Dave Kirk, for a variance to the front yard setback regulations at 2803 Forest Lane. This property is more fully described as Lot 1 in City Block A/6589 and is zoned RR which requires a front yard setback of 15 feet. The applicant proposes to construct a nonresidential structure in a required front yard and provide a 2 foot 8 inch setback which will require a variance of 12 feet 4 inches.

LOCATION: 2803 Forest Lane

APPLICANT: T-Mobile Texas, LP
Represented by Dave Kirk

REQUEST:

- According to the submitted application and Building Official’s Report, a variance to the front yard setback regulations of 12’ 4” is requested in conjunction with relocating a monopole tower in the site’s LBJ Freeway 15’ front yard setback.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The size of the subject site will be significantly reduced due to right-of-way takings that will occur along its northern frontage (LBJ Freeway side of the site). The site’s depth will be reduced as a result of these takings from about 163’ to 26’ on the west and from about 194’ to 45’ on the east. Although the submitted plat map shows that the site is currently approximately 26,000 square feet (or 0.6 acres) in area, the submitted site plan shows that the site *after* proposed LBJ Freeway right-of-way takings will be approximately 5,200 square feet (0.1 acres) in area.

STANDARD FOR A VARIANCE:

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

GENERAL FACTS:

- Structures on lots zoned RR (Regional Retail) are required to provide a minimum front yard setback of 15'.
Although the application and Building Official's Report make reference to a variance of 12' 4" (whereby a structure is located as close as 2' 8" from a front property line), the submitted site plan conveys that the closest point of any structure on the lot (after right-of-way taking on LBJ Freeway) is about 4' from the site's relocated LBJ Freeway front property line (or 11' into the LBJ Freeway 15' front yard setback).
- The RR-zoned site has street frontage on two streets (Forest Lane and LBJ Freeway), and as a result, has two front yard setbacks which is typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural. (No encroachment is shown or requested to be located in the site's 15' Forest Lane front yard setback).
- The site is flat, slightly irregular in shape (144.79 on the north, 150' on the south, 194.47' on the east, and 163.79' on the west), and, approximately 26,000 square feet (or 0.6 acres) in area. The submitted site plan shows dimensions of the site *after* proposed LBJ Freeway right-of-way takings to be approximately 145' on the north, approximately 150 on the south, approximately 45' on the east, and approximately 26' on the west), and approximately 5,200 square feet (0.1 acres) in area.

BACKGROUND INFORMATION:

Zoning:

Site: RR (Regional Retail)
North: MU-2 (Mixed Use)
South: IR (Industrial Research)
East: RR (Regional Retail)
West: RR (Regional Retail)

Land Use:

The subject site is developed with an animal clinic use and a monopole tower. The area to the north is the LBJ Freeway; the areas to the east and west are developed with commercial/retail uses; and the area to the south is developed with 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:

- June 25, 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.
- July 17, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 18, 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 July 27th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
 - the August 3rd 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 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 August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- July 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the

Board of Adjustment 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.

STAFF ANALYSIS:

- This request is made in conjunction with relocating an existing monopole tower on a site that will be significantly reduced in size due to right-of-way takings that will occur along its northern frontage (LBJ Freeway side). The site's depth will reduce as a result of these takings from about 163'- 194' to about 26' – 45'.
- The submitted plat map shows that the site is currently approximately 26,000 square feet (or 0.6 acres) in area. The submitted site plan shows that the site *after* proposed LBJ Freeway right-of-way takings will be approximately 5,200 square feet (0.1 acres) in area.
- 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 12' 4" requested in conjunction with relocating a monopole tower 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 after planned LBJ Freeway right-of-way takings will be about 5,200 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 RR 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 CR zoning classification.
- If the Board were to grant the front yard variance request of 12' 4", imposing a condition whereby the applicant must comply with the submitted site plan, the structure in the front yard setback would be limited to that shown on this plan – which in this case is a monopole structure that would be located about 4' from the site's LBJ Freeway front property line (or about 11' into the site's LBJ Freeway 15' front yard setback).

BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2007

APPEARING IN FAVOR: Dave Kirk, 7668 Warren Pkwy., Frisco, TX

APPEARING IN OPPOSITION: Nieman Poe, 7008 Children's Way, Plano, TX

MOTION: **Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 067-103**, on application of T-Mobile Texas, L.P., represented Dave Kirk, **grant** the 12-foot-four-inch 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 is required.

SECONDED: **Gabriel**

AYES: 5 – Richmond, Gabriel, Schweitzer, Scott, Gomez

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 067-104

BUILDING OFFICIAL'S REPORT:

Application of Al Romero for a special exception to the fence height regulations at 4512 Isabella Lane. This property is more fully described as Lot 1 in City Block H/5534 and is zoned R-1ac(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct an 8 foot fence in a required front yard setback which will require a special exception of 4 feet.

LOCATION: 4512 Isabella Lane

APPLICANT: Al Romero

August 14, 2007 Public Hearing Notes:

- The Board Administrator forwarded an amended site plan and elevation to the board members at the briefing that the applicant had submitted on August 10th (see Attachment B). The revised elevation indicated the following:
 - a 5' high combination wrought iron/stucco fence/wall (3' high open wrought iron fence atop a 2' high solid stucco base) with 6' high stucco columns;
 - two 7' high open wrought iron vehicular gates with 7' high stucco entry columns;
 - two 5' high open wrought iron pedestrian gates in the site's 40' front yard setback; and
 - approximately 5.5' – 6.5' high solid stucco wing walls that flank the two vehicular gates and the two pedestrian gates.

(The revised site plan was not to scale).

The Board Administrator also forwarded a memo to the board members at the briefing that the applicant had submitted on August 14th (see Attachment C). This memo described further modifications made to the proposal from what had been submitted on August 10th.

REQUEST:

- A special exception to the fence height regulations of 4' had been requested in conjunction with constructing and maintaining the following in the site's 40' front yard setback:
 - a 6' high combination wrought iron/stucco fence/wall (3' high open wrought iron fence atop a 3' high solid stucco base) with 7' high stucco columns;
 - two 8' high open wrought iron vehicular gates with 8' high stucco entry columns;
 - two 7' high open wrought iron pedestrian gates in the site's 40' front yard setback; and
 - approximately 6.5' – 7.5' high solid stucco wing walls that flank the two vehicular gates and the two pedestrian gates.
- (The site is being 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 fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.

The applicant has submitted a site plan and elevation indicating a fence/column/gate proposal that would reach a maximum height of 8' in the site's front yard setback.
- The submitted scaled site plan and elevation indicates that the proposal in the site's 40' front yard setback has the following additional characteristics:
 - approximately 171' in length parallel to Isabella Lane, approximately 20' perpendicular to Isabella Lane on the two sides of the site in the 40' front yard setback (of the 171' length, approximately 100' is comprised of the combination open metal/stucco fence wall with the remaining 71' comprised of solid stucco);

- located about 22' – 30' from the site's front property line or about 25' – 33' from the pavement line; and
- generally linear in design with curved/recessed pedestrian and vehicular entryways.
- There is one single family home that would have direct frontage to the proposal. This home has no fence in its front yard.
- The Board Administrator conducted a field visit of the site and surrounding area along Isabella Lane (approximately 500 feet east and west of the site) and noted no other fences in front yard setbacks.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a color perspective drawing of the proposal;
 - a copy of the originally submitted site plan;
 - a document that provides additional details about the request; and
 - photos of the site, surrounding area, and other fences/gates/columns in the area.
- The submitted revised site plan submitted on August 10th was not to scale.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA 056-145, 4562 Isabella Lane (three lots east of the subject site)

On May 15, 2006, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 2' imposing the following condition to the requests: compliance with the submitted site plan/elevation is required. The case report stated that the request was made to construct and maintain the following in the site's 40' front yard setback along Isabella Lane: a 6' high open iron gate with two 7.5' long, 4'- 6' high entry gate wing walls that

are oriented parallel to Isabella Lane; and a small portion of one of the two 7.5' long, 4'-6' high entry gate wing walls to be oriented perpendicular to Isabella Lane and/or parallel to Welch Road.

Timeline:

- June 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.
- July 17, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 18, 2007: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the requests;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the July 27th deadline to submit additional evidence for staff to factor into their analysis;
 - the August 3rd 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 August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- July 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment 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.

August 1, 2007 The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).

STAFF ANALYSIS:

- A scaled site plan has been submitted that documents the location of the proposed fence/wall, columns, and gate relative to the front property line and pavement line. (The fence/wall is shown to be about 171' in length, located about 22' – 30' from the front property line and about 25' – 33' from the pavement line).
- An elevation has been submitted that provides a full elevation of the proposal. The elevation documents the heights and materials of the proposal:
 - a 6' high combination wrought iron/stucco fence/wall (3' high open wrought iron fence atop a 3' high solid stucco base) with 7' high stucco columns;
 - two 8' high open wrought iron vehicular gates with 8' high stucco entry columns;
 - two 7' high open wrought iron pedestrian gates in the site's 40' front yard setback; and approximately 6.5' – 7.5' high solid stucco wing walls that flank the two vehicular gates and the two pedestrian gates.Of the 171' length, approximately 100' is comprised of the combination open metal/stucco fence wall with the remaining 71' comprised of solid stucco.
- There is one single family home that would have direct frontage to the proposal. This home has no fence in its front yard.
- No other fences above four (4) feet high which appeared to be located in the front yard setback were noted in the surrounding area approximately 500 feet east and west of the subject site.
- As of August 6, 2007, no letters had been submitted in support or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' (whereby the proposal to exceed 4' in height in the site's front yard setback) will not adversely affect neighboring property.
- Granting this special exception to the fence height regulations of 4' with a condition imposed that the applicant complies with the submitted site plan and elevation would provide assurance that the proposal would be constructed and maintained in the location and of the heights and materials as shown on these documents.

BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2007

APPEARING IN FAVOR: Al Romero, P.O. Box 870875, Mesquite, TX

APPEARING IN OPPOSITION: Craig Eggleston, 4530 Isabella Ln., Dallas, TX
Seth Molay, 4505 Isabella Ln., Dallas, TX

MOTION: **Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 067-104**, on application of Al Romero, **deny** the fence height special exception requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: Gomez

AYES: 3– Richmond, Gabriel, Schweitzer,

NAYS: 2- Scott, Gomez

MOTION PASSED: 3-2

FILE NUMBER: BDA 067-100

BUILDING OFFICIAL’S REPORT:

Application of Le Comte Group, LLC represented by Josh Le Comte, for variances to the front yard setback regulations and for variances to the side yard setback regulations at 2701 Throckmorton Street. This property is more fully described as part of Lot 56 in City Block 1332 and is zoned PD-193(MF-2) which requires a 15 foot front yard setback and a 10 foot side yard setback. The applicant proposes to construct a residential structure and provide 10 foot front yard setbacks which will require variances of 5 feet to the front yard setback regulations, and provide 5 foot side yard setbacks which will require variances of 5 feet to the side yard setback regulations.

LOCATION: 2701 Throckmorton Street.

APPLICANT: Le Comte Group, LLC
Represented by Josh Le Comte

August 14, 2007 Public Hearing Notes:

- The applicant submitted additional written information to the board at the public hearing.

REQUESTS:

- The following appeals have been made in this application:
 1. variances to the front yard setback regulations of 5’; and
 2. variances to the side yard setback regulations of 5’.These appeals have been made in conjunction with constructing and maintaining a 3-story, 4-unit multifamily development on the site that is currently developed with an office.

STAFF RECOMMENDATION:

Denial

Rationale:

- The site is flat, generally rectangular in shape site, approximately 4,800 square feet in area with two front yard setbacks (which is typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural). These physical features do not preclude the applicant from developing the parcel of land/subject site in a manner commensurate with development found on other PD No. 193 (MF-2 Subdistrict) zoned lots while simultaneously complying with zoning code setback requirements.
- The applicant has not substantiated how the site's restrictive area, shape and/or slope justify the proposed structure's encroachment into the site's two front and side yard setbacks.

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:

- Structures on lots zoned PD No. 193 (MF-2 Subdistrict) are required to provide a minimum front yard setback of 15'.
A revised site plan has been submitted that shows dashed lines conveying the 2nd and 3rd floor footprint lines of the proposed 4-unit structure on the site that are as close as 10' from the site's Brown Street and Throckmorton Street front property lines (or as much as 5' into the site's two 15' front yard setbacks).
- Structures on lots zoned PD No. 193 (MF-2 Subdistrict) are required to provide a minimum side yard setback of 10'.
A revised site plan has been submitted that shows building footprint lines of the proposed 3-story, 4-unit structure on the site that are as close as 5' from the site's northern and western side property lines (or as much as 5' into the site's two 10' side yard setbacks).

- The first floor of the proposed 3-story, 4-unit structure appears to be in compliance with the site's two 15' front yard setbacks. The building footprint of the 1st floor of the structure appears to be 1,850 square feet (or 97' x 19') in area. However, according to calculations taken from the submitted site plan by the Board Administrator, about 575 square feet of the structure's 2nd and 3rd floor approximately 2,300 square foot building footprint would be located in the site's 15' Brown Street and Throckmorton Street front yard setbacks.
- With regard to the side yard setbacks, it appears that about 485 square feet of each of the structure's 3 floors would be in the site's northern side yard setback and that about 125 square feet of the each of the structure's 3 floors would be in the site's western side yard setback.
- The site is flat, generally rectangular in shape (approximately 42 on the north, 39' on the south, 119' on the east, and 119' on the west), and approximately 4,800 square feet in area. The PD No. 193 (MF-2)-zoned site has street frontage on two streets (Throckmorton Street and Brown Street), and as a result, has two front yard setbacks which is typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural.
- DCAD records indicate that the site is developed with a 1,462 square foot single family structure in good condition built in 1924 with a 180 square foot detached carport.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - an amended site plan (with encroachments into the Throckmorton Street front yard setback as well as the Brown Street front yard setback);
 - a site plan showing the required setbacks; and
 - conceptual elevations/sections of the proposal.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (MF-2) (Planned Development Multifamily)
North: PD No. 193 (MF-2) (Planned Development Multifamily)
South: PD No. 193 (MF-2) (Planned Development Multifamily)
East: PD No. 193 (MF-2) (Planned Development Multifamily)
West: PD No. 193 (MF-2) (Planned Development Multifamily)

Land Use:

The subject site is developed with what appears to be an office use. The area to the north is undeveloped; and the areas to the south, east, and west are developed with 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:

- June 6, 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.
- July 17, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 18, 2007: The Board Administrator spoke to (and emailed) the applicant's representative about 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 July 27th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
 - the August 3rd 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 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 August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- July 27, 2007: The applicant submitted information beyond what was submitted with the original application (see Attachment A).
- July 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment 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.

STAFF ANALYSIS:

- Variances are requested on all four sides of the subject site: a front yard variance on the south side (Brown Street), a front yard variance on the east side (Throckmorton Street), a side yard variance on the north side, and a side yard variance on the west side.
- The first floor of the proposed 3-story, 4-unit structure is proposed to be in compliance with the site's two 15' front yard setbacks. The 2nd and 3rd floors of the structure are proposed to encroach into the site's two 15' front yard setbacks by 5'. It appears that about ¼ of the structure's 2nd and 3rd floors would be in the site's front yard setbacks.
- All three floors of the proposed 4-unit structure are proposed to encroach into the site's two 10' side yard setbacks by 5'. It appears that about 1/4 of the structure's three floors would be in the site's side yard setbacks.
- The site is flat, generally rectangular in shape site (approximately 42 on the north, 39' on the south, 119' on the east, and 119' on the west), and approximately 4,800 square feet in area. The PD No. 193 (MF-2)-zoned site has street frontage on two streets (Throckmorton Street and Brown Street), and as a result, has two front yard setbacks which is typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural.
- The applicant has the burden of proof in establishing the following related to the front and side yard variance requests:
 - That granting the variances to the front and side yard setback regulations requested in conjunction with constructing and maintaining portions of a 3-story, 4-unit residential structure will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variances are necessary to permit development of the subject site (a site that is developed with what appears to be an office structure, and is flat, generally rectangular in shape, and 4,800 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 PD No. 193 (MF-2) zoning classification.
 - The variances would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the PD No. 193 (MF-2) zoning classification.
- If the Board were to grant the variance requests, imposing a condition whereby the applicant must comply with the submitted revised site plan, the structure in the front and side yard setbacks would be limited to that shown on this plan – which in this case is a structure located 10' from the site's two front property lines (or 5' into the

site's 15' front yard setbacks) and 5' from the site's two side property lines (or 5' into the site's 10' side yard setbacks).

BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2007

APPEARING IN FAVOR: Josh LeComte, 6010 Velasco Ave., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Schweitzer

I move that the Board of Adjustment, in Appeal No. **BDA 067-100**, on application of Le Comte Croup, LLC, represented Josh Le Comte, **deny** the front yard variances 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: 3 – Gabriel, Schweitzer, Gomez

NAYS: 2 - Richmond, Scott

MOTION PASSED: 3– 2

MOTION #2: Schweitzer

I move that the Board of Adjustment, in Appeal No. **BDA 067-100**, on application of Le Comte Croup, LLC, represented Josh Le Comte, **deny** the side yard variances 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: 3 – Gabriel, Schweitzer, Gomez

NAYS: 2 - Richmond, Scott

MOTION PASSED: 3– 2

FILE NUMBER: BDA 067-102

BUILDING OFFICIAL'S REPORT:

Application of Miguel Gaona for a variance to the front yard setback regulations at 2850 W. Clarendon Drive. This property is more fully described as Lots 25 and 26 in City Block 2/3850 and is zoned CR which requires a front yard setback of 15 feet. The applicant proposes to maintain a nonresidential structure in a required front yard and provide a 7 inch setback which will require a variance of 14 feet 5 inches to the front yard setback regulations.

LOCATION: 2850 W. Clarendon Drive

APPLICANT: Miguel Gaona

REQUEST:

- A variance to the front yard setback regulations of 14' 5" is requested in conjunction with maintaining a patio structure in the site's 15' front yard setback. The existing patio structure is part of/attached to the restaurant on the subject site (Don Panza Restaurant).

STAFF RECOMMENDATION:

Denial

- The site is flat, slightly irregular in shape, about 3,000 square feet in area with two front yard setbacks (which is typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural). These physical features do not preclude the applicant from developing the parcel of land/subject site in a manner commensurate with development found on other CR zoned lots while simultaneously complying with zoning code setback requirements.
- The applicant has not substantiated how the site's restrictive area, shape and/or slope justify the existing structure's encroachment into the site's Clarendon Drive 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:

- Structures on lots zoned CR (Community Retail) are required to provide a minimum front yard setback of 15'.
A site plan has been submitted that shows a patio structure that is located as close as 7" away from the site's West Clarendon Drive front property line (or as much as 14' 5" into the 15' front yard setback).
- According to calculations taken from the site plan by the Board Administrator, about 384 square feet (or 32' x 12') of the existing 576 square foot (or 32' x 18') patio is located in the site's W. Clarendon Drive front yard setback. The existing restaurant structure that the patio structure is attached to is shown on the site plan to be 32' x 31.3' (or 1,008 square feet) in area.
- The site is flat, slightly irregular in shape (55.6' on the north, 63.91' on the south, 53.44' on the east, and 48' on the west), and, according to the application, 3,000 square feet in area. The CR-zoned site has street frontage on two streets (W. Clarendon Drive and Ravinia Avenue), and as a result, has two front yard setbacks which is typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural. (No encroachment is shown or requested to be located in the site's 15' Ravinia Drive front yard setback).
- DCAD records indicate that the site is developed with a 3,290 square foot "free standing retail" structure built in 1945.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included a letter that provided additional details about the request.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	CR (Community Retail)
<u>North:</u>	CD No. 8 (Conservation District)
<u>South:</u>	PD No. 723 (Planned Development District)
<u>East:</u>	CR (Community Retail)
<u>West:</u>	R-7.5(A) (Single family residential 7,500 square feet)

Land Use:

The subject site is developed with a restaurant use (Don Panza Restaurant). The areas to the north and east are developed with commercial/retail uses; the area to the south is developed as an elementary school; and the area to the west is 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 21, 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.
- July 17, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 18, 2007: The Board Administrator wrote the applicant a letter that conveyed among other things 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 July 27th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
 - the August 3rd 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 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 August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- July 27, 2007: The applicant submitted information beyond what was submitted with the original application (see Attachment A).
- July 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment 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.

STAFF ANALYSIS:

- The subject site is flat, slightly irregular in shape (55.6' on the north, 63.91' on the south, 53.44' on the east, and 48' on the west), and, according to the application, 3,000 square feet in area. The CR-zoned site has street frontage on two streets (W. Clarendon Drive and Ravinia Avenue), and as a result, has two front yard setbacks which is typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural. (No encroachment is shown or requested to be located in the site's 15' Ravinia Drive front yard setback).
- It appears that about 2/3 of the existing patio structure is located in the site's 15' front yard setback on Clarendon Drive, and that the patio structure encompasses over 1/3 of the entire structure on the site.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations of 14' 5" requested in conjunction with maintaining a patio structure attached to an existing restaurant 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 restaurant structure, and is flat, slightly irregular in shape, and, according to the application, 3,000 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 CR 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 CR zoning classification.
- If the Board were to grant the front yard variance request of 14' 5", imposing a condition whereby the applicant must comply with the submitted site plan, the structure in the front yard setback would be limited to that shown on this plan – which in this case is a patio structure located 7" from the site's Clarendon Drive front property line (or 14' 5" into the site's 15' front yard setback).

BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2007

APPEARING IN FAVOR: Miriam Gaona, 2443 Clearview, Dallas, TX
Joyce Lehe, 1702 Melbourne Ave., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Scott

I move that the Board of Adjustment, in Appeal No. **BDA 067-102**, on application of Miguel Gaona, **grant** the 14-foot-5-inch 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 is required.

SECONDED: Gomez

AYES: 4 – Richmond, Gabriel, Scott, Gomez

NAYS: 1 - Schweitzer

MOTION PASSED: 4– 1

FILE NUMBER: BDA 067-105

BUILDING OFFICIAL’S REPORT:

Application of Sidney H. Womack for a variance to the off-street parking regulations and for special exceptions to the visibility obstruction regulations at 2442 W. 10th Street. This property is more fully described as Lot 1 in City Block 7/4560 and is zoned R-7.5(A) which requires a parking space to be located at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley, and a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct a structure and provide enclosed parking spaces with a setback of 5 feet 2 inches which will require a 14 foot 10 inch variance to the off-street parking regulations. In addition, the applicant proposes to locate and maintain items in required visibility triangles which will require special exceptions to the visibility obstruction regulations.

LOCATION: 2442 W. 10th Street

APPLICANT: Sidney H. Womack

REQUESTS:

- The following appeals have been made in this application on a site developed with a single family home:
 1. A variance to the off-street parking regulations of 14’ 10” is requested in conjunction with constructing and maintaining an attached garage structure addition with enclosed parking spaces that would be located less than the required 20’ from the Franklin Street right-of-way line. (According to the applicant, the proposed garage structure addition would be located about 3’ further back from Franklin Street than the existing attached garage structure that he intends to replace).

2. Special exceptions to the visibility obstruction regulations are requested in conjunction with constructing and maintaining portions of the proposed attached garage structure that would be located in the site's two 20' visibility triangles at the drive approach into the proposed garage structure from Franklin Street.

STAFF RECOMMENDATION (related to variance):

Denial

Rationale:

- Although the site is slightly smaller in area than the typically-sized lot in an R-7.5(A) zoning district (approximately 6,900 square feet verses 7,500 square feet), this site characteristic does not constrain the site from being developed with a house with an attached garage that is commensurate in size with the development upon other parcels of land in districts with the same R-7.5(A) zoning district while simultaneously complying with zoning code setback requirements. According to calculations taken from the submitted site plan, there would be about 28' of width left of developable space on the south side of the lot if the proposed enclosed parking spaces were to comply with the 20' distance/setback requirement on the west side of the lot and the 5' side yard setback on the east side of the lot since the lot's width at its southern boundary is 53.7'.
- In addition to lack of property hardship, granting this variance would be contrary to the public interest: the City's Development Services Senior Engineer recommends that this request be denied.

STAFF RECOMMENDATION (related to visibility obstruction special exception):

Denial

Rationale:

- The City's Development Services Senior Engineer recommends that this request be denied.
- The applicant has not substantiated how constructing/maintaining portions of the proposed garage in two 20' visibility triangles at the drive approach into the garage from Franklin Street would not constitute a traffic hazard.

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.

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 variance):

- The Dallas Development Code requires that a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley.
The submitted site plan indicates enclosed parking spaces in a proposed attached garage that are located approximately 5' 2" from the Franklin Street right of way line or 14' 10" into the 20' setback distance for an enclosed parking space. A partial site plan has also been submitted that indicates a 14' distance between the garage door and the curb line.
- The site is flat, virtually rectangular in shape (approximately 53' on the north, 54' on the south, 129' on the east, and 130' on the west), and approximately 6,900 square feet in area. The site is zoned R-7.5(A) lots are typically 7,500 square feet in area.
- According to DCAD records, the property is developed with the following:
 - a single family home in "very good" condition built in 1939 with 1,928 square feet of living area;
 - a 120 square foot room addition; and
 - a 400 square foot detached garage.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included a partial site plan indicating a 14' distance between the garage door and curb line.

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).
- A site plan has been submitted that denotes portions of the attached garage addition proposed to be located in the site's two 20' visibility triangles at the drive approach into the site from Franklin Street.

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 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:

- June 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.
- July 17, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 14 & 24, 2007: The Board Administrator met 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 July 27th deadline to submit additional evidence for staff to factor into their analysis;
- the August 3rd 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 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 August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

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

July 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment 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.

August 1, 2007 The Development Services Senior Engineer forwarded a review comment sheet and marked "Recommends that this be denied."

STAFF ANALYSIS (related to variance):

- The request involves replacing an existing attached garage structure on the site that does not appear to be in compliance with the 20' distance required to be provided between an enclosed parking space and a street right-of-way line. (According to the applicant, the proposed garage structure addition would be located about 3' further back from Franklin Street than the existing attached garage structure that he intends to replace).
- The site is flat, virtually rectangular in shape (approximately 53' on the north, 54' on the south, 129' on the east, and 130' on the west), and approximately 6,900 square feet in area. The site is zoned R-7.5(A) lots are typically 7,500 square feet in area.
- The submitted site plan indicates that enclosed parking spaces in the new attached garage addition will be located approximately 5' 2" from the Franklin Street right-of-way line. A partial site plan indicates that the enclosed parking spaces in the new attached garage addition would be located 14' from the Franklin Street curb line.

- According to calculations taken from the submitted site plan by the Board Administrator, there would be about 28' of width left of developable space on the south side of the lot if the proposed enclosed parking spaces were to comply with the 20' distance/setback requirement on the west side of the lot and the 5' side yard setback on the east side of the lot since the lot's width at its southern boundary is 53.7'.
- The applicant could build the proposed addition without a garage door (or enclosing the parking spaces) if the board were to deny the variance request and grant the special exception to the visibility obstruction regulations request. Granting the request will allow the applicant to enclose parking spaces on the proposed addition with a garage door.
- The Development Services Senior Engineer has submitted a review comment sheet marked "Recommends that this be denied."
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the parking regulations of 14' 10" to enclose parking spaces in a new attached garage structure addition 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 to the parking regulations of 14' 10" requested to enclose parking spaces in a new attached garage structure addition is necessary to permit development of the subject site (a site that is developed with a single family home with attached garage, and is flat, virtually rectangular in shape, and, approximately 6,900 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 R-7.5(A) zoning classification.
 - The variance to the parking regulations of 14' 10" requested to enclose parking spaces in a new attached garage structure addition would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.
- Typically, when the Board has found that this type of variance request is warranted, they have imposed the following conditions:
 - Compliance with the submitted site plan is required.
 - An automatic garage door must be installed and maintained in working order at all times.
 - At no time may the area in front of the garages be utilized for parking of vehicles.
 - All applicable permits must be obtained.

These conditions are imposed to help assure that the variance will not be contrary to public interest.
- If the Board were to grant the variance request of 14' 10", imposing a condition whereby the applicant must comply with the submitted site plan, the proposed garage structure addition can be built and maintained as shown on the site plan with

a garage door (or enclosed parking spaces) that are 5' 2" away from the Franklin Street right of way line (or as much as 14' 10" into the 20' setback).

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

- These requests involve replacing an existing attached garage structure on the site that does not appear to be in compliance with the 20' visibility triangles with a new attached garage addition that is required to comply with visibility obstruction regulations at drive approaches. (According to the applicant, the proposed garage structure addition would be located about 3' further back from Franklin Street than the existing attached garage structure that he intends to replace).
- The Development Services Senior Engineer has commented that this request should be denied.
- The applicant has the burden of proof in establishing the following:
 - Granting the special exceptions to the visibility obstruction regulations (whereby, according to the submitted site plan, portions of the proposed garage addition would be located/maintained in the two, 20' drive approach visibility triangles at the drive approach into the garage from Franklin Street) will not constitute a traffic hazard.
- If these requests are granted, subject to compliance with the submitted site plan, the portions of the proposed attached garage addition "excepted" into the two, 20' drive approach visibility triangles into the site from Franklin Street would be restricted to that what is shown on this plan.

BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2007

APPEARING IN FAVOR: Sidney H. Womack, 2442 W. 10th St., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Scott

I move that the Board of Adjustment, in Appeal No. **BDA 067-105**, on application of Sidney H. Womack, **grant** the 14-foot-10-inch variance for an enclosed parking space entered directly from a street or alley, 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 conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.
- An automatic garage door must be installed and maintained in working order at all times.

- At no time may the area in front of the garages be utilized for parking of vehicles.
- All applicable permits must be obtained.

SECONDED: Gabriel

AYES: 5 – Richmond, Gabriel, Schweitzer, Scott, Gomez

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION #2: Scott

I move that the Board of Adjustment, in Appeal No. **BDA 067-105**, on application of Sidney H. Womack, **grant** the requests of this applicant to construct/maintain portions of an attached garage structure in visibility triangles as special exceptions 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 is required.

SECONDED: Gabriel

AYES: 5 – Richmond, Gabriel, Schweitzer, Scott, Gomez

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 067-109

BUILDING OFFICIAL’S REPORT:

Application of Capital One, represented by Don Sturr of National Signs, for a special exception to the sign regulations at 13410 Preston Road. This property is more fully described as Block 7438 and is zoned PD-17 which allows 1 detached sign for every 450 feet, or fraction thereof, of frontage on a public street. The applicant proposes to construct an additional detached sign in a business zoning district which will require a special exception to the sign regulations.

LOCATION: 13410 Preston Road

APPLICANT: Capital One
Represented by Don Sturr of National Signs

August 14, 2007 Public Hearing Notes:

- The applicant’s representative submitted additional written information to the board at the public hearing, part of which included an elevation of the proposed sign.

REQUEST:

- A special exception to the sign regulations is requested in conjunction with erecting and maintaining a detached premise sign for a bank structure/use (Capital One) that is currently under development on a site/premise that is developed with a retail strip center (Arnold Square).

STAFF RECOMMENDATION:

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 Preston Road on a site/premise with about 200' of frontage) 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 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.

GENERAL FACTS:

- PD No. 17 allows only one detached sign on any premise unless a premise has more than 450 feet of frontage.
The submitted site plan indicates that the subject site (or premise) has 207.5 feet for frontage. The site plan shows that the site/premise has one existing sign on Preston Road located near its northern boundary advertising businesses in a retail strip center (Arnold Square) on the site, and a proposed "Capital One Bank Monument sign" to be located near the center of the site that would advertise a bank use (Capital One) currently under development on the site. The site plan shows that the existing and proposed signs are about 110' apart.
- The portion of the site where the bank is being developed is not a separately platted lot from the retail strip center that occupies the northern portion of the site. As a result, the applicant has stated that the bank is not eligible for its own independent sign due to existing storm drainage facilities on the remaining part of the parcel that could not be updated without burdensome cost and disruption to the property.

- No elevation of either the existing multi-tenant sign or proposed sign on the site (or premise) has been submitted.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 17 (Planned Development District)
North: PD No. 17 (Planned Development District)
South: RR (Regional Retail)
East: R-16(A) (Single family residential 16,000 square feet)
West: RR (Regional Retail)

Land Use:

The site is currently developed as part of a retail strip center (Arnold Square) and a bank use that is currently under development. The areas to the north, south, and west are developed with retail uses; and the area to the east is 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:

- June 28, 2007: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- July 17, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 18, 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 July 27th deadline to submit additional evidence for staff to factor into their analysis/recommendation;

- the August 3rd 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 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 August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

July 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment 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.

STAFF ANALYSIS:

- The subject site (or premise) is developed with a retail strip center with a multi-tenant sign. A portion of this site is currently under development with a bank structure/use where a detached monument premise sign is proposed.
- The subject site/premise can only have one detached sign by right. The site has a little more than 200' of frontage and could only achieve a second sign if it had more than 450' of frontage, or if the one site/premise were replatted into two lots. (The applicant has stated that the bank is not eligible for its own independent sign due to existing storm drainage facilities on the remaining part of the parcel that could not be updated without burdensome cost and disruption to the property).
- No elevation of the existing multi-tenant sign or the proposed single tenant detached monument premise sign has 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 its approximately 200' of Preston Road frontage) 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 a condition imposed that the applicant complies with the submitted site plan) would restrict the specific location of the signs as shown on this plan – a distance of about 110' between the 2 signs. (Since no elevation of either the proposed or existing sign has been submitted, the only assurance as to

the size and features of the signs on the subject site would be general provisions provided in the Dallas Development Code pertaining to heights and effective area).

BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2007

APPEARING IN FAVOR: Mike Clements, 2611 El Camino, Houston, TX

APPEARING IN OPPOSITION: No one

MOTION: Scott

I move that the Board of Adjustment, in Appeal No. **BDA 067-109**, on application of Capitol One, represented by Don Sturr of National Signs, **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 and elevation is required.

SECONDED: Gomez

AYES: 4 – Richmond, Gabriel, Scott, Gomez

NAYS: 1 - Schweitzer

MOTION PASSED: 4– 1

FILE NUMBER: BDA 067-111

BUILDING OFFICIAL’S REPORT:

Application of Donald E. and Carmen Q. Godwin, represented by Robert Reeves and Christopher Reilly/John Mond, for a variance to the front yard setback regulations at 10349 Strait Lane. This property is more fully described as Lot 12 in City Block D/5532 and is zoned R-1ac(A) which requires a 40 foot front yard setback. The applicant proposes to construct a structure in a required front yard and provide a 25 foot setback which will require a variance of 15 feet.

LOCATION: 10349 Strait Lane

APPLICANT: Donald E. and Carmen Q. Godwin
Represented by Robert Reeves and Christopher Reilly/John Mond

August 14, 2007 Public Hearing Notes:

- The applicant's representative submitted additional written information to the board at the public hearing.

REQUEST:

- A variance to the front yard setback regulations of 15' is requested in conjunction with constructing and maintaining a carport structure in the site's Kelsey Road 40' front yard setback on a site developed with a single family home.

STAFF RECOMMENDATION:

Denial

Rationale:

- Staff concludes that although the applicant has substantiated how granting the variance would not be contrary to the public interest (the applicant has garnered support from the property owners directly north, northwest, west, and south of the subject site, and documented that the proposed encroachment is 0.57% increase in coverage on the subject site), the applicant has not substantiated that features of the flat, rectangular-shaped, 1.1 acre site with two front yard setbacks preclude the applicant from developing it (currently developed with a house with over 10,000 square feet of living area, a cabana, a garage and carport) in a manner commensurate with development found on other R-1ac(A) zoned lots while simultaneously complying with zoning code setback requirements.

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:

- Structures on lots zoned R-1ac(A) are required to provide a minimum front yard setback of 40'.
A revised scaled site plan has been submitted that shows a “proposed open-sided porte cochere” structure that is located 25 away from the site’s Kelsey Road front property line (or 15’ into the 40’ front yard setback).
- According to calculations taken from the site plan by the Board Administrator, the entire approximately 280 square foot (or 20’ x 14’) carport/porte cochere structure is located in the site’s Kelsey Road 40’ front yard setback.
- The site is flat, rectangular in shape (250’ x 200’) and 50,000 square feet (or 1.1 acres) in area. The site is zoned R-1ac(A) where lots are typically 43,560 square feet or 1 acre in area. The site has two 40’ front yard setbacks. (No encroachment is shown or requested to be located in the site’s Strait Lane 40’ front yard setback).
- DCAD records indicate that the site is developed with the following:
 - a single family home in excellent condition built in 1993 with 10,121 square feet of living space;
 - a 24 square foot vault;
 - an 807 square foot detached garage;
 - a pool;
 - a 606 square foot cabana;
 - a 705 square foot attached garage; and
 - a 280 square foot detached carport.
- The applicant’s representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a document that provides additional details about the request;
 - a scaled site plan;
 - photos of the site; and
 - 3 letters in support of the request.
- The applicant’s newly designated representative submitted additional information beyond what was submitted with the original application and beyond what was discussed at the July 30th staff review team meeting (see Attachment B). This information included the following:
 - a document that provides additional details about the request;
 - an aerial photo of the subject site;
 - copies of what appears to be the originally submitted site plan and elevation;
 - photos of the site and surrounding area; and
 - 1 additional letter in support of the request.

BACKGROUND INFORMATION:

Zoning:

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

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

Land Use:

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

Zoning/BDA History:

- | | |
|--|--|
| 1. BDA 93-063, 10349 Strait Lane
(the subject site) | On April 27, 1993, the Board of Adjustment granted a request to the fence height special regulations of 4' 3". The board imposed no conditions with this request but specified the following details in their motion: a fence special exception was granted to maintain a 6 foot wrought iron fence with an 8 foot gate and columns of 6.5 feet. |
|--|--|

Timeline:

- June 28, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 17, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- July 17, 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 July 27th deadline to submit additional evidence for staff to factor into their analysis;
 - the August 3rd 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 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 August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

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

July 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment 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.

August 3, 2007: The applicant’s newly designated representative submitted information beyond what was submitted with the original application and what was discussed at the July 30th staff review team meeting (see Attachment B).

STAFF ANALYSIS:

- The site is flat, rectangular in shape (250’ x 200’) and 50,000 square feet (or 1.1 acres) in area. The site is zoned R-1ac(A) where lots are typically 43,560 square feet or 1 acre in area. The site has two 40’ front yard setbacks. (No encroachment is shown or requested to be located in the site’s Strait Lane 40’ front yard setback).
- The submitted site plan indicates that the entire approximately 280 square foot (or 20’ x 14’) carport/porte cochere structure is located in the site’s Kelsey Road 40’ front yard setback.
- 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 15’ requested in conjunction with constructing/maintaining a carport/porte cochere that would attach to single family home in the site’s Kelsey Road front yard setback 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 according to DCAD developed with a single family structure with a garage, cabana, and carport, and is flat, rectangular in shape (250’ x 200’) and 50,000 square feet or 1.1 acres 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 R-1ac(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 R-1ac(A) zoning classification.
- If the Board were to grant the front yard variance request of 15', imposing a condition whereby the applicant must comply with the submitted revised scaled site plan, the structure in the front yard setback would be limited to that shown on this plan – which in this case is an “open-sided porte cochere” structure located 25' from the site's Kelsey Road front property line (or 15' into one of the site's two 40' front yard setbacks).

BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2007

APPEARING IN FAVOR: Robert Reeves, 900 Jackson #160, Dallas, TX
Donald Godwin, 10349 Strait Ln., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Scott**

I move that the Board of Adjustment, in Appeal No. **BDA 067-111**, on application Donald E. and Carmen Q. Goodwin, represented Robert Reeves and Christopher Reilly/John Mond, **grant** the 15-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 revised scaled site plan is required.

SECONDED: **Gabriel**

AYES: 4 – Richmond, Gabriel, Scott, Gomez

NAYS: 1 - Schweitzer

MOTION PASSED: 4– 1

FILE NUMBER: BDA 067-120

BUILDING OFFICIAL'S REPORT:

Application of Marvin V. Cannon, represented by Randy Daniels, for a variance to the parking regulations at 2727 Oak Lawn Avenue. This property is more fully described as Lots 6, 7, 12, and 13 in City Block 1/1337 and is zoned PD-193(GR) and PD-193(MF-3)

which requires parking to be provided. The applicant proposes to maintain a structure with veterinarian's office and office uses and provide 64 of the required 68 off-street parking spaces which will require a variance of 4 spaces.

LOCATION: 2727 Oak Lawn Avenue

APPLICANT: Marvin V. Cannon
Represented by Randy Daniels

August 14, 2007 Public Hearing Notes:

- The applicant's representative submitted additional written information to the board at the public hearing.

REQUEST:

- A variance to the off-street parking regulations of 4 spaces is requested in conjunction with transitioning approximately 6,800 square feet of vacant office space within an existing 21,400 square foot structure to veterinarian's office use. The applicant proposes to provide 64 (or 94%) of the required 68 parking spaces that are required for the office and veterinarian's office uses proposed for the existing structure on the site.

STAFF RECOMMENDATION:

Denial

Rationale:

- The applicant has not substantiated how granting the variance would not be contrary to the public interest. (The Development Services Senior Engineer has commented that the information submitted by the applicant does not provide a rationale for the request).
- In addition, the applicant has not substantiated how the variance to the parking regulations requested to lease/occupy areas in an existing structure with specific uses that generate more required off-street parking than can be provided is necessary to permit development of the site which is different from other lots by its restrictive size, shape, or slope. (The site is flat, rectangular in shape (334' x 100), and, approximately 33,000 square feet in area. The PD No. 193 (GR)-zoned site with two front yard setbacks is typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural). Staff has concluded that the size, shape, or slope of the site do not preclude the applicant from complete utilization of the existing structure on the site with uses that would not generate more than the required number of parking spaces that can be provided on the site.

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:

- According to a tabulation chart on the submitted site plan, PD No. 193 requires the following off-street parking requirements for the existing/proposed uses on the subject site:
 - 1 space is required per 366 square feet of floor area for an office use.
 - 1 space is required per 300 square feet of floor area for a veterinarian's office use.

The applicant is proposing to provide 64 (or 94%) of the required 68 parking spaces. (According to the applicant's representative, 54 spaces that are located on site, 5 spaces that are delta credited, and 5 spaces that are located off the site in a city-recognized parking agreement).
- PD No. 193 requires that this board of adjustment parking reduction request of 6% for these specific uses be "varied" rather than "special excepted" - the option on parcels on land outside PD No. 193 where the reduction is less than 25% of the required parking.
- According to calculations taken from the submitted site plan, the applicant proposes to either transition existing office space or fill vacant space within the existing 21,443 square foot structure currently used as a combination office/vet clinic with veterinarian's office use. The applicant proposes to occupy the approximately 21,400 square foot structure with about 15,600 square feet of veterinarian's office use and approximately 5,800 square feet of office use.
- The site is flat, rectangular in shape (334' x 100), and approximately 33,000 square feet in area. The PD No. 193 (GR and Mf-3)-zoned site has street frontage on two streets (Oak Lawn Avenue and Shelby Street), and as a result, has two front yard setbacks which is typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural.
- DCAD records indicate that the site is developed with a 22,440 square foot office structure built in 1964.

- The applicant’s representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included a letter that provided additional information about the request.
- In addition, the applicant’s representative submitted additional information beyond what was submitted with the original application and discussed at the July 30th staff review team meeting (see Attachment B). This information included a “parking tabulation” for the proposed uses on the subject site.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (GR & MF-3) (Planned Development General Retail and Multifamily)
North: PD No. 193 (GR & MF-3) (Planned Development General Retail and Multifamily)
South: PD No. 193 (GR & MF-3) (Planned Development General Retail and Multifamily)
East: PD No. 193 (GR & MF-3) (Planned Development General Retail and Multifamily)
West: PD No. 193 (GR & MF-3) (Planned Development General Retail and Multifamily)

Land Use:

The subject site is developed with a structure that is developed with office, veterinarian’s office, and vacant uses. The areas to the north, east, south, and west are developed with a mix of retail, office, and 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:

- June 28, 2007: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- July 17, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 18, 2007: The Board Administrator spoke to (and emailed) the applicant’s representative about 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 July 27th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
- the August 3rd 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 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 August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

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

July 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment 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.

July 31, 2007 The applicant's representative submitted information beyond what was submitted with the original application and what was discussed at the staff review team meeting (see Attachment B).

August 1, 2007 The Development Services Senior Engineer submitted an unmarked review comment sheet with the following comments:

- "No recommendation. The parking tabulation dated 7/31/07 (thru email) does not provide rationale for request. The applicant needs to present evidence/study/info to support the claim of estimated 40 cars comparing with 54 parking spaces provided , 68 spaces required. "

STAFF ANALYSIS:

- 94% of the required parking is proposed to be provided in conjunction with transitioning approximately 6,800 square feet of vacant office space within an existing 21,400 square foot structure to veterinarian's office use.

- The request to reduce the number of the required 68 parking spaces on the site by 4 spaces must be considered by the board as a *variance* request given what is being requested and that the site is located in PD No. 193. (If the site were located outside of PD No. 193 in a general zoning classification, the same 4 space reduction could be made as a *special exception* to the parking regulations since the amount of reduction being requested is less than 25% of the total number of parking spaces required.
- The site is flat, rectangular in shape (334' x 100), and approximately 33,000 square feet in area. The PD No. 193 (GR and MF-3)-zoned site has street frontage on two streets (Oak Lawn Avenue and Shelby Street), and as a result, has two front yard setbacks which is typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the parking regulations of 4 spaces requested in conjunction with transitioning approximately 6,800 square feet of vacant office space within an existing 21,400 square foot structure to veterinarian's office use 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 an existing 21,400 square foot structure, and is flat, rectangular in shape, and approximately 33,000 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 PD No. 193 (GR and MF-3) zoning classifications.
 - 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 PD No. 193 (GR and MF-3) zoning classifications.
- The Development Services Senior Engineer has commented that the information submitted by the applicant does not provide a rationale for the request, and that additional evidence/a study/information needs to be submitted in order for him to support the parking reduction request.

BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2007

APPEARING IN FAVOR: Randy Daniels, 4324 N Beltline Rd, #C202, Dallas, TX
Marvin Cannon, 3335 University Park Ln, Irving, TX

APPEARING IN OPPOSITION: No one

MOTION: **Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 067-120**, on application Marvin V. Cannon, represented Randy Daniels, **grant** the variance to the parking regulations of four spaces, 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.

SECONDED: Scott

AYES: 5 – Richmond, Gabriel, Schweitzer, Scott, Gomez

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 067-124

BUILDING OFFICIAL’S REPORT:

Application of Neal Heckel for a special exception to the tree preservation regulations at 12122 Audelia Road. This property is more fully described as an 8.994 acre tract of land in City Block 8440 and is zoned R-7.5(A) which requires mandatory landscaping. The applicant proposes to construct residential uses and provide an alternate tree mitigation plan which will require a special exception to the tree preservation regulations.

LOCATION: 12122 Audelia Road

APPLICANT: Neal Heckel

REQUEST:

- A special exception to the tree preservation regulations is requested in conjunction with removing protected trees on an approximately 3-acre site that is currently being developed with a single family development (Creekside).

STAFF RECOMMENDATION:

Denial

Rationale:

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

STANDARD FOR A SPECIAL EXCEPTION TO THE TREE PRESERVATION REGULATIONS:

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

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

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

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

GENERAL FACTS:

- The Dallas Development Code requires full compliance with the Tree Preservation Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet.
The applicant submitted information to the Building Inspection Development Code Specialist beyond what was submitted with the original application (see Attachment A). This information that was forwarded to the Board of Adjustment Chief Planner and Administrator at the July 30th staff review team meeting included the following:
 - a document that provides additional details about the request; and
 - a plan entitled "Alternate Mitigation Plan."
- The City of Dallas Acting Chief Arborist submitted a memo, photographs of the site, and a copy of the portion of the original tree survey field verified by City Arborist in 2006 to the Board Administrator and the Chief Board of Adjustment Planner (see Attachment B). The memo stated the following:
 - The applicant is requesting relief from tree mitigation regulations of Article X of the Dallas Development Code (The Landscape and Tree Preservation Regulations), in that the applicant is requesting to:
 - 1) eliminate the tree mitigation requirements with an alternate mitigation plan, and
 - 2) seek to extend the time to complete all mitigation requirements within 18 months of the date of the public hearing.
 - The special exception request is triggered by the removal of protected trees for the construction of a new single family residential development.
 - Deficiencies:
Section 51A-10.130 provides the ordinance for the mitigation of protected trees removed from a property.

The applicant is requesting changes to Section 51A-10.134, Replacement of Removed or Seriously Injured Trees by asking for a reduction in the quantity of mitigation and an extension on the timing of mitigation.

The applicant is also seeking an additional means of mitigation not credited in Section 51A-10.135, Alternate Methods of Compliance. (The property is currently not in compliance with the timing requirements for the completion of mitigation).

- Factors for consideration:
 - The development had been under discussion and review with City Arborists since August of 2006 where the owners approached staff to request the use of a “conservation easement” prior to development.
 - The City Arborists reviewed the request to determine its merits and notified the owners in October of 2006 that the easement adjacent to the development to be “unacceptable” because it did not meet the spirit and intent of Article X.
 - The permit request for tree removal was submitted in December of 2006 and approved by the former chief arborist in January of 2007. The permit identified of the *potential* (if all protected trees on the survey were removed) mitigation to be numbered at 180 protected trees and 2,333 caliper inches (with a replacement value of \$227,582).
 - Since the beginning of the project, the Acting Chief Arborist has spoken with the owner’s representatives on several occasions. In March of 2007, he agreed with the decision of the previous City Chief Arborist. (Specific details are provided in the arborist’s memo).
 - Since the City Arborists’ initial reviews, the owners have altered the design of the isolated northeast corner residential lot to protect some of the wooded area along the creek north of the future residence. This has not changed the City Arborists’ position on the status of creating a conservation easement.
 - The City Arborists have conducted a recent site inspection where it has been determined that the actual mitigation requirements after the construction of the infrastructure is now **2,013 caliper inches** (reduced by 320 inches from 21 trees on the original tree survey) with a “Replacement Value” of \$198,220.
 - The owners have submitted a sampling of trees from the previous survey to attempt to identify the number of protected inches west of the creek channel that might remain on the site but the City Arborist cannot confirm or deny their estimate of 1,016”.
 - The City Arborist staff does not accept the mitigation count submitted by the owners of 1,815” on their application and is uncertain of the actual declared numbers. Staff has determined that a tree survey dated 6/25/07 and submitted to the Board is incorrect and is not in agreement with the City Arborist site-verified tree survey that has been submitted for platting purposes in 2006. Staff also does not agree with the application statement that their total mitigation requirement is 799”. Article X does not reduce the amount of mitigation for trees removed for development with the number of trees *not* impacted by development. Mitigation only impacts the count of trees removed.

- Article X requires a minimum of 3 trees per lot on new single family developments. The trees must be a minimum of 2" caliper which would provide 6" per lot. The proposal for 210" is from this requirement. The trees must be from the approved replacement tree list.
- The applicant proposes 12" to be placed along Audelia Road at the southwest corner. There is insufficient space with the extent of the infrastructure, conflicting utilities, and sidewalks to place any more trees along Audelia Road.
- The applicant proposes 30" of trees to be planted in a "Reforestation Area" in the northeast corner of the development where trees were removed for grading and infrastructure improvements. An HOA dedicated "tree preservation area" is proposed on the property in the creek proximity with the rear 15' of the residential lots deed restricted from construction. Many of these lots have retaining walls of varying heights restricting them from practical use. The HOA is mandatory due to the land not being dedicated to single family homeowners.
- The owner is currently not in compliance with Section 51A-10.134(5) for the replacement of tree mitigation within a specific time period of 30 days, 6 months, or 18 months of the permit depending on the criteria. This particular issue has not been adequately approached with the owners by staff and staff will be seeking compliance with these city requirements in a short time after completion of the hearing.
- The owner has, by ordinance, until July 2008 to complete mitigation under Article X if a performance bond or letter of credit for the cost of buying and planting replacement trees on the property is submitted to the City of Dallas. (The owner is currently past the 6 month period after tree removal).
- Recommendation
 - Denial of the request for an alternate tree mitigation plan that deviates from Article X, Sections 51A-10.134 and 135.
 - The owners have recognized the basic requirements for tree mitigation since August of 2006, and prior to the request and approval, began to removed trees to begin the construction of the Creekside development.
 - Article X provides adequate methods to complete tree mitigation including planting on the property, donating trees to the Park Department, planting within one mile of the site, donating to the Reforestation Fund, and creating a conservation easement anywhere within the City of Dallas. A combination of any or all of these methods may be available.
 - Although a conservation easement cannot be created in the narrow area on the site, an easement may be created elsewhere to provide greater credits towards mitigation than would be feasible with the remaining undisturbed areas on the property.
 - Protecting the grouped trees toward the north and east ends of the site, and reducing the scope of development would have provided an opportunity to reduce the overall mitigation by saving large groups of trees, and would have increased the opportunities to create a dedicated conservation easement that complied with the spirit and intent of Article X.

- Denial of the request for a time extension (Section 51A-10.134(5) only) to complete mitigation required under Article X to 18 months from date of hearing.
 - There are only 252 inches of mitigation proposed to be planted on the site of the 2,013 verified inches of protected trees removed. Fulfillment of mitigation through alternate means already available could be resolved within the restricted period of time provided for in Article X prior to completion of the subdivision.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5(A)(SUP 1658)(Single family residential 7,500 square feet)(Specific Use Permit)
North: PD No. 301 (Planned Development)
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) & MF-1(A)(Single family residential 7,500 square feet & multifamily)

Land Use:

The subject site is currently under development. The area to the north is developed as a fire station; and the areas to the east, south, and west are developed with single family uses.

Zoning/BDA History:

- | | |
|--|--|
| <p>1. Z056-156, southeast corner of Audelia Road and Shadow Way (the subject site)</p> | <p>On March 23, 2006, the City Plan Commission recommended denial without prejudice of an application submitted for a Planned Development District for TH-1(A) District Uses and private streets on property zoned R-7.5(A). The case report stated the request was made in order to develop the site with single family attached dwelling units and provide for a gated community, thus requiring the private street use.</p> |
| <p>1. Z056-227, southeast corner of Audelia Road and Shadow Way (the subject site)</p> | <p>On March 27, 2007, the City Council created an ordinance that established SUP No. 1658 – a specific use permit for a private street on on property zoned R-7.5(A).</p> |

Timeline:

- June 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.
- July 17, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 18, 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 July 27th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
 - the August 3rd 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 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 August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- July 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment 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 however, the Building Inspection Development Code Specialist forwarded a copy of the applicant's alternate mitigation plan at the July 30th staff review team meeting (see Attachment A).
- August 6, 2007 The City of Dallas Acting Chief Arborist submitted information and a related memo regarding this request (see Attachment B).

STAFF ANALYSIS:

- The applicant has requested that the Board of Adjustment grant a special exception to the Tree Preservation Regulations involving (according to the Acting Chief Arborist):
 1. reducing the quantity of required mitigation,
 2. extending the time period in which mitigation must be achieved, and
 3. seeking additional means of mitigation not provided for in the Tree Preservation Regulations.
- The applicant has the burden of proof in establishing the following:
 - Strict compliance with the requirements of the Tree Preservation Regulations of the Dallas Development Code (i.e. mitigating all protected trees removed on the site which in this case amounts to 2,013 caliper inches/\$198,220.00) will unreasonably burden the use of the property (in this case, a site that is currently under development as a single family subdivision).
 - The special exception (allowing for a reduction in the quantity of required mitigation, extending the time period in which mitigation must be achieved, and seeking additional means of mitigation not credited/provided for in the code) will not adversely affect neighboring property.

BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2007

APPEARING IN FAVOR: Neal Heckel, 6409 Stonebrook Cr, Plano, TX
Sally Turner, 12323 Creek Span Dr, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Scott**

I move that the Board of Adjustment, in Appeal No. **BDA 067-124**, on application of Neal Heckel, **grant** the request of this applicant to implement an alternate tree mitigation plan, and extend the time to complete all mitigation to within 18 months of today, as a special exception to the tree preservation requirements contained in the Dallas Development Code, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that strict compliance with Article X will unreasonably burden the use of the property and the 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 alternate mitigation plan is required.
- All tree mitigation must be complete by February 14, 2009.

SECONDED: **Gabriel**

AYES: 5 – Richmond, Gabriel, Schweitzer, Scott, Gomez

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION: **Scott**

I move to adjourn this meeting.

SECONDED: **Gabriel**

AYES: 5– Richmond, Gabriel, Schweitzer, Scott, Gomez

NAYS: 0 -

MOTION PASSED: 5– 0 (Unanimously)

3:53 P.M. - Board Meeting adjourned for August 13, 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.