

NOTICE FOR POSTING
MEETING OF
BOARD OF ADJUSTMENT, PANEL B
WEDNESDAY, APRIL 18, 2007

Briefing:	10:30 A.M.	L1FN CONFERENCE CENTER AUDITORIUM
Public Hearing:	1:00 P.M.	L1FN CONFERENCE CENTER AUDITORIUM

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

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

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

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04-18-2007

ZONING BOARD OF ADJUSTMENT, PANEL B
WEDNESDAY, APRIL 18, 2007
AGENDA

BRIEFING	L1FN CONFERNCE CENTER AUDITORIUM	10:30A.M.
PUBLIC HEARING	L1FN CONFERNCE CENTER AUDITORIUM	1:00 P.M.

Donnie Moore, Chief Planner
Steve Long, Board Administrator

MISCELLANEOUS ITEMS

	Approval of the Wednesday, March 21, 2007 Board of Adjustment Public Meeting Minutes	M1
BDA067-053	465 South R.L. Thornton Freeway REQUEST: Of Lake Cliff Neighborhood Association, represented by Beverly Mendoza, to reimburse the filing fee submitted in conjunction with the request for the board of adjustment appeal to establish a compliance date for a nonconforming motel use	M2

UNCONSTESTED CASES

BDA 067-057	10051 Marsh Lane REQUEST: Application of Marsh Lane Plaza, LP, represented by Robert Baldwin, for a special exception to the parking regulations	1
BDA 067-058	1326 Ft. Worth Ave. (aka 1320 Ft. Worth Ave.) REQUEST: Application of T-Mobile Texas, LP, represented by Dave Kirk, to enlarge a nonconforming nonresidential use	2

HOLDOVER CASES

BDA 067-046 5750	E. Lovers Lane REQUEST: Application of H. E. B., represented by Santos Martinez of Masterplan, for a special exception to the landscape regulations	3
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BDA 067-054 8623 Hillcrest Road 4
REQUEST: Application of Dick P. Wood, Jr.,
represented by Robert Baldwin, for variances to the
floor area ratio and height regulations, and a special
exception to the landscape regulations

HOLDOVER COMPLIANCE CASE

BDA 067-053 465 S. R. L. Thornton Freeway 5
REQUEST: Application of Lake Cliff Neighborhood
Association, represented by Beverly Mendoza to
require compliance of a nonconforming use

EXECUTIVE SESSION NOTICE

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

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

(Rev. 6-24-02)

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel B March 21, 2007 public hearing minutes.

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: BDA067-053

REQUEST: To reimburse the \$1,000.00 filing fee submitted in conjunction with the Board of Adjustment appeal to establish a compliance date for a nonconforming motel use

LOCATION: 465 South R.L. Thornton Freeway

APPLICANT: Lake Cliff Neighborhood Association
Represented by Beverly Mendoza

STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT TO ESTABLISH A COMPLIANCE DATE FOR A NONCONFORMING USE:

The Dallas Development Code states that the board may waive the filing fee for a board of adjustment application if the board finds that payment of the fee would result in substantial financial hardship to the applicant. In making this determination, the board may require the production of financial documents. Notwithstanding the above, the board may waive the fee for a request to establish a compliance date under Section 51A-4.704(a)(1) only if:

- (A) the applicant is a corporeal person for whom payment of the fee would result in substantial financial hardship; or
- (B) a written request for a fee waiver is signed by owners, as evidenced by the last approved city tax roll, of 20 percent or more of real property within 200 feet, including streets and alleys, of the boundary of the lot containing the nonconforming use.

GENERAL FACTS:

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waiver/s reimbursements:
 - The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.
 - The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board's miscellaneous docket for predetermination.
 - If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.
 - In making this determination, the board may require the production of financial documents.
 - Notwithstanding the above, the board may waive the fee for a request to establish a compliance date under Section 51A-4.704(a)(1) only if:

- (A) the applicant is a corporeal person for whom payment of the fee would result in substantial financial hardship; or
 - (B) a written request for a fee waiver is signed by the owners, as evidenced by the last approved tax roll, of 20 percent or more of real property within 200 feet, including streets and alleys, of the boundary of the lot containing the nonconforming use.
- The applicant submitted an email to staff requesting a reimbursement of the filing fee submitted in conjunction with this Board of Adjustment case (see Attachment A). This letter contained some details on the applicant's finances.
 - On March 21, 2007, the Board of Adjustment Panel B conducted a public hearing on this matter and delayed action until April 18, 2007. The applicant has submitted no additional information on this request.

Timeline:

- Feb. 15, 2007: The Board of Adjustment Secretary randomly assigned the request to require compliance of the nonconforming use on this site to Board of Adjustment Panel B.
- March 7, 2007 The applicant submitted an email requesting a fee reimbursement of \$1,000.00 for the Board of Adjustment application requesting a compliance for the nonconforming motel use located at 465 South R.L. Thornton Freeway (see Attachment A).
- March 7, 2007: The Board Administrator emailed the applicant the following information:
- Advising her that the request would be placed on the board's March 21st agenda;
 - Attaching the criteria/standard that the board will use in their decision to approve or deny the fee waiver request; and
 - Informing her of the March 9th deadline to submit additional evidence to be incorporated into the Board's docket materials.
- March 21, 2007: The Board of Adjustment Panel B conducted a public hearing on this matter and delayed action on the request until April 18, 2007.

BOARD OF ADJUSTMENT ACTION: MARCH 21, 2007

APPEARING IN FAVOR: Gregory Mays, 824 N Marsalis, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Beikman

I move that the Board of Adjustment in Appeal No. **BDA 067-053**, hold this fee reimbursement matter under advisement until **April 18, 2007**.

SECONDED: **Brannon**

AYES: 5–Cox, Brannon, Gillespie, Beikman, Chernock

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 067-057

BUILDING OFFICIAL'S REPORT:

Application of Marsh Lane Plaza, LP, represented by Robert Baldwin, for a special exception to the parking regulations at 10051 Marsh Lane. This property is more fully described as Lot 1 in City Block A/6426 and is zoned CR, LO-1& LO-1-D, which requires parking to be provided. The applicant proposes to construct and maintain nonresidential structures and provide 416 parking spaces which would require a special exception of 49 parking spaces.

LOCATION: 10051 Marsh Lane

APPLICANT: Marsh Lane Plaza, LP.
Represented by Robert Baldwin

REQUEST:

- According to March 30th and April 7th correspondence from the applicant's representative, and the latest revised Building Official's Report, a special exception to the off-street parking regulations of 49 spaces is requested in conjunction with:
 1. addressing an existing retail center (Marsh Lane Plaza) that is "short of meeting the city's off-street parking requirements," and
 2. constructing / maintaining a vehicle inspection facility/auto service center use on the subject site.

According to March 30th and April 7th correspondence from the applicant's representative, and the latest revised Building Official's Report, the applicant is proposing to provide 416 (or 89%) of the required 465 parking spaces on the subject site.

STAFF RECOMMENDATION:

Approval, subject to the following conditions:

- The special exception of 49 spaces automatically and immediately terminates if and when the restaurant without drive-in or drive through service; general merchandise or food store less than or greater than 3,500 square feet; office; and auto service center uses on the site are changed or discontinued.

Rationale:

- The Development Services Senior Engineer supports the request.

STANDARD FOR A SPECIAL EXCEPTION TO THE OFF-STREET PARKING REGULATIONS:

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
 - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
 - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
 - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
 - (E) The availability of public transit and the likelihood of its use.
 - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
 - (A) establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
 - (B) impose restrictions on access to or from the subject property; or
 - (C) impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
 - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
 - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

GENERAL FACTS:

- According to a table submitted by the applicant's representative on April 4, 2007, the Dallas Development Code requires the following off-street parking requirements for the existing/proposed uses on the subject site:
 - 1 space is required per 100 square feet of floor area for a restaurant without drive-in or drive through service use.
 - 1 space is required per 200 square feet of floor area of a general merchandise or food store less than 3,500 square feet and greater than 3,500 square feet.
 - 1 space is required per 333 square feet of office use
 - 1 space is required per 500 square feet of auto service center use.

According to the applicant's representative's March 30th and April 7th correspondence and the latest revised Building Official's Report, the applicant is proposing to provide 416 of the required 465 off-street parking spaces, hence a parking reduction/special exception need of 49 spaces. However, according to an email submitted by the applicant's representative on April 9th, the applicant is proposing to provide 351 of the required 393 off-street parking spaces, hence a parking reduction/special exception need of 42 spaces. (Building Inspection staff was not able to confirm the applicant's representative's revised available/required parking numbers of April 9th at the time of the assembly of this case report).
- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachments A and B). This information included the following:
 - a parking study related to the request;
 - a letter that provided additional details about the request;
 - a table pertaining to permitted uses, parking ratios and multipliers;
 - a tenant, use, square footage, multiplier, and required parking list within the center.
- On April 4, 2007, the applicant's representative submitted additional information beyond what was submitted with the original application and discussed at the staff review team meeting (see Attachment C). This information included a table listing existing/proposed uses in the center as classified in Chapter 51(A).
- On April 4, 2007, the Building Inspection Development Code Specialist forwarded a revised Building Official's Report on this matter (see Attachment D).
- On April 7, 2007, the applicant's representative submitted additional information beyond what was submitted with the original application and discussed at the staff review team meeting (see Attachment E). This information included a letter that provided additional/revised details about the request, and a revised site plan.
- On April 9, 2007, the applicant's representative submitted additional information beyond what was submitted with the original application and what was discussed at the staff review team meeting (see Attachment F). This information included an email that provided revised provided parking, required parking, and requested parking figures and related table (none of which could be confirmed by Building Inspection at the time of the assembly of this case report).

BACKGROUND INFORMATION:

Zoning:

Site: CR, LO-1 (SUP 1100) (Commercial Retail, Limited Office, Specific Use Permit for Radio, Television, or Microwave Tower)
North: CR (Community Retail)
South: R-7.5(A) (Single family district, 7,500 square feet)
East: CR (Community Retail)
West: PD No. 31 (Planned Development District)

Land Use:

The subject site is developed as a shopping center (Marsh Lane Plaza). The areas to the north and east are developed with retail uses, and the areas to the south and west are developed with single family uses.

Zoning/BDA History:

1. BDA 95-042, 10065 Marsh Lane (the northern portion of the subject site) On April 25, 2005, the Board of Adjustment Panel A granted a request for a special exception to the sign regulations. The board imposed the following condition with this request: Compliance with the submitted elevation and site plan is required; and any change to the elevation or site plan must be approved by the Board of Adjustment. The case report stated that the request was made in conjunction with erecting a new 50 square foot detached premise sign within an existing retail center that was allowed one detached premise sign by right.

Timeline:

- Feb. 15, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- March 22, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- March 23, 2007: The Board Administrator emailed the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - offered to forward the criteria/standard that the board will use in their decision to approve or deny the request as well as the board's documentary evidence rule of procedure;
 - the March 30th deadline to submit additional evidence for staff to factor into their analysis;

- the April 6th deadline to submit additional evidence to be incorporated into the Board's docket materials.

March 30, 2007 The applicant's representative submitted information beyond what was submitted with the original application (see Attachments A and B).

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

April 4, 2007 The applicant's representative submitted information beyond what was submitted with the original application and discussed at the staff review team meeting (see Attachment C).

April 4, 2007 The Building Inspection Development Code Specialist forwarded a revised Building Official's Report to the Board Administrator (see Attachment D).

April 7, 2007 The applicant's representative submitted information beyond what was submitted with the original application and discussed at the staff review team meeting (see Attachment E).

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

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

April 4, 2007 The Development Services Senior Engineer submitted a review comment sheet marked "Has no objections" with the following comments:

1. "Parking demand study dated Feb. 9, 2007.
2. Letter dated Mar. 30, 2007."

April 9, 2007 The applicant's representative submitted information beyond what was submitted with the original application and discussed at the April 2nd staff review team meeting (see Attachment F).

STAFF ANALYSIS:

- According to March 30th and April 7th correspondence from the applicant's representative, and the latest revised Building Official's Report, 89 percent of the required off-street parking spaces is proposed to be provided in conjunction with addressing an existing retail center that is "under-parked," and constructing and maintaining an approximately 250 square foot vehicle inspection facility/auto service center use on the subject site.
- Granting this request, subject to the condition that the special exception of 49 spaces automatically and immediately terminates if and when the restaurant without drive-in or drive through service; general merchandise or food store less than or greater than 3,500 square feet; office; and auto service center uses are changed or discontinued, would remedy the existing center's parking deficit, and allow the construction of an approximately 250 square foot vehicle inspection facility/auto service center use on the site.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the restaurant without drive-in or drive through service; general merchandise or food store less than or greater than 3,500 square feet; office; and auto service center uses does not warrant the number of off-street parking spaces required, and
 - The special exception of 49 spaces (or 11% of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- The Development Services Senior Engineer has commented that he has no objections to this request based on the submitted parking demand study of February 9, 2007, and the applicant's representative's letter of March 30, 2007.

FILE NUMBER: BDA 067-058

BUILDING OFFICIAL'S REPORT:

Application of T-Mobile Texas, LP, represented by Dave Kirk, to enlarge a nonconforming nonresidential use at 1326 Fort Worth Avenue (AKA 1320 Fort Worth Avenue). This property is more fully described as Lot 2 in City Block 3957 and is zoned PD-714, Subdistrict 2B, which limits the enlargement of a nonconforming use. The applicant proposes to enlarge a nonconforming use by adding 6 feet to the existing height.

LOCATION: 1326 Fort Worth Avenue (AKA 1320 Fort Worth Avenue)

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

REQUEST:

- A request is made to enlarge a nonconforming "tower/antenna for cellular communication" use. The site is currently developed with a 74' high cellular tower that the applicant proposes to enlarge by increasing its height by 6 feet.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request to enlarge a nonconforming use since the basis for this type of appeal is based on when, in the opinion of the Board, the enlargement: 1) does not prolong the life of the nonconforming use; 2) would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and 3) will not have an adverse effect on the surrounding area.

STANDARD FOR A ENLARGING A NONCONFORMING USE:

The board may allow the enlargement of a nonconforming use when, in the opinion of the Board, the enlargement: 1) does not prolong the life of the nonconforming use; 2) would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and 3) will not have an adverse effect on the surrounding area.

GENERAL FACTS:

- The site is located in Subdistrict 2B of PD No. 714 that was established in 2005. The ordinance creating PD No. 714 describes Subdistrict 2 as follows:

- “Subdistrict 2 is a mixed-use subdistrict that consists predominantly of residential uses, but with some small retail and office uses. Because residential neighborhoods are adjacent to the subdistrict, it should be more serene than other subdistricts. New development should strengthen the existing residential neighborhoods and help create a pedestrian-friendly environment. North Edgefield Avenue should connect the north and south neighborhoods. Pedestrian protections from traffic, such as on-street parking, street trees, and parkways are desired. Buildings should have minimum or no setbacks. Building heights are controlled separately in Subdistricts 2A and 2B to optimize medium density residential development, preserve downtown views, and be sensitive to the existing single-family neighborhood to the north. Preserving historic buildings through adaptive re-use is a priority.”

Subdistrict 2 of PD No. 714 district does not allow a “tower/antenna for cellular communication” use by right.

- The applicant has submitted an elevation denoting the following:

- “top of existing monopole 70’ -6”;
- “new 6’ – 6” tower extension”;
- “top of tower extension and new T-Moble antenna rad c.l. = 77’-0””

The elevation also makes references to unlabeled dimensions of 74’- 0” and 80’ – 0”. The 74’ denotes the very highest point of the current tower and antennas, and the 80’ denotes the very highest point of the proposed tower and antenna, hence a request to enlarge a nonconforming tower/antenna for cellular communication use by 6’.

- The Dallas Development Code defines a nonconforming use as “a use that does not conform to the use regulations of this chapter, but was lawfully established under regulations in force at the beginning of operation and has been in regular use since that time.”
- The Building Inspection Development Code Specialist has stated that the site was zoned CS (Commercial Service) prior to its rezoning to PD No. 714 where the 74’ high cell tower was permitted by right.
- Given provisions set forth in PD No. 714, the existing “tower/antenna for cellular communication” use on the site can obtain “conforming use” status upon either:
 1. the applicant attaining a PD (Planned Development) District on the site from the City Council; or
 2. the City Council amending ordinance language pertaining to Subdistrict 2 of PD No. 714 whereby a “tower/antenna for cellular communication” use would be added as a permitted use on all lots located in this specific subdistrict.
- The applicant has been informed of the Dallas Development Code provisions pertaining to “Nonconforming Uses and Structures,” and how nonconforming uses can be brought to the Board of Adjustment for amortization where if the board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for that nonconforming use - a compliance date that is provided under a plan whereby the owner’s actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 714, Subdistrict 2B (Planned Development District)
North: PD No. 714, Subdistrict 2A (Planned Development District)
South: CD No. 13 (Conservation District)
East: PD No. 714, Subdistrict 2B (Planned Development District)
West: PD No. 714, Subdistrict 2B (Planned Development District)

Land Use:

The subject site is developed with a 74' high cell tower. The areas to the north, east, and west are developed with commercial uses, and the area to the south is a freeway (Interstate 30).

Zoning/BDA History:

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

Timeline:

- Feb. 12, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- March 22, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- March 22, 2007: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the March 30th deadline to submit additional evidence for staff to factor into their analysis;
 - the April 6th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and

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

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

The District Manager of Code Compliance submitted a review comment sheet marked "Has no objections."

STAFF ANALYSIS:

- The request site is zoned PD No. 714.
- The "tower/antenna for cellular communication" use is not a permitted use in Subdistrict 2 of the recently created PD No. 714 zoning district.
- An elevation has been submitted indicating a 74' height (indicating the very highest point of the current tower and antennas), and an 80' height (indicating the very highest point of the proposed tower and antenna).
- It is the applicant's burden of proof to establish that the expansion of the non-conforming use enlargement:
 1. does not prolong the life of the nonconforming use;
 2. would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and
 3. will not have an adverse effect on the surrounding area.
- Granting this request, subject to compliance with the submitted elevation, would allow the existing nonconforming "tower/antenna for cellular communication" use to be expanded in height by 6' to reach a maximum height of 80 feet.

FILE NUMBER: BDA 067-046

ORIGINAL BUILDING OFFICIAL'S REPORT:

Application of H. E. B., represented by Santos Martinez of Masterplan, for a variance to the front yard setback regulations and for a special exception to the landscape regulations at 5750 E. Lovers Lane. This property is more fully described as Lot 1A in City Block G/5402 and is zoned PD-610, which requires a front yard setback of 15 feet and requires mandatory landscaping. The applicant proposes to construct additions to an existing nonresidential structure and provide a zero front yard setback which would require a variance of 15 feet to the front yard setback regulations, and to amend a previously submitted landscape plan which would require a special exception to the landscape regulations.

LOCATION: 5750 E. Lovers Lane

APPLICANT: H. E. B.
Represented by Santos Martinez of Masterplan

REQUEST:

- The following appeals had been made in this application:
 1. a special exception to the landscape regulations; and
 2. variances to the front yard setback regulations of 15 feet*.These appeals were requested in conjunction with constructing and maintaining additions to an existing retail structure/use (Central Market).

- * On March 21, 2007, the Board of Adjustment Panel B conducted a public hearing where the board granted the requests for variances to the front yard setback regulations (subject to compliance with the submitted site/development plan), and delayed action on the request for a special exception to the landscape regulations until April 18, 2007.

REVISED APRIL 18th STAFF RECOMMENDATION:

Approval, subject to the following conditions:

1. The owner installs and maintains all landscaping on the property that is identified on the landscape plan that is greater than 50 feet beyond the shown construction area (including courtyard), and has it inspected by the city arborist, within 45 days of approval; and
2. The owner installs, and has inspected, all remaining landscaping shown on the landscape plan prior to the final inspection for the new building addition.

Rationale:

- The City's Acting Chief Arborist recommends approval of the request, subject to the conditions mentioned above.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

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

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

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

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

GENERAL FACTS:

- The Dallas Development Code requires full compliance with the Landscape Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet.
According to the City's Acting Chief Arborist, a special exception to the landscape requirements of Article X: The Landscape Regulations is made related to revisions that applicant seeks to make to an alternate landscape plan granted on the site on November 12, 2002, and related to new site changes/additions to the existing structure on the site.
- On March 2, 2007, the applicant's representative submitted additional 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 requests;
 - a copy of a "development plan;"
 - a copy of an "overall landscape plan;"
 - a copy of a "courtyard hardscape plan;" and
 - a copy of a "courtyard landscape plan."
- On March 7, 2007, the applicant's representative submitted additional information beyond what was submitted with the original application and discussed at the staff review team meeting (see Attachment B). This information included the following:
 - a letter that provided additional details about the requests; and
 - a revised copy of the "courtyard landscape plan."
- On March 12, 2007, the applicant's representative submitted additional information beyond what was submitted with the original application and discussed at the staff

review team meeting (see Attachment C). This information included a letter that provided additional details about the landscape special exception request.

- On March 12, 2007, the City's Acting Chief Arborist submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner (see Attachment D). The memo stated the following with regard to the originally submitted landscape plan:
 - Trigger:

The applicant is seeking a special exception to Article X and a revision to a previously approved alternate landscape plan (BDA023-008) in November of 2002. The requested setback variance and site changes in general require that landscaping be revised for approval by the Board of Adjustment. A future building permit for an additional square footage over 10,000 square feet would trigger Article X requirements.
 - Deficiencies:
 1. The site does not comply with Article X because landscaping does not meet residential adjacency requirements due to stated Oncor requirements in 2002 to remove all planted trees from the utility easement. Article X street tree requirements also could not be met with the needed adjustments.
 2. An alternate landscape plan was approved by the Board of Adjustment in 2002. At the time of this report, the site was not in complete compliance with this plan. Some trees and other plant materials that were required in various locations on the property were not installed. The applicant has stated in a letter that they will bring the site into compliance with the current requirements to address missing landscaping.
 3. The proposed landscape plan revisions submitted for approval at the time of this report is incomplete and does not address the removal of plant materials including site trees in the vicinity of Matilda Street near the proposed building addition.

Factors:

- The location of new plant materials in the revised landscaping is partially dependent on the board approval of a building setback variance.
- The applicant is proposing an optional block of crape myrtles to be located on utility company property and would be subject to electric utility approval.
- Staff requires a full site landscape plan for the building permit process to address all Article X compliance issues on site that is not given a special exception by the board.
- Recommendation:
 - Delay for one month pending the following:
 1. The applicant can produce a revised landscape plan for approval by the board that: a) complies with the provisions granted by the board in 2002, where feasible, and b) accounts for the relocation and removal of plant materials necessary for the construction of the proposed building expansion and courtyard. The plan should comply with Article X in all matters addressed in board case #023-008.
 2. The owner installs and maintains all required landscaping as shown on the approved 2002 landscape plan except those plant materials that would directly interfere with the construction of the proposed building expansion and courtyard.

- On March 21, 2007, the Board of Adjustment Panel A conducted a hearing on this application. The applicant's representative submitted photos of the site that will be available for review at the April 18th briefing/public hearing.
- On March 30, 2007, the applicant's representative submitted additional information to staff (see Attachment E). This information included the following:
 - a letter that provided additional details about the request; and
 - a copy of the "overall landscape plan;"
 - a copy of the "courtyard hardscape plan;" and
 - a copy of the "courtyard landscape plan."
- On April 9, 2007, the City's Acting Chief Arborist submitted a revised/updated memo to the Board Administrator and the Board of Adjustment Chief Planner (see Attachment F). The memo included the following update from the arborist's original memo of March of 2007:
 - A revised alternate landscape plan has been submitted that remains deficient of meeting Article X standards as indicated in the previous memo. The current plan does address some missing landscaping from the approved alternate landscape plan of 2002 with some adjustments to conform to the future site condition after construction of the addition.
 - At the time of this report, no replacement plantings have been completed on site
Factors:
 - On March 21st, the board gave approval of a building setback variance.
 - The proposed landscape plan indicates a surplus of site trees above the minimum required under Article X. Due to physical changes to the site not addressed on the original approved landscape plan, some trees and other plant materials are not shown in their original placement.
 - The new plan proposes a reduction of small tree (redbud) planting along the west wall of the structure to sustain a healthy growing condition for the large Eldarica pine trees that are shown there in the original revised landscape plan and that must still be planted. The arborist office supports this revision.
 - Other missing trees along Milton Street and along Lovers Lane are shown to be replaced on the revised plan.
 - The construction zone along the east side of the existing structure indicates a relocation of most of the existing Eldarica pine trees near the future courtyard and includes additional trees within the courtyard.
 - The applicant is proposing an optional block of crape myrtles (shown on plan) to be located on utility company property and would be subject to electric utility approval. No commentary from TXU electric representatives has been received.
 - The applicant has provided a full site landscape plan for the building permit review process to address all Article X compliance issues on site that is not given a special exception by the Board of Adjustment.
 - Trees still must be planted on site that are not tied directly to the new construction.
 - Recommendation:
 - Approval, subject to the following conditions:
 1. The owner installs and maintains all landscaping on the property that is identified on the landscape plan that is greater than 50 feet beyond the

- shown construction area (including courtyard), and has it inspected by the city arborist within 45 days of approval; and
2. The owner installs, and has inspected, all remaining landscaping shown on the landscape plan prior to the final building inspection for the new building addition.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 610 (Planned Development District)
North: MU-3 (Mixed Use)
South: PD No. 333 (Planned Development District)
East: MF-2(A) (Multifamily residential)
West: MU-3 (Mixed Use)

Land Use:

The subject site is developed with a retail use (Central Market). The areas to the north, south, and west are developed with retail/commercial uses; and the area to the east is developed with multifamily uses.

Zoning/BDA History:

1. BDA 023-008, 5750 E. Lovers Lane (the subject site)

On November 12, 2002, the Board of Adjustment Panel B granted a request for a special exception to the landscape regulations. The board imposed the following conditions with this request: 1) compliance with the submitted revised landscape plan is required; and 2) this special exception will become effective only after: the board administrator notifies the applicant in writing that the administrator has received letters authorizing the applicant to make a request on behalf of all owners of property for this special exception; or the applicant indemnifies the City of Dallas, the Board of Adjustment, and their officers and employees against any action arising out of the granting of this special exception without the signature of all the owners; or evidence of legal authority of the applicant to request and receive a special exception in a form acceptable to the city attorney.

Timeline:

- Jan. 26, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Feb. 15, 2007: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."
- Feb. 15, 2007: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the March 2nd deadline to submit additional evidence for staff to factor into their analysis;
 - the March 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- March 2, 2007 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).
- March 5, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, Development Services Senior Engineers, the Building Inspection Development Code Specialist, the Interim Chief Arborist, and the Assistant City Attorney to the Board.
- The District Manager of Code Compliance submitted a Review Comment Sheet marked "Has no objections."

- March 7 & 12, 2007 The applicant's representative submitted information beyond what was submitted with the original application and beyond what was discussed at the staff review team meeting (see Attachments B and C).
- March 12, 2007 The City's Acting Chief Arborist submitted a memo that provided his comments regarding the special exception to the landscape regulations (see Attachment D).
- March 21, 2007 The Board of Adjustment Panel B held a public hearing on this application where they granted the applicant's requests for variances to the front yard setback regulations (subject to compliance with the submitted site/development plan) and delayed action on the request for a special exception to the landscape regulations until April 18, 2007.
- March 30, 2007 The applicant's representative submitted information beyond what was submitted with the original application and what was presented/discussed at the March 21st public hearing (see Attachment E).
- April 2, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Acting Chief Arborist, and the Assistant City Attorney to the Board.
- April 9, 2007 The City's Acting Chief Arborist submitted a memo that provided his revised comments regarding the special exception to the landscape regulations (see Attachment F).

STAFF ANALYSIS:

- The landscape requirements on this site are not imposed by a site-specific landscape plan approved by the city plan commission or city council.
- According to the City's Acting Chief Arborist, the applicant is seeking a special exception to Article X and a revision to a previously approved alternate landscape plan (BDA023-008) in November of 2002 where some trees and other plant materials that were required on the property as part of this approved special exception were not installed on the site.
- The applicant has the burden of proof in establishing the following:
 - The special exception will unreasonably burden the use of the property; and the special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose the conditions suggested by the City's Acting Chief Arborist, the site would be "excepted" from specific landscape provisions in Article X: The Landscape Regulations, and "excepted" from certain

landscape provisions imposed in conjunction with a landscape special exception granted by the board in 2002 where a condition was imposed (among other things) that the applicant comply with the submitted landscape plan – some of which were never installed on the site.

BOARD OF ADJUSTMENT ACTION: MARCH 21, 2007

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

APPEARING IN OPPOSITION: No one

MOTION #1: Brannon

I move that the Board of Adjustment in Appeal No. **BDA 067-046**, suspend the rules and accept the evidence that is being presented to us today.

SECONDED: No one
MOTION FAILED FOR LACK OF A SECOND

MOTION #2: Chernock

I move that the Board of Adjustment in Appeal No. **BDA 067-046**, hold the landscape special exception under advisement until **April 18, 2007**.

SECONDED: **Beikman**
AYES: 5–Cox, Brannon, Gillespie, Beikman, Chernock
NAYS: 0 – None
MOTION PASSED 5 – 0 (Unanimously)

MOTION #3: Chernock

I move that the Board of Adjustment, in Appeal No. **BDA 067-046**, on application of H.E.B., represented by Santos Martinez of Masterplan, **grant** the 15 foot variances 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/development plan is required.

SECONDED: **Brannon**
AYES: 5–Cox, Brannon, Gillespie, Beikman, Chernock
NAYS: 0 – None
MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 067-054

REVISED BUILDING OFFICIAL'S REPORT:

Application of Dick P. Wood, Jr., represented by Robert Baldwin, for variances to the floor area ratio and height regulations and a special exception to the landscape regulations at 8623 Hillcrest Road. This property is more fully described as a 2.1151 acre tract in City Block 5464 and is zoned CR and MC-1 which limits the floor area ratio to 0.75 for all uses combined in the CR zoning and limits the floor area ratio to 0.90 for a mix of 2 categories (office use & retail/personal service use) in the MC-1 zoning. The zoning districts also limit the height of the structure to 47 feet 3 1/2 inches due to the residential proximity slope and require mandatory landscaping. The applicant proposes to construct a nonresidential structure with combined uses with a floor area ratio of 0.81 in the CR zoning which would require a variance of 0.06 to the floor area ratio regulations for the portion of the site zoned CR; and proposes to construct a nonresidential structure with a mix of 2 categories (office use & retail/personal service use) with a floor area ratio of 0.95 in the MC-1 zoning which would require a variance of 0.05 to the floor area regulations for the portion of the site zoned MC-1. The applicant proposes to construct a nonresidential structure with a height of 63 feet which would require a variance of 15 feet 8 1/2 inches to the height regulations due to the residential proximity slope regulations. Lastly, the applicant proposes an alternate landscape plan which would require a special exception to the landscape regulations.

LOCATION: 8623 Hillcrest Road

APPLICANT: Dick P. Wood, Jr.,
Represented by Robert Baldwin

REQUESTS:

- The following appeals were requested of the board at March 21, 2007 public hearing:
 1. A variance to the FAR (Floor Area Ratio) regulations of 0.06 is requested for proposed development located on the portion of the site zoned CR.
 2. A variance to the FAR (Floor Area Ratio) regulations of 0.05 is requested for proposed development located on the portion of the site zoned MC-1.
 3. A variance to the height regulations (specifically to the residential proximity slope or RPS) of 15' 8.5" is requested for the entire site where structures are proposed to reach 63' in height.

These appeals are requested in conjunction with constructing and maintaining a retail/office development on a site that is undeveloped.

Although the applicant had originally submitted merely a variance to the FAR (Floor Area Ratio) regulations of 0.31, the additional/revised variance needs described above and in the revised Building Official's Report (Attachment B) were determined upon further plan review by the Building Inspection Development Code Specialist. Then on

March 30, 2007, the applicant's representative added a 4th request to the application: a special exception to the landscape regulations.

STAFF RECOMMENDATION: (FAR & Height Variances)

Denial

Rationale:

- There are no physical site constraints or special conditions of the subject site whereby a literal enforcement of the code regulations results in unnecessary hardship: the subject site is flat, generally rectangular in shape (approximately 130' wide and approximately 740' long), and 2.2 acres in area. Although the applicant contends that the variances are directly related to narrowness of the lot, the site's approximately 130' width does not constrain the site from being developed in a manner commensurate with the development upon other parcels of land in districts with the same CR and MC-1 zoning classifications while simultaneously complying with development code standards including setback, height, and FAR regulations.
- The alleged narrowness of the site at approximately 130' in width should not encumber the developer from reducing his FAR in the CR zoned portion of the site by 0.06 and in the MC-1 zoned portion of the site by 0.05; nor relocating what the applicant describes as "fancy screening area for mechanical equipment" outside/below the residential proximity slope line.

STAFF RECOMMENDATION: (Landscape Special Exception)

Approval, subject to the following conditions:

1. Compliance with the submitted alternate landscape plan is required.
2. The applicant/owner must meet all private licensing and permit requirements for planting in the parkway.

Rationale:

- The City's Acting Chief Arborist recommends approval of the request, subject to the conditions mentioned above.

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 LANDSCAPE REGULATIONS:

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

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

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

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

GENERAL FACTS (related to the variances):

- The Dallas Development Code defines the term “floor area ratio” as the ratio of floor area to lot area. (Note: A 1:1 FAR is stated as “1.0,” 2:1 is stated as “2.0,” 2.5:1 is stated as “2.5,” etc.)
- The subject site is zoned CR (Community Retail) and MC-1 (Multiple Commercial). The maximum floor area for CR zoned properties is 0.5 for office uses and 0.75 for all uses combined; and the maximum floor area for MC-1 zoned properties that incorporate a mix of 2 use categories is 0.9. A site plan has been submitted indicating that the proposed FAR for the portion of the site zoned CR is 0.81 (or 0.06 greater than what is permitted by right); and that the proposed FAR for the portion of the site zoned MC-1 is 0.95 (or 0.05 greater than what is permitted by right).
- CR zoning establishes that the maximum structure height is 54 feet; and MC-1 zoning establishes that the maximum structure height is 70 feet. Both zoning districts provide further height restrictions related to the residential proximity slope, specifically that if any portion of a structure is over 26 feet in height, that portion may not be located above a residential proximity slope. Exception: Except for chimneys, structures listed in Section 51A-4.408(a)(2) may project through the slope to a height not to exceed the maximum structure height, or 12’ above the slope, whichever is less. Note that this exception applies in districts in which building height is limited to 36 feet in height or less, which is neither the case on the site’s CR and MC-1 zoned areas. (Although the applicant’s representative had written in his March 2nd letter that 12’ of the “fancy screening area for mechanical equipment” is allowed to encroach

above/beyond the RPS line, he informed the Board Administrator on March 13th that upon his further review of the code provisions, this statement was incorrect).

Both the CR and MC-1 zoning district establish provisions related to residential proximity slope, specifically that if any portion of a structure is over 26 feet in height, that portion may not be located above a residential proximity slope.

The Dallas Development Code establishes a residential proximity slope that limits height to 1 foot in height for every 3 feet away from private property in a residential zoning district (or a portion of a PD district which is restricted to residential uses).

The revised Building Official's Report states that the applicant proposes to construct structures that would reach 63' in height which is 15' 8.5" above the maximum height allowed due to the residential proximity slope of 47' 3.5".

(Staff has interpreted that the residential proximity slope was created to discourage incompatibility/privacy disruptions that may be caused by high office towers overlooking into single family lots).

- The site is flat, generally rectangular in shape site (approximately 130' on the north, 127' on the south, approximately 740' on the east, and approximately 743' on the west) and, according to the application is 2.2 acres in area. The site is zoned both CR and MC-1.
- DCAD records indicate that property located at 8623 Hillcrest Road is developed with a "converted service station" built in 1966 that is 1,554 square feet in area.
- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment C). This information included a letter that provided additional details about the request.
- The Building Inspection Development Code Specialist forwarded copies of elevations of the proposal to staff at the March 5th staff review team meeting (see Attachment D). The code specialist created his revised Building Official's Report of February 27th on these elevations.
- The applicant's representative submitted additional information beyond what was submitted with the original application and discussed at the March 5th staff review team meeting (see Attachment E). This information included a legible plat map of the subject site.
- On March 21, 2007, the Board of Adjustment Panel B conducted a public hearing on the variance requests and delayed action until April 18, 2007 to allow time for the applicant's representative to determine if he needed to request a special exception to the landscape regulations. (The Board Administrator circulated an email from the applicant's representative to the board members at the briefing (see Attachment F) that conveyed the applicant's representative's intent to seek a delay on the variance request until April in order for him to determine if he additionally needed to request a special exception to the landscape regulation on the site).
- On March 30 and April 2, 2007, the applicant's representative submitted additional information beyond what was submitted with the original application and discussed at the March public hearing (see Attachment G). This information included the following:
 - a letter that provided additional details about the requests; and
 - an alternate landscape plan.

- On April 2, 2007, the Building Inspection Development Code Specialist forwarded a revised Building Official's report to the Board Administrator that added a request for a special exception to the landscape regulations (see Attachment H).

GENERAL FACTS (related to the landscape special exception):

- The Dallas Development Code requires full compliance with the Landscape Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet.
According to the City's Acting Chief Arborist, a special exception to the landscape requirements of Article X: The Landscape Regulations is made, more specifically relief is requested from mandatory street tree conditions, and the provision that requires all required parking spaces to be located within 120' of a large canopy tree.
 - On March 30 and April 2, 2007, the applicant's representative submitted additional information beyond what was submitted with the original application and discussed at the March public hearing (see Attachment G). This information included the following:
 - a letter that provided additional details about the requests; and
 - an alternate landscape plan.
 - On April 2, 2007, the Building Inspection Development Code Specialist forwarded a revised Building Official's report to the Board Administrator that added a request for a special exception to the landscape regulations (see Attachment H).
 - On April 9, 2007, the City's Acting Chief Arborist submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner (see Attachment I). The memo stated the applicant is seeking relief from mandatory street tree conditions and the requirement that all parking spaces must be located within 120' from a large canopy tree.
 - Trigger:
New building construction.
 - Deficiencies:
 1. Street trees – 18 large species trees are required along the total street frontage. (A maximum of 9 trees are provided on the proposed plan that would comply with code).
 2. Parking lot – All required parking spaces must be located within 120' of a large canopy tree on the lot. (Some required parking spaces are underground and central portion of the property would not comply).
- Factors:
- Utility lines are within the parkway in the proximity to where the applicant could otherwise plant large trees to meet the street tree requirements by ordinance. In order to place any trees in the parkway that would not conflict with the overhead utility lines in the future, the applicant must install a small tree species that will not normally grow higher than 25' – 30'. The City identifies a "small tree" as "a tree of a species that normally reaches a height of less than 30' upon maturity." The applicant has chosen the redbud which is on the TXU recommended tree list for planting in proximity to electric utility lines, and is also on the City of Dallas approved replacement tree list.

- The narrow lot limits the amount of planting space available to plant large canopy trees without reducing the amount of ground-level parking spaces to serve the facility
- The proposed landscape plan contains two design standards (screening of off-street parking and enhanced pedestrian pavement) and still provides for the 15 required site trees above the 17 trees proposed within the city parkway.
- Recommendation:
 - Approval, subject to the following conditions:
 1. The applicant must comply with the submitted alternate landscape plan.
 2. The applicant must meet all private licensing and permit requirements for planting in the parkway.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail) and MC-1 (Multiple Commercial)
North: LO-1, SUP 307 (Limited Office, Specific Use Permit for telephone center)
South: City of University Park
East: R-7.5 (A) (Single family residential 7,500 square feet)
West: CR (Community Retail)

Land Use:

The subject site is undeveloped. The area to the north is developed with office uses; the area to the west is developed with a church use (Temple Emanu-el); the area to the south is developed with residential uses; and the area to the west is developed with office and retail 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:

Jan. 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.

Feb. 15, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

Feb. 16, 2007: The Board Administrator emailed the applicant's representative the following information:

- the public hearing date and panel that will consider the application;

- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the March 2nd deadline to submit additional evidence for staff to factor into their analysis/recommendation;
- the March 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Feb. 26, 2007: The Board Administrator emailed the applicant's representative with questions/concerns about the application (see Attachment A).

Feb. 27, 2007 The Building Inspection Development Code Specialist forwarded a revised Building Official's Report to the Board Administrator (see Attachment B).

March 2, 2007 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment C).

March 5, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, Development Services Senior Engineers, the Building Inspection Development Code Specialist, the Interim Chief Arborist, and the Assistant City Attorney to the Board.

The Building Inspection Development Code Specialist submitted copies of elevations of the proposal to staff at this meeting (see Attachment D).

The District Manager of Code Compliance submitted a Review Comment Sheet marked "Has no objections."

March 7, 2007 The applicant's representative submitted information beyond what was submitted with the original application and beyond what was discussed/considered at the March 5th staff review team meeting where staff formed a recommendation of denial of the request (see Attachments E).

- March 21, 2007 The Board of Adjustment Panel B held a public hearing on this application and delayed action on the requests until April 18, 2007. (The Board Administrator circulated an email from the applicant's representative to the board members at the briefing (see Attachment F) that conveyed the applicant's representative's intent to seek a delay on the variance request until April in order for him to determine if he additionally needed to request a special exception to the landscape regulation on the site).
- March 30 & April 2, 2007 The applicant's representative submitted information beyond what was submitted with the original application and what was presented/discussed at the March 21st public hearing (see Attachment G).
- April 2, 2007 The Building Inspection Development Code Specialist forwarded a revised Building Official's Report to the Board Administrator (see Attachment H).
- April 2, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Acting Chief Arborist, and the Assistant City Attorney to the Board.
- April 9, 2007 The City's Acting Chief Arborist submitted a memo that provided his revised comments regarding the special exception to the landscape regulations (see Attachment I).

STAFF ANALYSIS (related to the variance requests):

- The site is flat, generally rectangular in shape site (approximately 130' on the north, 127' on the south, approximately 740' on the east, and approximately 743' on the west) and, according to the application is 2.2 acres in area. The site is zoned both CR and MC-1.
- The applicant has the burden of proof in establishing the following:
 - That granting the variances to FAR regulations and the height regulations due to the residential proximity slope requested to construct and maintain a 63' high, retail/office development 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 (an undeveloped site that is flat, generally rectangular in shape, and 2.2 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 CR and MC-1 zoning classifications.

- 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 same CR and MC-1 zoning classifications.
- If the Board were to grant the FAR requests of 0.06 and 0.05, and the height variance of 15' 8.5", imposing a condition whereby the applicant must comply with the submitted site plan and section elevations, the structures would be limited to that shown on these submitted plans – structures in the CR zoned portion of the site with an FAR of 0.81; structures in the MC-1 zoned portion of the site with an FAR of 0.95; and structures in both zoning districts on the site that would be 15' 8.5" above the residential proximity slope line.

STAFF ANALYSIS (related to the landscape special exception):

- The landscape requirements on this site are not imposed by a site-specific landscape plan approved by the city plan commission or city council.
- According to the City's Acting Chief Arborist, the applicant is seeking a special exception to Article X, more specifically relief from mandatory street tree conditions and the requirement that all parking spaces must be located within 120' from a large canopy tree.
- The applicant has the burden of proof in establishing the following:
 - The special exception will unreasonably burden the use of the property; and the special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose the conditions suggested by the City's Acting Chief Arborist, the applicant would be "excepted" from full compliance with Article X: The Landscape Regulations, specifically landscape requirements related to mandatory street trees and the distance that required parking spaces must be located from large canopy trees.

BOARD OF ADJUSTMENT ACTION: MARCH 21, 2007

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Beikman**

I move that the Board of Adjustment, in Appeal No. **BDA 067-054**, hold this matter under advisement until **April 18, 2007**.

SECONDED: **Brannon**

AYES: 5–Cox, Brannon, Gillespie, Beikman, Chernock

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 067-053

BUILDING OFFICIAL'S REPORT:

Application of Lake Cliff Neighborhood Association, represented by Beverly Mendoza, to require compliance of a nonconforming use at 465 S. R. L. Thornton Freeway. This property is more fully described as Lots 5A, 5, and 8 in City Block 85B/3068 and is zoned MU-1 which limits the legal uses in a zoning district. The applicant requests that the board establish a compliance date for a nonconforming hotel or motel use.

LOCATION: 465 S. R. L. Thornton Freeway

APPLICANT: Lake Cliff Neighborhood Association
Represented by Beverly Mendoza

REQUEST:

- A request is made for the Board of Adjustment to establish a compliance date for a nonconforming motel use (The Mustang Inn) on the subject site. (According to information submitted by the applicant, the motel is comprised of approximately 42 rooms).

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

(a) Compliance regulations for nonconforming uses. It is the declared purpose of this subsection that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.

(1) Amortization of nonconforming uses.

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

- (B) Factors to be considered. The board shall consider the following factors when determining whether continued operation of the nonconforming use will have an adverse effect on nearby properties:
- (i) The character of the surrounding neighborhood.
 - (ii) The degree of incompatibility of the use with the zoning district in which it is located.
 - (iii) The manner in which the use is being conducted.
 - (iv) The hours of operation of the use.
 - (v) The extent to which continued operation of the use may threaten public health or safety.
 - (vi) The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust, and odor.
 - (vii) The extent to which public disturbances may be created or perpetuated by continued operation of the use.
 - (viii) The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use.
 - (ix) Any other factors relevant to the issue of whether continued operation of the use will adversely affect nearby properties.
- (C) Finality of decision. A decision by the board to grant a request to establish a compliance date is not a final decision and cannot be immediately appealed. A decision by the board to deny a request to establish a compliance date is final unless appealed to state court within 10 days in accordance with Chapter 211 of the Local Government Code.
- (D) Determination of amortization period.
- (i) If the board determines that continued operation of the nonconforming use will have an adverse effect on nearby properties, it shall, in accordance with the law, provide a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.
 - (ii) The following factors must be considered by the board in determining a reasonable amortization period:
 - (aa) The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.
 - (bb) Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
 - (cc) Any return on investment since inception of the use, including net income and depreciation.
 - (dd) The anticipated annual recovery of investment, including net income and depreciation.
- (E) Compliance requirement. If the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.

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

GENERAL FACTS:

- City records indicate that the motel use on the subject site became nonconforming on November 12, 2003 (Ordinance No. 25435).
- The Dallas Development Code states that "nonconforming use" means "a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time."
- The subject site is zoned MU-1 (Mixed Use -1) that permits a "hotel or motel" use by SUP (Specific Use Permit) only if the hotel or motel use has 60 or fewer guest rooms.
- The Dallas Development Code establishes the following provisions for "hotel or motel" use in Section 51A-4.205 (1):
 - "Hotel or motel."
 - (A) Definition: A facility containing six or more guest rooms that are rented to occupants on a daily basis.
 - (B) Districts permitted:
 - (i) Except as otherwise provided in Subparagraphs (B)(iii) or (B)(iv), by right in MO(A), GO(A), RR, CS, LI, IR, IM, central area, MU-1, MU-1(SAH), MU-2, Mu-2(SAH), MU-3, MU-3(SAH) and multiple commercial districts.
 - (ii) By SUP only in the CR district.
 - (iii) By SUP only for a hotel or motel use that has 60 or fewer guest rooms.
 - (iv) If an SUP is not required, RAR required in MO(A), GO(A), RR, CS, LI, IR, IM, MU-1, MU-1(SAH), MU-2, MU-2(SAH), MU-3, MU-3(SAH), and multiple commercial districts.
- The owner of the site could eliminate the nonconforming use status of the existing motel use by obtaining an SUP (Specific Use Permit) from City Council.
- The owner of the site could transition the use of the site from motel use to any use that is permitted by right in the site's existing MU-1 (Mixed Use-1) zoning classification. Uses permitted by right in this zoning district include a number of commercial and business service uses; institutional and community service uses; office uses; recreation uses; residential uses; retail and personal service uses; transportation uses; utility and public service uses; and wholesale, distribution, and storage uses.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following exhibits and documents to support the applicant's appeal:
 - A number of exhibits (including CO's, ordinances, affidavit, and photos);
 - Information related to 6 Code Compliance Service Request summary;
 - Information related to 11 Dallas Police Department Call for Service Reports for the subject site;

- Information related to 156 Dallas Police Department Miscellaneous Incident Reports for the subject site;
- Information related to 89 Dallas Police Department Offense Incident Reports for the subject site;
- Information related to 50 Dallas Police Department Arrest Reports for the subject site;
- Information related to 33 Dallas Police Department Vice Unit Arrest Reports; and
- Information related to 7 Dallas Police Department S.A.F.E. Team Reports.
- On March 21, 2007, the Board of Adjustment Panel B conducted a public hearing on this matter, and delayed action until April 18, 2007. No additional information was submitted to staff from either the applicant or the owner of the motel on the subject site.

BACKGROUND INFORMATION:

Zoning:

Site: MU-1 (Mixed Use)
North: MU-1 (Mixed Use)
South: MU-1 (Mixed Use)
East: PD No. 388 (Planned Development District)
West: MU-1 (Mixed Use)

Land Use:

The site is currently developed with a motel use that according to the applicant is comprised of approximately 42 guest rooms (The Mustang Inn). The areas to the north and south are developed with commercial uses; the area to the east is a freeway (R.L. Thornton Freeway); and the area to the west is developed with residential uses.

Zoning/BDA History:

- | | |
|---|---|
| <p>1. BDA 91T-107, 465 S. R.L. Thornton Freeway (the subject site)</p> | <p>On October 22, 1991, the Board of Adjustment held an application requesting a termination date for the nonconforming motel being operated on the site under advisement until the City Council acts on a zoning case (an SUP for a motel/hotel).</p> |
| <p>2. SUP No. 1152, 465 S. R.L. Thornton Freeway (the subject site)</p> | <p>On May 6, 1993, the City Council passed an ordinance establishing SUP No. 1152 for a one year time period for a motel that has fewer than 80 guest rooms on property zoned MU-1. According to Building Inspection staff, this SUP was deemed to invalid given a district court decision regarding specific code provisions related to SUP requirements for certain motels in the city.</p> |

Timeline:

- Jan. 26, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Feb. 15, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Feb 16, 2007: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the March 2nd deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - the March 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Feb. 16, 2007: The Board Administrator wrote/sent the owner of the site (Ketan and Kusum Masters) a certified letter that informed them that a Board of Adjustment case had been filed against his property. The letter included following enclosures:
- a copy of the Board of Adjustment application and related materials that had been submitted in conjunction with the application;
 - a copy of the section of the Dallas Development Code that described the Board of Adjustment (Section 51A-3.102);
 - a copy of the section of the Dallas Development Code that provides the definition of "nonconforming use" (Section 51A-2.102(90));
 - a copy of the section of the Dallas Development Code that provides the definition and provisions set forth for "hotel or motel" use (Section 51A-4.205(1));

- a copy of the section of the Dallas Development Code that provides provisions for “nonconforming uses and structures” (Section 51A-4.704); and
- a copy of the section of the Dallas Development Code that provides provisions regarding the Board of Adjustment hearing procedures (51A-4.703).

The letter also informed the owner of the date, time, and location of the briefing/public hearing.

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

March 5, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, Development Services Senior Engineers, the Building Inspection Development Code Specialist, the Interim Chief Arborist, and the Assistant City Attorney to the Board.

The District Manager of Code Compliance submitted a Review Comment Sheet marked “Recommends that this be denied” commenting “Haven for crack addicts. School within 1,000 feet. Owner does not screen tenants, prostitutes work out of there without regard or supervision.”

March 7, 2007: The Board Administrator sent the owner of the site (Ketan and Kusum Masters) and the applicant a copy of the procedures for the March 21, 2007 hearing (see Attachment B).

March 21, 2007: The Board of Adjustment Panel B conducted a public hearing on this matter and delayed action on the application until April 18, 2007.

March 23, 2007: The Board Administrator left a message with the owner of the motel on the site’s attorney informing him of the April 9th deadline to submit information for the board’s docket and the board’s rule pertaining to documentary evidence.

March 23, 2007: The Board Administrator spoke with the applicant informing her of the April 9th deadline to submit information for the board’s docket and reminding her about the board’s rule pertaining to documentary evidence.

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

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

STAFF ANALYSIS:

- The motel use on the subject site is a nonconforming use. The motel use on the subject site was issued a CO (Certificate of Occupancy) in 1978 but became a nonconforming use on November 12, 2003 when the City Council passed Ordinance No. 25435 – an ordinance that required an SUP (Specific Use Permit) for motel uses with 60 or fewer guest rooms located in MU-1 zoning districts.
- The Dallas Development Code states that it is the declared purpose of this subsection (Sec. 51A-4.704. Nonconforming Uses and Structures) that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.
- The owner of the site could eliminate the nonconforming use status of the existing motel use that has 60 or fewer guest rooms by obtaining an SUP from City Council.
- The owner of the site could transition the use of the site from motel use to any use that is permitted by right in the site's existing MU-1 (Mixed Use-1) zoning classification. Uses permitted by right in this zoning district include a number of commercial and business service uses; institutional and community service uses; office uses; recreation uses; residential uses; retail and personal service uses; transportation uses; utility and public service uses; and wholesale, distribution, and storage uses.
- The applicant has the burden of proof in establishing the following:
 - Continued operation of the nonconforming motel use will have an adverse effect on nearby properties.
- The purpose of the Board of Adjustment's April 18th public hearing shall be to determine whether continued operation of the nonconforming motel use will have an adverse effect on nearby properties. The Dallas Development Code states that if, based on the evidence presented at the public hearing, the board determines that continued operation of this use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for the nonconforming use (at a subsequent public hearing); otherwise, it shall not.

BOARD OF ADJUSTMENT ACTION: MARCH 21, 2007

APPEARING IN FAVOR:

Gregory Mays, 824 N Marsalis, Dallas, TX
Ross Emmett, 11503 Gatewood Dr, Dallas, TX
Efrain Marquez, 908 E 9th St., Dallas, TX
RD Pollard, 4230 W Illinois, Dallas, TX
Rose Cardenas, 421 W Page Ave, Dallas, TX

APPEARING FOR THE CITY:

Tania Alavera, City Attorney's office
Bill Jordan, Code Compliance, City of Dallas
Michael A Mendez, 1400 S Lamar, Dallas, TX

APPEARING IN OPPOSITION:

Thomas Keen, 2609 Banner Elk Cr., Plano, TX
Ketan Masters, 2601 Oates Ln, Arlington TX
Kaushue Masters, 2924 Clyupia Dr, GP, TX

4:28 P.M. Executive Session Begins

4:35 P.M. Executive Session Ends

MOTION #1: **Taylor**

I move that the Board of Adjustment in Appeal No. **BDA 067-053**, hold this case under advisement until **April 18, 2007**.

SECONDED: **Beikman**

AYES: 5–Cox, Brannon, Gillespie, Beikman, Chernock

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)