

**NOTICE FOR POSTING**  
**MEETING OF**  
**BOARD OF ADJUSTMENT, PANEL B**  
**WEDNESDAY, JUNE 25, 2008**

<b>Briefing:</b>	<b>10:00 A.M.</b>	<b>L1FN CONFERENCE CENTER AUDITORIUM</b>
<b>Public Hearing:</b>	<b>1:00 P.M.</b>	<b>L1FN CONFERENCE CENTER AUDITORIUM</b>

**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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06-25-2008

ZONING BOARD OF ADJUSTMENT, PANEL B  
WEDNESDAY, JUNE 25, 2008  
AGENDA

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

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**Donnie Moore, Chief Planner**  
**Steve Long, Board Administrator**  
**Kyra Blackston, Senior Planner**

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**MISCELLANEOUS ITEM**

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Approval of the <b>Wednesday, May 21, 2008</b> Board of Adjustment Public Hearing Minutes	M1
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**UNCONSTESTED CASES**

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BDA 078-080(K)	5848 Martel Avenue <b>REQUEST:</b> Application of Frank Blanchard for a variance to the front yard setback regulations	1
BDA 078-081	5330 Park Lane <b>REQUEST:</b> Application of Walter Taylor, represented by Robert Baldwin, for a special exception to the fence height regulations	2
BDA 078-083(K)	1117 Bally Mote Drive <b>REQUEST:</b> Application of Jay W. Thomas for a special exception to the front yard setback regulations	3
BDA 078-085	2909 Forest Lane <b>REQUEST:</b> Application of Kirk Williams and Tommy Mann of Winstead PC, for a special exception to the sign regulations	4

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**REGULAR CASES**

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BDA 078-076	2223 Hawthorne Avenue <b>REQUEST:</b> Application of Rick Hale, represented by Rob Baldwin, for a special exception to the tree preservation regulations	5
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BDA 078-086(K)

19009 Preston Road

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**REQUEST:** Application of Kirk Williams and Tommy Mann of Winstead PC for a special exception to the parking regulations

## 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 May 21, 2008 public hearing minutes.

**FILE NUMBER:** BDA 078-080(K)

**BUILDING OFFICIAL'S REPORT:**

Application of Frank Blanchard for a variance to the front yard setback regulations at 5848 Martel Avenue. This property is more fully described as the eastern 10 feet of Lot 16 and all of Lot 17 in City Block B/2877 and is zoned D(A) which requires a front yard setback of 25 feet. The applicant proposes to construct a residential duplex structure and provide a 7 foot 2 inch front yard setback which will require a variance of 17 feet 10 inches.

**LOCATION:** 5848 Martel Avenue

**APPLICANT:** Frank Blanchard

**REQUEST:**

- A variance to the front yard setback regulations of 17 feet 10 inches is requested in conjunction with constructing and maintaining a duplex in the site's Delmar Street 25' front yard setback on a site that is developed.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The site is different from other parcels of land in that it has two 25' front yard setbacks (one along Delmar Ave, another along Martel Ave). Once all setbacks are account for there is only 30' x 48' of developable area or 1,440 of the site's 8,460 square feet (or 17% of the site).
- The restrictive area of the subject site caused by the two front yard setback preclude it from being developed in a manner commensurate with developments upon other parcels of land in districts with the same D(A) zoning classification.

**STANDARD FOR A VARIANCE:**

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area ratios, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations that will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice

done. The variance must be necessary to permit development of a specific parcel of land which differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same zoning classification. A variance may not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land in districts with the same zoning classification.

### **GENERAL FACTS:**

- Structures on lots zoned D(A) are required to provide a minimum front yard setback of 25'. The site is located at the southeast corner of Martel Ave and Delmar St, and has two front yard setbacks. Martel is the shorter of lot's two frontages and Delmar St. is the longer of the lot's two frontages. The structure on the property immediately south of the site facing Delmar St. creates the double front yard setback requirement for the subject site.
- The site is flat, rectangular in shape (60' x 141') and approximately 8,460 square feet in area.
- The submitted site plan indicates the proposed structure will not encroach on the site's Martel Ave. front yard setback of 25 feet.
- DCAD states that there is a detached garage on the site.
- Once a 25' front yard setback is accounted for on the north and a 5' side yard setback is accounted for on the west, the developable width remaining on the 60' wide site is 35'.

### **BACKGROUND INFORMATION:**

#### **Zoning:**

<u>Site:</u>	D(A) (Duplex)
<u>North:</u>	D(A) (Duplex)
<u>South:</u>	D(A) (Duplex)
<u>East:</u>	D(A) (Duplex)
<u>West:</u>	D(A) (Duplex)

Land Use:

The subject site is currently developed with a duplex. The sites to the north, south, east, and west are developed with duplexes.

#### **Zoning/BDA History:**

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

#### **Timeline:**

- April 14, 2008 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 22, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- May 23, 2008:: The Board of Adjustment's Senior Planner contacted the applicant and shared the following information by phone and letter:
- the public hearing date and panel that will consider the application;
  - the criteria and standard that the board will use in their decision to approve or deny the request;
  - the June 9<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
  - the June 13<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the June public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.
- June 10, 2008 The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearing. 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 Chief Arborist, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.

### **STAFF ANALYSIS:**

- The submitted site plan indicates that about half of the proposed duplex building footprint is to be located in the site's Delmar Ave 25' front yard setback.
- The site is flat, rectangular in shape (141' x 60') and 8,460 square feet in area. The site is zoned D(A). The site has two 25' front yard setbacks. (No encroachment is shown or requested to be located in the site's Martel Ave. 25' front yard setback).
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the front yard setback regulations of 17' 10" requested in conjunction with constructing and maintaining a duplex in the site's



Martel Ave front yard setback will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.

- The variance is necessary to permit development of the subject site (a site that is flat, rectangular in shape (141' x 60') and 8,460 square feet in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same D(A) zoning classification.
- The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the D(A) zoning classification.
- If the Board were to grant the front yard variance request of 17 feet 10 inches, imposing a condition whereby the applicant must comply with the submitted site plan, the structure in the front yard setback would be limited to that shown on this plan – which in this case is a single family structure located 7 feet 2 inches from the site's Delmar Ave front property line (or 17 feet 10 inches into one of the site's two 25' front yard setbacks).

**FILE NUMBER:** BDA 078-081

**BUILDING OFFICIAL'S REPORT:**

Application of Walter Taylor, represented by Robert Baldwin, for a special exception to the fence height regulations at 5330 Park Lane. This property is more fully described as Lot 6A in City Block 5/5595 and is zoned R-1ac(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct an 11 foot fence which will require a special exception of 7 feet.

**LOCATION:** 5330 Park Lane

**APPLICANT:** Walter Taylor  
Represented by Robert Baldwin

**REQUEST:**

- A special exception to the fence height regulations of 7'\* is requested in conjunction with constructing and maintaining 3 arched open decorative iron gates (one gate at 8' in height along Alva Court that includes 7' high columns, and two gates at 10' in height along Park Lane) in the site's 40' front yard setbacks along Park Lane and Alva Court on a site being developed with a single family home.

\* Although the application specifically references a request for a 7' special exception, no materials (i.e. site plan or elevation) have been submitted that indicates any fence/gate/column that would exceed 10' in height which would require only a 6' special exception. Additionally note that this application does not include any request to remedy the existing approximately 8' high wall on the site – a wall that the applicant's representative has stated is "grandfathered."

**STAFF RECOMMENDATION:**

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

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:**

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

**GENERAL FACTS:**

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.

The subject site is located at the southwest corner of Park Lane and Alva Court. The site has a 40' front yard setback along Alva Court (since it is the shorter of the two street frontages) and a 40' front yard setback along Park Lane. (Even though the Park Lane frontage is the longer of the two street frontages, it is deemed a front yard in order to maintain the continuity of the established setback of homes to the west of the site that front northward onto Park Lane).

A site plan/elevation document had been submitted that indicated the site with a notation of "Existing Fence to Remain" with three separate gate elevations. (Materials of the gates were not specified although the gates appear to be open metal).

A revised site plan/elevation was submitted that added a notation: "All gates are to be constructed out of decorative iron" and indicated that both the proposed gates/columns and existing wall were in compliance with the visual obstruction regulations (See Attachment A).

- There is no single family home that has direct frontage to the proposed Alva Court gate and one home with direct frontage to the proposed Park Lane gates.
- The Board Administrator conducted a field visit of the site and surrounding area and noted a number of other fences above four (4) feet high which appeared to be located in a front yard setback in the immediate area. Although details of these fences and wall are provided in the "Zoning/BDA History" section of the case report, they have not been provided in this section of the report since this application only concerns adding three gates on a site developed with an existing approximately 8' high "grandfathered" wall.

## **BACKGROUND INFORMATION:**

### **Zoning:**

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

### **Land Use:**

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

### **Zoning/BDA History:**

1. BDA 92-034, 5323 Park Lane ( two lots immediately north of the subject site) On May 12, 1992, the Board of Adjustment followed the staff recommendation and granted a request for a special exception to the fence regulations of 3' 8" needed in conjunction with constructing and maintaining a 5' high sloped solid wall with a maximum height of 7' 8" for entry columns. The panel conditioned this request to the submittal of a revised landscape plan.
2. BDA 990-254, 9610 Meadowbrook (the lot immediately northwest of the subject site) On January 16, 2001, the Board of Adjustment Panel B granted requests for a special exception to the fence height regulations of 4.5' and to the visual obstruction regulations and imposed the following condition: compliance with the submitted revised elevation and newly revised planting plan is required. The case report stated that the requests were made in conjunction with constructing/maintaining, according to a note on a plan, an 8' wrought iron with columns; and landscape materials (and fence) in the visibility triangles at drive approaches on Meadowbrook Drive and Park Lane, and at the intersection of Meadowbrook Drive and Park Lane.

3. BDA 990-364, 5404 Park Lane (the lot immediately east of the subject site)

On November 14, 2001, the Board of Adjustment Panel B granted requests for a special exception to the fence height regulations of 7' 3" and to the single family regulations. The board imposed the following condition in conjunction with the fence height special exception: compliance with the submitted site plan and elevation is required. The board imposed the following condition in conjunction with the single family special exception: the applicant must deed restrict the property to prevent use of the additional dwelling unit as rental accommodations; and compliance with the submitted site plan is required. The case report stated that the requests were made in conjunction with constructing and maintaining a fence consisting of an 11' 3" wrought iron gate, a 9' 2" fence and 10' 3" brick columns within the 40' front yard setback along Park Lane, Holloway Road and Alva Court (with the requested 11' 3" gate that is within the 40' front yard setback located on Alva Court) and constructing/maintaining an additional dwelling unit on the subject property to be used as guest quarters.
4. BDA 056-210, 5423 Park Lane (two lots northeast of the subject site)

On September 19, 2006, the Board of Adjustment Panel A granted a request for a special exception to the fence height regulations of 4' 6" and imposed the following conditions: 1) Compliance with the submitted revised site plan and "gate elevation" is required; and 2) No portion of the fence or gate may exceed eight-feet, six inches in height. The case report stated that the request was made for a special exception to the fence height regulations of 4' 6" where a "gate elevation" had been submitted that indicated a "6' 6" (TYP.)" high decorative iron fence with 8' high brick columns, and an 8.5' high decorative iron gate with 8.5' high entry columns. In addition, a site plan had been submitted that indicated that the fence is proposed to be located in the site's Park Lane 40' front yard setback on a site being developed with a single family home.

## **Timeline:**

- April 25, 2008: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 22, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- May 27, 2008: The Board Administrator contacted the applicant and shared the following information by phone and email:
- 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 June 9<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
  - the June 13<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and, if not, may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- May 30, 2008 The applicant submitted additional information to the Board Administrator (see Attachment A).
- June 10, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist.
- No review comment sheets with comments were submitted in conjunction with this application.

## **STAFF ANALYSIS:**

- This request focuses on adding three open iron decorative gates (one gate at 8' in height on Alva Court, the other two gates at 10' in height on Park Lane) on an estate with (according to the applicant) an approximately 8' high "grandfathered" wall.

- A site plan/elevation document has been submitted that indicates the location of the proposed gates to be located in the site's Alva Court and Park Lane front yard setbacks as well as their materials (decorative iron) and heights (one at 8', the other two at 10').
- There are no single family homes that have direct frontage to the gate proposed on Alva Court since this home "fronts" Park Lane, and one single family home that would have direct frontage to the two gates proposed on Park Lane – an estate with its own board "special excepted" gate and fence/wall above 4' in height.
- The immediate area around the site (particularly on Park Lane) has a number of fences/walls above 4' in height and in the front yard setbacks, most of which have been previously "special excepted" by the Board of Adjustment (see the "Zoning/BDA History" section of the case report for further details).
- As of June 16, 2008, no letters had been submitted to staff either in support or in opposition to the request.
- The applicant has the burden of proof in establishing that the requested special exception to the fence height regulations of 7' (whereby a proposal that would reach a maximum 10' in height) will not adversely affect neighboring property.
- Granting this special exception to the fence height regulations of 7' with a condition imposed that the applicant complies with the submitted revised site plan/elevation document would assure that the proposal would be constructed and maintained in the location and of the heights and materials as shown on this document.
- The board may want to establish with the applicant's representative at the public hearing that indeed nothing in his proposal (as indicated on the revised site plan/elevation) is to exceed 10' in height. If this is established, then the Board would only need to grant a special exception of 6' in order to account for a maximum 10' high gate.

**FILE NUMBER:** BDA 078-083(K)

**BUILDING OFFICIAL'S REPORT:**

Application of Jay W. Thomas for a special exception to the front yard setback regulations at 1117 Bally Mote Drive. This property is more fully described as Lot 5 in City Block 4/4413 and is zoned R-10(A) which requires a front yard setback of 30 feet. The applicant proposes to construct and maintain a carport for a single family residential dwelling in a front yard and provide a 19 foot setback which will require a special exception of 11 feet.

**LOCATION:** 1117 Bally Mote Drive

**APPLICANT:** Jay W. Thomas

**REQUEST:**

- A special exception to the front yard setback regulations of 11 feet is requested to construct and maintain a carport in the site's Bally Mote Drive's 30' front yard setback.

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to the front yard setback for a carport since the basis for this type of appeal is when in the opinion of the board, the carport will not have a detrimental impact on surrounding properties.

**STANDARD FOR A VARIANCE:**

The board may grant a special exception to the minimum front yard requirements in this section for a carport for a single family or duplex use when, in the opinion of the board:

- (A) there is no adequate vehicular access to an area behind the required front building line that would accommodate a parking space; and
- (B) the carport will not have a detrimental impact on surrounding properties.

In determining whether to grant this special exception, the board shall consider the following factors:

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



- (C) The suitability of the size and location of the carport.
- (D) The materials to be used in construction of the carport.

The storage of items other than motor vehicles is prohibited in a carport for which a special exception has been granted under this subsection.

**GENERAL FACTS:**

- Structures on lots zoned R-10(A) are required to provide a minimum front yard setback of 30'. A scaled site plan has been submitted that shows that the proposed carport is 19' from the property line. Approximately 110 square feet of the proposed 360 square foot carport encroaches on the site's front yard setback (or 31%).
- Parcels of land in the R-10(A) zoning typically have an area of 10,000 square feet. The site is irregular in shape and approximately 17,420 square feet according to DCAD.
- According to DCAD, the site was developed in 1959 with a single family home that is in "excellent" condition with 2,768 square feet of living space. DCAD states that there is an attached garage on the site.
- A 30' front yard setback is required in the R-10(A) zoning district. The applicant submitted a site plan indicating a "new carport" on the site that is located 19' from the front yard property line (or 11' into the 30' front yard setback).
- There are other carports in the immediate vicinity of the subject site.
- The Dallas Development Code provides for the Board of Adjustment to consider special exceptions for carports in the front yard setback with a specific basis for this type of appeal.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-10 (A) (Single family district 10,000 square feet)  
North: R-10 (A) (Single family district 10,000 square feet)  
South: R-10 (A) (Single family district 10,000 square feet)  
East: R-10 (A) (Single family district 10,000 square feet)  
West: R-10 (A) (Single family district 10,000 square feet)

**Land Use:**

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

**Zoning/BDA History:**

There is no case history for neither this site or any properties in the immediate area.

**Timeline:**

- April 23, 2008      The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- May 22, 2008:      The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- May 23, 2008:      The Board Administrator contacted the applicant and shared the following information by phone and letter:
- the public hearing date and panel that will consider the application;
  - the criteria and standard that the board will use in their decision to approve or deny the request;
  - the June 9<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
  - the June 13<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the June public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.
- June 10, 2008 :      The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearing. 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 Chief Arborist, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.

**STAFF ANALYSIS:**

- The submitted site plan indicates that about one-third of the proposed carport structure’s 360 square foot footprint is to be located in the site’s 30’ front yard setback.
- The site is sloped and irregular in shape approximately 17,420 square feet in area in a R-10(A) zoned area where lots are typically 10,000 square feet.
- The applicant has the burden of proof in establishing the following:
  - That granting the special exception to the front yard setback regulations of 30’ requested to maintain an approximately 360 square foot, carport attached to a single family home that is 19’ from the front yard property line (or 11’ into the

30' front yard setback) will not have a detrimental impact on surrounding properties.

- Typically, staff has suggested that the Board impose conditions with this type of appeal. The following conditions would restrict the location and size of the carport in the front yard setback; require the carport in the front yard setback to be retained in its current design, material, and configuration; and would require the applicant to mitigate any water drainage related issues that the carport may cause on the lot immediately adjacent:
  1. Compliance with the submitted site plan, elevation, and sectional view document.
  2. The carport structure must remain open at all times.
  3. There is no lot-to-lot drainage in conjunction with this proposal.
  4. All applicable building permits are obtained.
  5. No item (other than a motor vehicle) may be stored in the carport.

**FILE NUMBER:** BDA 078-085

**BUILDING OFFICIAL'S REPORT:**

Application of Kirk Williams and Tommy Mann of Winstead PC for a special exception to the sign regulations at 2909 Forest Lane. This property is more fully described as Lot 3A in City Block A/6590 and is zoned MU-2 which requires that a non-monument sign is not allowed within 250 feet of either private property in a non-business zoning district or a public park of more than one acre. The applicant proposes to construct and maintain two non-monument signs within 250 feet of a private property in a non-business district which will require a special exception.

**LOCATION:** 2909 Forest Lane

**APPLICANT:** Winstead PC  
Represented by Kirk Williams and Tommy Mann

**REQUEST:**

- A special exception to the sign regulations is requested in conjunction with relocating/replacing and maintaining two detached signs within 250' of non-business zoning districts to the east (GO(A)) and to the south (NS(A)) of the subject site – a site currently developed as a shopping center (Josey Village Shopping Center).

**STAFF RECOMMENDATION:**

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

**STANDARD FOR A SPECIAL EXCEPTION TO THE SIGN REGULATIONS FOR A NON-MONUMENT SIGN WITHIN 250 FEET OF EITHER PRIVATE PROPERTY IN A NON-BUSINESS ZONING DISTRICT OR PUBLIC PARK OF MORE THAN ONE ACRE:**

The Board of Adjustment may grant a special exception to the provision that non-monument signs are not allowed within 250 feet of either private property in a non-business zoning district or a public park of more than one acre when, in the opinion of the board, the special exception will not adversely affect neighboring property.

**GENERAL FACTS:**

- The Dallas Development Code states non-monument signs are not allowed within 250 feet of either private property in a non-business zoning district or a public park of

more than one acre. (The code defines “business zoning district” as “any zoning district designated by this chapter as CR, RR, CS, industrial, central area, mixed use, or multiple commercial.”)

A site plan has been submitted that notes “Exist. sign to be relocated as shown” in two locations on the site.

One existing sign is located in the upper northeast corner of the lot where a new sign would replace it approximately 70’ further south and approximately no closer to the site’s eastern side property line/GO(A)-zoned property than the existing sign – an area developed as a office building. (The existing sign and proposed sign is/would be approximately 19’ from GO(A)-zoned property to the east).

The other existing sign is located in the lower southwest corner of the lot where a new sign would replace it approximately 5’ further north and approximately 55’ further east from the existing sign – an area developed as a convenience store. (This existing sign is approximately 80’ from NS(A)-zoned property to the southwest and would be approximately 100’ from this property once/if replaced).

Although two sign elevations have been submitted (what is presumed to the replacement signs), there is no clear definition as to which of these two signs will be located in either of the two spots noted on the site plan, nor the relatively of these presumed proposed signs to what is presumed to be the existing signs on the site. One sign elevation details a sign that is 35’ high with an approximately 13.5’ x 12’ signboard; the other sign elevation details a sign that is 40’ high with an approximately 25’ x 16’ signboard.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: MU-2 (Mixed Use)  
North: MU-2 (Mixed Use)  
South: NS(A) & MU-1 (Neighborhood Service and Mixed Use)  
East: MU-2 & GO(A) (Mixed Use and General Office)  
West: MU-2 (Mixed Use)

### **Land Use:**

The site is currently developed as a shopping center (Josey Village Shopping Center). The area to the north is the LBJ Freeway; the area to the east is developed with retail and office uses; the area to the south is developed with residential and retail uses; and the area to the west is developed with retail uses.

### **Zoning/BDA History:**

1. Z 078-150, Property located at the northeast corner of Josey Lane and Forest Lane (the subject site) On April 23, 2008, the City Council moved to deny a request for an MU-3 Mixed Use District with deed restrictions on property zoned MU-2 Mixed Use with prejudice.

## **Timeline:**

- April 25, 2008: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 22, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- May 22, 2008: The Board Administrator contacted the applicant and shared the following information by phone and email:
- 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 June 9<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
  - the June 13<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and, if not, may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- June 10, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist.
- No review comment sheets with comments were submitted in conjunction with this application.

## **STAFF ANALYSIS:**

- The request focuses on relocating/replacing/maintaining two detached signs in an existing 1970's shopping center – relocated/replacement signs that would be within 250' of non-business zoning districts to the east and south.
- The applicant has stated that one sign is proposed to be relocated/replaced given the widening of LBJ Freeway, while the other sign is proposed to be relocated/replaced in conjunction with the desire to simply upgrade it.

- The proposed relocation/replacement of one of these signs would be no closer to the non-business zoned land to the east than an existing sign, and the other sign would be farther from the other non-business zoned land to the south than the other existing sign on the site. Given that DCAD shows that the center was built in 1979, the two existing signs on the site were most likely erected legally since the 250 distance requirement from which the applicant seeks exception from was not part of the sign regulations until 2004.
- Two sign elevations have been submitted with specific dimensions as well as a site plan noting the two locations where “Exist. sign to be relocated as shown.” It cannot be determined from either notations on the elevations or site plan which of the two signs is to be located near the northeast corner of the site near LBJ Freeway and which sign is to be located in the south central portion of the site near Forest Lane. Nor can it be determined the scale/size of the two proposed signs relative to the existing signs since elevations/dimensions of the existing signs have not been submitted.
- The applicant has the burden of proof in establishing the following:
  - That granting the special exception to the provision that non-monument signs are not allowed within 250 feet of either private property in a non- business zoning district (which in this case are two replacement signs that will not be closer to these districts) will not adversely affect neighboring property.
- Granting this special exception (with a condition imposed that the applicant complies with the submitted site plan and sign elevations) would allow the relocation/replacement of two signs within the existing shopping center.
- If the Board feels it is necessary to specify which of the two submitted sign elevations go in the two relocated areas shown on the site plan, they may require the applicant to label the elevations accordingly.

**FILE NUMBER:** BDA 078-076

**BUILDING OFFICIAL'S REPORT:**

Application of Rick Hale, represented by Rob Baldwin, for a special exception to the tree preservation regulations at 2223 Hawthorne Avenue. This property is more fully described as Lots 19, 20, 23, 24, 28, & 32 in City Block 2301 and is zoned PD-193 (MF-2) which requires tree mitigation. The applicant proposes to construct a single family residential development and provide an alternate tree mitigation plan which will require a special exception.

**LOCATION:** 2223 Hawthorne Avenue

**APPLICANT:** Rick Hale  
Represented by Rob Baldwin

**REQUEST:**

- A special exception to the tree preservation regulations is requested in conjunction with mitigating removed protected trees on a site that is planned to be developed with a single family development.

**STAFF RECOMMENDATION:**

Denial

Rationale:

- The applicant had not substantiated:
  - how strict compliance with the requirements of the Tree Preservation Regulations of the Dallas Development Code (specifically related to the timing in which protected trees removed on the site must be mitigated) will unreasonably burden the use of the property; and
  - that the special exception will not adversely affect neighboring property .
- The City's Chief Arborist recommends denial of the request.

**STANDARD FOR A SPECIAL EXCEPTION TO THE TREE PRESERVATION REGULATIONS:**

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

- (1) strict compliance with the requirements of this article will unreasonably burden the use of the property;
- (2) the special exception will not adversely affect neighboring property; and



(3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

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

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

### **GENERAL FACTS:**

- The Dallas Development Code requires full compliance with the Tree Preservation Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet.

An application has been submitted that states that a request has been made to “grant an extension to the time allowed to complete tree mitigation requirements” and that “this site is in the process of being developed and due to market conditions, we are requesting extension to comply with the tree mitigation requirements when the final building inspection is completed.”

- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Chief Board of Adjustment Planner prior to the November hearing (see Attachment A). The memo stated the following:
  - The applicant is requesting relief from tree mitigation regulations of Article X of the Dallas Development Code (The Landscape and Tree Preservation Regulations), more specifically, relief from Section 51A-10.134(5) pertaining to timing of tree replacement.
  - Trigger:

An approved tree removal permit was issued in conjunction with a grading permit to prepare the undeveloped site for a new single family development.
  - Deficiencies:

The tree removal permit was issued for the entire undeveloped land area on November 10, 2006. Article X requires all mitigation for trees removed under a tree removal permit to be completed no later than 18 months from the beginning of tree removal. The 18 month anniversary was May 10, 2008. No tree replacement has occurred to date.
  - Factors for consideration:
    - All tree mitigation is required within 30 days of removal or within six months of removal with a notarized affidavit from the owner requesting the extended time. The following provisions also apply:
      - Section 51A-10.134(5) states “if a property owner provides the building official with a performance bond or letter of credit in the amount of the total cost of purchasing and planting replacement trees, the building official may permit the property owner up to 18 months to plant the replacement trees with the following restrictions:

- For single family or multifamily developments, at least 50 percent of the total caliper of replacement trees must be planted before 65 percent of the development has received a final building inspection or a certificate of occupancy, and all replacement trees must be planted prior to the completion of the development; and
- In all other cases, the replacement trees must be planted prior to the issuance of a certificate of occupancy.
- The preliminary estimated mitigation was determined at permit review to be a total of 1,712 caliper inches from 105 trees with a replacement value (Reforestation Fund) of \$145,842.00. This number is subject to final adjustment at time of inspection based on the protection of some trees on the work site.
- All tree mitigation requirements remain with the Property in perpetuity and are adopted by any new owner of that Property.
- The site has been cleared and graded per plan. The infrastructure has been installed and the site is ready for new vertical construction.
- As of the date of this report (6-16-08), the mitigation does not have an accompanying planting plan, and is as stated on the application: "This site is in the process of being developed and due to market conditions, we are requesting extension to comply with the tree mitigation requirements when the final building inspection is completed."
- Recommendation
  - Denial.
  - Reasoning:
    - A specified time duration has not been presented and the estimated time for building inspections on the Property for new projects cannot be determined. No new building permits have been submitted or issued for the Property. The chief arborist does not favor the "unlimited" nature of the request for time extension and believes this proposal does not meet with the spirit or the intent of Article X.
    - Although it is encouraged and directed by ordinance when it is practicable to do so, tree mitigation is not required to be planted back onto the Property with the designated landscaping. The property owner can still comply with the tree preservation ordinance by mitigating through any of the alternative methods described in Article X: planting within one mile of the Property, donating trees to the Park Department, forming a conservation easement on property within city limits, and/or paying into the Reforestation Fund.
    - If the Board chooses to favor the request, the chief arborist recommends that the board consider the designation of a specified time to complete all tree mitigation to not exceed 18 months from the date of this hearing, being December 25, 2009, and that this should be subject to the conditions of Section 51A-10.134(5)(i) for single family or multifamily developments.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: PD No. 193 (MF-2 Subdistrict) (Planned Development District, Multifamily)  
North: PD No. 193 (MF-2 Subdistrict) (Planned Development District, Multifamily)  
South: IR (Industrial Research)  
East: PD No. 193 (PDS 28) (Planned Development District)  
West: IR (Industrial Research)

### **Land Use:**

The subject site is in the process of being developed as a single family subdivision. The area to the north is developed with single family residential uses; the area to the east is developed as what appears to be an institutional/private school use; and the areas to the south and west are developed with office/industrial uses.

### **Zoning/BDA History:**

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

### **Timeline:**

- April 24, 2008: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 22, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- May 27, 2008: The Board Administrator contacted the applicant and shared the following information by phone and email:
- 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 June 9<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
  - the June 13<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and, if not, may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- June 10, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public

hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist.

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

June 16, 2008      The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment A).

**STAFF ANALYSIS:**

- The request focuses on obtaining additional time to mitigate protected trees removed on this site (i.e. trees removed in conjunction with developing a single family development) beyond the 18 months the applicant had to do so from when a tree removal permit was issued on this site on November 10, 2006.
- The applicant has not presented a specific time period or an estimated time for building inspections of the homes to be constructed on the site.
- The property owner can comply with tree preservation regulations by mitigating the removed trees in any of the alternative methods provided for in Article X: planting within one mile of the Property, donating trees to the Park Department, forming a conservation easement on property within city limits, and/or paying into the Reforestation Fund.
- The City of Dallas Chief Arborist recommends that this request be denied.
- The applicant has the burden of proof in establishing the following:
  - Strict compliance with the requirements of the Tree Preservation Regulations of the Dallas Development Code (i.e. mitigating all protected trees removed on the site within 30 days – 18 months from removal) will unreasonably burden the use of the property (in this case, a site that is undeveloped but planned to be developed as a single family subdivision).
  - The special exception (allowing for an extension of the time period in which to fully mitigate protected trees removed on the site to “when the final building inspection is completed”) will not adversely affect neighboring property.
- If the Board chooses to grant this request, staff suggests that the Board consider the designation of a specified time limit to complete all tree mitigation to not exceed 18 months from the date of the hearing which in this case would be December 25, 2009, and that this should be subject to the conditions of Section 51A-10.134(5)(i) for single family or multifamily developments.

**FILE NUMBER:** BDA 078-086(K)

**BUILDING OFFICIAL'S REPORT:**

Application of Kirk Williams and Tommy Mann of Winstead PC for a special exception to the parking regulations at 19009 Preston Road. This property is more fully described as Lot 58 in City Block 18/8736 and is zoned PD-170(Tract 6A) which requires parking to be provided. The applicant proposes to construct and maintain a nonresidential structure for office use, personal service use, restaurant without drive-in or drive-through service use, and general merchandise or food store less than 3500 square feet use and provide 303 of the required 377 parking spaces which will require a special exception of 74 spaces (19.6% reduction) to the parking regulations.

**LOCATION:** 19009 Preston Road

**APPLICANT:** Winstead PC

**REQUEST:**

- A special exception to the off-street parking regulations of 74 parking spaces (or 19.6% of the required off-street parking) is requested in conjunction with constructing and maintaining a nonresidential structure for office use, personal use, restaurant without drive-in or drive-through service use, and general merchandise or food store less than 3500 square feet use, and provide 303 of the required 377 parking spaces.

**STAFF RECOMMENDATION:**

Approval:

Rationale:

- The Development Services Senior Engineer has no objections to the request based on letters (and traffic counts) submitted by the applicant's representative.
- The applicant has substantiated how the parking demand generated by the proposed uses does not warrant the number of off-street parking spaces required, and that the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not

warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.

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

#### **GENERAL FACTS:**

- This site is in PD 170. The site is currently developed with the Preston Lloyd Shopping Center and is proposed to include the following mix of uses: office use,

personal service use, restaurant without drive-in or drive-through service use, and general merchandise or food store less than 3500 square feet use.

- According the applicant the site is currently 48% leased.
- The applicant's representative has submitted a parking analysis related to the allowed uses of this property (see attachment).
- The site has a total of 54,234 square feet.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: PD No. 170 (Planned Development)  
North: PD No. 170 (Planned Development)  
South: PD No. 170 (Planned Development)  
East: PD No. 765 and PD 202 (Planned Development)  
West: PD No. 170 (Planned Development)

### **Land Use:**

The subject site is developed with Preston Lloyd Shopping Center. The property to the north is developed with a shopping center, the property to the west is developed with a multi-family use, the properties to the south are residential.

### **Zoning/BDA History:**

PD 170 was established by ordinance 18131, passed by the Dallas City Council on January 11, 1984.

### **Timeline:**

- April 25, 2008: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 22, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- May 23, 2008: The Board of Adjustment's Senior Planner contacted the applicant's representative and shared the following information by letter:
- the public hearing date and panel that will consider the application;
  - the criteria and standard that the board will use in their decision to approve or deny the request;
  - the June 9<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
  - the June 13<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;

- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the June public hearing after considering the information, evidence and testimony presented to them by the applicant and all other interested parties.

June 10, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearing. 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 Chief Arborist, and the Assistant City Attorney to the Board.

June 12, 2008 The Development Services Senior Engineer submitted a review comment sheet marked “Has no objections” (see attachment).

**STAFF ANALYSIS:**

- The property owned by First Allied Corporation, is a mixed use shopping center with uses that include, restaurant, personal service, and retail uses.
- According to the applicant 48% of the 54,234 square foot structure is occupied, with 28, 200 square feet vacant or 52% vacant.
- The applicant is requesting a special exception of 74 spaces or a 19.6% reduction to the parking requirement.
- The applicant has not specified any particular use in conjunction with the request, however the applicant indicates the following mix of uses for consideration: office use, personal service use, restaurant without drive-in or drive-through service use, and general merchandise or food store less than 3500 square feet use.
- 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.
- The applicant has submitted a parking analysis conducted for the site that includes this variety of uses (see attachment).
- The submitted parking analysis states that the “currently occupied areas of Preston Lloyd Shopping Center require 182 parking spaces>”
- The applicant has the burden of proof in establishing the following:
  - The parking demand generated by the 54,234 square foot shopping center” use does not warrant the number of off-street parking spaces required, and
  - The special exception of 74 spaces (or 19.6 percent 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 indicated that he has no objections to this request.



