

**NOTICE FOR POSTING**  
**MEETING OF**  
**BOARD OF ADJUSTMENT, PANEL B**  
**WEDNESDAY, AUGUST 16, 2006**

<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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8-16-2006

ZONING BOARD OF ADJUSTMENT, PANEL B  
WEDNESDAY, AUGUST 16, 2006  
AGENDA

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

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**Donnie Moore, Chief Planner**  
**Steve Long, Board Administrator**  
**Jennifer Hiromoto, Senior Planner**

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**MISCELLANEOUS ITEMS**

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	Approval of the <b>Wednesday, June 21, 2006</b> Board of Adjustment Public Meeting Minutes	M1
Unassigned	10522 Aledo Drive <b>REQUEST:</b> Application of Rosa Puente to waive the filing fee to be submitted in conjunction with a potential Board of Adjustment appeal	M2
	Chief Planner and Assistant City Attorney status report on the provision of staff recommendations	M3

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**UNCONTESTED CASES**

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BDA 056-174(J)	4616 Langdon Road <b>REQUEST:</b> Application of Beck Construction, represented by Gillett Berger for a special exception to the parking regulations	1
BDA 056-176	6033 Campbell Road <b>REQUEST:</b> Application of David Piro for a special exception to allow an additional sign	2
BDA 056-177(J)	2424 Simpson Stuart Road <b>REQUEST:</b> Application of T-Mobile, represented by Rob Baldwin, for a variance to the height regulations	3
BDA 056-178	17174, 17180, and 17194 Preston Road, 6033 Campbell Road, 6220 McCallum Boulevard	4

**REQUEST:** Application of DeShazo Tang & Asso. Inc. represented by John J. DeShazo Jr., for a special exception to the parking regulations

BDA 056-185	6630 Pemberton Drive <b>REQUEST:</b> Application of Gianna Glaesmann for a variance to the parking regulations	5
BDA 056-197	4342 Crowley Drive <b>REQUEST:</b> Application of Michael J. Krzysiak for a variance to the side yard setback regulations	6
BDA 056-198(J)	9707 Meadowbrook Drive <b>REQUEST:</b> Application of Steve Aaron, represented by Roger Albright for a special exception to the single family regulations	7

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**REGULAR CASE**

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BDA 056-169	7402 Greenville Avenue #102 <b>REQUEST:</b> Application of John Alsenih, Represented by Roger Albright, to appeal the decision of the Building Official	8
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## 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 June 21, 2006 public hearing minutes.

**MISCELLANEOUS ITEM NO. 2**

**FILE NUMBER:** Unassigned

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

**LOCATION:** 10522 Aledo Drive

**APPLICANT:** Rosa Puente

**STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:**

The Dallas Development Code states that the board may waive the filing fee for a board of adjustment application if the board finds that payment of the fee would result in substantial financial hardship to the applicant.

**GENERAL FACTS:**

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waiver/s reimbursements:
  - The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.
  - The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board's miscellaneous docket for predetermination.
  - If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.
  - In making this determination, the board may require the production of financial documents.
- The applicant submitted a letter to the Board Administrator requesting a waiver of the \$600.00 filing fee submitted in conjunction with a potential appeal to the Board of Adjustment (see Attachment A). This letter contained some details on the applicant's finances but did not specify the dollar amount of the fee (or fees) to be waived.
- The applicant submitted additional information (including a letter, financial income/debt accounts from March 2006- August 2006, and a series of receipts and bills) (see Attachment B).

**Timeline:**

July 26, 2006      The applicant submitted a letter requesting a waiver of the filing fee for a Board of Adjustment application that may be submitted/requested at the address referenced above.

July 26, 2006: The Board of Adjustment Secretary randomly assigned this request to Board of Adjustment Panel B.

July 26, 2006: The Board Administrator wrote the applicant a letter that conveyed the following information:

- the public hearing date and panel that will consider the request;
- 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 noon, August 4<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 recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

August 4, 2006 The applicant submitted additional information (including a letter, financial income/debt accounts from March 2006- August 2006, and a series of receipts and bills) (see Attachment B).

**MISCELLANEOUS ITEM NO. 3**

A briefing will be conducted by the Board of Adjustment Chief Planner and the Assistant City Attorney to the Board of Adjustment on the status of providing staff recommendations on specific types of board of adjustment appeals.



**FILE NUMBER:** BDA 056-174(J)

**BUILDING OFFICIAL'S REPORT:**

Application of Beck Construction, represented by Gillett Berger for a special exception to the parking regulations at 4616 Langdon Road. This property is more fully described as Lot 1 in City Block A/8284 and is zoned IR which requires parking to be provided for new construction. The applicant proposes to construct a building and provide 111 of the required 221 parking spaces which would require a special exception of 110 spaces or 50% to the parking regulations. Referred to the Board of Adjustment in accordance with Section 51A-4.311 (a) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

**LOCATION:** 4616 Langdon Road

**APPLICANT:** Beck Construction  
Represented by Gillett Berger

**REQUEST:**

- A special exception to the off-street parking regulations of 107 spaces (or 48%) requested in conjunction with an inside industrial use.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
  - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
  - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.

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

### **GENERAL FACTS:**

- The request site is currently under development with an inside industrial use.
- The applicant is requesting to provide 114 parking spaces (or 52%) of the 221 spaces required with the construction of a 132,790 square foot building.
- The Dallas Development Code states the parking requirements for the following uses:
  - 1 space per 600 square feet for industrial (inside) uses.
- The site plan shows the proposed development would construct a structure with a footprint of approximately 112,000 square feet (560' x 200'), a guard shack, the parking lot and loading areas. The site plan also shows an area of future development in Phase 2.
- The applicant has provided a table of parking analysis on the site plan that describes the types of uses within the building, the number of employees needed for the operation of the inside industrial use, and the number of spaces required and provided.
- DCAD indicates that the request site is undeveloped.

## **BACKGROUND INFORMATION:**

### **Zoning:**

<b><u>Request Site:</u></b>	IR (Industrial Research)
<b><u>North:</u></b>	IR (Industrial Research)
<b><u>South:</u></b>	LI (Light Industrial)
<b><u>East:</u></b>	IR (Industrial Research)
<b><u>West:</u></b>	IR (Industrial Research)

### **Land Use:**

The request site is under construction with an industrial (inside) use. The area to north, south, east and west is undeveloped. Further to the west, uses include a cell tower and residential.

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

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

### **Timeline:**

- June 16, 2006      The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 12, 2006:      The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- July 17, 2006:      The Board Senior Planner contacted the applicant and conveyed the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the August 4<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the August public hearing after considering the information/evidence and

testimony presented to them by the applicant and all other interested parties.

July 26, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; the Chief Arborist, and the Assistant City Attorney to the Board.

August 4, 2006 Transportation Engineer Nguyen provided a review comment sheet stating no objection.

### **STAFF ANALYSIS:**

- The Development Services Transportation Engineer provided comments on August 4, 2006 stating he has no objection to the request.
- Langdon Road is indicated in the Thoroughfare Plan as an undivided Community Collector with 60 feet of right of way.
- The applicant submitted a parking analysis table on the site plan that indicates the floor area and number of employees to demonstrate the parking need.
- The Dallas Development Code required 1 space per 600 square feet of floor area; the applicant is proposing to provide parking at the ratio of 1 space per 1,165 square feet.
- The site plan indicates an area for future expansion. Any expansion will be subject to meeting the requirements of the off-street parking regulations based on the floor area.
- Granting this request, subject to the condition that the special exception automatically and immediately terminates if and when the industrial (inside) use on the site is changed or discontinued, would allow the construction of a 132,790 square foot structure with 114 off-street parking spaces.
- The applicant has the burden of proof in establishing the following as related to the request for a special exception of 107 parking spaces:
  - The extent to which the parking spaces provided will be remote, shared, or packed parking.
  - The parking demand and trip generation characteristics of all uses for which the special exception is requested.
  - Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
  - The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
  - The availability of public transit and the likelihood of its use.
  - The feasibility of parking mitigation measures and the likelihood of their effectiveness.

**FILE NUMBER:** BDA 056-176

**BUILDING OFFICIAL'S REPORT:**

Application of David Piro for a special exception to allow an additional sign at 6033 Campbell Road. This property is more fully described as Lot 1A in City Block 8206 and is zoned CR which allows one detached sign per street frontage. The applicant proposes to erect one additional detached sign which would require a special exception. Referred to the Board of Adjustment in accordance with Section 51A-7.703 (d) (2) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

**LOCATION:** 6033 Campbell Road

**APPLICANT:** David Piro

**REQUEST:**

- A special exception to the sign regulations is requested to locate and maintain an additional detached sign on the subject site's Campbell Road street frontage. The applicant proposes to construct and maintain a detached monument sign that would advertise an existing retail business (Sheridan's Lattes & Frozen Custard) for the site's only free-standing structure/business on Campbell Road. The subject site is currently developed as a shopping/office center (Preston Trail Village).

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

The Board of Adjustment may, in specific cases and subject to appropriate conditions, authorize one additional detached sign on a premise in excess of the number permitted by the sign regulations as a special exception to these regulations when the board has made a special finding from the evidence presented that strict compliance with the requirement of the sign regulations will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.

**GENERAL FACTS:**

- The Dallas Development Code states that only one detached sign is allowed per street frontage other than expressways.  
The applicant has a submitted site plan of the subject site – a site with approximately 850 linear feet of frontage along Campbell Road. The site plan denotes an existing sign fronting Campbell Road (which, according to a field visit of the site, is a multi-tenant sign advertising businesses in the existing shopping center) and a proposed

sign to front Campbell Road (which, according to a submitted elevation, is a single-tenant sign that would advertise the business in the free-standing retail building on the site: Sheridan's Lattes & Frozen Custard).

- A sign elevation of the proposed additional single-tenant monument sign indicates that this sign is 66" high, 96" long, and 18" wide. (A sign elevation of the existing multi-tenant sign has not been submitted).
- The site plan of the overall subject site indicates that the proposed sign is to be located about 13' from the subject site's western boundary and about 450' west of the existing multi-tenant sign that is located near the center of the site.
- Amendments to the sign regulations of the Dallas Development Code were made in October of 2004. The previous sign regulations allowed one detached sign on any premise except that a premise that has more than 450 feet of frontage along a public way other than an alley may have no more than one additional sign for each additional 450 feet of frontage or fraction thereof. The subject site (with over 800 linear feet of Campbell Road frontage) would have been allowed 2 detached premise signs prior to October 2004. According to a City of Dallas sign inspector, the site had two detached premise signs – one multi-tenant sign (that still exists on the subject site) and another single tenant sign (that was removed by the applicant in the approximate location that the new sign is proposed).
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included a letter that additional details about the request and why it should be granted.

## **BACKGROUND INFORMATION:**

### **Zoning:**

<u>Site:</u>	CR (Community Retail)
<u>North:</u>	CR and MC-1 (Community Retail and Multiple Commercial)
<u>South:</u>	CR (Community Retail)
<u>East:</u>	R-10 (A) (Single family district 10,000 square feet)
<u>West:</u>	NO (A) (Neighborhood office)

### **Land Use:**

The site is currently developed with as a shopping/office center (Preston Trail Village). The areas to the north and south are developed with retail uses, the area to the east is developed with single family uses; and the area to the west is developed with office uses.

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

1. BDA 056-178, 17194 Preston Road (the subject site)

On August 16, 2006, the Board of Adjustment Panel B will consider a request for a special exception to the off-street parking regulations of 142 spaces made in conjunction with reallocating uses within an

2. BDA 95-035, 17194 Preston Road (the subject site)

existing shopping center.

On March 28, 1995, the Board of Adjustment granted a request for a special exception to the landscape regulations. The board imposed the following condition: compliance with the submitted landscape plan is required. The case report states the request was made to construct a 20,000 square foot addition to an existing 42,000 square foot grocery store.

3. Z 70-241, (an area encompassing the subject site)

On April 23, 1974, the City established deed restrictions that limited uses to certain areas to those uses permitted in the Shopping Center zoning classification, the O-2 zoning classification, and the MF-1 zoning classification of the Zoning Ordinance. A review of these deed restrictions show that they no longer exist on the site since the restrictions stipulate that they terminate on the 20<sup>th</sup> anniversary of the date of execution.

### **Timeline:**

April 28, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

July 11, 2006: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.

July 17, 2006: The Board Administrator contacted the applicant and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the requests;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the July 24<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the August 4<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 recently adopted Board of Adjustment Working Rules of Procedure

pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and

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

July 24, 2006           The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).

July 26, 2006:        The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; 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:**

- Prior to October of 2004, the proposed sign that is the nature of this appeal would have been allowed by right since the sign regulations at that time allowed two detached premise signs on the subject site’s over 800 linear feet of Campbell Road frontage.
- According to the applicant and a City of Dallas sign inspector, the subject site had two detached premised signs along Campbell Road – one multi-tenant sign that still exists on the subject site (a multi-tenant sign that, according to the applicant, is full and that cannot be added upon), and another sign that was recently removed by the applicant for the only “stand alone” building on the site (a sign that advertised the former Kentucky Fried Chicken business in the free-standing retail structure on the site currently occupied by Sheridan’s, and a sign that was permitted by right under the pre-2004 sign regulations). According to the City of Dallas sign inspector, the previous single tenant KFC sign lost its nonconforming rights once it was removed by the applicant.
- The applicant could locate and maintain the proposed sign on the subject site if it was (or was to become) a separately platted lot rather than a lot that is part of a larger lot that encompasses the Preston Trail Shopping Center. The current sign regulations allow any separately platted lot (regardless of its linear feet/frontage) one detached sign per street frontage.
- A sign elevation of the proposed additional single-tenant monument sign indicates that the additional proposed sign is 66” high, 96” long, and 18” wide. (A sign elevation of the existing multi-tenant sign has not been submitted).
- The site plan of the overall subject site indicates that the proposed sign is to be located about 13’ from the subject site’s western boundary and about 450’ west of the existing multi-tenant sign that is located near the center of the subject site.



- The applicant states that the business is losing about 15-20% in sales without the use of the proposed sign compared to other Sheridan's Lattes & Frozen Custard establishments that have signs similar to that which is proposed in this request.
- The applicant has the burden of proof in establishing the following:
  - That strict compliance with the requirement of the sign regulations will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.
- Granting this special exception with conditions imposed that the applicant complies with the submitted site plans and sign elevation would allow a 2<sup>nd</sup> sign to be placed on the site with assurance that the existing and proposed signs are located/maintained as shown of the submitted site plans, and that the additional/second sign is constructed/maintained as indicated on the submitted sign elevation (a sign that is shown to be 5.5' high and 8' long).

**FILE NUMBER:** BDA 056-177(J)

**BUILDING OFFICIAL'S REPORT:**

Application of T-Mobile, represented by Rob Baldwin, for a variance to the height regulations at 2424 Simpson Stuart Road. This property is more fully described as Lot 1B in City Block A/6884 and is zoned CR (A) which limits the height of a structure to 26 feet due to the residential proximity slope regulations. The applicant proposes to construct a monopole cell tower with a height of 85 feet, which would require a variance of 59 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

**LOCATION:** 2424 Simpson Stuart Road

**APPLICANT:** T-Mobile  
Represented by Rob Baldwin

**REQUEST:**

- A variance to the height regulations of 59' is requested in conjunction with constructing a cell tower.

**STANDARD FOR A VARIANCE:**

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

**GENERAL FACTS:**

- The request site is currently developed parking lot for a church.

- The property is zoned CR Community Retail District. The property to the east, northeast, and south are zoned R-7.5(A), which requires any development on the request site to respect a 1-to-3 residential proximity slope that is over 26 feet in height.
- Residential proximity slope requires a setback for development on properties adjacent to residential districts at a specified ratio or distance.
- A cell tower is a use allowed by Specific Use Permit in a CR District. The applicant has applied for the SUP and received a conditional approval from the City Plan Commission.
- An SUP cannot be granted for a development that does not meet the requirements of the Dallas Development Code. In this case, the cell tower exceeds RPS and cannot be considered by City Council unless a variance for additional height is granted.
- The proposed cell tower is 85' in height.
- The elevation shows a "stealth" tower design, meaning there will not be antenna extending on the outside of the tower.
- The submitted site plan shows the location of the existing cell tower. The cell tower is approximately 230 feet from the west property line (Lancaster Road side), 145 feet from the north property line (Simpson Stuart Road side), and 37 feet from the closest R-7.5(A) boundary line (the east property line).
- The proposed height of 85 feet requires a setback of 255 feet from the site of origination (the nearest property line of a residential district).
- The location of the cell tower is approximately 248 feet from the R-7.5(A) property to the south; approximately 37 feet from the R-7.5(A) property to the east; and approximately 140 feet from the R-7.5(A) property to the northeast. It appears that the location would provide approximately 340 feet setback from the R-7.5(A) property line to the west across Lancaster Road.
- At the proposed location, the cell tower would be allowed a maximum height of 26 feet. To construct an 85 foot cell tower in this location would require a variance of 59 feet to the height.
- The site appears slightly sloped, irregular in shape, and approximately 8.37 acres in area. The site could not be fully viewed or evaluated on the site visit because the driveways were chained closed.
- DCAD indicates that the request site is a church built in 1984.

## **BACKGROUND INFORMATION:**

### **Zoning:**

<b><u>Request Site:</u></b>	CR (Community Retail)
<b><u>North:</u></b>	CR (Community Retail), PD 625 (Mixed Use), and R-7.5(A) (Single Family Residential 7,500 Square Feet)
<b><u>South:</u></b>	R-7.5(A) (Single Family Residential 7,500 Square Feet)
<b><u>East:</u></b>	R-7.5(A) (Single Family Residential 7,500 Square Feet)
<b><u>West:</u></b>	R-7.5(A) (Single Family Residential 7,500 Square Feet)

### **Land Use:**

The request site is undeveloped. The area to the east is developed with a church; the area to the west is undeveloped; the areas to the northeast and south are developed with single family residential; the area to the north is developed with motel use.

**Zoning/BDA History:**

1. Z056-236 (request site)                      On June 22, 2006, the City Plan Commission recommended approval of a Specific Use Permit for a tower/antenna for cellular communication, subject to a height variance due to RPS.

**Timeline:**

- June 19, 2006                      The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- July 12, 2006:                      The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- July 17, 2006:                      The Board Senior Planner contacted the applicant and conveyed the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the August 4<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board’s docket;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- July 26, 2006:                      The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection

Development Code Specialist, the Board of Adjustment Senior Planner; the Chief Arborist, and the Assistant City Attorney to the Board.

No review comment sheets were received on this case.

August 7, 2006      The applicant submitted additional information explaining the application.

**STAFF ANALYSIS:**

- Attachment A is letter from the applicant further explaining the purpose of his application and color photos of the site.
- The applicant has a pending SUP application which received a recommendation of approval from CPC on June 22, 2006 that is conditional on receiving a height variance. If the variance is denied, the City Council cannot consider the SUP application.
- A cell tower at a height of 85' would require a setback of 255' from the R-7.5(A) district property's boundary lines to the west, east, northeast, and south.
- Granting this variance, subject to the submitted site plan and elevation, would allow the construction of a cell tower at a height that exceeds the Residential Proximity Slope by 59 feet if City Council approves the SUP.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance of 59' to the height regulations 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 height variance of 59' is necessary to permit development of the subject site (that appears slightly sloped, irregular in shape, and approximately 8.37 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 zoning classification.
  - The height variance of 59' would not to 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 zoning classification.

**FILE NUMBER:** BDA 056-178

**BUILDING OFFICIAL'S REPORT:**

Application of DeShazo Tang & Asso. Inc. represented by John J. DeShazo Jr., for a special exception to the parking regulations at 17174, 17180, and 17194 Preston Road, 6033 Campbell Road, 6220 McCallum Boulevard. This property is more fully described as Lot 1A in City Block 8206 and is zoned CR and MC-1 (A) which requires parking to be provided. The applicant proposes to maintain an existing shopping center and provide 848 of the required 990 parking spaces which would require a special exception of 142 parking spaces. Referred to the Board of Adjustment in accordance with Section 51A-4.311 (a) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

**LOCATION:** 17174, 17180, and 17194 Preston Road, 6033 Campbell Road, 6220 McCallum Boulevard

**APPLICANT:** DeShazo Tang & Asso. Inc.  
REpresented by John J. DeShazo Jr.

**REQUEST:**

- A special exception to the off-street parking regulations of 142 spaces (or 14% of the required off-street parking) is requested in conjunction with reallocating the leasing areas/uses within an existing shopping/office center (The Preston Trail Village).

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
  - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.

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

**GENERAL FACTS:**

- The applicant has provided a list of existing, planned, and conceivable uses for the center. This list includes the following: private recreation club, medical clinic or ambulatory surgical center, general office, financial institution, dry cleaning or laundry store, furniture store, general merchandise or food store greater than 3,500 square feet, general merchandise or food store 3,500 square feet or less, home improvement center, personal service, restaurant with drive-in or drive-through service, restaurant without drive-in or drive through service, and temporary retail.
- The Dallas Development Code requires the following parking requirements for the existing, planned, or conceivable uses on the subject site:
  - 1 space is required for every 200 square feet of floor area for “medical clinic or ambulatory surgical center” use.
  - 1 space is required for every 333 square feet of floor area for “office” use.
  - 1 space is required for every 333 square feet of floor area for “financial institution without drive-in window” and “financial institution with drive-in window” uses.

- 1 space is required for every 200 square feet of floor area for “dry cleaning or laundry store” use.
  - 1 space is required for every 200 square feet of floor area for “general merchandise or food store 3,500 square feet or less” and “general merchandise or food store greater than 3,500 square feet” uses.
  - 1 space is required for every 200 square feet of retail floor area, plus 1 space per 1,000 square feet of site area exclusive of parking area for “home improvement center” use
  - 1 space is required for every 200 square feet of floor area for “personal service” use.
  - 1 space is required for every 100 square feet of floor area for “restaurant without drive-in or drive-through” and “restaurant with drive-in or drive-through” uses.
  - 1 space is required for every 500 square feet of floor area for “temporary retail” use.
- The applicant proposes to provide 848 (or 86%) of the total required 990 off-street parking spaces on the site.
  - A study submitted in conjunction with the application indicates that the center has 177,049 square feet of area that is/can be leased.
  - No enlargements or additions to the existing structures in the center are planned in conjunction with this request. This special exception request is triggered by the applicant’s intent to possibly reallocate the uses within the existing center. (The applicant informed the Board Administrator that this request was triggered by the owner’s intent to possibly reallocate some existing retail uses/spaces to restaurant uses/spaces, and an existing furniture store to general merchandise).
  - The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included a list of existing, planned, and conceivable uses as identified in the Dallas Development Code to be considered by the Board of Adjustment in their determination on the appeal.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: CR (Community Retail)  
North: CR and MC-1 (Community Retail and Multiple Commercial)  
South: CR (Community Retail)  
East: R-10 (A) (Single family district 10,000 square feet)  
West: NO (A) (Neighborhood office)

**Land Use:**

The site is currently developed with as a shopping/office center (The Preston Trail Village). The areas to the north and south are developed with retail uses, the area to the east is developed with single family uses; and the area to the west is developed with office uses.

**Zoning/BDA History:**



- |   |   |
|---|---|
| 1. BDA 056-178, 6033 Campbell Road (the subject site) | On August 16, 2006, the Board of Adjustment Panel B will consider a request for a special exception to the sign regulations made in conjunction with locating an additional monument sign on a site developed as an existing shopping center.   |
| 2. BDA 95-035, 17194 Preston Road (the subject site)  | On March 28, 1995, the Board of Adjustment granted a request for a special exception to the landscape regulations. The board imposed the following condition: compliance with the submitted landscape plan is required. The case report states the request was made to construct a 20,000 square foot addition to an existing 42,000 square foot grocery store.   |
| 3. Z 70-241, (an area encompassing the subject site)  | On April 23, 1974, the City established deed restrictions that limited uses to certain areas to those uses permitted in the Shopping Center zoning classification, the O-2 zoning classification, and the MF-1 zoning classification of the Zoning Ordinance. A review of these deed restrictions show that they no longer exist on the site since the restrictions stipulate that they terminate on the 20 <sup>th</sup> anniversary of the date of execution. |

**Timeline:**

- June 23, 2006: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- July 11, 2006: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- July 13, 2006: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the requests;
  - the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;

- the July 24<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the August 4th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

July 26, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; the Chief Arborist, and the Assistant City Attorney to the Board.

July 27, 2006 The applicant submitted information beyond what was submitted with the original application (see Attachment A).

August 2, 2006 The Development Services Senior Engineer submitted a review comment sheet marked "Has no objections." The engineer made the following additional comment:  
 - "Based on the parking analysis dated 6/22/2006."

**STAFF ANALYSIS:**

- 86 percent of the required off-street parking spaces are proposed to be provided in conjunction with the possible reallocation of leasing areas/uses within an existing shopping/office center.
- No enlargements or additions to the existing structures in the center are planned in conjunction with this request. This special exception request is triggered by the applicant's intent to possibly reallocate the uses within the existing center. (The applicant informed the Board Administrator that this request was triggered by the owner's intent to possibly reallocate some existing retail uses/spaces to restaurant uses/spaces, and possibly reallocate an existing furniture store to general merchandise).
- Granting this request, subject to the condition that the special exception of 142 spaces automatically and immediately terminates if and when the private recreation club, medical clinic or ambulatory surgical center, general office, financial institution, dry cleaning or laundry store, furniture store, general merchandise or food store greater than 3,500 square feet, general merchandise or food store 3,500 square feet or less, home improvement center, personal service, restaurant with drive-in or drive-through service, restaurant without drive-in or drive through service, and temporary retail uses on the site are changed or discontinued, would allow the

approximately 180,000 square foot center to be potentially leased with this mix of uses.

- The applicant has the burden of proof in establishing the following:
  - The parking demand generated by the proposed private recreation club, medical clinic or ambulatory surgical center, general office, financial institution, dry cleaning or laundry store, furniture store, general merchandise or food store greater than 3,500 square feet, general merchandise or food store 3,500 square feet or less, home improvement center, personal service, restaurant with drive-in or drive-through service, restaurant without drive-in or drive through service, and temporary retail uses does not warrant the number of off-street parking spaces required, and
  - The special exception of 142 spaces (or 14% of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- The applicant has submitted a parking study that states that the existing parking supply of 848 spaces will satisfy the parking needs for the proposed modifications to the center based on the low utilization of existing parking demand observed on the site, judgment and experience with other parking analysis of similar magnitude, and national data published by the Urban Land Institute (*Parking Requirements for Shopping Centers, 1999*).
- The Development Services Senior Engineer has commented that he has no objections to this request based on the June 22, 2006 parking analysis prepared by the applicant.

**FILE NUMBER:** BDA 056-185

**BUILDING OFFICIAL'S REPORT:**

Application of Gianna Glaesmann for a variance to the parking regulations at 6630 Pemberton Drive. This property is more fully described as Lot 1 in City Block 3/5497 and is zoned R-16(A) which requires a 20 foot setback for an enclosed parking space. The applicant proposes to construct a building and provide a 12 foot setback for an enclosed parking space which would require a variance of 8 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

**LOCATION:** 6630 Pemberton Drive

**APPLICANT:** Gianna Glaesmann

**REQUEST:**

- A variance to the off-street parking regulations of 8' is requested in conjunction with constructing and maintaining an attached garage on a single family home whereby enclosed parking spaces in the garage would be less than 20' from the alley right-of-way line.

**STANDARD FOR A VARIANCE:**

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

**GENERAL FACTS:**

- The Dallas Development Code requires that a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an

enclosed structure and if the space faces upon or can be entered directly from the street or alley.

The applicant has made a request to vary this provision of the Code whereby the enclosed parking spaces in the new garage would be 12' from the right-of-way line, hence a request for a variance of 8'. (Note that the applicant's representative has submitted information indicating that the enclosed parking spaces in the new garage will be located approximately 14.5' from the alley pavement line).

- The applicant could build the garage structure without a garage door (or enclosed parking spaces) if the board were to deny the variance request. The need for the parking variance is merely to allow the parking spaces in the structure to be enclosed with a garage door.
- The subject site is flat, rectangular in shape (160' x 106'), and 16,960 square feet in area. The site is zoned R-16(A) where lots are typically 16,000 square feet in area.
- The subject site has two mature trees in locations that the applicant contends limits the placement of the expanded garage to be in compliance with the parking regulations.
- DCAD records indicate that the site is developed with a single family home in "very good" condition built in 1953 with 3,061 square feet of living space, and a 600 square foot attached garage.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
  - an account that provided additional details about the request;
  - photos of the site;
  - copies of design requirements for garage and access requirements,
  - a site plan indicating an area in which a 3<sup>rd</sup> car could be located on the site;
  - a "neighborhood site plan" that indicates a comparison of age, square footage, to size, and ratio of home site to lot for 35 homes in the area.

(Note that the applicant's representative submitted a detailed appendix of information obtained from DCAD pertaining to 35 properties in the area. Given the volume of information in this document, the applicant's representative allowed the Board Administrator to place it in the case file, and make it available for review upon request at the briefing/public hearing).

## **BACKGROUND INFORMATION:**

### **Zoning:**

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

### **Land Use:**

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

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

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

### **Timeline:**

- June 29, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 11, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- July 12, 2006: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the July 24<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
  - the August 4<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 recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- July 26, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; the Chief Arborist, and the Assistant City Attorney to the Board.

- July 26, 2006      The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the variance request (see Attachment B).
- August 2, 2006      The Development Services Senior Engineer submitted a review comment sheet with the following comment:
- “Cannot support the request.”
- August 4, 2006      The applicant’s representative submitted information beyond what was submitted with the original application (see Attachment A).

**STAFF ANALYSIS:**

- The subject site is flat, rectangular in shape (160’ x 106’), and 16,960 square feet in area. The site is zoned R-16(A) where lots are typically 16,000 square feet in area.
- The site has two mature trees in locations that the applicant contends limits the placement of the expanded garage on the site while simultaneously complying with the parking regulations. The City of Dallas Chief Arborist has submitted a memo indicating that he feels that the 42” and 57” trees are worthy of preservation and recommends that as little of the critical root zone(s) as possible be compromised.
- According to information submitted by the applicant’s representative, the house with the proposed addition would have 3,840 square feet of living area (increased from its current 3,061 square feet) with a 711 square foot attached garage. The applicant’s representative argues that the size of the house with the addition is commensurate with other homes in the area which average at 3,949 square feet of living area.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the parking regulations of 8’ to enclose parking spaces in a new expanded garage structure will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance to the parking regulations of 8’ requested to enclose parking spaces in a new garage structure is necessary to permit development of the subject site (a site that is flat, rectangular in shape (160’ x 106’), and 16,960 square feet in area in R-16(A) where lots are typically 16,000 square feet in area with two mature trees worthy of preservation, and developed with single family home with about 3,000 square feet of living area and a 600 square foot attached garage) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-16 (A) zoning classification.
  - The variance to the parking regulations of 8’ requested to enclose parking spaces in a new garage structure would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-16 (A) zoning classification.
- Typically, when the Board has found that this type of variance request is warranted, they have imposed the following conditions:

- Compliance with the submitted site plan is required.
- An automatic garage door must be installed and maintained in working order at all times.
- At no time may the area in front of the garage be utilized for parking of vehicles.
- All applicable permits must be obtained.

These conditions are imposed to assure that the variance will not be contrary to public interest.

- Granting the request will allow the applicant to enclose parking spaces with a garage door which otherwise could be constructed as an open garage (or carport) with unenclosed parking spaces.
- If the Board were to grant the parking variance request of 8', imposing the conditions mentioned above, the new structure could be constructed on the site with a garage door whereby the enclosed parking spaces would be 12' from the alley right-of-way line (or 14.5' from the alley pavement) or 8' into the 20' distance that an enclosed parking space is required to be located from a street or alley right-of-way line.
- The Development Services Senior Engineer has submitted a review comment sheet commenting: "Cannot support the request."



**FILE NUMBER:** BDA 056-197

**BUILDING OFFICIAL'S REPORT:**

Application of Michael J. Krzysiak for a variance to the side yard setback regulations at 4342 Crowley Drive. This property is more fully described as Lot 7 in City Block 3/5537 and is zoned R-16(A) which requires a side yard setback of 10 feet. The applicant proposes to construct an addition and provide a 6 foot side yard setback which would require a variance of 4 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

**LOCATION:** 4342 Crowley Drive

**APPLICANT:** Michael J. Krzysiak

**REQUEST:**

- A variance to the side yard setback regulations of 4' is requested in conjunction with replacing a one-story attached garage with a two-story garage/game room addition on a site that is developed with a single family home.

**STANDARD FOR A VARIANCE:**

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

**GENERAL FACTS:**

- The Dallas Development Code requires sites that are zoned R-16 (A) must provide a 10' side yard setback.

A site plan has been submitted that denotes a proposed addition that would be located at its closest point, 6' from the western side property line (or at most, 4' into the 10' side yard setback). The site plan indicates the building footprint of the existing garage that is located at its closest point 8' away from the side property line (or 2' into the 10' side yard setback). (The existing garage on the site is most likely a nonconforming structure with the assumption that it was built in 1950 along with the home on the site).

- Floor plans have been submitted that denote that the addition will include a two-vehicle garage on the first floor, and a game room, loft, and craft room on the second floor. According to calculations taken from the site plan by the Board Administrator, the floor plans denote that the addition will be 23' 1" wide and approximately 35' 7" long – a building footprint that is approximately 815 square feet in area.
- According to calculations taken from the site plan by the Board Administrator, the submitted site plan denotes that the approximately 36 square feet of the addition's approximately 815 square foot building footprint is located in the site's western 10' side yard setback.
- The subject site is flat, irregular in shape (approximately 162' on the north, approximately 60' on the south, approximately 120' on the east, and approximately 125' on the west), and approximately 13,875 square feet in area. The site is zoned R-16(A) where lots are typically 16,000 square feet in area. The site has two 35' front yard setbacks, one along Crowley Drive, the other along Shirley Drive. In addition, the subject site has a mature tree in a location that the applicant contends limits the placement of the expanded garage/game room northward towards Crowley Drive whereby the addition would be in compliance with the side yard regulations.
- The applicant and the Building Inspection Development Code Specialist state that the site has two, 40' platted building lines.
- DCAD records indicate that the site is developed with a single family home in "average" condition built in 1950 with 3,221 square feet of living space, and a 400 square foot attached garage.
- The applicant has only made application for a variance to the side yard regulations even though a part of the existing single family home is located in one of the site's two front yard setbacks. The Board Administrator has explained the nonconforming structure provisions of the Dallas Development Code to the applicant who, in turn, understands that any nonconforming structure that is not intentionally destroyed by the owner or the owner's agent can be replaced with the same building footprint.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
  - a letter that provides additional details about the request;
  - DCAD information on the average, minimum, and maximum square footages of living area and garages of 10 homes zoned R-16 (A) with 2 miles of the subject site;
  - Consumer Guide information related to the average and overall length, width, and seating capacity of large and mid size SUV's;
  - Elitecarseats.com information related to the average seat width, height, and weight of car seats;

- Photos of the existing site (which will be available for review at the briefing/hearing);
- 12 letters from neighbors/owners in support of the request (including the owner to the west of the subject site nearest the side yard encroachment); and
- An appendix related to child seat dimensions, SUV dimensions, and DCAD information (which will be available for review at the briefing/hearing).

## **BACKGROUND INFORMATION:**

### **Zoning:**

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

### **Land Use:**

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

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

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

### **Timeline:**

- June 29, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 11, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- July 13, 2006: The Board Administrator contacted the applicant and conveyed the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the requests;
  - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the July 24<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;

- the August 4th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

July 20 & August 4, 2006      The applicant submitted information beyond what was submitted with the original application (see Attachment A).

July 26, 2006:                The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; the Chief Arborist, and the Assistant City Attorney to the Board.

July 26, 2006                The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the variance request (see Attachment B).

**STAFF ANALYSIS:**

- The subject site is flat, irregular in shape (approximately 162' on the north, 60' on the south, 120' on the east, and 125' on the west), and 13,875 square feet in area. The site is zoned R-16(A) where lots are typically 16,000 square feet in area.
- The site has two 35' front yard setbacks, one along Crowley Drive, the other along Shirley Drive.
- The subject site has a mature tree in a location that the applicant contends limits the placement of the expanded garage northward toward Crowley Drive whereby the addition would be in compliance with the side yard regulations. If the addition were shifted northward the health of the tree could be compromised. The City of Dallas Chief Arborist has submitted a memo indicating that he feels that the 23" caliper tree is worthy of preservation.
- The applicant has submitted information that establishes the following:
  - The request for a 4 foot side yard variance is 2 feet greater than the existing structure;
  - The property hardship is based on 3 factors: 1) restrictions caused by two front yard setbacks; 2) the restriction caused by a 23' mature Elm tree; 3) the restriction caused by the irregularly-shaped site (whereby if the lot were rectangular in shape with right angles, the proposed structure would be in compliance with the 10 foot side yard setback).
- According to calculations taken from the site plan by the Board Administrator, the floor plan denotes that the addition is 23' 1" wide and approximately 35' 7" long.

Approximately 36 square feet of the approximately 815 square foot building footprint would be located in the site's western 10' side yard setback.

- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the side yard setback regulations of 4' to construct and maintain a two-story garage/game room addition that would attach to a single family home will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance to the side yard setback regulations of 4' to construct and maintain a two-story garage/game room addition that would attach to a single family home is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-16(A) zoning classification.
  - The variance would not to 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 not permitted by this chapter to other parcels of land in districts with the same R-16 (A) zoning classification.
- If the Board were to grant the side yard variance request of 4', imposing a condition whereby the applicant must comply with the submitted site plan, a two-story garage/game room addition with about an 815 square foot building footprint could be constructed and maintained as close as 6' from the site's western side property lines or as much 4' into the 10' side yard setback. In addition, if the Board were to grant the side yard variance request, imposing the submitted site plan as a condition, the amount of structure in the site's western side yard setback would be restricted to the specific area/location shown on this plan.

**FILE NUMBER:** BDA 056-198(J)

**BUILDING OFFICIAL'S REPORT:**

Application of Steve Aaron, represented by Roger Albright for a special exception to the single family regulations at 9707 Meadowbrook Drive. This property is more fully described as Lot 1A in City Block 1/5589 and is zoned R-1ac(A) which limits the number of dwelling units to one. The applicant proposes to construct an addition for an additional dwelling unit which would require a special exception. Referred to the Board of Adjustment in accordance with Section 51A-4.209(b)(6)(E)(i) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

**LOCATION:** 9707 Meadowbrook Drive

**APPLICANT:** Steve Aaron  
Represented by Roger Albright

**REQUEST:**

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

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

The board may grant a special exception within the single family use regulations to authorize an additional dwelling unit in any single family zoning district when, in the opinion of the board, the additional dwelling unit will not:

- 1) be used as rental accommodations; or
- 2) adversely affect neighboring properties.

In granting a special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

**GENERAL FACTS:**

- "Single family" use is defined in the Dallas Development Code as "one dwelling unit located on a lot," however, the code allows the Board of Adjustment to grant a special exception to this provision to allow an additional dwelling unit when, in their opinion, the additional dwelling unit will not:

- 1) be used as rental accommodations; or
- 2) adversely affect neighboring properties.
- The subject site is 5.1225 acres and developed with, according to DCAD records, a single family home that is in very good condition built in 1996 with 16,535 square feet of living area and a 1,132 square foot basement, a 1,593 square foot cabana, a 1,190 square foot barn and a 1,064 square foot detached garage.
- This site plan indicates that the additional “dwelling unit” structure currently has a building footprint of approximately 30’ x 38’ or is about 1,216 square feet in area. The proposed addition will add 632 square feet of floor area, which will make the total floor area 1,848 square feet.
- The site plan shows that the additional “dwelling unit” structure will be located approximately 8’ from the nearest property line which in this case is the side property line on the north. The submitted site plan is a reduction.
- The submitted elevation indicates that the 1-story additional “dwelling unit” structure will be approximately 15’ in height. The addition is proposed to be a height of approximately 9’.
- The existing floor plan indicates space for three large rooms (unlabeled), two closets, a bathroom, and a kitchen. The proposed floor plan indicates space for two large rooms (unlabeled), three closets, two bathrooms, two bedrooms, two dressing rooms, and a play room.
- If this request is granted, a completed deed restriction stating that the additional dwelling unit on the site will not be used for rental accommodations must be submitted to the Board Administrator, approved by the City Attorney’s Office as to form, and filed in the deed records of the applicable county (in this case, Dallas County) before the applicable permits for this additional dwelling unit can be issued by the City.

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

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

**Zoning/BDA History:**

1. BDA967-203                      On March 18, 1997, Panel B of the Board of Adjustment granted a special exception to the fence height regulations

and a special exception to the visibility obstruction regulations.

**Timeline:**

June 27, 2006 The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

July 12, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

July 17, 2006: The Board Senior Planner contacted the applicant and conveyed the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the August 4<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board’s docket;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

July 26, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; the Chief Arborist, and the Assistant City Attorney to the Board.

No review comment sheets were received on this case.

July 26, 2006 The applicant submitted photos of the request site because access to the property was restricted during the site visit.

**STAFF ANALYSIS:**



- The proposed addition on the additional dwelling unit will add 632 square feet of floor area, which will make the total floor area 1,848 square feet.
- The additional dwelling unit appears to meet all of the height, setback, and accessory structure regulations from the site plan provided.
- The applicant has the burden of proof in establishing that the additional dwelling unit will not be used as rental accommodations and that will not adversely affect neighboring properties.
- The Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.
- If the Board were to approve the special exception request, subject to imposing a condition that the applicant comply with the submitted elevation and site plan, the proposed “dwelling unit” structure would be restricted to the specific location, size, and height shown on the plans, which in this case is a 1-story garage/dwelling unit structure.

**FILE NUMBER:** BDA 056-169

**BUILDING OFFICIAL'S REPORT:**

Application of John Alsenih, represented by Roger Albright, to appeal the decision of the Building Official concerning 7402 Greenville Avenue #102. This property is more fully described as a tract of land in City Block B/6140 and is zoned PD No. 85. The applicant proposes to appeal the decision of the Building Official. Referred to the Board of Adjustment in accordance with Section 51A-3.102 (d) (1) of the Dallas Development Code, as amended, which states the power of the Board to hear and decide appeals from the decisions of administrative officials made in the enforcement of the zoning ordinance of the city.

**LOCATION:** 7402 Greenville Avenue #102

**APPLICANT:** John Alsenih  
Represented by Roger Albright

**REQUEST:**

- An application has been made requesting that the Building Official's decision be reversed/overturned regarding the building official's final decision that the owner of the restaurant use (Al Amir) on the subject site (7402 Greenville Avenue, Suite 102) lost their right to operate a nonconforming use when the use became a conforming "restaurant without drive-in service" use.

**BASIS FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:**

Section 51A-3.102(d)(1) of the Dallas Development Code states that the Board of Adjustment has the power and duty to hear and decide appeals from decisions of Administrative Officials made in the enforcement of the Dallas Development Code.

**GENERAL FACTS:**

- The original application made to the Board of Adjustment in May of 2006 was a request to change the existing nonconforming "restaurant" use to another nonconforming use: an "alcoholic beverage establishment" use. The original application was scheduled for Board of Adjustment Panel B's public hearing scheduled for June 21, 2006.
- The site is zoned PD No. 85. This zoning district was created by the City Council in 1978 (and amended in 1993). (See Attachment A).
- The Dallas Development Code specifies that the board may allow a change from one nonconforming use to another nonconforming use when:  
(A) the change does not prolong the life of the nonconforming use;

(B) the change is to a use that would have been permitted in the zoning district where the current nonconforming use was first permitted by right;  
(C) the change is to a use that is similar in nature to the current use; and  
(D) the change is to a use that will not have a greater adverse effect on the surrounding area than the current use.

- The Dallas Development Code defines “nonconforming use” as “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.”
- Although the Board of Adjustment has the authority to permit a change from one nonconforming use to another nonconforming use, if a use is conforming, the Board does not have authority.
- The Building Inspection Development Code Specialist originally determined that the “restaurant” use on the site was a nonconforming use in this zoning district.
- After further deliberation, the Building Inspection Development Code Specialist determined that the applicant lost the right to operate a nonconforming use when their use became a conforming restaurant without drive-in service.
- The applicant now appeals from the Building Inspection Development Code Specialist’s decision.

### **BACKGROUND INFORMATION:**

#### **Zoning:**

Site: PD No. 85 (Planned Development District)  
North: PD No. 85 (Planned Development District)  
South: PD No. 96 (Planned Development District)  
East: PD No. 85 (Planned Development District)  
West: PD No. 453 (Planned Development District)

#### **Land Use:**

The subject site (7402 Greenville Avenue, Suite 102) is developed with a restaurant use (Al Amir). The areas to the north, south and west are developed with retail and office uses; and the area to the east is developed with multifamily uses.

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

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

#### **Timeline:**

May 8, 2006: 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 12, 2006: The applicant's representative submitted information with the original application (see Attachment B). This information included materials related to why the Board of Adjustment should allow the owner of the property to convert a nonconforming restaurant use to a nonconforming alcoholic beverage establishment use.
- May 18, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- May 19, 2006: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the June 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
  - the June 9<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 recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- June 1, 2006: The Building Inspection Development Code Specialist contacted the applicant's representative to let him know that the Building Official thought they had lost nonconforming rights when they became a conforming restaurant without drive-in service.
- June 2, 2006: The applicant's representative submitted additional information related to the application to change from one nonconforming use to another nonconforming use (see Attachment C). The applicant provided arguments as to why they maintained their nonconformity. They asked the city to reconsider their position, and in the alternative, requested to appeal the building official's decision.
- June 5, 2006: 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 Chief Arborist, the Board Administrator, the Board of Adjustment Senior Planner; the

Development Services Senior Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

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

- June 6, 2006: The applicant's representative submitted additional information related to the application to change from one nonconforming use to another nonconforming use (see Attachment D). Applicant requested the building official reconsider their decision and provided arguments as to why they maintained their nonconformity.
- June 8, 2006: The Board Administrator faxed a cover sheet to the applicant's representative informing him of the Building Inspection Development Code Specialist's determination that his application to change from one nonconforming use to another nonconforming use would be delayed until August 16, 2006.
- June 8, 2006: The applicant's representative submitted a letter to the Board Administrator acknowledging the delay of the request until August 16, 2006 (see Attachment E).
- July 6, 2006: The Assistant City Attorney to the Board of Adjustment wrote a letter to applicant's representative stating, among other things, that the letter was "notice of the building official's final decision that your client lost their right to operate a nonconforming use when there use became a conforming restaurant without drive-in service." (See Attachment F).
- July 11, 2006: Building Inspection Development Code Specialist forwarded an amended application dated July 10, 2006, which stated that a request had been made to "appeal the July 6, 2006 decision of the Building Official that the Board lacks the authority to grant a change of use."
- July 12, 2006: The Board Administrator forwarded a copy of the "Outline of Procedure for Handling Appeals from Decisions of the Building Official by the Board of Adjustment of the City of Dallas" to the applicant's representative (see Attachment G).
- July 26, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; the Chief Arborist, and the Assistant City Attorney to the Board.

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

August 7, 2006: The Assistant City Attorney representing the Building Official submitted a series of documents for the Board's consideration on the appeal (see Attachment H).

### **STAFF ANALYSIS:**

- The site is zoned PD No. 85. This zoning district was created by the City Council in 1978 (and amended in 1993) (see Attachment A).
- PD No. 85 permits in its designated "Retail Area" all uses permitted in the Shopping Center District of the Chapter 51 except the following:
  - Convenience store or major grocery stores (specialty stores selling groceries as a side line and where the main items for sale are not groceries are permitted).
  - Motor vehicles and related uses as referenced in Section 10-213 of the Comprehensive Zoning Ordinance of the City of Dallas.
  - Stores where the sale of alcoholic beverages is the primary item sold (specialty stores featuring wine and cheese and stores selling alcoholic beverages as a side line are permitted subject to Paragraph 4 of this condition).
  - A specific use permit is required to locate any use in this area if the sale or service of alcohol is part of the operation of the use.
- The Building Inspection Development Code Specialist originally determined that the "restaurant" use on the site was a nonconforming use in this zoning district.
- The Dallas Development Code defines "nonconforming use" as "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."
- On July 6, 2006, notice was given to the applicant's representative that the Building Official's final decision was that the applicant lost their right to operate a nonconforming use when their use became a conforming restaurant without drive-in service use upon obtaining a Certificate of Occupancy for this use on February 13, 2004.
- If the Board of Adjustment upholds the Building Official's decision, the applicant can continue to operate the restaurant use as a conforming restaurant use. They will also be able to sell and serve alcohol as an accessory use to their conforming restaurant use. They, however, must obtain a Specific Use Permit (SUP) to be an alcoholic beverage establishment. An alcoholic beverage establishment is an establishment that derives 75 percent or more of its gross revenue on a quarterly basis from the sale or service of alcoholic beverages for on-premise consumption.
- If the Board of Adjustment reverses the Building Officials' decision, the restaurant will be considered a nonconforming use. The nonconforming use would be subject to compliance proceedings before the Board of Adjustment. If the Board of Adjustment reverses the Building Officials' decision, the applicant may file an application to change from one nonconforming use (restaurant) to another nonconforming use (alcoholic beverage establishment).

