

NOTICE FOR POSTING
MEETING OF
BOARD OF ADJUSTMENT, PANEL B
WEDNESDAY, AUGUST 19, 2009

Briefing:	11:00 A.M.	L1FN CONFERENCE CENTER AUDITORIUM
Public Hearing:	1:00 P.M.	L1FN CONFERENCE CENTER AUDITORIUM

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

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

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

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08-19-2009

ZONING BOARD OF ADJUSTMENT, PANEL B
WEDNESDAY, AUGUST 19, 2009
AGENDA

BRIEFING	L1FN CONFERENCE CENTER AUDITORIUM	11:00 A.M.
PUBLIC HEARING	L1FN CONFERENCE CENTER AUDITORIUM	1:00 P.M.

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

MISCELLANEOUS ITEMS

Approval of the **Wednesday, June 17, 2009** Board of Adjustment Public Hearing Minutes M1

EXECUTIVE SESSION: M2
Executive session for attorney briefing pursuant to Texas Open Meetings Act Section 551.071, regarding *Larry Meletio and Jill Meletio v. City of Dallas, Texas, and Board of Adjustment, Dallas, Texas*, Civ. Action No. 3:09-CV-1205-M (N.D. Tex.), BDA 089-057, Property at 4341 Beechwood Lane

UNCONSTESTED CASES

BDA 089-084(K)	6131 Bordeaux Avenue REQUEST: Application of Charles Dube for a variance to the front yard setback regulations, a special exception to the visibility obstruction triangle regulations, and a special exception to the landscape/sidewalk regulations	1
BDA 089-089(K)	11170 N. Central Expressway REQUEST: Application of Debbie Tessler represented by Rick Dodgen for a special exception to the sign regulations	2
BDA 089-090(K)	10301 Inwood Road REQUEST: Application of Tommy Mann for a special exception to the fence height regulations	3
BDA 089-093(K)	12222 N. Central Expressway REQUEST: Application of Marc Goldman for a special exception to the parking regulation	4

REGULAR CASE

BDA 089-082 5814 Vickery Boulevard

5

REQUEST: Application of Santos T. Martinez of
Masterplan for a special exception to the side yard
setback regulations

EXECUTIVE SESSION NOTICE

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

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

(Rev. 6-24-02)

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel B June 17, 2009 public hearing minutes.

MISCELLANEOUS ITEM NO. 2

Executive session for attorney briefing pursuant to Texas Open Meetings Act Section 551.071, regarding *Larry Meletio and Jill Meletio v. City of Dallas, Texas, and Board of Adjustment, Dallas, Texas*, Civ. Action No. 3:09-CV-1205-M (N.D. Tex.), BDA 089-057, Property at 4341 Beechwood Lane

FILE NUMBER: BDA 089-084(K)

BUILDING OFFICIAL'S REPORT:

Application of Charles Dube for a variance to the front yard setback regulations, a special exception to the visibility obstruction triangle regulations, and a special exception to the landscape/sidewalk regulations at 6131 Bordeaux Avenue. This property is more fully described as Lot 6B in City Block E/2478 and is zoned PD-193(MF-1), which requires a front yard setback of 15 feet, and requires a 20 foot visibility triangle at the driveway approach, and a 20 foot visibility triangle at alley/street intersections, and a 45 foot visibility triangle at street intersections, and requires mandatory landscaping and sidewalks. The applicant proposes to construct and maintain a single family residential dwelling structure and provide a 0 foot front yard setback, which will require a variance of 15 feet to the front yard setback regulations, special exceptions to the visibility obstruction regulations, and will require a special exception to the landscape/sidewalk regulations.

LOCATION: 6131 Bordeaux Avenue

APPLICANT: Charles Dube

REQUESTS:

The applicant seeks to develop the property with a single family residential use and requests a special exception to the visibility obstruction regulations; special exception to the landscape regulations; and a variance to the front yard setback regulations.

STAFF RECOMMENDATION (landscape regulations):

Approval

Rationale:

- The Chief Arborist has reviewed the submitted site plan and does not have any objections to the special exception to the landscape regulations for this site.
- The special exception will not adversely affect neighboring properties.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

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

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

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

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

STAFF RECOMMENDATION (visibility obstruction):

To be determined.

Rationale:

- The development Services Senior Engineer has not submitted a recommendation for the proposed visibility obstructions.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISIBILITY OBSTRUCTION REGULATIONS:

The Board shall grant a special exception to the requirements of the visibility obstruction regulations when, in the opinion of the Board, the item will not constitute a traffic hazard.

STAFF RECOMMENDATION (variance front yard setback):

Approval, subject to the following condition:

- Compliance with the submitted site plan.

Rationale:

- The literal enforcement of the front yard setback requirements will result in an unnecessary hardship.
- The variance is necessary to develop this partial site that differs from other parcels in the PD 193 (MF-1) zoning, that is irregular in shape and has a restrictive developable area.

STANDARD FOR A VARIANCE TO THE FRONT YARD SETBACK:

To grant variances from the front yard, side yard, rear yard, lot width, lot depth, lot coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street loading, or landscape regulations provided that: the variance is not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance

will be observed and substantial justice done; the variance is necessary to permit development of specific parcel of land that differs from other parcels of land by being of such restrictive area, shape, or slope that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and the variance is not 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 with the same zoning.

GENERAL FACTS:

- The applicant proposes to construct and maintain an addition to the accessory structure to be used for enclosed parking.
- The site is zoned PD 193 (MF-1) and is developed with a single family structure.
- The property is located on the corner of Inwood Road and Bordeaux Avenue and is required to provide a 45 foot visibility triangle at the intersection and 20 foot visibility triangles at drive approaches.
- The applicant is seeking relief from the visibility obstruction regulations for the 45 foot visibility triangle at the intersection of Bordeaux and Inwood, a 20 visibility triangle at the northern drive approach on Bordeaux, and a 20 foot visibility triangle at the drive approach on Inwood.
- The proposed enclosed parking will require a variance to the front yard setback of 15.

BACKGROUND INFORMATION:

Zoning:

Site: PD 193 (MF-1) (Planned Development District Multi-family use)
North: MF-2(A) (Multifamily)
South: PD 193 (MF-1) (Planned Development District Multi-family use)
East: R-7.5(A) (Single-family residential 7,500 square feet)
West: MF-2(A) (Multifamily)

Land Use:

The subject site is developed with a single family dwelling. The properties to the south and west are developed with single family dwellings. The properties to the north and east are developed with multi-family developments.

Zoning/BDA History:

There is no zoning history or Board of Adjustment history for this site or sites in the immediate area.

Timeline:

- May 28, 2009: 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 16, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- July 23, 2009: The Board Senior Planner contacted the applicant by telephone and email and conveyed the following information:
- the public hearing date and panel that will consider the application;
 - the criteria and standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the July 27th deadline to submit additional evidence for staff to factor into their analysis and recommendation;
 - the August 5th 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 28, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- August 12, 2009 The Chief Arborist submitted a memorandum referencing the submitted alternate landscape plan (attachment A).

STAFF ANALYSIS:

- The applicant proposes to construct and maintain an enclosed parking space in a required front yard and provide a 0 foot setback. The applicant is also seeking to

- According to DCAD the subject site was developed in 1984 with a 2,225 square foot townhome that is listed in good condition on a lot that is approximately 8,300 square feet. The site is also developed with a detached garage (456 square feet) and in-ground pool.
- The applicant is seeking a special exception to the visibility obstruction regulations. The existing landscaping on the site is located within the 45 foot visibility triangle and the intersection of Inwood Rd. and Bordeaux Ave. The existing landscaping on the site is located within the 20-foot visibility triangle at the northern drive approach. The proposed enclosed parking and existing landscaping are located within the 20 visibility triangle at the northern drive approach on Inwood Road.
- The applicant is requesting a special exception to the landscaping regulations for relief from the street tree and sidewalk requirements in PD 193.
- The Chief Arborist has reviewed the submitted site plans and has indicated no objection to the request. The Chief Arborist has also stated that a landscape plan was not submitted for review.
- The applicant is seeking to obtain a variance to the front yard setback requirements to construct an enclosed parking space to the “rear” of the site. The applicant proposes to provide a 0 foot front yard setback, which will require a 15 foot variance.
- The property is irregularly shaped and the “rear” (to the west) of the property approximately 18 feet wide, is significantly more narrow, than what is typically considered the “front” (the east) of the property, being approximately 95 feet wide. The developable area of the site is restricted due to the irregular shape of the property.
- The applicant has the burden of proof of showing:
 1. that maintaining the landscape materials and a portion of the proposed enclosed parking structure in the properties 45 foot and 20 foot visibility triangles will not create a traffic hazard;
 2. the variance to the front yard setback is necessary to develop a parcel of land that has such a restrictive, shape, slope, or size it cannot be developed in a manner commensurate with other parcels of land in the same PD-193 (MF-1) zoning;
 3. strict compliance with the landscaping regulations will unreasonable burden the property, the special exception will not adversely affect neighboring property; and, the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.
- If the Board votes to approve the variance to the front yard setback requirements, staff recommends conditioning the approval to the submitted site plan.
- Staff recommends compliance with the submitted site plan, should the Board vote to approve the special exception to the visibility obstruction regulations.
- Staff recommends compliance with a submitted alternate landscape plan, should the Board grant a special exception to the landscape regulations.

FILE NUMBER: BDA 089-089(K)

BUILDING OFFICIAL'S REPORT:

Application of Debbie Tessler represented by Rick Dodgen for a special exception to the sign regulations at 11170 N. Central Expressway. This property is more fully described as Lot 5 in City Block 7290 and is zoned MU-3, which limits the number of words on a sign. The applicant proposes to construct an attached premise sign on a nonresidential building facade with nine words or characters which contain characters of a height equal to or exceeding four inches, which will require a special exception allowing one additional word to the sign regulations.

LOCATION: 11170 N. Central Expressway

APPLICANT: Debbie Tessler
Represented by Rick Dodgen

REQUEST:

- A special exception to the sign regulations is requested to allow for one additional large letter word on an attached sign.

STAFF RECOMMENDATION:

None

Rationale:

- Staff does not make a recommendation on this type of appeal.

STANDARD FOR A SPECIAL EXCEPTION TO THE SIGN REGULATIONS:

The Dallas Development Code states that the board of adjustment may authorize up to two additional large letter words on an attached sign in excess of the number permitted, when the board has made special finding from the evidence submitted that strict compliance with the requirement of this article 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 this article.

GENERAL FACTS:

- The site is developed with a retail shopping center.
- The applicant is seeking a special exception to the sign regulations for the number of large words permitted by code.
- The Dallas Development Code states a sign may not have more than eight large words.

BACKGROUND INFORMATION:

Zoning:

Site: MU-3 (Mixed Use)
North: MU-3 (Mixed Use)
South: MU-3 (Mixed Use)
East: CR (Community Retail)
West: MU-1 (Mixed Use)

Land Use:

The subject site is developed with a shopping center. The properties to the north and south are developed with a retail center. The properties to the east, south and west are developed with non-residential commercial/retail uses.

Zoning/BDA History:

There is no case history for this site or sites in the immediate area.

Timeline:

- June 24, 2009: 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 16, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- July 23, 2009: The Board of Adjustment's Senior Planner contacted the applicant and shared the following information via letter and phone:
- the public hearing date and panel that will consider the application;
 - the criteria and standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the July 27th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - the August 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and

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

July 28, 2009: 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 Development Services Department Current Planning Division Assistant Director, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

STAFF ANALYSIS:

- The subject site is developed with a retail shopping center. The applicant is requesting a variance to sign regulations for Sun and Ski Sports.
- The Dallas Development code limits the number of large words on a sign to eight. The applicant is proposing to install an attached sign with nine words.
- A submitted elevation illustrates an attached sign located on the front elevation of the building with a logo and the words “Sun & Ski Sports” and “Ski Hike” and “Board Bike.”
- The applicant has the burden of proof in establishing that granting the special exception is necessary due to substantial financial hardship or inequity.
- If the board chooses to grant this request, staff recommends compliance with the submitted elevation.

FILE NUMBER: BDA 089-090(K)

BUILDING OFFICIAL'S REPORT:

Application of Tommy Mann for a special exception to the fence height regulations at 10301 Inwood Road. This property is more fully described as the 3.66 acre tract 2 in City Block 5525 and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 6 foot fence in a required front yard setback which will require a 2-foot special exception.

LOCATION: 10301 Inwood Road

APPLICANT: Tommy Mann

REQUESTS:

A special exception to the fence height regulations of 2 feet is requested to construct a fence that is 6 feet high in a required front yard.

STAFF RECOMMENDATION (fence height special exception):

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The site is zoned R 16(A) and has a platted front yard setback of 40 feet.
- The applicant proposes to maintain a 6 foot high fence.
- The Dallas Development Code limits the height of fences in front yard setbacks to 4 feet in residential zoning.

BACKGROUND INFORMATION:

Zoning:

Site: R-16ac (A) (Single family residential 1 acre).
North: R-16ac (A) (Single family residential 1 acre).
South: R-16ac (A) (Single family residential 1 acre).
East: R-16ac (A) (Single family residential 1 acre).
West: R-16ac (A) (Single family residential 1 acre).

Land Use:

The subject site is undeveloped. The properties to the north, south, and east are developed with single family structures.

Zoning/BDA History:

BDA 089-009 (5107 Kelsey Road). The Board of Adjustment Panel A denied the request for a fence height special exception without prejudice.

Timeline:

- June 24, 2009: The applicant's representative submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 16, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- July 23, 2009: The Board Senior Planner contacted the applicant's representative by telephone and email and the following information:
- the public hearing date and panel that will consider the application;
 - the criteria and standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the July 27th deadline to submit additional evidence for staff to factor into their analysis and recommendation;
 - the August 5th 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

July 28, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

STAFF ANALYSIS:

- The property is undeveloped and the surrounding properties, in the area, are developed with single-family structures.
- The applicant proposes to construct and maintain solid “gray 6’ high split face CMU block wall”, located 28 feet front the front yard property line.
- The proposed fence runs 350 feet parallel to the front property line.
- The applicant has submitted a landscape plan in conjunction with the fence height special exception request.
- During the site visit the senior planner did not observe any other fences taller than 4 feet in the immediate area.
- The applicant has the burden of proof in establishing that granting the special exception to the fence height regulation will not adversely affect neighboring properties.
- If the Board grants the special exception to the fence height regulations, staff recommends imposing the submitted site plan, landscape plan and elevation as a condition.

FILE NUMBER: BDA 089-093(K)

BUILDING OFFICIAL'S REPORT:

Application of Marc Goldman for a special exception to the parking regulation at 12222 N. Central Expressway. This property is more fully described as Lot 1 in City Block 7749 and is zoned MU-3, which requires parking to be provided. The applicant proposes to construct a nonresidential structure for medical clinic or ambulatory surgical center use and provide 308 of the required 360 parking spaces, which will require a 52 space special exception (14.5% reduction).

LOCATION: 12222 N. Central Expressway

APPLICANT: Marc Goldman

REQUEST:

- A special exception to the off-street parking regulations of 52 parking spaces (or 14.5% of the required off-street parking) is requested in conjunction with constructing and maintaining a nonresidential structure for medical clinic or ambulatory surgical center use.

STAFF RECOMMENDATION:

No objection.

Rationale:

1. The Development Services Senior Engineer has submitted a comment sheet marked "No objection if certain conditions are met:" the requested reduction in required parking is not substantiated by a study or parking analysis (see attachment A).

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 subject site is currently undeveloped. The property to the south is developed with a hospital.
- The proposed site is described as Phase II of the medical use campus.
- The proposed site will be developed with a 4 level 72,000 square foot building.
- The Dallas Development Code requires the following off-street parking requirements:

- Medical clinic or ambulatory surgical center: 1 space per 200 square feet of floor area. If more than ten off-street parking spaces are required for this use, handicapped parking must be provided pursuant to code.

The application and Building Official's Report state that 308 (or 85.5 percent) of the required 360 spaces will be provided in conjunction with the proposed medical center.

BACKGROUND INFORMATION:

Zoning:

Site: MU-3 (Mixed Use)
North: MU-3 (Mixed Use)
South: PD No. 441 (Planned Development)
East: R-7.5(A) (Single-family residential 7,500 square feet)
West: MU-3 (Mixed Use))

Land Use:

The subject site is undeveloped. The property to the north is undeveloped. The property to the south is developed with a medical center. The properties to the east are developed with single family structures. The properties to the west are developed with non-residential uses.

Zoning/BDA History:

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

Timeline:

- June 26, 2009: 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, 16, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- July 23, 2009: The Board Senior Planner contacted the applicant's representative and shared the following information by letter:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the July 27th deadline to submit additional evidence for staff to factor into their analysis;

- the August 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

July 28, 2009: 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 Assistant Director of Development Services, the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

July 30, 2009: The Development Services Senior Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met"

STAFF ANALYSIS:

- The applicant proposes to provide 308 or (85.5 percent) of the required 360 spaces for a "medical clinic or ambulatory surgical center" use on a site that is undeveloped.
- The submitted site plan describes the proposed development as "Phase II" of medical campus, Phase I is the property to the south that is developed with a hospital.
- The applicant has indicated that the special exception is necessary due to the existing floodplain on the site that limits the amount of developable area. The submitted site plan state the developable area of the property has been reduced by 26,900 square feet due to the floodplain.
- The Development Services Senior Engineer submitted a comment sheet marked "has no objections if certain conditions are met." A parking analysis needs to be submitted to support the request for the reduction in required parking.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the "medical clinic or ambulatory surgical center" use does not warrant the number of off-street parking spaces required, and
 - The special exception of 52 spaces (or 14.5 percent of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board chooses to grant the special exception to the required parking, staff suggests the following condition: the special exception of 52 spaces automatically

FILE NUMBER: BDA 089-082

BUILDING OFFICIAL'S REPORT:

Application of Santos T. Martinez of Masterplan for a special exception to the side yard setback regulations at 5814 Vickery Boulevard. This property is more fully described as Lot 4 in City Block 10/1920 and is zoned R-7.5(A), which requires a side yard setback of 5 feet. The applicant proposes to modify and maintain a carport and provide a 0 foot setback which will require a special exception of 5 feet.

LOCATION: 5814 Vickery Boulevard

APPLICANT: Santos T. Martinez of Masterplan

REQUEST:

- A special exception to the side yard setback regulations of 5' is requested in conjunction with modifying an existing metal-columned carport with a roll down door into, according to the submitted site plan, revised elevation (Attachment E dated 8-4-09), and email from the applicant (Attachment B dated 7-14-09), an approximately 840 square foot (60' x 14'), approximately 11' high, brick-columned, flat-roofed carport *without* a roll-down door on a site developed with a one-story approximately 25' high duplex structure.

Note that the Board Administrator received a phone call from a neighbor/owner in July and an email/photos of the subject site from a city staff person taken in June related to the issue of whether the applicant had complied with the Dallas Development Code provision related to the posting of the notification sign on the subject site (see Attachments A and D). As a result of the phone call from a citizen and the email/photographs of the sign on the site, the Board of Adjustment should determine if they feel that the applicant has complied with the Dallas Development Code provision related to the posting of notification signs code – a provision that states: “If the board of adjustment determines that the applicant has failed to comply with the provisions of this section, it shall take no action on the application other than to postpone the public hearing for at least four weeks, or deny the applicant’s request, with or without prejudice.” Depending on the board’s determination the board may choose to deny, delay, or hear the request on August 19th.

(Note that the Board Administrator had informed the applicant of this concern whereby the applicant stated in the July 10th email (Attachment A) that “We did post the required sign within 14 days of the application submittal,” and verbally responded to the Board Administrator’s July 30th email (Attachment D) on the issue that he wished to proceed with this application as opposed to withdraw it and re-file a new application.

STAFF RECOMMENDATION:

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

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

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

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

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

GENERAL FACTS:

- A 5' side yard setback is required in the R-7.5(A) zoning district.
The applicant has submitted a site plan indicating the location of "existing carport area" on the site that is located on from the site's eastern side property line (or 5' into the 5' side yard setback).
The applicant submitted an elevation with the application on May 7, 2009 that did not denote the carport in the "front elevation." On July 20, 2009, the applicant submitted a revised elevation document (not to scale) (Attachment C) that documented front and side elevations with the following notations: "brick to be placed around columns" and "existing steel carport to remain." The "left elevation" on the elevation document entitled "Attachment C" showed the roof line of the carport to be higher than the cornice line of the duplex while the "front elevation" showed the roof line of the carport to be flat and in line with the cornice line of the existing duplex structure – a height denoted of 9'. However, on August 4, 2009, the applicant submitted a revised elevation document (Attachment E) that documented front and side elevations where the roof lines on both elevations appeared to match, and where the "front elevation" had a denoted height of 11'.
- The following information was gleaned from the submitted site plan:
 - Approximately 60' in length and approximately 14' in width (approximately 840 square feet in total area) that is proposed to be maintained attached to a duplex structure that is approximately 70' in length and approximately 30' in width (with a total approximate square footage of 2,100 square feet).
- The subject site is 140' x 50' (or 7,000 square feet) in area.

- According to calculations made by the Board Administrator from the submitted site plan, approximately 300 square feet of the approximately 840 square foot carport is located in the site's eastern 5' side yard setback.
- According to DCAD, the site is developed with a structure in "unsound" condition built in 1940 with 2,204 square feet of living area, and an 820 square foot attached aluminum carport.
- The Dallas Development Code provides for the Board of Adjustment to consider special exceptions for *carports* in the side yard with a specific basis for this type of appeal. (Note that the Dallas Development Code does not provide a definition of "carport" however Building Inspection interprets a "carport" to be a structure that would cover a vehicle and be open on at least one side. Building Inspection has recently been interpreting what would appear to a layperson to be a garage without a garage door as a "carport").
- The Dallas Development Code provides for the Board of Adjustment to consider *variances for structures* in the side yard setback with a different basis for appeal than that of *special exceptions for carports* in the side yard setback.
- A number of emails and plans between the applicant and the Board Administrator materialized from when this application was submitted on May 7, 2009 (see Attachments A-E).

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	R-7.5 (A) (Single family residential 7,500 square feet)
<u>North:</u>	R-7.5 (A) (Single family residential 7,500 square feet)
<u>South:</u>	CD No. 12 (Conservation District)
<u>East:</u>	R-7.5 (A) (Single family residential 7,500 square feet)
<u>West:</u>	R-7.5 (A) (Single family residential 7,500 square feet)

Land Use:

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

Zoning/BDA History:

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| <ol style="list-style-type: none"> 1. Miscellaneous Item #2, Property located at 5814 Vickery Boulevard (the subject site) | <p>On February 18, 2009, the Board of Adjustment Panel B denied the applicant's request (who at this time was Jill and Kyle Byrd) to waive the filing fee to be submitted in conjunction with a potential board of adjustment application – a special exception to the side yard setback regulations for a carport.</p> |
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Timeline:

- May 7, 2009 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 9, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B. This assignment was made in order to comply with Section 9(k) of the Board of Adjustment Working Rules of Procedure that states, "If any preliminary action is required on a case, including but not limited to a fee waiver or waiver of the two year waiting period, the case must be returned to the panel taking
- July 10, 2009: The Board Administrator and the applicant exchanged emails regarding the posting of the notification sign and what appeared to be an incomplete application (see Attachment A).
- July 14, 2009: The Board Administrator and the applicant exchanged emails about what was the issue of the request (see Attachment B).
- July 17, 2009: The Board Administrator contacted the applicant and shared the following information via phone and email:
- an attachment that provided the public hearing date and panel that will consider the application; the July 27th deadline to submit additional evidence for staff to factor into their analysis; and the August 7th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the requests; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- July 20, 2009: The applicant submitted a revised elevation of the carport to be modified on the subject site (see Attachment C).
- July 28, 2009 The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- July 30, 2009: The Board Administrator forward an email and photos taken by a city staff person of the sign as it was posted on the site on June 3, 2009 (see Attachment D).

August 4, 2009: The applicant submitted a revised elevation of the carport to be modified on the subject site (see Attachment E).

STAFF ANALYSIS:

- This request focuses on modifying and maintaining an existing carport that is located on the site's eastern side property line (or as much as 5' into the 5' side yard setback). The applicant has written and submitted an elevation that represents a modification to an existing metal-columned carport with a roll down door (of which the City has no record of issuing a permit for) into, according to the submitted site plan, revised elevation (Attachment E dated 8-4-09), and email from the applicant (Attachment B dated 7-14-09), an approximately 840 square foot (60' x 14'), approximately 11' high brick-columned, flat-roofed carport *without* a roll-down door on a site developed with a one-story approximately 25' high duplex structure.
- The Board Administrator received a phone call from a neighbor/owner in July and an email/photos of the subject site from a city staff person taken in June related to the issue of whether the applicant has complied with the Dallas Development Code provision related to the posting of the notification sign on the subject site (see Attachments A and D). As a result, the Board of Adjustment should determine if the applicant complied with the Dallas Development Code provision related to the posting of notification signs.
- The Dallas Development Code states that "The applicant shall post the required number of notification signs on the property within 14 days after an application is filed. The signs must be legible and remain posted until a final decision is made on the application. For tracts with street frontage, signs must be evenly spaced over the length of every street frontage, posted at a prominent location adjacent to a public street, and be easily visible from the street. For tracts without street frontage, signs must be evenly posted in prominent locations most visible to the public." The code additionally states "If the city plan commission, landmark commission, or board of adjustment determines that the applicant has failed to comply with the provisions of this section, it shall take no action on the application other than to postpone the public hearing for at least four weeks, or deny the applicant's request, with or without prejudice. If the hearing is postponed, the required notification signs must be posted within 24 hours after the case is postponed and comply with all other requirements of this section."
- If the Board of Adjustment were to determine that the applicant complied with the Dallas Development Code provision related to the posting of notification sign on the site, the applicant shall have the burden of proof in establishing the following:
 - That granting this special exception to the side yard setback regulations of 5' (requested in this case to modify and maintain an approximately 840 square foot carport attached to a duplex that would be approximately 11' high, brick-columned, and flat-roofed *without* a roll-down door located on the eastern side property line or 5' into the 5' side yard setback) will not have a detrimental impact on surrounding properties.

- According to calculations made by the Board Administrator from the submitted site plan, approximately 300 square feet of the approximately 840 square foot carport is located in the site's eastern 5' side yard setback.
- As of August 10, no letters or petitions had been submitted in support and one email had been submitted in opposition to the request.
- Typically, staff has suggested that the Board impose conditions with this type of appeal. The following conditions would restrict the location and size of the carport in the side yard setback; would require the carport in the side yard setback to be constructed and maintained in a specific design with specific materials and in a specific configuration; and would require the applicant to mitigate any water drainage-related issues that the modified carport may cause on the lot immediately east:
 1. Compliance with the submitted site plan and revised elevation dated 8-4-09 is required.
 2. The carport structure must remain open at all times.
 3. There is no lot-to-lot drainage in conjunction with this proposal.
 4. All applicable building permits are obtained.
 5. No item (other than a motor vehicle) may be stored in the carport.