

NOTICE FOR POSTING
MEETING OF
BOARD OF ADJUSTMENT, PANEL B
WEDNESDAY, SEPTEMBER 16, 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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09-16-2009

ZONING BOARD OF ADJUSTMENT, PANEL B
WEDNESDAY, SEPTEMBER 16, 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, August 19, 2009 Board of Adjustment Public Hearing Minutes	M1
BDA 089-051	515 N. St. Paul Street & 608 N. St. Paul Street REQUEST: Of Jonathan Vinson of Jackson Walker, LLP, to extend the time period in which to file an application for a building permit or certificate of occupancy on a request for special exceptions to the pedestrian skybridge regulations granted by the Board of Adjustment Panel B on April 15, 2009.	M2

UNCONTESTED CASES

BDA 089-098(K)	5527 Royal Lane REQUEST: Application of Carl C. Scherz for a special exception to the fence height regulations and a special exception to the visibility obstruction regulations	1
BDA 089-105(K)	5202 Mercedes Avenue REQUEST: Application of Cullen Dickey represented by David Yeargan for a variance to the side yard setback regulations	2

HOLDOVER CASES

BDA 089-082 5814 Vickery Boulevard	3
REQUEST: Application of Santos T. Martinez of Masterplan for a special exception to the side yard setback regulations	
BDA 089-093(K) 12222 N. Central Expressway	4
REQUEST: Application of Marc Goldman for a special exception to the parking regulation	

REGULAR CASE

BDA 089-107 5357 W. Northwest Highway	5
REQUEST: Application of Tommy Mann for variances to the off-street parking regulations	

EXECUTIVE SESSION NOTICE

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

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

(Rev. 6-24-02)

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel B August 19, 2009 public hearing minutes.

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: BDA 089-051

REQUEST: To extend the time period in which to file an application for a building permit or certificate of occupancy an additional 12 months beyond the 180 days the applicant has to do so from the Board of Adjustment's favorable action on a request for special exceptions to the pedestrian skybridge regulations granted by Board of Adjustment Panel B on April 15, 2009.

LOCATION: 515 N. St. Paul Street & 608 N. St. Paul Street

APPLICANT: Jonathan Vinson of Jackson Walker, LLP

STANDARD FOR EXTENDING THE TIME PERIOD IN WHICH TO APPLY FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY:

The Board of Adjustment Working Rules of Procedure states that a panel may not extend the time period for making application for a building permit or certificate of occupancy beyond 180 days from the date of its favorable action unless it makes a specific finding based on evidence presented at a public hearing that there are no substantially changed conditions or circumstances regarding the property to the satisfaction of the panel. In no event, however, may the board extend the time period beyond 18 months from the date of its favorable action.

GENERAL FACTS:

- The Dallas Development Code states the following with regard to board action:
 - The applicant shall file an application for a building permit or certificate of occupancy within 180 days for the date of the favorable action of the board, unless the applicant files for and is granted an extended time period prior to the expiration of the 180 days. The filing of a request for an extended time period does not toll the 180 day time period. If the applicant fails to file an application within the time period, the request is automatically denied without prejudice, and the applicant must begin the process to have his request heard again.
- The Board of Adjustment Working Rules of Procedure state the following with regard to extensions of the time period for making application for a building permit or certificate of occupancy:
 - A panel may not extend the time period for making application for a building permit or certificate of occupancy beyond 180 days from the date of its favorable action unless it makes a specific finding based on evidence presented at a public hearing that there are no substantially changed conditions or circumstances regarding the property to the satisfaction of the panel. In no event, however, may

the board extend the time period beyond 18 months from the date of its favorable action.

Timeline:

- April 15, 2009 The Board of Adjustment Panel B granted a request for special exceptions to the pedestrian skybridge regulations. The case report stated that the request was made in conjunction with locating a proposed pedestrian skybridge over St. Paul Street 166' from a historic overlay district -The Downtown US Post Office (134' closer than the required 300' distance), and constructing this skybridge with an interior passageway of 21' (or 1' wider than the 20' width allowed by code). The proposed skybridge would connect a proposed new sanctuary use to a proposed new children's education building. The site is currently developed with a church use (First Baptist Church of Dallas) on the southwest side of St. Paul Street and a surface parking lot on the northeast side of St. Paul Street.
- April 23, 2009 The Board Administrator wrote the applicant's representative a letter documenting the April 15th action of the board, and noting to "Contact Building Inspection at 320 E. Jefferson, Room 105 to file an application for a building permit or certificate of occupancy within 180 days from the date of the favorable action of the board."
- August 20, 2009 The applicant's representative submitted a letter to staff requesting that the Board extend the time period in which to file an application for a building permit or certificate of occupancy an additional 12 months beyond the 180 days they had to do so from the April 15, 2009 favorable action (see Attachment A).
- August 20, 2009: The Board Administrator responded to the applicant's representative by email informing him of the following:
- 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 September 4th deadline to submit additional evidence to be incorporated into the Board's docket materials; and
 - that additional evidence should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and if not, may result in delay of action on the appeal or denial.
- Sept. 3, 2009 The applicant's representative submitted another letter to staff providing additional details about the request (see Attachment B).

FILE NUMBER: BDA 089-098(K)

BUILDING OFFICIAL'S REPORT:

Application of Carl C. Scherz for a special exception to the fence height regulations and a special exception to the visibility obstruction regulations at 5527 Royal Lane. This property is more fully described as Lot 25 in City Block 7/6389 and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet and requires a 45 foot visibility triangle at street intersections. The applicant proposes to construct an 8 foot, 6 inch fence in a required front yard setback which will require a 4 foot, 6 inch special exception to the fence regulations and to construct and maintain a single family residential fence structure in a required visibility obstruction triangle, which will require a special exception to the visibility obstruction regulations.

LOCATION: 5527 Royal Lane

APPLICANT: Carl C. Scherz

REQUESTS:

A special exception to the fence height regulations of 4 foot and 6 inches is requested to construct a fence that is 8 feet and 6 inches in a required front yard and to construct and maintain a single family residential fence structure in a required visibility obstruction triangle, which will require a special exception to the visibility obstruction regulation.

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.

STAFF RECOMMENDATION (visibility obstruction):

Approval:

Rationale:

- The Development Services Senior Engineer has no objections to this case.

the request: compliance with the submitted site/landscape and elevation plan is required. The case report states the request was made to complete and maintain a maximum 5' high combination solid brick and open metal fence with 5' 2" high columns, and that although the fence appears to be higher than 5', the fence was technically measured from the inside grade which resulted in a maximum fence/column height of only 5' 2". (The way in which a fence is measured was amended in the Dallas Development Code in 1998 whereby the height of a fence in single family and duplex districts is now measured to the top of the fence to the level of the ground inside and outside of any fence and is the greater of these two measurements).

3. BDA 056-250, 5514 Royal Lane

On November 13, 2006 the Board of Adjustment, Panel C, granted a request for a special exception to the fence height regulations of 4 feet, 9 inches. The board imposed the condition of compliance with the submitted site plan/elevation, fence elevation, and site plan with landscaping materials is required.

4. BDA 089-086, 5511 Royal Lane.

On August 18, 2009, the Board of Adjustment Panel A, granted a requested for a special exception to the fence height regulations of 5 feet, 6 inches.

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 B.
- 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

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

July 30, 2009 The applicant submitted a request to have this case delayed until September 16, 2009.

September 1, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September 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 developed with a single family structure and the surrounding properties are developed with single-family structures.
- This property has frontage along the private drive and along Royal Lane.
- The applicant proposes to construct and maintain a solid masonry and wood fence that is 8 feet and 6 inches in height.
- The proposed fence runs approximately 130 feet parallel to the front property line.
- During the site visit the senior planner observed multiple fences over four-feet high in the front yards of the neighboring properties.
- 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 and that the fence located in the visibility triangle will not constitute a traffic hazard.
- If the Board grants the special exception to the fence height and visibility obstruction regulations, staff recommends imposing the submitted site plan and elevation as a condition.

FILE NUMBER: BDA 089-105(K)

BUILDING OFFICIAL'S REPORT:

Application of Cullen Dickey represented by David Yeargan for a variance to the side yard setback regulations at 5202 Mercedes Avenue. This property is more fully described as Lot 1 in City Block 19/2930 and is zoned CD-9, which requires a side yard setback of 10 feet. The applicant proposes to construct and maintain a single family residential structure and provide a 5 foot, 2 inch side yard setback which will require a variance of 4 feet, 10 inches.

LOCATION: 5202 Mercedes Avenue

APPLICANT: Cullen Dickey
Represented by David Yeargan

REQUESTS:

A variance to the side yard setback is requested in conjunction with building and maintaining a residential structure.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The applicant has substantiated the variance is not contrary to the public interest.
- The variance is necessary to permit development of this specific parcel of land that differs from other parcels of land in the CD-9 zoning district being that the parcel of land is of such a restrictive shape that is cannot be developed in a manner commensurate with the development upon other parcels of land within the same zoning.

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 for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that:

- (A) 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;

- (B) the variance is necessary to permit development of a specific parcel of land that 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 with the same zoning; and
- (C) 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 subject site is developed with a single family structure and is located in the CD-9 zoning, which requires a 10 foot side yard setback.
- The applicant proposes to construct and maintain a single family residential structure and provide a 5 foot 2 inch side yard setback, which will require a 4 foot 10 inch variance to the side yard setback regulation.
- A portion of the current structure exists within the 10 foot side yard setback.
- The subject site is developed with a single family structure. According to DCAD the property was developed in 1937 with a 1,416 square foot home that is listed in good condition on a lot that is 9,123 square feet in area.

BACKGROUND INFORMATION:

Zoning:

Site: CD-9 (Conservation District)
North: CD-9 (Conservation District)
South: CD-9 (Conservation District)
East: CD-9 (Conservation District)
West: CD-9 (Conservation District)

Land Use:

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

Zoning/BDA History:

On July 9, 2009 the applicant received approval for a bathroom addition from the Conservation Preservation staff.

Timeline:

July 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.

- August 20, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- August 24, 2009: The Board of Adjustment Senior Planner contacted the applicant by phone and email and shared the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the August 31st deadline to submit additional evidence for staff to factor into their analysis; and the September 4th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria and standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- August 29, 2009 The Senior Historic Planner submitted a comment sheet in conjunction with this application (see Attachment A).
- Sept. 1, 2009 The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the September 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, Building Inspection Development Code Specialists, and the Assistant City Attorney to the Board.

STAFF ANALYSIS:

- The applicant proposes to construct and maintain a single family residential structure and provide a 5 foot 2 inch side yard setback, which will require a 4 foot 10 inch variance to the side yard setback regulation.
- On July 9, 2009 the applicant received approval from the Conservation and Historic preservation staff for an addition for the construction of a bathroom.
- The existing structure provides a 5 foot, 2 ½ inch side yard setback, requiring a 4 foot, 10 inch variance will remedy the existing structure and the proposed addition.
- This corner lot is trapezoidal in shape and is different from other parcels of land in the CD-9 zoning that are typically rectangular in shape. The shape of the lot creates a hardship that limits the developable area of the lot.
- The applicant has the burden to prove the variance to the side yard setback is necessary to develop a specific parcel of land that differs from other parcels of land in the same CD-9 zoning, the variance is not contrary to the public interest, and the variance is not necessary to remedy a self-created or financial hardship.
- If the Board votes to grant the variance to the side yard setback, staff recommends compliance with the submitted site plan as a condition.

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 F dated 8-18-09), and email from the applicant (Attachment B dated 7-14-09), an approximately 840 square foot (60' x 14'), approximately 9' 6" high, brick-columned, flat-roofed carport *without* a roll-down door on a site developed with a one-story approximately 25' high duplex structure.

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 on the "left elevation" 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'.
On August 4, 2009, the applicant submitted a revised elevation document dated 8-4-09 (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'.
On August 31, 2009, the applicant submitted a revised elevation document dated 8-18-09 (Attachment F) that documented front and side elevations showing the roof line of the carport on the "front elevation" to be higher than the cornice line of the duplex while the roof line of the carport on the "left elevation" is in line with the cornice line of the duplex.
- 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).
- The Board determined at their August 18th hearing that the applicant failed to comply with the following Dallas Development Code provision related to the posting of notification signs: “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.” As a result the board chose to delay hearing testimony on this application until their next regularly scheduled hearing – September 16, 2009.
- On August 31, 2009, the applicant submitted a revised elevation document dated 8-18-09 (see Attachment F).

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is developed with a 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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| <p>1. Miscellaneous Item #2, Property located at 5814 Vickery Boulevard (the subject site)</p> | <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).
- August 19, 2009 The Board of Adjustment conducted a public hearing on this request and delayed action until their September 16th public hearing in order for the applicant to comply with the Dallas Development Code provisions related to the posting of notification signs.
- August 20, 2009: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the August 31st deadline to submit additional evidence for staff to factor into their analysis; and the September 4th 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 request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- August 31, 2009 The applicant submitted additional information to the Board Administrator (see Attachment F).
- Sept. 1, 2009 The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the September 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, Building Inspection Development Code Specialists, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.

STAFF ANALYSIS:

- This request 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 F dated 8-18-09), and email from the applicant (Attachment B dated 7-14-09), an approximately 840 square foot (60' x 14'), 9' 6" 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 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 9' 6" 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 September 8, 2009, 11 letters had been submitted in support, 5 letters/emails had been submitted in opposition, and 1 letter had been submitted neutral 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 8-18-09* 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.
- * Note that there appears to be a discrepancy between the heights of the carport as denoted on the "left" and "front" elevations of the elevations document (Attachment E) dated 8-18-09 – a discrepancy that was identified to the applicant but not addressed as of September 8, 2009 . The board may feel it is necessary for the applicant to address this matter and possibly request that the applicant provide clarity to his submitted elevation document dated 8-18-09.

BOARD OF ADJUSTMENT ACTION: AUGUST 19, 2009

APPEARING IN FAVOR: Santos Martinez, 900 Jackson St., Dallas, TX
Kyle Byrd, 5734 Vickery, Dallas, TX

APPEARING IN OPPOSITION: Brian Sloss, 5818 Vickery Blvd., Dallas, TX

MOTION #1: **Wilson**

I move that the sign was posted in sufficient time in order to hear the matter in Appeal No. **BDA 089-082**.

SECONDED: **Chernock**

AYES: 2– Chernock, Wilson

NAYS: 3 –Reynolds, Gillespie, Beikman,

MOTION FAILED 3 – 2

MOTION #2: **Wilson**

I move that the Board of Adjustment in Appeal No. **BDA 089-082**, hold this matter under advisement until **September 16, 2009**.

SECONDED: **Gillespie**

AYES: 4– Reynolds, Gillespie, Beikman, Wilson

NAYS: 1 – Chernock

MOTION PASSED 4 – 1

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:

Denial.

Rationale:

1. The Development Services Senior Engineer has submitted a comment sheet stating 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”

August 19, 2009 The Board of Adjustment, Panel B, voted to hold this case under advisement until September 16, 2009

September 1, 2009 The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September 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.

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 stating he has no objections if a parking analysis is 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 and immediately terminates if and when the “medical clinic or ambulatory surgical center” use is changed or discontinued.

FILE NUMBER: BDA 089-107

BUILDING OFFICIAL'S REPORT:

Application of Tommy Mann for variances to the off-street parking regulations at 5357 W. Northwest Highway. This property is more fully described as Lot 5 in City Block 7/5580 and is zoned R-1ac(A) which requires screening to separate a parking area serving a nonresidential use from a contiguous residential use if either is in an A, A(A), R, R(A), D, D(A), TH, TH(A), CH, MF, MF(A), MH, or MH(A) district, and requires a front yard setback of 40 feet. The applicant proposes to construct and maintain a structure and not provide the required parking area screening, and to locate and maintain off-street parking spaces and provide a 13 foot setback. This proposal will require variances to the off-street parking regulations related to required screening of parking areas and to the required front yard setback of 27 feet.

LOCATION: 5357 W. Northwest Highway

APPLICANT: Tommy Mann

REQUESTS:

- The following appeals have been made on a site currently developed as a church use (Lovers Lane United Methodist Church):
 1. a variance to the off-street parking regulations of 27' is requested in conjunction with locating and maintaining 3 required off-street parking spaces in the site's 40' Inwood Road front yard setback; and
 2. a variance to the off-street parking regulations is requested in conjunction with not providing the required brick, stone, or concrete masonry, stucco, concrete, or wood wall or fence not less than 6' in height to be provided between the required off-street parking on the site developed as a nonresidential use (a church) and the contiguous residential uses zoned R-1ac(A) immediately north and east of the subject site.

The requests for variances to off-street parking regulations described above are prompted by the construction and maintenance of additions currently underway on the subject site.

STAFF RECOMMENDATION (variance related to parking location):

Approval, subject to the following condition:

- Compliance with the submitted "Landscape Screening Exhibit" document is required.

Rationale:

- The subject site is restricted in its developable area and is different from other parcels of land zoned R-1ac(A) given its size restricted by its two 40' front yard

- The applicant has substantiated how granting this variance does not appear to be contrary to the public interest given that: 1) the Development Services Senior Engineer has commented with no objections to this request; and 2) although the history is unclear, subsequent acquisitions of right-of-way for Inwood Road have lead to the encroachment of a few church parking spaces currently in this Inwood Road front yard setback.

STAFF RECOMMENDATION (variance related to parking screening):

Denial

Rationale:

- Although staff concluded that there was hardship that warranted the variance to the off-street parking regulations related to locating required off-street parking out of one of two of the site's front yard setbacks, the applicant had not substantiated how the site's restrictive area, shape, or slope, precluded the applicant from providing the required screening between the church parking area and the single family zoned property to the north and east of the subject site.

STANDARD FOR A VARIANCE:

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that:

- (D) 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;
- (E) the variance is necessary to permit development of a specific parcel of land that 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 with the same zoning; and
- (F) 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 subject site is one block wide with Inwood Road as its western boundary, Meadowbrook Drive as its eastern boundary, and W. Northwest Highway as its southern boundary. Even though the Inwood Road and Meadowbrook Drive "sides" of the site function more as the site's side yards and the W. Northwest Highway "side" functions as the site's front yard, the subject site has two 40' front yard setbacks along Inwood Road and Meadowbrook Drive and two 20' side yard

- The Dallas Development Code states that in residential districts, any off-street parking for nonresidential uses must comply with the minimum front yard requirements of Section 51A-4.401.

The minimum front yard setback on a R-1ac(A) zoned lot is 40 feet.

The applicant has submitted a "Landscape Screening Exhibit" indicating three off-street parking spaces in the site's Inwood Road 40' front yard setback, one of which is as close as 13' from the front property line (or 27' into the 40' front yard setback).

- The Dallas Development Code requires certain screening provisions for off-street parking- specifically that the owner of off-street parking must provide screening to separate the parking area from: 1) a contiguous residential use or a vacant lot if either is in an A, A(A), R, R(A), D, D(A), TH, TH(A), CH, MF, MF(A), MH, MH(A) district and the parking area serves a nonresidential use; or 2) a contiguous single family or duplex use or a vacant lot if either is in an R, R(A), D, D(A), TH, TH(A), CH, district and the parking area serves a multifamily use. The code continues to state that screening for off-street parking must be a brick, stone, or concrete masonry, stucco, or wood wall or fence that is not less than 6' in height; that the wall or fence may not have more than 10 square inches of open area for each square foot of surface area, and may not contain any openings or gates for vehicular access; and that the board may not grant a special exception to the height requirements for screening around off-street parking.

The applicant has submitted a "Landscape Screening Exhibit" indicating notes of "proposed evergreen holly screen" or "existing evergreen hedge" on the site along part of the site's northern border beginning in the northwest corner and proceeding eastward from Inwood Road, and notes of "existing chain link fence," "existing tree canopy," "existing wood fence" on the lots immediately adjacent to the site along part of its northern boundary. The plan also indicates notes of "existing wood fence" and "existing tree canopy" on the lot immediately adjacent to the site along part of its northern boundary nearer to the east side of the subject site at Meadowbrook Drive.

It appears from calculations taken by the Board Administrator from the submitted "Landscape Screening Exhibit" that about 1,300 linear feet of the approximately 1,400 total linear feet of the site's northern boundary is proposed not to be screened per the code provisions.

- The site appears to be mostly flat, is irregular in shape, and according to DCAD is 11.78 acres in area. The site is zoned R-1ac(A). The site has two 40' front yard setbacks which is not typical of most lots zoned R-1ac(A).
- According to DCAD records, the property is developed with one "church building" with 100 square feet built in 1960, two "church buildings" with 100 square feet each built in 1970, and one "church building" with 39,428 square feet built in 2000.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a letter that provided additional details about the requests; and
 - photographs of the site and neighboring properties.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is developed with a church (Lovers Lane United Methodist Church). The areas to the north, east, south, and west are developed with single family uses.

Zoning/BDA History:

1. BDA 990-266, Property at 5357 W. Northwest Highway (the subject site)
On June 20, 2000, the applicant withdrew a request for a variance to the off-street parking regulations that had been randomly assigned to be considered by Board of Adjustment Panel B.
2. Z089-253, Property at 5357 W. Northwest Highway (the subject site)
An application has been made for a PDD (Planned Development District) on property currently zoned R-1ac(A). The application for PDD is made in conjunction with plans for a private school to be located on the subject site. As of September 8, 2009, this application has not been scheduled for City Plan Commission.

Timeline:

- July 31, 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.
- August 20, 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 Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."
- August 20, 2009: The Board Administrator contacted the applicant by phone and shared the following information via email:

- an attachment that provided the public hearing date and panel that will consider the application; the August 31st deadline to submit additional evidence for staff to factor into their analysis; and the September 4th 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 request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

August 28, 2009 The applicant submitted additional information to the Board Administrator (see Attachment A).

Sept. 1, 2009 The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the September 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, Building Inspection Development Code Specialists, and the Assistant City Attorney to the Board.

Sept. 3, 2009 The Development Services Senior Engineer submitted a review comment sheet marked "Has no objections" with the following comments:

- "Ref. Z089-253. No objection to the parking spaces in the front yard setback along Inwood Road. "

STAFF ANALYSIS:

- The requests for variances to the off-street parking regulations focus on: 1) locating and maintaining 3 off-street parking spaces in the site's 40' Inwood Road front yard setback; and 2) not providing the required brick, stone, or concrete masonry, stucco, concrete, or wood wall or fence not less than 6' in height between the required off-street parking on the site developed as a church and the contiguous residential uses zoned R-1ac(A) immediately north and east of the subject site.
- The parking variances described above are prompted by the construction and maintenance of additions currently underway on the subject site.
- The submitted "Landscape Screening Exhibit" indicates three off-street parking spaces in the site's Inwood Road 40' front yard setback, one of which is as close as 13' from the front property line (or 27' into the 40' front yard setback).
- The submitted "Landscape Screening Exhibit" indicates notes of "proposed evergreen holly screen" or "existing evergreen hedge" on the site along part of the site's northern border beginning in the northwest corner and proceeding eastward from Inwood Road, and notes of "existing chain link fence," "existing tree canopy," "existing wood fence" on the lots immediately adjacent to the site along part of its northern boundary. The plan also indicates notes of "existing wood fence" and "existing tree canopy" on the lot immediately adjacent to the site along part of its northern boundary nearer to the east side of the subject site at Meadowbrook Drive.

- It appears from calculations taken by the Board Administrator from the submitted “Landscape Screening Exhibit” that about 1,300 linear feet of the approximately 1,400 total linear feet of the site’s northern boundary is proposed not to be screened per the code provisions.
- The site appears to be mostly flat, is irregular in shape, and according to DCAD is 11.78 acres in area. The site is zoned R-1ac(A). The site has two 40’ front yard setbacks which is not typical of most lots zoned R-1ac(A).
- The applicant has the burden of proof in establishing the following:
 - That granting both variances to the off-street parking 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.
 - Both variances are 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-1ac(A) zoning classification.
 - Both variances would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-1ac(A) zoning classification.
- If the Board were to grant both variances, imposing a condition whereby the applicant must comply with the submitted “Landscape Screening Exhibit”, the parking space encroachment into the Inwood Road front yard setback and the variance to the screening requirement would be limited to what is shown on this document.
- Note that if the board were to grant one but not both variance requests and impose the submitted “Landscape Screening Exhibit” as a condition, notations would be made of such action on this submitted plan.