

**NOTICE FOR POSTING**  
**MEETING OF**  
**BOARD OF ADJUSTMENT, PANEL B**  
**WEDNESDAY, SEPTEMBER 19, 2007**

<b>Briefing:</b>	<b>11:00 A.M.</b>	<b>L1FN CONFERENCE CENTER AUDITORIUM</b>
<b>Public Hearing:</b>	<b>1:00 P.M.</b>	<b>L1FN CONFERENCE CENTER AUDITORIUM</b>

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

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

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

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09-19-2007

ZONING BOARD OF ADJUSTMENT, PANEL B  
WEDNESDAY, SEPTEMBER 19, 2007  
AGENDA

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

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**Donnie Moore, Chief Planner**  
**Steve Long, Board Administrator**

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**MISCELLANEOUS ITEMS**

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	Approval of the <b>Wednesday, August 15, 2007</b> Board of Adjustment Public Hearing Minutes	M1
BDA 067-070	4627 Kelsey Road <b>REQUEST:</b> Of Yigal Lelah to waive the two year time limitation in place on a request for a special exception to the fence height regulations that was denied by Board of Adjustment Panel B on May 16, 2007 with prejudice	M2

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**UNCONSTESTED CASES**

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BDA 067-135	6342 Mercedes Ave <b>REQUEST:</b> Application of Ron Kirk for a variance to the off-street parking regulations	1
BDA 067-138	5405 Park Lane <b>REQUEST:</b> Application of John R. Woodward, represented by Jack Broaddus, for a special exception to the fence height regulations	2

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**REGULAR CASES**

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BDA 067-127	11420 Emerald Street <b>REQUEST:</b> Application of Robert E. McKenzie for a special exception to the parking regulations	3
BDA 067-128	11434 Emerald Street <b>REQUEST:</b> Application of Robert E. McKenzie for a special exception to the parking regulation	4

## 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 15, 2007 public hearing minutes.

**MISCELLANEOUS ITEM NO. 2**

**FILE NUMBER:** BDA 067-070

**REQUEST:** To waive the two year limitation in place on a request for a special exception to the fence height regulations that was denied with prejudice by Board of Adjustment Panel B on May 16, 2007

**LOCATION:** 4627 Kelsey Road

**APPLICANT:** Yigal Lelah

**STANDARD FOR WAIVING THE TWO YEAR TIME LIMITATION:**

The Dallas Development Code states that the board may waive the two year time limitation on a final decision reached by the board if there are changed circumstances regarding the property sufficient to warrant a new hearing.

**GENERAL FACTS:**

- The Dallas Development Code states the following with regard to board action:
  - Except as provided below, after a final decision is reached by the board, no further request on the same or related issues may be considered for that property for two years from the date of the final decision.
  - If the board renders a final decision of denial without prejudice, the two year limitation is waived.
  - The applicant may apply for a waiver of the two year limitation in the following manner:
    - The applicant shall submit his request in writing to the director. The director shall inform the applicant of the date on which the board will consider the request and shall advise the applicant of his right to appear before the board.
    - The board may waive the two year time limitation if there are changed circumstances regarding the property sufficient to warrant a new hearing. A simple majority vote by the board is required to grant the waiver. If a rehearing is granted, the applicant shall follow the process outlined in the code.
- On September 6, 2007, the applicant submitted a letter (see Attachment A) requesting a waiver of the two year time limitation in place on a special exception to the fence height regulations that was denied with prejudice by Board of Adjustment Panel B on May 16, 2007. (The case report stated that the request for a special exception to the fence height regulations of 4' was made in conjunction with constructing and maintaining an 8' high iron fence with 8' high masonry columns, and an approximately 6.5' – 7.5' high wrought iron and wood gate on a site being developed with a single family home).

- On September 10, 2007, the Board Administrator responded back to the applicant's request in an email. The email provided additional details about the request (see Attachment B).

**FILE NUMBER:** BDA 067-135

**BUILDING OFFICIAL'S REPORT:**

Application of Ron Kirk for a variance to the off-street parking regulations at 6342 Mercedes Ave. This property is more fully described as Lot 1 in City Block D/2849 and is zoned R-7.5(A) which requires a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley. The applicant proposes to construct a structure and provide an enclosed parking space with a setback of 10 feet which will require a variance to the off-street parking regulations of 10 feet.

**LOCATION:** 6342 Mercedes Ave

**APPLICANT:** Ron Kirk

**REQUEST:**

- A variance to the off-street parking regulations of 10' is requested in conjunction with constructing and maintaining an enclosed parking space in a one-bay garage extension/addition that would attach to an existing single family home. The enclosed parking space in the proposed garage would be located less than the required 20' distance from an alley right-of-way line.

**STAFF RECOMMENDATION:**

- Approval, subject to the following conditions:
  1. Compliance with the submitted site plan is required.
  2. An automatic garage door must be installed and maintained in working order at all times.
  3. At no time may the area in front of the garage be utilized for parking of vehicles.
  4. All applicable permits must be obtained.

**Rationale:**

- The Development Services Senior Engineer supports the request noting that the proposed garage addition will be in line with the existing garage, and will be located on an alley with very limited (if not non-existent) traffic.
- The irregular shape of the subject site precludes it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.

**STANDARD FOR A VARIANCE:**

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

### **GENERAL FACTS:**

- The Dallas Development Code requires that a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley.  
Submitted site plans (a floor plan and a site plan) and elevations show a proposed enclosed parking space in a new addition that would be located 10' from the alley right of way line (or 10' into the 20' setback/distance that an enclosed parking space is required to be from an alley right-of-way line).  
The plans show that the proposed enclosed parking space in the new addition would be located about 13.5' from the alley pavement line and 20' to the center of the alley. It appears from the site plan that the proposed garage will be located virtually in line with an existing attached two-car garage that faces the alley as well. The existing two-car garage (with enclosed parking spaces) on the existing home does not comply with the 20' setback/distance requirement but is nonconforming given that the garage was most likely constructed with the house in, according to DCAD, 1933.
- The site is flat, irregular in shape (according to the submitted plat, approximately 142' on the north, 80' on the south, 182' on the east, and 164' on the west), and approximately 19,000 square feet in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet.
- According to DCAD records, the property is developed with the following:
  - a single family home in "very good" condition built in 1933 with 3,859 square feet of living area;
  - a 169 square foot storage building; and
  - a 441 square foot attached garage.

### **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: R-7.5(A) (Single Family Residential 7,500 square feet)  
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 single family home. The areas to the north, east, south, and west are developed with single family uses.

**Zoning/BDA History:**

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

**Timeline:**

July 27, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

August 16, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

August 16, 2007: The Board Administrator contacted the applicant and shared the following information by phone and email:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the August 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
- the September 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the September public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

August 28, 2007: 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 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.

Sept. 7, 2007

The Development Services Senior Engineer forwarded a review comment sheet marked "Has no objections." The engineer made the following comments:

1. The proposed garage addition will be in line with the existing garage,
2. Traffic on alley appears very limited, probably non-existent.

### **STAFF ANALYSIS:**

- This request is made to allow the applicant the ability to enclose a parking space in a proposed one-bay garage extension/addition that would face/access to an alley. The proposed extension/addition complies with all development standards with the exception of the 20' spacing/distance requirement that is required to be provided between an enclosed parking space and an alley right of way line. As a result, the proposed extension/addition could be constructed and maintained on the site as shown on the submitted site plan *without* a garage door (on an enclosed parking space) if this request were denied.
- The Development Services Senior Engineer has submitted a review comment sheet marked "Has no objections." The engineer has commented that the proposed garage addition will be in line with the existing garage, and that the traffic on the alley in which the enclosed space would access to is very limited, probably non-existent.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the parking regulations of 10' to construct and maintain a garage structure addition with an enclosed parking space 10' away from an alley right of way line will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance to the parking regulations of 10' requested to construct and maintain a garage structure addition with an enclosed parking space 10' away from an alley right of way line 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-7.5(A) zoning classification.
- Typically, when the Board has found that this type of variance request is warranted, they have imposed the following conditions:
  1. Compliance with the submitted site plan is required.
  2. An automatic garage door must be installed and maintained in working order at all times.
  3. At no time may the area in front of the garage be utilized for parking of vehicles.
  4. All applicable permits must be obtained.These conditions are imposed to help assure that the variance will not be contrary to public interest.

- If the Board were to grant the variance request of 10', imposing a condition whereby the applicant must comply with the submitted site plan, the garage structure extension/addition could be constructed and maintained as shown on the site plan with a garage door or an enclosed parking space that is 10' away from the alley right of way line (or 10' into the 20' setback/distance requirement).

**FILE NUMBER:** BDA 067-138

**BUILDING OFFICIAL'S REPORT:**

Application of John R. Woodward, represented by Jack Broaddus, for a special exception to the fence height regulations at 5405 Park Lane. This property is more fully described a 1.15 acre lot in City Block 2/5590 and is zoned R-1ac(A) which limits the height of a fence in the front yard to four feet. The applicant proposes to construct an 11 foot high fence in a required front yard setback which will require a special exception to the fence height regulations of seven feet.

**LOCATION:** 5405 Park Lane.

**APPLICANT:** John R. Woodward  
Represented by Jack Broaddus

**REQUEST:**

- A special exception to the fence height regulations of 7' is requested in conjunction with constructing and maintaining generally a 6' high open wrought iron fence\* with two, 7' high brick entry columns and an 8' high open wrought iron arched gate in the site's 40' front yard setback. (The site is developed with a single family home).

\* A special exception of 7' has been requested to address a relatively small length of approximately 10' where the fence reaches 11' in height in a recessed area on the site where there is a creek bed.

**STAFF RECOMMENDATION:**

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

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

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

**GENERAL FACTS:**

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

The applicant submitted a site plan and elevations with the original application that were not to standard scales. However the applicant submitted a revised standard scaled site plan/elevation and gate elevation that denoted that the proposal will reach a maximum height of 11 feet (see Attachment A).

- The following additional information was gleaned from the revised standard scaled site plan/elevation:
  - Approximately 150' in length parallel to the street with a recessed entry way.
  - Approximately 10' – 20' from the property line (or 14' – 24' from the pavement line).
- There is one single family home that would have direct frontage to the proposed fence. This home has an approximately 9' high open wrought iron fence with approximately 10' high columns and approximately 12' high entry gate in its front yard that appears to be a result of a special exception granted by Board of Adjustment Panel B in November of 2000 (BDA990-364).
- The Board Administrator conducted a field visit of the site and surrounding area along Park Lane (generally from Alva Court to Hollow Way Road) and noted the following additional visible fences above four feet high which appeared to be located in the front yard setback. (Note that these locations and dimensions are approximations):
  - A 6.5' high open wrought iron fence with 8' high columns and an 8.5' high entry gate with 8.5' high entry columns immediately east of the subject site that is the result of an approved fence height special exception granted by the Board of Adjustment Panel A in September of 2006 (BDA 056-210).
  - A 5' high solid wall with 7.5' entry columns immediately west of the subject site that is the result of an approved fence height special exception granted by the Board of Adjustment in May of 1992 (BDA92-034).
  - A 6' high open wrought iron fence with 7' high columns and a 8' high entry gate with 8.5' high entry columns two lots east of the subject site that is the result of an approved fence height special exception granted by the Board of Adjustment Panel A in September of 2000 (BDA 990-342).
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included the following information:
  - a standard scaled site plan/fence/gate elevation;
  - a photo of a gate and fence;
  - a gate elevation;
  - a column elevation; and
  - a document that describes the wrought iron sections of the proposal.

## **BACKGROUND INFORMATION:**

### **Zoning:**

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

West: R-1ac (A) (Single family district 1 acre)

**Land Use:**

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

**Zoning/BDA History:**

1. BDA 056-183, 5405 Park Lane  
(the subject site) A request for a special exception to the fence height regulations of 9' assigned to Board of Adjustment Panel B was withdrawn on July 21, 2006.
2. BDA 92-034, 5323 Park Lane  
(the lot immediately west of the subject site) On May 12, 1992, the Board of Adjustment granted a request for a special exception to the fence height regulations of 3' 8". The board imposed the following condition related to this request: compliance with the submitted revised landscape plan is required. The case report stated that the request was made to construct and maintain a 5' high sloped solid wall with a maximum height of 7' 8" for entry columns.
3. BDA 990-364, 5404 Park Lane  
(the lot immediately south of the subject site) On November 14, 2000, the Board of Adjustment Panel B granted requests for special exceptions to the single family and fence height regulations of 11' 3". The board imposed the following conditions related to the single family regulations special exception: 1) the applicant must deed restrict the property to prevent use of the additional dwelling unit as rental accommodations; and 2) compliance with the submitted site plan is required. The board imposed the following conditions related to the fence height regulations special exception: compliance with the submitted site plan and elevation is required. The case report stated that the requests were made to construct and maintain a guest quarters on the site, and a 9' 2" high fence with 10' 3" high brick columns and an 11' 3" high entry gate.
4. BDA 990-342, 5435 Park Lane  
(two lots east of the subject site) On September 26, 2000, the Board of Adjustment Panel A granted a request for special exception to the fence height regulations of 4.5'. The board imposed the following conditions: 1) compliance with a modified elevation from what was submitted

that reduces the heights of the proposal at the front entryway to 8.5 feet high be submitted to the board administrator; and 2) compliance with the submitted site plan is required. The case report stated that the request was made to construct and maintain a 6' 8" high open wrought iron fence with an 8' high solid brick wall with 10' high solid masonry columns at the entry, 11' high entry columns, and an approximately 6' – 8.5' high open metal entry gate.

**Timeline:**

- July 30, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- August 16, 2007: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B. This assignment was made in order to comply with Section 9(k) of the Board of Adjustment Working Rules 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 16, 2007: The Board Administrator contacted with the applicant's representative and shared the following information by phone and email:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the August 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and discuss at the staff review team meeting;
  - the September 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the September public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- August 23, 2007 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).

August 28, 2007: 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 Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

### **STAFF ANALYSIS:**

- A revised scaled site plan/fence/column/gate elevation has been submitted that documents the location and materials of the proposal to exceed 4' in height in the front yard setback which in this case is an approximately 150' long, generally 6' high open wrought iron fence with two, 7' high brick columns, and an 8' high open wrought iron arched gate. (An approximately 10' length of the fence would reach a maximum height of 11' in a recessed area on the site where there is a creek bed).
- There is one single family home that would have direct frontage to the proposed fence. This lot has an approximately 9' high open wrought iron fence with approximately 10' high columns and approximately 12' high entry gate in its front yard that appears to be a result of a special exception granted by Board of Adjustment Panel B in November of 2000 (BDA990-364).
- In addition, three other fences/walls were noted in the immediate area above four feet high which appeared to be located in the front yard setback. (Note that these locations and dimensions are approximations):
  - A 6.5' high open wrought iron fence with 8' high columns and an 8.5' high entry gate with 8.5' high entry columns immediately east of the subject site that is the result of an approved fence height special exception granted by the Board of Adjustment Panel A in September of 2006 (BDA 056-210).
  - A 5' high solid wall with 7.5' entry columns immediately west of the subject site that is the result of an approved fence height special exception granted by the Board of Adjustment in May of 1992 (BDA92-034).
  - A 6' high open wrought iron fence with 7' high columns and a 8' high entry gate with 8.5' high entry columns two lots east of the subject site that is the result of an approved fence height special exception granted by the Board of Adjustment Panel A in September of 2000 (BDA 990-342).
- As of September 10th, no letters had been submitted in support or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 7' (whereby the proposal that would exceed 4' in height) will not adversely affect neighboring property.
- Granting this special exception of 7' with a condition imposed that the applicant complies with the submitted revised site plan/fence/column/gate elevation would assure that the proposed fence, entry columns, and gate would be constructed



of/maintained as/limited to the materials, heights, and location shown on this document.

**FILE NUMBER:** BDA 067-127

**BUILDING OFFICIAL'S REPORT:**

Application of Robert E. McKenzie for a special exception to the parking regulations at 11420 Emerald Street. This property is more fully described as Lot 1 in City Block B/6548 and is zoned RR which requires parking to be provided. The applicant proposes to maintain a nonresidential structure with restaurant, office, and general merchandise or food store uses and provide 53 of the required 71 parking spaces which will require a special exception to the off-street parking regulations of 18 spaces.

**LOCATION:** 11420 Emerald Street

**APPLICANT:** Robert E. McKenzie

**REQUEST:**

- A special exception to the off-street parking regulations of 18 parking spaces (or 25% of the required off-street parking) is requested in conjunction with leasing an existing approximately 9,000 square foot strip center (currently in the process of renovation) with restaurant, office, and retail (general merchandise 3,500 square feet or less) uses.

**STAFF RECOMMENDATION:**

Denial

Rationale:

- The Development Services Senior Engineer recommends that this request be denied since the parking analysis (submitted on September 5<sup>th</sup>) did not provide sufficient study/detail/rationale.
- The applicant had not substantiated how the parking demand generated by the uses does not warrant the number of off-street parking spaces required, nor that the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and

nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.

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

### **GENERAL FACTS:**

- The Dallas Development Code requires the following off-street parking requirements:
  - General merchandise or food store 3,500 square feet or less: 1 space per 200 square feet of floor area.

- Office use: 1 space per 333 square feet of floor area.
- Restaurant use: 1 space per 100 square feet of floor area.

A revised “parking analysis” chart submitted on September 5th indicates that the proposed mix of restaurant, general merchandise or food store less than 3,500 square feet, and office uses in the four suites in the existing center would require 71 off-street parking spaces. The revised Building Official’s Report states that 53 of the required 71 spaces will be provided (in this case either on site or through a City-recognized remote parking agreement).

- The applicant and his designated parking consultant submitted additional information beyond what was submitted with the original application and beyond what was discussed at the August 28<sup>th</sup> staff review team meeting (see Attachments B and C). This information included the following:
  - a document entitled “Parking Analysis” for the site;
  - a document entitled “Parking Analysis for Emerald Retail Center” prepared by a parking consultant.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: RR (Regional Retail)  
North: IR (Industrial Research)  
South: RR (Regional Retail)  
East: RR (Regional Retail)  
West: IR (Industrial Research)

**Land Use:**

The subject site is developed with a strip center currently in the process of being renovated. The area to the north is developed with a strip center (under renovation and the subject site of BDA067-128), the area to the east is Stemmons Freeway, and the areas to the south and west are developed with retail uses.

**Zoning/BDA History:**

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| <ol style="list-style-type: none"> <li>1. BDA 067-128, 11434 Emerald Street (the lot immediately north of subject site)</li> </ol> | <p>On September 19, 2007, the Board of Adjustment Panel B will consider a request for a special exception to the parking regulations of 9 spaces (or 24% of the required parking) requested in conjunction with leasing an existing strip center with retail, restaurant, and office showroom/warehouse uses.</p> |
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**Timeline:**

- July 18, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- August 16, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- August 16, 2007: The Board Administrator contacted the applicant and shared the following information by phone and email:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the August 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
  - the September 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the September public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- August 28, 2007: 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 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.
- August 29, 2007 The Building Inspection Development Code Specialist forwarded a revised Building Official's Report to the Board Administrator (see Attachment A).
- Sept. 5, 2007 The applicant submitted information beyond what was submitted with the original application and discussed at the staff review team meeting (see Attachment B).
- Sept. 5, 2007 The Development Services Senior Engineer submitted a review comment sheet marked "Recommends that this be denied" with the following comments: "The parking analysis does not provide sufficient study/detail/rationale."
- Sept. 7, 2007 The applicant's parking consultant submitted information beyond what was submitted with the original application, discussed at the

staff review team meeting, and the date in which the staff recommendation of denial was formed (see Attachment C).

**STAFF ANALYSIS:**

- This off-street parking reduction request is made in conjunction with leasing space in an existing strip center (constructed in the 80s) with a mix of uses that require more off-street parking spaces that can either be provided on the site or in a City-recognized parking agreement. The request does not involve any proposed increase in square footage to the existing center.
- According to the latest revised Building Official's Report, 75 percent of the required off-street parking spaces are proposed to be provided in conjunction with leasing suites within an existing strip center with a combination of restaurant, office, and retail (general merchandise or food store 3,500 square feet or less) uses on the subject site.
- Granting this request, subject to the condition that the special exception of 18 spaces automatically and immediately terminates if and when the restaurant without drive-in or drive through service; general merchandise or food store 3,500 square feet or less; and office uses are changed or discontinued, would allow the existing approximately 9,000 square foot center to be leased with these specific uses.
- The applicant has the burden of proof in establishing the following:
  - The parking demand generated by the restaurant without drive-in or drive through service; general merchandise or food store 3,500 square feet or less; and office uses does not warrant the number of off-street parking spaces required, and
  - The special exception of 18 spaces (or 25% of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- The Development Services Senior Engineer recommends that this request be denied commenting that the parking analysis (submitted on September 5<sup>th</sup>) does not provide sufficient study/detail/rationale.

**FILE NUMBER:** BDA 067-128

**BUILDING OFFICIAL'S REPORT:**

Application of Robert E. McKenzie for a special exception to the parking regulation at 11434 Emerald Street. This property is more fully described as Tract 3 in City Block 6548 and is zoned IR which requires parking to be provided. The applicant proposes to maintain a nonresidential structure with general merchandise or food store, office showroom/warehouse, and restaurant uses and provide 28 of the 37 required parking spaces which will require a special exception to the off-street parking regulations of 9 spaces.

**LOCATION:** 11434 Emerald Street

**APPLICANT:** Robert E. McKenzie

**REQUEST:**

- A special exception to the off-street parking regulations of nine parking spaces (or 24% of the required off-street parking) is requested in conjunction with leasing an existing approximately 7,700 square foot strip center (currently in the process of renovation) with retail (general merchandise or food store), restaurant, and office showroom/warehouse uses.

**STAFF RECOMMENDATION:**

Denial

Rationale:

- The Development Services Senior Engineer recommends that this request be denied since the parking analysis (submitted on September 5<sup>th</sup>) did not provide sufficient study/detail/rationale.
- The applicant had not substantiated how the parking demand generated by the uses does not warrant the number of off-street parking spaces required, nor that the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

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

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

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

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

### **GENERAL FACTS:**

- The Dallas Development Code requires the following off-street parking requirements:



- General merchandise or food store 3,500 square feet or less: 1 space per 200 square feet of floor area.
- Office showroom/warehouse use: office: 1 space is required per each 333 square feet of floor area; showroom/warehouse: 1 space per each 1,000 square feet of floor area.
- Restaurant use: 1 space per 100 square feet of floor area.

A revised “parking analysis” chart submitted on September 5th indicates that the proposed mix of restaurant, general merchandise or food store less than 3,500 square feet, and office showroom/warehouse uses in the four suites in the existing center would require 37 off-street parking spaces. The Building Official’s Report states that 28 of the required 37 spaces will be provided (in this case either on site or through a City-recognized remote parking agreement).

- The applicant and his designated parking consultant submitted additional information beyond what was submitted with the original application and beyond what was discussed at the August 28<sup>th</sup> staff review team meeting (see Attachments A and B). This information included the following:
  - a document entitled “Parking Analysis” for the site;
  - a document entitled “Parking Analysis for Emerald Retail Center” prepared by a parking consultant.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: IR (Industrial Research)  
North: IR (Industrial Research)  
South: RR (Regional Retail)  
East: IR (Industrial Research)  
West: IR (Industrial Research)

**Land Use:**

The subject site is developed with a strip center currently in the process of being renovated. The area to the north is developed with a commercial use, the area to the east is Stemmons Freeway, the area to the south is developed with a strip center (under renovation and the subject site of BDA067-127), and the area to the west is developed with retail uses.

**Zoning/BDA History:**

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| <ol style="list-style-type: none"> <li>1. BDA 067-127, 11420 Emerald Street (the lot immediately south of subject site)</li> </ol> | <p>On September 19, 2007, the Board of Adjustment Panel B will consider a request for a special exception to the parking regulations of 18 spaces (or 25% of the required parking) requested in conjunction with leasing an existing strip center with restaurant, office, and retail (general</p> |
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merchandise or food store 3,500 square feet or less) uses.

**Timeline:**

- July 18, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- August 16, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
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- Sept. 5, 2007 The applicant submitted information beyond what was submitted with the original application and discussed at the staff review team meeting (see Attachment A).
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Sept. 7, 2007

The applicant's parking consultant submitted information beyond what was submitted with the original application, discussed at the staff review team meeting, and the date in which the staff recommendation of denial was formed (see Attachment B).

**STAFF ANALYSIS:**

- This off-street parking reduction request is made in conjunction with leasing space in an existing strip center (constructed in the 80s) with a mix of uses that require more off-street parking spaces that can either be provided on the site or in a City-recognized parking agreement. The request does not involve any proposed increase in square footage to the existing center.
- According to the latest revised Building Official's Report, 76 percent of the required off-street parking spaces are proposed to be provided in conjunction with leasing suites within an existing strip center with a combination of restaurant, retail (general merchandise or food store 3,500 square feet or less), and office showroom/warehouse uses on the subject site.
- Granting this request, subject to the condition that the special exception of nine spaces automatically and immediately terminates if and when the restaurant without drive-in or drive through service; general merchandise or food store 3,500 square feet or less; and office showroom/warehouse uses are changed or discontinued, would allow the existing approximately 7,700 square foot center to be leased with these specific uses.
- The applicant has the burden of proof in establishing the following:
  - The parking demand generated by the restaurant without drive-in or drive through service; general merchandise or food store 3,500 square feet or less; and office showroom/warehouse uses does not warrant the number of off-street parking spaces required, and
  - The special exception of nine spaces (or 24% of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- The Development Services Senior Engineer recommends that this request be denied commenting that the parking analysis (submitted on September 5<sup>th</sup>) does not provide sufficient study/detail/rationale.