

**NOTICE FOR POSTING**  
**MEETING OF**  
**BOARD OF ADJUSTMENT, PANEL B**  
**WEDNESDAY, OCTOBER 17, 2007**

<b>Briefing:</b>	<b>10:30 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**

tl  
10-17-2007

ZONING BOARD OF ADJUSTMENT, PANEL B  
WEDNESDAY, OCTOBER 17, 2007  
AGENDA

---

BRIEFING	L1FN CONFERENCE CENTER AUDITORIUM	10:30 A.M.
PUBLIC HEARING	L1FN CONFERENCE CENTER AUDITORIUM	1:00 P.M.

---

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

---

**MISCELLANEOUS ITEMS**

---

Approval of the <b>Wednesday, September 19, 2007</b> Board of Adjustment Public Hearing Minutes	M1
Consideration and adoption of Panel B's 2008 Public Hearing Schedule	M2

---

**UNCONTESTED CASES**

---

BDA 067-143	6347 Vickery Boulevard <b>REQUEST:</b> Application of Tim & Julia Herchen, represented by Scott Roberts of Creative Architects, for a special exception to the front yard setback regulations for tree preservation	1
BDA 067-150	4702 Belmont Avenue <b>REQUEST:</b> Application of Ryan William Lane for a variance to the front yard setback regulations	2

---

**HOLDOVER CASES**

---

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 regulations	4

---

**REGULAR CASES**

---

BDA 067-141

4405 Glenwood Avenue

**REQUEST:** Application of Santos T. Martinez, represented by Masterplan, for a variance to the front yard setback regulations

5

## 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 September 19, 2007 public hearing minutes.

**MISCELLANEOUS ITEM NO. 2**

To approve the Board of Adjustment Panel B's 2008 Public Hearing Schedule (see Attachment A for proposed schedule).

**FILE NUMBER:** BDA 067-143

**BUILDING OFFICIAL'S REPORT:**

Application of Tim & Julia Herchen, represented by Scott Roberts of Creative Architects, for a special exception to the front yard setback regulations for tree preservation at 6347 Vickery Boulevard. This property is more fully described as Lot 11A in City Block 6/2161 and is zoned R-7.5(A) which requires a front yard setback of 25 feet. The applicant proposes to construct a single family residential structure and provide a 20 foot front yard setback which will require a special exception of 5 feet.

**LOCATION:** 6347 Vickery Boulevard

**APPLICANT:** Tim & Julia Herchen  
Represented by Scott Roberts of Creative Architects

**REQUEST:**

- A special exception to the front yard setback regulations of 5' for tree preservation is requested in conjunction with constructing and maintaining a single family home in the site's 25' front yard setback on a site that is undeveloped.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The requested special exception of 5' appears to be compatible with the character of the neighborhood. (The proposed approximately 4,600 square foot home is within the approximately 2,200 – 5,000 square foot range of seven other homes on the block, and the house in its proposed location 5' into the 25' setback will not affect the look of the streetscape given the curve of the street).
- The value of the surrounding properties would not appear to be adversely affected by granting the exception. (An approximately 50 square foot triangular area of the home's garage is proposed to be located in the setback; the home on the site is in the middle range of seven other home on the block in terms of size - homes ranging in value from \$362,500 - \$879,780; and the proposed house is designed with a swing garage entry facing west instead of a front entry garage facing south/the street).
- The City's Chief Arborist has stated that there is a tree on the site that is "worthy of preservation" - a mature 42" caliper American elm.

## **STANDARD FOR A SPECIAL TO THE FRONT YARD REGULATIONS FOR TREE PRESERVATION:**

The Dallas Development Code specifies that the board may grant a special exception to the minimum front yard requirements to preserve an existing tree. In determining whether to grant this special exception, the board shall consider the following factors:

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

## **GENERAL FACTS:**

- Structures on lots zoned R-7.5(A) are required to provide a minimum front yard setback of 25'.  
The submitted site plan denotes a structure that is proposed to be located as close as 20' from the front property line (or as much as 5' into the 25' front yard setback).
- According to calculations taken from the site plan by the Board Administrator, a triangular area of about 50 square feet of the proposed single family home (a portion of its garage) is to be located in the site's 25' front yard setback. The structure's footprint appears to be approximately 3,000 square feet in area.
- DCAD records indicate that the site has no main improvements.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
  - a document providing additional details about the request;
  - a site plan of the proposal;
  - an aerial photograph of the site with the footprints of newly constructed homes superimposed on this photo;
  - site photos that show the approximate location of the proposed home, the tree to be saved, and the elevation superimposed on the photo of the site; and
  - documentation related to lot size, structure size, and DCAD appraisals of 7 other homes on the block.

## **BACKGROUND INFORMATION:**

### **Zoning:**

<u>Site:</u>	R-7.5 (A) (Single family district 7,500 square feet)
<u>North:</u>	R-7.5 (A) (Single family district 7,500 square feet)
<u>South:</u>	R-7.5 (A) (Single family district 7,500 square feet)
<u>East:</u>	R-7.5 (A) (Single family district 7,500 square feet)
<u>West:</u>	R-7.5 (A) (Single family district 7,500 square feet)

### **Land Use:**

The subject site is undeveloped. 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:**

- August 22, 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.
- Sept. 20, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Sept. 21, 2007: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the September 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
  - the October 5<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 October public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Sept. 27, 2007: The Building Inspection Development Code Specialist forwarded a revised Building Official's Report on this application. (The amendment reflected the applicant's request to alter his application from a variance to a special exception to preserve a tree).
- Sept. 27, 2007: The applicant's representative submitted additional information to the Board Administrator (see Attachment A).
- October 1, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection

Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

October 8, 2007: The Chief Arborist submitted a memo to the Board Administrator (see Attachment B). This memo stated among other things that the 42" American elm tree is worthy of preservation.

**STAFF ANALYSIS:**

- The Dallas Development Code allows the Board of Adjustment to consider this (or any) proposed structure encroachment in a front yard setback on an R-7.5(A) zoned lot either by an application for a variance to the front yard setback regulations with a standard largely based on the demonstration of property hardship, or by an application for a special exception to the front yard setback regulations to preserve an existing tree with a standard largely based on compatibility, property values, and whether a tree is located on a site that is worthy of preservation (not property hardship). The applicant in this case as made an application for a *special exception* to the front yard setback regulations for tree preservation.
- This special exception request is made to allow approximately 50 square feet of a proposed single family home's approximately 3,000 square foot building footprint in the site's 25' front yard setback. (The site plan shows that, given the slightly irregular shape of the lot, a triangular portion of the attached garage would be as close as 20' from the 25' front yard setback while a portion of the garage would be located at the 25' setback line).
- The City's Chief Arborist has stated that there is a 42" American elm tree that is "worthy of preservation."
- The applicant has the burden of proof in establishing the following related to the front yard special exception request:
  1. Whether the requested special exception is compatible with the character of the neighborhood.
  2. Whether the value of the surrounding properties will be adversely affected.
  3. Whether the tree is worthy of preservation.
- If the Board were to grant the front yard special exception request of 5', imposing a condition whereby the applicant must comply with the submitted site plan, the structure in the front yard setback would be limited to that what is shown on this plan – which in this case is a triangular portion of the home's garage located as close as 20' from the front property line (or as much as 5' into the site's 25' front yard setback).

**FILE NUMBER:** BDA 067-150

**BUILDING OFFICIAL'S REPORT:**

Application of Ryan William Lane for a variance to the front yard setback regulations at 4702 Belmont Avenue. This property is more fully described as Lot 13 in City Block 3/2001 and is zoned MF-2(A) which requires a front yard setback of 25 feet. The applicant proposes to construct and maintain a residential structure and provide a 5 foot front yard setback which will require a variance of 20 feet.

**LOCATION:** 4702 Belmont Avenue

**APPLICANT:** Ryan William Lane

**REQUEST:**

- A variance to the front yard setback regulations of 20' is requested in conjunction with constructing and maintaining 2 attached single family homes (or townhomes) in the site's Kirby Street 25' front yard setback on a site that is under development.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The site is different from other parcels of land in that it has two front yard setbacks. The lot's two front yard setbacks leave only 17.7' of developable space left on the 47.7' wide site once a 25' front yard setback is accounted for on the southwest and a 5' side yard setback is accounted for on the northeast.
- In addition, it appears that the proposed encroachment for the new townhomes on the subject site would not violate any existing established 25' setback of homes immediately along Kirby Street since most of these homes fronting Kirby Street were built decades ago, and do not/were not required to provide a 25' front yard setback.

**STANDARD FOR A VARIANCE:**

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

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

### **GENERAL FACTS:**

- Structures on lots zoned MF-2(A) are required to provide a minimum front yard setback of 15'. However, the Dallas Development Code includes a general provision in its minimum front yard regulations stating that the front yard for the entire block must comply with the requirements of the district with the greatest yard requirement. The MF-2(A)-zoned site located at the southeast corner of Belmont Avenue and Kirby Street and has two front yard setbacks. The site has a 15' front yard setback on Belmont Avenue and a 25' front yard setback on Kirby Street since the site has frontage on blockface (between Belmont Avenue and Capitol Avenue) part which is zoned R-7.5(A) which requires a 25' front yard setback.  
A scaled plot/site plan has been submitted that shows all of one and a portion of the second proposed townhome on the site located in the site's 25' Kirby Street front yard setback. The site plan shows that the structure would be located 5' from the site's Kirby Street front property line (or 20' into the site's 25' front yard setback). According to calculations taken from the site plan by the Board Administrator, the proposed building footprint for the 2 townhomes is 2,337 square feet (63' x 37') of which approximately 1,260 square foot (or 63' x 20') of the footprint (all of one of the homes and a portion of the other) is located in the site's Kirby Street 25' front yard setback.
- The site is flat, rectangular in shape (104' x 47.7') and approximately 4,900 square feet in area. The site is zoned MF-2(A). The site has two front yard setbacks: a 15' front yard setback on Belmont Avenue, and a 25' front yard setback on Kirby Street. (No encroachment is shown or requested to be located in the site's Belmont Avenue 15' front yard setback).
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
  - a document that provided additional details about the request;
  - photos of similar development adjacent to the site;
  - maps and photos of the site and adjacent properties;
  - a document entitled "Building Inspection Time Line"; and
  - a copy of a building permit.

### **BACKGROUND INFORMATION:**

#### **Zoning:**

Site: MF-2 (A) (Multifamily)  
North: MF-2 (A) (Multifamily)  
South: MF-2 (A) (Multifamily)

East: MF-2 (A) (Multifamily)  
West: MF-2 (A) (Multifamily)

**Land Use:**

The subject site is under development. The areas to the north, south, and west are developed with single family uses; and the area to the east is undeveloped.

**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:**

- August 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.
- Sept. 20, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Sept. 24, 2007: The Board Administrator met with the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the September 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
  - the October 5<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 October public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Sept. 28, 2007 The applicant submitted additional information to the Board Administrator (see Attachment A).
- Oct. 1, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection

Development Code Specialist, the 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:**

- This variance request is made to allow all of one and a portion of a 2<sup>nd</sup> proposed attached single family structure/townhome in the site's 25' front yard setback on Kirby Street.
- The site is flat, rectangular in shape (104' x 47.7') and approximately 4,900 square feet in area. The site is zoned MF-2(A). The site has two front yard setbacks: a 15' front yard setback on Belmont Avenue, and a 25' front yard setback on Kirby Street. (No encroachment is shown or requested to be located in the site's Belmont Avenue 15' front yard setback).
- Once a 25' front yard setback is accounted for on the southwest along Kirby Street and a 5' side yard setback is accounted for on the northeast, the developable width remaining on the 47.7' wide site is 17.7' – a width that the applicant states makes the lot virtually impossible to develop given that the minimum parking standard of 2 cars per side/townhouse and the necessity of a separation firewall.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the front yard setback regulations of 20' requested in conjunction with constructing/maintaining all of one and a portion of a second attached single family home in the site's Kirby Street front yard setback will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance is necessary to permit development of the subject site (a site that is under development, and is rectangular in shape (104' x 47.7'), approximately 4,900 square feet in area, zoned MF-2(A) with two front yard setbacks) 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 MF-2(A) zoning classification.
  - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the MF-2(A) zoning classification.
- If the Board were to grant the front yard variance request of 20', imposing a condition whereby the applicant must comply with the submitted site plan, the structure in the front yard setback would be limited to that shown on this plan – which in this case is all of one and a portion of a second attached single family structure/townhome located 5' from the site's Kirby Street front property line (or 20' into of the Kirby Street 25' front yard setback).

**FILE NUMBER:** BDA 067-127

**ORIGINAL 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.

**REVISED 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, medical clinic or ambulatory surgical center, and general merchandise or food store 3500 square feet or less uses and provide 64 of the 75 required parking spaces, which will require a special exception of 11 spaces (14.7% reduction) to the parking regulations.

**LOCATION:** 11420 Emerald Street

**APPLICANT:** Robert E. McKenzie

**REVISED REQUEST:**

- A special exception to the off-street parking regulations of 11 parking spaces (or 15% 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, medical clinic or ambulatory surgical center, and retail (general merchandise or food store 3,500 square feet or less) uses.

**STAFF RECOMMENDATION:**

Approval, subject to the following conditions:

1. The special exception shall automatically and immediately terminate if and when the restaurant without drive-in, medical clinic or ambulatory surgical center, and general merchandise or food store 3,500 square feet or less uses are changed or discontinued.
2. The special exception shall be terminated if the pending Remote Parking Agreement of 35 spaces with the property located at 11434 Emerald Street is not executed within 180 days from the date of the favorable action of the board.

Rationale:

- The Development Services Senior Engineer has no objections to the request based on revised parking analysis dated September 28, 2007, and on the condition that the parking agreement for 35 spaces with the adjacent tract (11434 Emerald Street) is reached and filed.
- The applicant has substantiated how the parking demand generated by the uses does not warrant the number of off-street parking spaces required, and that the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
  - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
  - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
  - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
  - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
  - (E) The availability of public transit and the likelihood of its use.
  - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
  - (A) establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
  - (B) impose restrictions on access to or from the subject property; or
  - (C) impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.

- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
  - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
  - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

### **GENERAL FACTS:**

- 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.
  - Medical clinic or ambulatory surgical center use: 1 space per 200 square feet of floor area.
  - Restaurant use: 1 space per 100 square feet of floor area.A revised “parking analysis” chart submitted on September 28<sup>th</sup> indicates that the proposed mix of restaurant, general merchandise or food store less than 3,500 square feet, and medical clinic or ambulatory surgical center uses in the four suites in the existing center would require 75 off-street parking spaces. The revised Building Official’s Report (Attachment F) states that 64 of the required 75 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.
- The Board Administrator forwarded a September 11<sup>th</sup> email from the applicant’s representative to the board members at the September 19<sup>th</sup> briefing (see Attachment D). This email stated the applicant’s intention of requesting that the board postpone action on the application in order to research some more information about the property and associated parking requirements.
- The Board of Adjustment conducted a public hearing on this matter on September 19<sup>th</sup> and delayed action on this request until October 17<sup>th</sup>.
- The applicant’s designated parking consultant submitted additional information beyond what was submitted with the original application, what was discussed at the August 28<sup>th</sup> staff review team meeting, and what was presented at the September 19<sup>th</sup> hearing (see Attachments E and G). This information included a document

entitled "Technical Memorandum" and an email that provided additional details about the request.

## **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:**

1. BDA 067-128, 11434 Emerald Street (the lot immediately north of subject site)      On September 19, 2007, the Board of Adjustment Panel B delayed action on 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 until October 17, 2007. (The applicant has since submitted an email requesting that this request be denied without prejudice).

### **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).

Sept. 19, 2007 The Board Administrator forwarded a September 11<sup>th</sup> email from the applicant's representative to the board members at the September 19<sup>th</sup> briefing (see Attachment D). This email stated the applicant's intention of requesting that the board postpone action on the application in order to research some more information about the property and associated parking requirements. The Board of Adjustment conducted a public hearing on this matter and delayed action on this request until October 17<sup>th</sup>.

- Sept. 28, 2007 The applicant's parking consultant submitted information beyond what was submitted with the original application, and presented at the September 19<sup>th</sup> public hearing (see Attachment E).
- October 1, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- October 2, 2007 The Building Inspection Development Code Specialist forwarded a revised Building Official's Report to the Board Administrator (see Attachment F).
- October 2, 2007 The Development Services Senior Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments: "Based on the revised parking analysis dated September 28, 2007 and parking agreement for 35 spaces is reached with adjacent tract (11434 Emerald) and is filed."
- October 8, 2007 The applicant's parking consultant submitted an email that summarized his request to the board (see Attachment G).

### **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, 85 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, medical clinic or ambulatory surgical center, 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 11 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 medical clinic or ambulatory surgical center 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 medical clinic or ambulatory surgical center uses does not warrant the number of off-street parking spaces required, and

- The special exception of 11 spaces (or 15% 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 granted with the condition that the parking agreement for 35 spaces is reached and filed with the owner of the adjacent tract of land located at 11434 Emerald Street.

**BOARD OF ADJUSTMENT ACTION: SEPTEMBER 19, 2007**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Gillespie**

I move that the Board of Adjustment, in Appeal No. **BDA 067-127**, hold this matter under advisement until **October 17, 2007**.

SECONDED: **Beikman**

AYES: 5—Cox, Brannon, Gillespie, Beikman, Chernock

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

**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

**ORIGINAL REQUEST:**

- A special exception to the off-street parking regulations of nine parking spaces (or 24% of the required off-street parking) had been 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.

**REVISED REQUEST (October 8, 2007):**

- On October 8, 2007, the applicant's designated parking consultant submitted an email to the Board Administrator requesting that this application be denied without prejudice (see Attachment E).

**STAFF RECOMMENDATION:**

Denial without prejudice

Rationale:

- The applicant has requested that this application be denied without prejudice. It appears from information submitted that the applicant is intending to provide the required parking on the subject site.

**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 28th indicated that the proposed mix of restaurant, and office showroom/warehouse uses in the four suites in the existing center would require 24 off-street parking spaces.

- 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.
- The Board Administrator forwarded a September 11<sup>th</sup> email from the applicant’s representative to the board members at the September 19<sup>th</sup> briefing (see Attachment C). This email stated the applicant’s intention of requesting that the board postpone action on the application in order to research some more information about the property and associated parking requirements.
- The Board of Adjustment conducted a public hearing on this matter on September 19<sup>th</sup> and delayed action on this request until October 17<sup>th</sup>.
- The applicant’s designated parking consultant submitted additional information beyond what was submitted with the original application, what was discussed at the August 28<sup>th</sup> staff review team meeting, and what was presented at the September 19<sup>th</sup> hearing (see Attachments D and E). This information included a document entitled “Technical Memorandum” and an email that provided additional details about the request. The consultant stated in this email that he is requesting that the board deny this application without prejudice.

## **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:**

1. BDA 067-127, 11420 Emerald Street (the lot immediately south of subject site)      On September 19, 2007, the Board of Adjustment Panel B will consider a request for a special exception to the parking regulations of 11 spaces (or 15% of the required parking) requested in conjunction with leasing an existing strip center with restaurant, clinic or ambulatory surgical center, and retail (general 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.
- 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. 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).
- 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 B).
- Sept. 19, 2007 The Board Administrator forwarded a September 11<sup>th</sup> email from the applicant's representative to the board members at the September 19<sup>th</sup> briefing (see Attachment C). This email stated the applicant's intention of requesting that the board postpone action on the application in order to research some more information about the property and associated parking requirements. The Board of Adjustment conducted a public hearing on this matter and delayed action on this request until October 17<sup>th</sup>.
- Sept. 28, 2007 The applicant's parking consultant submitted information beyond what was submitted with the original application, and presented at the September 19<sup>th</sup> public hearing (see Attachment D).
- October 1, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- October 8, 2007 The applicant's parking consultant submitted an email that summarized his request to the board (see Attachment E).

#### **STAFF ANALYSIS:**

- An off-street parking reduction request had been 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 had not involved 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 was 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.
- However, on October 8, 2007, the applicant's designated parking consultant submitted an email to the Board Administrator requesting that this application be denied without prejudice (see Attachment E). It appears from information submitted that the applicant is intending to provide the required parking on the subject site.

**BOARD OF ADJUSTMENT ACTION: SEPTEMBER 19, 2007**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Gillespie**

I move that the Board of Adjustment, in Appeal No. **BDA 067-128**, hold this matter under advisement until **October 17, 2007**.

SECONDED: **Beikman**

AYES: 5—Cox, Brannon, Gillespie, Beikman, Chernock

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

**FILE NUMBER:** BDA 067-141

**BUILDING OFFICIAL'S REPORT:**

Application of Santos T. Martinez, represented by Masterplan, for a variance to the front yard setback regulations at 4405 Glenwood Avenue. This property is more fully described as Lot 9 in City Block 3/2022 and is zoned PD No. 193 (R-7.5) which requires that where two or more main buildings exist in a blockface, any new building must have a minimum front yard setback that is the average of the front yard setbacks of the two main buildings that are closest to the lot in the same blockface. The applicant proposes to construct a single family residential structure and provide a 30 foot front yard setback which will require a variance of 8 feet.

**LOCATION:** 4405 Glenwood Avenue

**APPLICANT:** Santos T. Martinez  
Represented by Masterplan

**REQUEST:**

- A variance to the front yard setback regulations of 8' is requested in conjunction with constructing and maintaining a single family home in the site's 38' front yard setback on a lot that is undeveloped.

**STAFF RECOMMENDATION:**

Denial

Rationale:

- The site's physical features do not preclude the applicant from developing the vacant parcel of land/subject site in a manner commensurate with development found on other PD No. 193 (R-7.5 Subdistrict) zoned lots while simultaneously complying with zoning code development standards including setback requirements. Development of the site with a commensurately-sized single family home is not encumbered by either the site's slope (the site is basically flat), irregular shape (the site is rectangular in shape – 60.7' x 150.4'), or restrictive area caused by the size of the lot which is approximately 9,000 square feet in area (or 1,500 square feet larger than the typically sized R-7.5 zoning subdistrict lots at 7,500 square feet in area) or the 40" live oak tree on the site. The lot's 150.4' length would leave 107.4' of developable length left on the site once the 38' front yard and the 5' rear yard setbacks are accounted for.
- In addition, the applicant has not substantiated how granting this variance would not be contrary to public interest. Although the preservation of the existing tree on the site has merit, no letters of support have been received on this application to allow a

house to encroach into the site's front yard setback, and three letters and an email have been submitted in opposition to the request (one of which is from the president of the Northern Hills Neighborhood Association).

### **STANDARD FOR A VARIANCE:**

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

### **GENERAL FACTS:**

- Structures on lots in R-7.5 Subdistricts of PD No. 193 are required to provide a minimum front yard setback that is the average of the front yard setbacks of the two main buildings that are closest to the lot in the same blockface where two or more buildings exist in a blockface. According to materials submitted by the applicant and the Building Official's Report, this site is required to provide a 38' front yard setback. A scaled site plan has been submitted that shows that the proposed single family home will be located 30' from the front property line (or 8' into the 38' front yard setback). The site plan denotes a 40" live oak tree located in the site's front yard setback.
- According to calculations taken from the site plan by the Board Administrator, about 230 square feet of the proposed single family home (a portion of its garage and covered porch) is to be located in the site's 38' front yard setback. The structure's footprint appears to be approximately 3,200 square feet in area.
- The site is flat, rectangular in shape (150.4' x 60.7'), approximately 9,000 square feet in area. The site is zoned PD No. 193 (R-7.5 Subdistrict) where lots are typically 7,500 square feet in area.
- DCAD records indicate that the site has no main improvements.
- The applicant's representative submitted information beyond what was submitted with the original application and discussed at the October 1<sup>st</sup> staff review team meeting (see Attachment B).
- The president of the Northern Hills Neighborhood Association submitted information to be included in the board's docket (see Attachment D).

### **BACKGROUND INFORMATION:**

## **Zoning:**

Site: PD No. 193 (R-7.5)(Planned Development, Single family)  
North: PD No. 193 (R-7.5)(Planned Development, Single family)  
South: PD No. 193 (R-7.5)(Planned Development, Single family)  
East: PD No. 193 (R-7.5)(Planned Development, Single family)  
West: City of Highland Park

## **Land Use:**

The subject site is undeveloped. 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:**

- August 17, 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.
- Sept. 20, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Sept. 20, 2007: The Board Administrator contacted 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 September 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
  - the October 5<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 October public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

October 1, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

October 2, 2007 The Building Inspection Development Code Specialist forwarded a revised Building Official's Report to the Board Administrator (see Attachment A). This revised report reflected the applicant's intent to seek a variance for the proposed encroachment since it had been determined at the October 1<sup>st</sup> staff review team meeting that the originally submitted special exception for tree preservation request was not an option for the site or any parcel of land located in PD No. 193.

October 2, 2007 The applicant's representative submitted additional information to the Board Administrator (see Attachment B).

October 5, 2007: The Chief Arborist submitted a memo to the Board Administrator (see Attachment C). This memo stated among other things that the 40" live oak tree is in very good to excellent condition and that the proposed one-story residential structure would not cause direct mechanical damage to the tree canopy.

October 8, 2007 The president of the Northern Hills Neighborhood Association submitted information to the Board Administrator to be included in the board's docket (see Attachment D).

### **STAFF ANALYSIS:**

- The Dallas Development Code allows the Board of Adjustment to consider proposed structure encroachment in front yard setbacks on lots located outside of PD No. 193 either by an application for a variance to the front yard setback regulations with a standard largely based on the demonstration of property hardship, or by an application for a special exception to the side yard setback regulations to preserve an existing tree with a standard largely based on compatibility, property values, and whether a tree is located on a site that is worthy of preservation (not property hardship). Although the applicant had originally requested a special exception to the front yard setback regulations to preserve a tree, staff discovered that the only option the owner had in this case for his proposed encroachment on the lot located in PD No. 193 was for a variance.
- This variance request is made to allow about 230 square feet of a proposed single family home's approximately 3,200 square foot building footprint in the site's 38' front yard setback. (A floor plan shows that approximately 8' of the proposed structure's garage would be located in the 38' front yard setback).

- The site is flat, rectangular in shape (150.4' x 60.7), approximately 9,000 square feet in area. The site is zoned PD No. 193 (R-7.5 Subdistrict) where lots are typically 7,500 square feet in area. A 40" live oak tree is on the site – a tree that the applicant contends creates hardship on the lot and justifies the variance request.
- The site is vacant/undeveloped.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the front yard setback regulations requested in conjunction with constructing and maintaining a single family home with what appears to be a 3,200 square foot building footprint 8' into the 38' front yard setback will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance is necessary to permit development of the subject site (a site that is undeveloped, and is flat, rectangular in shape, and 9,000 square feet in area with a 40" live oak tree that is, according to the City's Chief Arborist, in very good to excellent condition) 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 PD No. 193 (R-7.5) zoning classification.
  - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the PD No. 193 (R-7.5) zoning classification.
- If the Board were to grant the variance request, imposing a condition whereby the applicant must comply with the submitted site plan, the structure in the front yard setback would be limited to what is shown on this plan – which in this case is a portion of a proposed single family structure located 30' from the site's front property line (or 8' into the site's 38' front yard setback).