

NOTICE FOR POSTING
MEETING OF
BOARD OF ADJUSTMENT, PANEL B
WEDNESDAY, NOVEMBER 19, 2008

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

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

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

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

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11-19-2008

ZONING BOARD OF ADJUSTMENT, PANEL B
WEDNESDAY, NOVEMBER 19, 2008
AGENDA

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

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

MISCELLANEOUS ITEMS

Approval of the Wednesday, October 15, 2008 Board of Adjustment Public Hearing Minutes	M1
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UNCONSTESTED CASES

BDA 078-132 1320 (aka 1326) Fort Worth Ave.	1
REQUEST: Application of Dave Kirk to enlarge a nonconforming nonresidential use	
BDA 078-140 3921 Gaston Avenue	2
REQUEST: Application of Robert Reeves for a variance to the landscape regulations	
BDA 078-149(K) 5203 Bexar Street.	3
REQUEST: Application of Hailu Ejigu for a special exception to the parking regulations	

HOLDOVER CASE

BDA 078-130(K) 6010 Walnut Hill Lane	4
REQUEST: Application of Benny Duncan represented by P. Michael Jung for a special exception to the visibility obstruction regulations	

EXECUTIVE SESSION NOTICE

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

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

(Rev. 6-24-02)

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel B October 15, 2008 public hearing minutes.

FILE NUMBER: BDA 078-132

BUILDING OFFICIAL'S REPORT:

Application of Dave Kirk to enlarge a nonconforming nonresidential use at 1320 (aka 1326) Fort Worth Ave. This property is more fully described as Tract 2 in City Block 3957 and is zoned PD-714 (Subdistrict 2B) which limits the enlargement of a nonconforming use. The applicant proposes to enlarge a nonconforming tower/antenna for cellular communication use by adding 6 feet to its existing height which would require a special exception.

LOCATION: 1320 (aka 1326) Fort Worth Avenue

APPLICANT: Dave Kirk

REQUEST:

- A request is made to enlarge a nonconforming "tower/antenna for cellular communication" use. The site is currently developed with a 74' high cellular tower that the applicant proposes to enlarge by increasing its height by 6 feet. (Note that the applicant has re-filed the exact same application made to Board of Adjustment Panel B on April 18, 2007 where the board denied the request without prejudice).

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request to enlarge a nonconforming use since the basis for this type of appeal is based on when, in the opinion of the Board, the enlargement: 1) does not prolong the life of the nonconforming use; 2) would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and 3) will not have an adverse effect on the surrounding area.

STANDARD FOR ENLARGING A NONCONFORMING USE:

The board may allow the enlargement of a nonconforming use when, in the opinion of the Board, the enlargement: 1) does not prolong the life of the nonconforming use; 2) would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and 3) will not have an adverse effect on the surrounding area.

GENERAL FACTS:

- The site is located in Subdistrict 2B of PD No. 714 that was established in 2005. The ordinance creating PD No. 714 describes Subdistrict 2 as follows:

- “Subdistrict 2 is a mixed-use subdistrict that consists predominantly of residential uses, but with some small retail and office uses. Because residential neighborhoods are adjacent to the subdistrict, it should be more serene than other subdistricts. New development should strengthen the existing residential neighborhoods and help create a pedestrian-friendly environment. North Edgefield Avenue should connect the north and south neighborhoods. Pedestrian protections from traffic, such as on-street parking, street trees, and parkways are desired. Buildings should have minimum or no setbacks. Building heights are controlled separately in Subdistricts 2A and 2B to optimize medium density residential development, preserve downtown views, and be sensitive to the existing single-family neighborhood to the north. Preserving historic buildings through adaptive re-use is a priority.”

Subdistrict 2 of PD No. 714 district does not allow a “tower/antenna for cellular communication” use by right.

- The applicant has submitted an elevation denoting the following:

- “top of existing monopole 70’ -6”;
- “new 6’ – 6” tower extension”;
- “top of tower extension and new T-Mobile antenna rad c.l. = 77’-0””

The elevation also makes references to unlabeled dimensions of 74’- 0” and 80’ – 0”. The 74’ denotes the very highest point of the current tower and antennas, and the 80’ denotes the very highest point of the proposed tower and antenna, hence a request to enlarge a nonconforming tower/antenna for cellular communication use by 6’.

- The Dallas Development Code defines a nonconforming use as “a use that does not conform to the use regulations of this chapter, but was lawfully established under regulations in force at the beginning of operation and has been in regular use since that time.”
- The Building Inspection Development Code Specialist has stated that the site was zoned CS (Commercial Service) prior to its rezoning to PD No. 714 where the 74’ high cell tower was permitted by right.
- Given provisions set forth in PD No. 714, the existing “tower/antenna for cellular communication” use on the site can obtain “conforming use” status upon either:
 1. the applicant attaining a PD (Planned Development) District on the site from the City Council; or
 2. the City Council amending ordinance language pertaining to Subdistrict 2 of PD No. 714 whereby a “tower/antenna for cellular communication” use would be added as a permitted use on all lots located in this specific subdistrict.
- The applicant has been informed of the Dallas Development Code provisions pertaining to “Nonconforming Uses and Structures,” and how nonconforming uses can be brought to the Board of Adjustment for amortization where if the board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for that nonconforming use - a compliance date that is provided under a plan whereby the owner’s actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 714, Subdistrict 2B (Planned Development District)
North: PD No. 714, Subdistrict 2A (Planned Development District)
South: CD No. 13 (Conservation District)
East: PD No. 714, Subdistrict 2B (Planned Development District)
West: PD No. 714, Subdistrict 2B (Planned Development District)

Land Use:

The subject site is developed with a 74' high cell tower. The areas to the north, east, and west are developed with commercial uses, and the area to the south is a freeway (Interstate 30).

Zoning/BDA History:

1. BDA 067-058, Property at 1320 Fort Worth Avenue (the subject site) On April 18, 2007, the Board of Adjustment Panel B denied a request to enlarge a nonconforming 74' high cellular tower by 6' without prejudice.

Timeline:

- August 28, 2008: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- October 16, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B. This assignment was made in order to comply with Section 9(k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."
- October 16, 2008: The Board Administrator emailed the applicant the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the requests;
 - the October 29th deadline to submit additional evidence for staff to factor into their analysis;
 - the November 7th 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, if not, may result in delay of action on the appeal or denial; and

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

October 30, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, the Assistant Building Official, the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- This request focuses on enlarging a nonconforming “tower/antenna for cellular communication” use by increasing its existing height from 74’ to 80’. This applicant has re-filed the exact same application that was presented to Board of Adjustment Panel B in April of 2007 – an application that the board denied without prejudice.
- The request site is zoned PD No. 714.
- The “tower/antenna for cellular communication” use is not a permitted use in Subdistrict 2 of the recently created PD No. 714 zoning district.
- An elevation has been submitted indicating a 74’ height (indicating the very highest point of the current tower and antennas), and an 80’ height (indicating the very highest point of the proposed tower and antenna).
- It is the applicant’s burden of proof to establish that the expansion of the non-conforming use enlargement:
 1. does not prolong the life of the nonconforming use;
 2. would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and
 3. will not have an adverse effect on the surrounding area.
- Granting this request, subject to compliance with the submitted elevation, would allow the existing nonconforming “tower/antenna for cellular communication” use to be expanded in height by 6’ to reach a maximum height of 80 feet.

FILE NUMBER: BDA 078-140

BUILDING OFFICIAL'S REPORT:

Application of Robert Reeves for a variance to the landscape regulations at 3921 Gaston Avenue. This property is more fully described as Lot 1 in City Block A/765 and is zoned PD-298 (Subarea 12) which requires mandatory landscaping. The applicant proposes to construct a structure and provide an alternate landscape plan which will require a variance.

LOCATION: 3921 Gaston Avenue

APPLICANT: Robert Reeves

REQUEST:

- A variance to the landscape regulations is requested in conjunction with constructing and maintaining a financial institution with drive-in window use with orientation along Floyd Street on a site partially developed with a financial institution without drive-in window use with orientation along Gaston Avenue (Bank of America).

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted revised alternate landscape plan dated November 6, 2008 is required.*

- * The board may want to place an additional condition to this request per the Chief Arborist – a condition that would allow the applicant the ability to substitute the easternmost large tree shown on the November 6th landscape plan along Gaston Avenue for a small tree given that an existing tree on the lot immediately east could create a conflict if a *large* tree were planted on the subject site directly underneath its canopy.

Rationale:

- The City's Chief Arborist recommends approval of the request since the submitted revised alternate landscape plan dated November 6, 2008 is in compliance with the PD No. 298 landscape regulations with minimal exceptions specifically related to the tree planting zone and sidewalk requirements along Floyd Street – a location on the site where if the applicant were to strictly comply with the tree planting zone and sidewalk requirements by planting new trees in the location provided in the ordinance (directly beneath overhead utility lines), four existing trees located slightly outside the tree planting zone along a slightly less-than-meets-the-requirement 4' wide sidewalk would be negatively impacted and would be required to be removed.

- Staff has concluded that granting the variance is not contrary to the public interest (since the site would not be “varied” from any street tree number requirement), how a literal enforcement of the code provisions would result in unnecessary hardship (since full compliance with the landscape regulations would negatively impact and require the removal of four existing mature trees on Floyd Street); and how the variance is necessary to permit development of the subject site in that it is different from other parcels of land by its restrictive area (caused by the applicant’s intention to preserve the four existing mature trees along Floyd Street that are slightly out of compliance to the landscape ordinance tree planting zone and sidewalk requirements) whereby it cannot be developed in a manner commensurate with the development upon other parcels of land with the same PD No. 298 zoning district.

STANDARD FOR A VARIANCE:

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

GENERAL FACTS:

- The landscaping provisions of Article X apply in the Bryan Area SPD with additional requirements in all subareas except Subareas 6 and 9. (The subject site is located in Subdistrict 12). The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period.
A revised alternate landscape plan dated November 6, 2008 has been submitted (Attachment C) that according to the City of Dallas Chief Arborist is deficient from meeting specific requirements of PD No. 298 hence the request for landscape leniency must be made to the board of adjustment as a landscape variance request as opposed to a landscape special exception request.
- It appears that the existing bank without drive-in window on the site oriented towards Gaston Avenue reached its point of completion and obtained a permit by providing a plan that complied with the code knowing they would need to approach the board of adjustment for leniency to the landscape regulations sought in conjunction with the

financial institution with drive-in window use oriented towards Floyd Street that they are currently proposing.

- The site is flat, is rectangular in shape (297' x 139') and approximately 1 acre in area. The subject site is zoned PD No. 298. The site is partially developed with a bank without drive-in window along Gaston Avenue and partially undeveloped along Floyd Street. Four existing mature trees are located along the site's Floyd Street frontage – trees that according to the City's Chief Arborist would be required to be removed if new street trees and a replacement sidewalk were located on the site in their ordinance required locations.
- On October 23 and November 6, 2008, the applicant submitted additional information to staff regarding the request (see Attachments A and C). This information included a revised application and revised alternate landscape plans.
- The City of Dallas Chief Arborist has submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner pertaining to the submitted revised landscape plan (see Attachment D). The memo stated that the applicant is requesting a variance to the landscape requirements of PD 298, more specifically, application of 51P-298.103(7) "Tree Planting Zone" definition and for 51P-298.106(4)(A) "Sidewalk" provisions of the code for the Floyd Street frontage.
 - The special exception request is triggered by the new construction of additional pavement and bank uses on property. Landscaping applies to the entire property. Existing mature trees are establishing in a determined location that are in non-compliance with code that must be applied with the addition.
 - Deficiencies:
 - PD 298, Subdistrict 12 requires compliance with Article X with additional provisions – the proposed plan is deficient on the sidewalk width and tree planting zone requirements on Floyd Street. (Floyd Street requires 4 street trees and a minimum 6' wide sidewalk (or 4' if determined inadequate right-of-way width). The applicant proposes to maintain 4 existing street trees outside the tree planting zone of 2.5' – 10' from back of curb with a 4' wide sidewalk.
 - Factors:
 - All other PD 298 landscape requirements are met on the proposed landscape plan.
 - Existing large maturing trees are approximately 13' from the back of the curb along Floyd Street which places them about 3' outside the required tree planting zone.
 - A 4' sidewalk exists along, but not contiguous to, the curb on Floyd Street. The existing sidewalk is approximately 6' – 7' from the base of the trees.
 - A distance of approximately 6' – 7' were provided between the existing trees and the new vehicle drive surface within the property. The combined rooting area provide suitable expanse to preserve the existing trees along Floyd Street.
 - Installing new sidewalks to make them 6' wide can have some negative impact to the roots of the existing trees. The level of impact may be based on the extent and methods of construction used on site.
 - Placing new trees in the required tree planting zone would require the removal of the existing trees and place any tree directly beneath overhead utility lines.

- Recommendation:
 - Approval, subject to the following conditions:
 - The landscape must conform to the approved landscape plan.
 - Based upon a conflict with an existing tree canopy on the most easterly portion of the property along Gaston Avenue, allow for the possible adjustment to a small tree for the most easterly Gaston Avenue street tree. (Street trees are normally required to be large trees). The existing tree in conflict grows on the adjacent property but the mature Live Oak overhangs the property line.

BACKGROUND INFORMATION:

Zoning:

- Site: PD No. 298(SUP 1690) (Planned Development District, Specific Use Permit for financial institution with drive-in window)
- North: PD No. 298(SUP 540) (Planned Development District, Specific Use Permit for institution for care of alcoholic patients)
- South: PD No. 298 (Planned Development District)
- East: PD No. 298 (Planned Development District))
- West: PD No. 298 (Planned Development District)

Land Use:

The subject site is partially developed with a financial institution without drive-in window (Bank of America) roughly half of the site that faces Gaston Avenue, and partially undeveloped on the other “half” of the site that faces Floyd Street. The areas to the north, east, south, and west are developed with a mix of mostly office, retail, and institutional uses.

Zoning/BDA History:

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| <ol style="list-style-type: none"> 1. Z056-242, northwest line of Gaston Avenue, southwest of Haskell Avenue (the subject site) | <p>On December 12, 2007, the City Council recommended approval of an application for a Specific Use Permit for Financial Institution with drive-in windows for a ten-year period with eligibility for automatic renewal for additional ten-year periods, subject to a site plan and conditions. The case report stated that the request was made to construct a five-lane motor bank addition within the undeveloped portion of the site.</p> |
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Timeline:

- Sept. 24, 2008 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- October 16, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- October 16, 2008: The Board Administrator emailed the applicant the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the requests;
 - the October 29th deadline to submit additional evidence for staff to factor into their analysis;
 - the November 7th 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 matters at the November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- October 23, 2008 The applicant submitted an amended application and landscape plan (see Attachment A).
- October 24, 2008 The Building Inspection Development Code Specialist forwarded a revised Building Official's Report to the Board Administrator (see Attachment B).
- October 30, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, the Assistant Building Official, the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- November 6, 2008 The applicant submitted a revised *revised* landscape plan dated November 6, 2008 (see Attachment C).

November 7, 2008 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment D).

STAFF ANALYSIS:

- This variance request focuses on constructing and maintaining a financial institution with drive-in window use on a site currently developed with a financial institution *without* drive-in window use (Bank of America) on the Gaston Avenue side of the site – an existing bank that appears to have obtained a permit by providing a plan that complied with the code knowing that a request to the board of adjustment would be needed to seek leniency to the landscape regulations in conjunction with the construction of the new drive-in window bank on the Floyd Street side of the subject site.
- The applicant is seeking leniency to certain landscape requirements of PD No. 298, specifically the tree planting zone and sidewalk requirements of the ordinance in order to maintain four trees along Floyd Street that lie outside the tree planting zone and whose size and location preclude the applicant from providing the required 6' wide minimum sidewalk width along Floyd Street.
- The request for landscape leniency to certain landscape requirements of PD No. 298 in this case requires a landscape *variance* request as opposed to the more typically seen landscape *special exception* request.
- The City of Dallas Chief Arborist recommends that the variance request be granted with two conditions:
 1. The landscape must conform to the approved landscape plan.
 2. Based upon a conflict with an existing tree canopy on the most easterly portion of the property along Gaston Avenue, allow for the possible adjustment to a small tree for the most easterly Gaston Avenue street tree. (Street trees are normally required to be large trees). The existing tree in conflict grows on the adjacent property but the mature Live Oak overhangs the property line.
- The site is flat, is rectangular in shape (297' x 139') and approximately 1 acre in area. The subject site is zoned PD No. 298. The site is partially developed with a bank without drive-in window oriented towards Gaston Avenue and partially undeveloped along Floyd Street. Four existing mature trees are located along the site's Floyd Street frontage – trees that according to the City's Chief Arborist would be required to be removed if new street trees and a replacement sidewalk were located on the site in their ordinance required locations.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the landscape regulations requested in conjunction with constructing/maintaining the new bank with drive-in window on the portion of the site that is undeveloped that would be deficient to the sidewalk and street tree location requirements is not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope,

that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land with the same PD No. 298 zoning.

- 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 with the same PD No. 298 zoning.
- If the Board were to grant this variance request and impose a condition that the applicant must comply with the submitted revised alternate landscape plan dated November 6, 2008, the site would be “varied” from full compliance to the landscape regulations of the PD No. 298, specifically the tree planting zone and sidewalk requirements of the ordinance in order to maintain four trees along Floyd Street. The board may want to place an additional condition to this request per the Chief Arborist – a condition that would allow the applicant the ability to substitute the easternmost large tree shown on the November 6th landscape plan along Gaston Avenue for a small tree given that an existing tree on the lot immediately east could create a conflict if a *large* tree were planted on the subject site directly underneath its canopy.

FILE NUMBER: BDA 078-149(K)

BUILDING OFFICIAL'S REPORT:

Application of Hailu Ejigu for a special exception to the parking regulations at 5203 Bexar Street. This property is more fully described as Lot 11A in City Block 9/2532 and is zoned PD-730 (Tract 1A), which requires parking to be provided. The applicant proposes to construct a nonresidential structure for office use, general merchandise or food store less than 3500 square feet use and multifamily use, and provide 29 of the required 38 parking spaces which will require a special exception of 9 parking spaces (24% reduction).

LOCATION: 5203 Bexar Street

APPLICANT: Hailu Ejigu

REQUEST:

- A special exception to the off-street parking regulations of 9 parking spaces (or 25% of the required off-street parking) is requested in conjunction with constructing and maintaining a nonresidential structure for office use, general merchandise or food store less than 3500 square feet use, and multifamily use.

STAFF RECOMMENDATION:

Approval, subject to the following conditions:

1. The special exception shall automatically and immediately terminate if and when the "office use or multifamily use" changes.

Rationale:

- The Development Services Senior Engineer has no objections.
- The applicant has substantiated how the parking demand generated by the use 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 applicant proposes to provide 29 of the 38 required parking spaces for a proposed 13,931 square foot mixed use development (2,050 square foot retail, 3,508 square foot office, and 8,373 square foot).

- The Dallas Development Code 51A-4.209(b)(5)(C) gives the following off-street parking requirement for multi-family use:
 - One space per 500 square feet of floor area.
- The Dallas Development Code 51A-4.207(5)(C) gives the following off-street parking requirement for office use:
 - One space per 333 square feet of floor area.
- The Dallas Development Code 51P-730.109(b)(2) give the following off-street parking requirement for retail uses:
 - One space per 200 square feet of floor area is required.

BACKGROUND INFORMATION:

Zoning:

Site: PD 730 (Tract 1A) (Planned Development)
North: PD 730 (Planned Development)
South: PD 730 (Planned Development)
East: PD 730 (Planned Development)
West: PD 595 R-5(A) (Planned Development single family 5,000 square feet)

Land Use:

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

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:

- September 30, 2008: The applicant’s representative submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- October 16, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- October 21, 2008: The Board of Adjustment Senior Planner contacted the applicant and shared the following information by phone and letter:
- the public hearing date and panel that will consider the application;
 - the criteria and standard that the board will use in their decision to approve or deny the request;

- the October 29th deadline to submit additional evidence for staff to factor into their analysis;
- the November 7th 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 November public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.

October 30, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearing. 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.

November 7, 2008 The Development Services Senior Engineer submitted a review comment sheet (see attachment).

STAFF ANALYSIS:

- The applicant has submitted a site plan illustrating the location of the proposed development and all parking to be provided for the site. The site plan shows 11 on-street parking spaces and 18 off-street parking spaces.
- Granting this request, subject to the condition that the special exception of 9 spaces automatically and immediately terminates if and when the office use, general merchandise or food store less than 3500 square feet use, and multifamily use is changed or discontinued, would allow the continuation of the proposed approximately 13,931 square foot structure to be leased with this specific use.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the office use, general merchandise or food store less than 3500 square feet use, and multifamily use does not warrant the number of off-street parking spaces required, and
 - The special exception of 9 spaces (or 24 percent 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 has indicated that he has no objections to this request.

FILE NUMBER: BDA 078-130(K)

BUILDING OFFICIAL'S REPORT:

Application of Benny Duncan represented by P. Michael Jung for a special exception to the visibility obstruction regulations at 6010 Walnut Hill Lane. This property is more fully described as Lot 1 in City Block A/5479 and is zoned R-10(A) which requires a 20 foot visibility triangle at driveway approaches and a 45 foot visibility triangle at street intersections. The applicant proposes to construct and maintain a fence and vegetation for a residential structure in a required 20 foot visibility obstruction triangle and a 45 foot visibility obstruction triangle, which will require special exceptions.

LOCATION: 6010 Walnut Hill Lane

APPLICANT: Benny Duncan
Represented by P. Michael Jung

REQUESTS:

A special exception to the visibility obstruction regulations is requested in conjunction with constructing and maintaining a fence and vegetation for a residential structure in a required 20 foot drive approach visibility triangle and a 45 foot street intersection visibility triangle.

STAFF RECOMMENDATION (visibility obstruction):

Denial of visibility obstruction at the intersection and drive approaches on Walnut Hill Lane.

Rationale:

- The Development Services Senior Engineer submitted a comment sheet marked "Recommends that this be denied: potential traffic hazard even at this signalized intersection."

Approval of visibility obstruction in drive approach and alley on Preston Road.

Rationale:

- The Development Services Senior Engineer submitted a comment sheet recommending approval (see attachment A).

STANDARD FOR A SPECIAL EXCEPTION TO THE VISIBILITY OBSTRUCTION REGULATIONS:

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

GENERAL FACTS:

- The property is located on the southeast corner of Preston Road and Walnut Hill Lane and is developed with a single family structure.
- The site is zoned R-10(A) which requires a visibility triangle of 20' at driveway approaches and 45' at street intersections.

The 45 foot visibility triangle exists at the northwestern corner of the lot (the southeastern corner of Preston and Walnut Hill). The property has three 20' visibility triangles at the drive approaches on Walnut Hill Lane and three 20' visibility triangles at the drive approach and alley on Preston Road.

BACKGROUND INFORMATION:

Zoning:

Site: R-10(A) (Single family residential 10,000 square feet).
North: R-10(A) (Single family residential 10,000 square feet) with SUP 971
South: R-10(A) (Single family residential 10,000 square feet).
East: R-10(A) (Single family residential 10,000 square feet).
West: R-1ac(A) (Single family residential 1 acre)

Land Use:

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

Zoning/BDA History:

BDA 056-045. The Board of Adjustment Panel A, granted a special exception to the fence regulations, on December 13, 2005.

Timeline:

August 26, 2008: The applicant's representative submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

September 18, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

September 24, 2008: The Board Senior Planner mailed the applicant's representative a letter that contained the following information:

- the public hearing date and panel that will consider the application;
- the criteria and standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the September 29th deadline to submit additional evidence for staff to factor into their analysis and recommendation;
- the October 3rd 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 October public hearing after considering the information or evidence and testimony presented to them by the applicant and all other interested parties.

September 30, 2008: 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 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.

The Development Services Senior Engineer submitted a review comment sheet recommending denial to the special exception to the visibility obstruction regulations.

October 15, 2008 The Board of Adjustment, Panel B voted to hold this case under advisement until November 19, 2008

October 30, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November 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.

November 4, 2008 The Development Services Senior Engineer submitted a review comment sheet.

STAFF ANALYSIS:

- The applicant proposes to maintain a fence and vegetation in the 45' visibility triangle at the intersection of Preston and Walnut Hill and at the 20' visibility triangles at the three driveway approaches on the property.
- According to DCAD this 2,891 square foot single family structure was constructed in 1956 and is listed in "good: condition.
- A review of the site plan and site visit reveals the site has three driveway visibility triangles; two along Walnut Hill Lane and another along Preston Road.
- The visibility triangle on the eastern property line (Walnut Hill Lane) is created by a driveway on the adjoining property. The subject site has a fence and vegetation in the 20 foot visibility triangle.
- The City's Senior engineer reviewed the site plans and has recommended denial of the special exception.
- The applicant has the burden of proof in establishing that granting the special exception to the visibility obstruction regulations does not constitute a traffic hazard
- If the Board were to grant the special exception to the visibility obstruction regulations, it may impose the following condition; compliance with the submitted site plan and elevation is required.