

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
WEDNESDAY, JANUARY 21, 2009**

MEMBERS PRESENT AT BRIEFING: Darlene Reynolds, Vice Chair, Sam Gillespie, Panel Vice Chair, Marla Beikman, regular member, Christian Chernock, regular member and David Wilson, regular member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Darlene Reynolds, Vice Chair, Sam Gillespie, Panel Vice Chair, Marla Beikman, regular member, Christian Chernock, regular member and David Wilson, regular member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Casey Burgess, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Donnie Moore, Chief Planner, Sam Eskander, Traffic Engineer, Phil Erwin, Chief Arborist and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Casey Burgess, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Donnie Moore, Chief Planner, Sam Eskander, Traffic Engineer, Phil Erwin, Chief Arborist and Trena Law, Board Secretary

11:00 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **January 21, 2009 docket.**

1:02 P.M.

The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel B November 19, 2008 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: January 21, 2009

MOTION: Gillespie

I move approval of the Wednesday, **November 19, 2008** Board of Adjustment Public Hearing minutes.

SECONDED: Beikman

AYES: 5– Reynolds, Gillespie, Beikman, Chernock, Wilson

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: Unassigned

REQUEST: To waive the filing fee to be submitted in conjunction with a potential Board of Adjustment appeal

LOCATION: 5814 Vickery Boulevard

APPLICANT: Jill and Kyle Byrd

January 21, 2009 Public Hearing Notes:

- The Board Administrator circulated additional written documentation submitted by the applicant to the board members at the briefing (labeled "Attachment B"). This information was an email from the applicant requesting that the board delay action on the request until a later date since he would be unable to attend the hearing given a client meeting that he had to attend.
- The board members encouraged staff at the briefing to relay to the applicant that they would be interested in the applicant submitting the following additional information if they were to hold action on the request until their next hearing:
 - a copy of tax returns;
 - a personal balance sheet;

- medical bills; and/or
- list of all accounts.

STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:

The Dallas Development Code states that the board may waive the filing fee for a board of adjustment application if the board finds that payment of the fee would result in substantial financial hardship to the applicant.

GENERAL FACTS:

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waivers/reimbursements:
 - The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.
 - The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board’s miscellaneous docket for predetermination.
 - If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.
 - In making this determination, the board may require the production of financial documents.
- The applicants have submitted a letter to the Board Administrator requesting a waiver of the \$600.00 filing fee to be submitted in conjunction with a potential appeal to the Board of Adjustment (see Attachment A). This letter is accompanied with other information related to why the applicants feel that the filing fee should be waived.

Timeline:

- Dec. 8, 2008 The applicants submitted a letter requesting a waiver of the \$600.00 filing fee for a Board of Adjustment application that may be submitted/requested at the address referenced above (see Attachment A).
- Dec. 11, 2008: The Board of Adjustment Secretary randomly assigned this request to Board of Adjustment Panel B.
- Dec. 11, 2008: The Board Administrator contacted one of the applicants informing him of the board of adjustment panel/hearing date to which the request was assigned. The board administrator followed the phone conversation with an email (with attachments) to the applicants that conveyed the following information:
 - an attachment that provided the public hearing date and panel that will consider the application; the January 5th deadline to submit additional evidence for staff to factor into their analysis; and the January 9th deadline to submit additional evidence to be incorporated into the Board’s docket materials;

- the criteria/standard that the board will use in their decision to approve or deny the request;
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence;” and
- a brochure that explains the board of adjustment process.

BOARD OF ADJUSTMENT ACTION: JANUARY 21, 2009

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Gillespie**

I move that the Board of Adjustment hold this matter under advisement until **February 18, 2009.**

SECONDED: **Beikman**

AYES: 5– Reynolds, Gillespie, Beikman, Chernock, Wilson

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 089-002

BUILDING OFFICIAL’S REPORT:

Application of Santos T. Martinez of Masterplan for special exceptions to the fence height and visual obstruction regulations at 4316 Abrams Road. This property is more fully described as lot 26A in City block A/2956 and is zoned R-7.5(A) which limits the height of a fence in the front yard to 4 feet and requires a 45 foot visibility triangle at street intersections. The applicant proposes to construct an 8 foot fence in a required front yard setback which will require a 4 foot special exception to the fence height regulations, and to construct, locate and maintain items in a required visibility triangle which will require a special exception to the visual obstruction regulations.

LOCATION: 4316 Abrams Road

APPLICANT: Santos T. Martinez of Masterplan

January 21, 2009 Public Hearing Notes:

- The Board Administrator circulated additional written documentation submitted by the applicant to the board members at the briefing (labeled “Attachment B”). This information was a revised partial site plan document that added the following notation: “Note: Shrubs in Visibility Triangle Not to exceed 30” height.”

REQUESTS:

- The following appeals have been made in this application on a site that is currently developed with a church (Wilshire Baptist Church):
 1. A special exception to the fence height regulations of 4' is requested in conjunction with constructing and maintaining an 8' high solid masonry fence/wall and a 6' high "ornamental metal louvered screen/fence" located in the site's 25' front yard setbacks along Ravendale Lane and Springside Lane.
 2. A special exception to the visual obstruction regulations is requested in conjunction with locating and maintaining portions of the 8' high solid masonry fence/wall, the 6' high "ornamental metal louvered screen/fence", and 3' high shrubs in the 45' visibility triangle at the intersection of Ravendale Lane and Springside Lane.

STAFF RECOMMENDATION (fence height special exception):

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

STAFF RECOMMENDATION (visual obstruction special exception):

Approval, subject to the following condition:

- Compliance with the submitted partial site plan and partial elevation/section is required.
- Shrubs/landscape materials located in the Ravendale Lane/Springside Lane intersection visibility triangle must not exceed 30 inches in height as measured from the top of the curb.

Rationale:

- The City's Development Services Senior Engineer recommends approval of this request whereby the items in the Ravendale Lane/Springside Lane intersection visibility triangle (with the conditions mentioned above imposed) will not constitute a traffic hazard.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

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

GENERAL FACTS (related to the fence height special exception):

- The Dallas Development Code states that a person shall not erect or maintain a fence in a required yard more than 9' above grade, and additionally states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
The applicant has submitted a partial site plan document and a partial elevation indicating a proposal that would reach a maximum height of 8' in the site's required 25' front yard setbacks on Ravendale Lane and Springside Lane.
- The following additional information was gleaned from the partial site plan document:
 - The proposal appears to be approximately 120' in length parallel to Springside Lane and approximately 23' in length perpendicular to the Springside Lane on the north and south "sides" of the site in the site's Springside Lane 25' front yard setback.
 - Of the approximately 120' total length of the proposal in the Springside front yard setback, approximately 50' is shown to be the 6' high "ornamental metal louvered screen/fence" and approximately 70' is shown to be the 8' high solid masonry fence/wall.
- The proposal is located approximately 2' from the Springside Lane front property line (or approximately 15' from the pavement line) and approximately 6' from the Ravendale Lane front property line (or approximately 20' from this pavement line).
- The partial site plan document and partial elevation/section document indicate the following landscape materials to be located on the street side of the proposed wall:
 - Four Shumard Oaks;
 - Two espaliers with vines;
 - Two trellises with vines;
 - Shurbs (3' in height).
- There are no single family homes that would have direct frontage to the proposal since the houses across the street from the site on Springside Lane front either north or south on Sudbury Drive or south on Ravendale Lane.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences above four (4) feet high which appeared to be located in the front yard setback.
- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a letter providing additional details about the requests;
 - a colored copy of the proposed elevation/section;
 - a photograph of the existing fence on the site to be replaced;
 - a colored copy of the proposed partial site plan;
 - a photo of the property across Ravendale Lane and Springside Lane;
 - a copy of the partial site plan noting the items to be located/maintained in the visibility triangle; and
 - photos taken inside a vehicle at the Ravendale Lane/Springside Lane intersection.

GENERAL FACTS (related to the visual obstruction special exception):

- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at intersections and 20-foot visibility triangles at drive approaches); and
 - between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).

The applicant has submitted a partial site plan document and a partial elevation indicating portions of the proposed 8’ high solid masonry fence/wall, the 6’ high “ornamental metal louvered screen/fence”, and 3’ high shrubs in the 45’ visibility triangle at the intersection of Ravendale Lane and Springside Lane.
- The applicant’s representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a letter providing additional details about the requests;
 - a colored copy of the proposed elevation/section;
 - a photograph of the existing fence on the site to be replaced;
 - a colored copy of the proposed partial site plan;
 - a photo of the property across Ravendale Lane and Springside Lane;
 - a copy of the partial site plan noting the items to be located/maintained in the visibility triangle; and
 - photos taken inside a vehicle at the Ravendale Lane/Springside Lane intersection.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5 (A) (Single family district 7,500 square feet)
North: R-7.5 (A) (Single family district 7,500 square feet)
South: CR (Community Retail)
East: R-7.5 (A) (Single family district 7,500 square feet)
West: R-7.5 (A) (Single family district 7,500 square feet)

Land Use:

The subject site is developed with a church (Wilshire Baptist Church). The areas to the north, east, and west are developed with single family uses; and the area to the south is developed with retail uses.

Zoning/BDA History:

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|---|---|
| <ol style="list-style-type: none"> 1. BDA 990-139, property located at 4316 Abrams Road (the subject site) | <p>On October 19, 1999, the Board of Adjustment Panel B granted a request for a variance to the parking regulations and imposed the following condition: compliance with the submitted site plan is required. The</p> |
|---|---|

case report stated that the request was requested in conjunction with maintaining approximately 15 existing parking spaces in the front yard setback along Abrams Road (that according to the applicant have been located in this area since the church was built in 1966); and striping and maintaining approximately 27 additional parking spaces located in the front yard setback along Abrams Road.

2. BDA 956-190, property located at 4316 Abrams Road (the subject site)

On May 28, 1996, the Board of Adjustment Panel B granted a request for a variance to the residential proximity slope regulations and imposed the following condition: compliance with the submitted site plan and elevation indicating full screening of the proposed equipment structure and the existing cooling equipment on the roof is required. The case report stated that the request was requested in conjunction with constructing and maintaining a 46' 11" high cellular antenna equipment structure and associated screening on the roof of an existing church.

Timeline:

- October 30, 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.
- Dec. 16, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Dec. 16, 2008: The Board Administrator emailed the applicant's representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the January 5th deadline to submit additional evidence for staff to factor into their analysis; and the January 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the requests;
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

- Dec. 30, 2008 The applicant's representative submitted additional information to staff beyond what was submitted with the original application (see Attachment A).
- Jan. 6, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January 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, the Development Services Senior Engineer and the Assistant City Attorney to the Board.
- Jan. 7, 2009 The Development Services Senior Engineer submitted a review marked "Has no objections if certain conditions are met" with the following comments:
 "Condition:
 1. "Keep the shrubs at 30-in height measured from top of the curb which comply with the Dallas City Code."

STAFF ANALYSIS (related to the fence height special exception):

- This request focuses on locating and maintaining an 8' high solid masonry fence/wall and a 6' high "ornamental metal louvered screen/fence" located in the site's 25' front yard setbacks along Ravendale Lane and Springside Lane.
- A partial site plan and elevation/section have been submitted documenting the location of the proposal relative to the entire site (about 120' long parallel to Springside Lane and about 23" perpendicular on the "sides" in the front yard setback), the front property lines (from 2' – 6' from the property lines) and the pavement line (from about 15' – 20' from the pavement lines), and the proposed heights and building materials (about 50' is shown to be the 6' high "ornamental metal louvered screen/fence" and approximately 70' is shown to be the 8' high solid masonry fence/wall).
- There are no single family homes that would have direct frontage to the proposal since the houses across the street from the site on Springside Lane front either north or south on Sudbury Drive or south on Ravendale Lane.
- No other fences were noted in the general area of the subject site above four (4) feet high which appeared to be located in the front yard setback.
- As of January 12, 2009, no letters had been submitted to staff in support or in opposition to the proposal.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' (whereby the proposal that would reach 8' in height) will not adversely affect neighboring property.
- Granting this special exception of 4' with a condition imposed that the applicant complies with the submitted partial site plan and partial elevation/section would assure that the proposal would be constructed and maintained in the locations and of the heights and materials as shown on these documents.

STAFF ANALYSIS (related to the visual obstruction special exception):

- This request focuses on locating and maintaining portions of an 8’ high solid masonry fence/wall (approximately 5’ in length), a 6’ high “ornamental metal louvered screen/fence” (approximately 12’ in length), and 3’ high shrubs (approximately 20’ in length) in the 45’ visibility triangle at the intersection of Ravendale Lane and Springside Lane.
- The Development Services Senior Engineer submitted a review comment sheet marked “Has no objections if certain conditions are met” with the following comments: “Condition: “Keep the shrubs at 30-in height measured from top of the curb which comply with the Dallas City Code.
- The applicant has the burden of proof in establishing the following:
 - Granting the special exception to the visual obstruction regulations and allowing a portion of an 8’ high solid masonry fence/wall, a 6’ high “ornamental louvered screen/fence” and 3’ high shrubs in the 45’ Ravendale Lane/Springside Lane visibility triangle will not constitute a traffic hazard.
- If this request is granted, subject to compliance with the submitted partial site plan and partial elevation/section, the items shown on these documents would be “excepted” into the visibility triangle on the subject site.
- Note that if the board were to grant this request and impose only the submitted partial site plan and partial elevation/section as a condition to the request, the shrubs in the visibility triangle would be allowed to reach 3’ in height or 6” higher than the 30” height limit suggested by the Development Services Senior Engineer.

BOARD OF ADJUSTMENT ACTION: January 21, 2009

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Beikman

I move that the Board of Adjustment grant application **BDA 089-002** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised partial site plan and partial elevation/section is required.

SECONDED: Chernock

AYES: 5– Reynolds, Gillespie, Beikman, Chernock, Wilson

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 089-010

BUILDING OFFICIAL'S REPORT:

Application of John K. Percy, represented by Robert Baldwin, for a special exception to the landscape regulations at 5636 Lemmon Avenue. This property is more fully described as Lot 2 in City Block A/2476 and is zoned PD-193 (GR) which requires mandatory landscaping. The applicant proposes to construct a structure and provide an alternate landscape plan which will require a special exception to the landscape regulations.

LOCATION: 5636 Lemmon Avenue

APPLICANT: John K. Percy
Represented by Robert Baldwin

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with constructing and maintaining a financial institution with drive-in window use (Bank of America) on the subject site which is developed as a retail strip center.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan is required.

Rationale:

- If the board were to grant this request with the staff suggested condition imposed, the site would only be minimally "excepted" from the street tree location, sidewalk, and landscape site area (required front yard) requirements of PD No. 193 while exceeding requirements related to the number of street trees, and landscape site area (lot area), general planting area (required front yard), and special planting area (required front yard).
- The City's Chief Arborist recommends approval of this request whereby if the alternate landscape plan were imposed as a condition, the special exception would not compromise the spirit and intent of the landscaping requirements of PD No. 193, particularly given that the landscape deficiencies on the site are partially created through existing city infrastructure conflicts and expansion along Lemmon Avenue and Inwood Road.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS IN OAK LAWN:

Section 26(a)(4) of Ordinance No. 21859, which establishes PD No. 193, specifies that the board may grant a special exception to the landscaping requirements of this section if, in the opinion of the Board, the special exception will not compromise the spirit and intent of this section. When feasible, the Board shall require that the applicant submit

and that the property comply with a landscape plan as a condition to granting the special exception.

GENERAL FACTS:

- PD No. 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind.

The applicant has submitted an alternate landscape plan that, according to the City of Dallas Chief Arborist, is seeking relief from the landscaping requirements of PD No. 193, specifically the street tree, sidewalk, and landscape area requirements of this ordinance.

- The City of Dallas Chief Arborist has submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner pertaining to the special exception request (see Attachment A). The memo stated the following:
 - The special exception request is triggered by new construction.
 - Deficiencies:
 1. 995 square feet short of Front Yard Landscape Site Area. (The applicant is providing 1,040 of the required 2,035 square feet).
 2. Sidewalk location along Inwood Road near Lemmon Avenue is not parallel to curb due to road angle thus creating a slight adjustment from code required distance from curb.
 3. Street trees along Inwood Road are placed behind sidewalk from under utility. The memo provides a table indicating among other things how the applicant is providing 9 of the required 8 street trees, and is exceeding the requirements relating to Landscape Site Area Lot Area, General Planting Area Required Front Yard.
 - Factors:
 - The development was approved under SUP 1722 by the City Council on August 13, 2008. Use and development of the Property must comply with the approved site plan. Under the SUP, “landscaping must be provided and maintained in accordance with Section 51P-193.126, as amended.”
 - A right-of-way dedication, identified on the site plan, places the new property line boundary just over 21 feet from the curb along Lemmon Avenue. The adjusted property line is shown at 10 feet from the front façade of the building. The vehicular pavement for the drive is partially within the dedicated public right-of-way.
 - Landscape site area (Section 51P-193.126(h)) for GR subdistricts requires “at least 10 percent of lot, including at least 60 percent of the required front yard.” The LSA must be permeable but can have pedestrian pavement.
 - The “required front yard” is the portion of that lot that abuts a street and extends across the width of the lot between the property line and the building setback line.

- Approximately 6 feet of the “required front yard” along Lemmon Avenue adjacent to the building is vehicular pavement. Another 3.5 feet is pedestrian pavement.
 - In total, the required front yard landscape site area is short by 995 square feet (49 percent). The placement of the vehicular pavement along the Lemmon Avenue frontage helped create a deficiency.
 - In addition, street trees are required to be between 2.5’ and 5’ from the back of curb. Sidewalks are required to be 6 feet in width and placed between 5’ to 12’ from back of curb. Inwood Road has a built sidewalk along the street at a slight angle (not parallel) to the street curb but parallel to the property line. The planting width is reduced near Lemmon Avenue. In addition, overhead power lines restrict the site to small tree species. Combined areas of visibility triangles also force a compression of the allowed planting areas along Inwood Road. The owner proposes to plant larger pond cypress trees further back (approximately 12 feet from back of curb) out of conflict with utilities, and pedestrian and vehicular traffic.
- Recommendation:
- Approval, subject to compliance with the proposed landscaping planting plan.
Reasoning: The Council-approved site plan meets the general zoning standards for the property. The landscape deficiencies are partially created through existing city infrastructure conflicts and expansion along Lemmon Avenue and Inwood Road. The applicant had worked with staff prior to the SUP hearing to improve the ratio of front yard landscaping (southwest and southeast corners) from earlier site plans. Additional perimeter landscaping exceeds minimum standards. I feel the applicant is seeking to meet the spirit and intent of the code while addressing space limitations and traffic circulations problems.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	PD No. 193 (GR Subdistrict)(Deed Restricted) (Planned Development District, General Retail)
<u>North:</u>	CS (Commercial Service)
<u>South:</u>	PD No. 193 (GR Subdistrict)(Deed Restricted) (Planned Development District, General Retail)
<u>East:</u>	PD No. 193 (GR Subdistrict)(Deed Restricted) (Planned Development District, General Retail)
<u>West:</u>	PD No. 72 & SUP 240 (Planned Development District, Specific Use Permit)

Land Use:

The subject site is developed with a retail strip center (Sigel’s Beverages, A-Affordable Auto Insurance, CE Cash Express, and Rent-A-Center). The areas to the north and east are developed with commercial uses; and the areas to the south and west are developed with retail uses.

Zoning/BDA History:

1. Z889-153, Lemmon Avenue and On October 11, 1989, the City Council

Inwood Road, east corner (the subject site and parcels of land east and south of the subject site)

created an ordinance authorizing a GR Subdistrict on property previously zoned a LC Subdistrict within PD No. 193. The City Council also authorized acceptance of a deed restriction instrument submitted in conjunction with the change in zoning – deed restrictions that limited height to 30 feet and two stories; floor area ratio to 0.5:1; prohibition of drive-through restaurants within a certain area of the area of request; prohibited sexually oriented businesses; and required a continuous masonry screening wall at least 6 feet in height in certain areas of the area of request.

(Note that the applicant’s representative informed the Board Administrator on January 6, 2009 that his request to the board of adjustment for a special exception to the landscape regulations does not violate these deed restrictions).

2. Z067-316, Lemmon Avenue and Inwood Road, east corner (the subject site)

On August 13, 2008, the City Council granted an application for a Specific Use Permit (SUP) for a bank or savings and loan office on property zoned a GR General Retail Subdistrict within PD No. 193.

(Note that the applicant’s representative informed the Board Administrator on January 7, 2009 that his request to the board of adjustment for a special exception to the landscape regulations is consistent with the SUP approval).

Timeline:

Nov. 20, 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.

Dec. 16, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

Dec. 16, 2008: The Board Administrator emailed the applicant’s representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the January 5th deadline to submit additional evidence for staff to factor into their analysis;

the January 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;

- the criteria/standard that the board will use in their decision to approve or deny the request;
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

Jan. 6, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January 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, the Development Services Senior Engineer and the Assistant City Attorney to the Board.

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

Jan. 12, 2009 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment A).

STAFF ANALYSIS:

- This request focuses on constructing and maintaining a financial institution with drive-in window use (Bank of America) on the subject site which is developed as a retail strip center.
- Approval of this landscape special exception request would allow the redevelopment of the site with a bank while allowing the site to not fully comply with the street tree, sidewalk, and landscape area requirements of PD No. 193.
- An alternate landscape plan has been submitted whereby the applicant seeks an exception from the landscape requirements in the following ways:
 1. Providing 1,040 square feet short of Front Yard Landscape Site Area when 2,035 square feet is required.
 2. Providing a sidewalk location along Inwood Road near Lemmon Avenue that is not parallel to curb due to road angle thus creating a slight adjustment from code required distance from curb when sidewalks are required to be located 6' – 12' from back of curb.
 3. Providing street trees along Inwood Road that are placed behind sidewalk from under utility when street trees are required to be located 2.5' – 5' from back of curb.

The alternate landscape plan meets or exceeds all other mandatory landscape provisions.

- The City of Dallas Chief Arborist supports the request largely given that the landscape deficiencies on the site are partially created through existing city infrastructure conflicts and expansion along Lemmon Avenue and Inwood Road
- The applicant has the burden of proof in establishing the following:

- The special exception (where an alternate landscape plan has been submitted that is deficient the street tree, sidewalk, and landscape area requirements) will not compromise the spirit and intent of the section of the ordinance (Section 26: Landscape, streetscape, screening, and fencing standards).
- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted alternate landscape plan, the site would be minimally “excepted” from compliance from the street tree location, sidewalk, and landscape site area requirements of PD No. 193 while exceeding requirements related to the number of street trees, and landscape site area (lot area), general planting area (required front yard), and special planting area (required front yard).

BOARD OF ADJUSTMENT ACTION: January 21, 2009

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

***Member Marla Beikman recused herself and did not hear or vote on this matter.**

MOTION: Chernock

I move that the Board of Adjustment, in Appeal No. **BDA 089-010**, on application of John K. Percy, represented by Robert Baldwin, **grant** the request of this applicant for a special exception to the landscaping requirements contained in PD 193, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that this special exception will not compromise the spirit and intent of Section 51P-193.126 of the Dallas Development Code. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted alternate landscape plan is required.

SECONDED: Gillespie

AYES: 4– Reynolds, Gillespie, Chernock, Wilson

NAYS: 0 –

MOTION PASSED 4 – 0 (unanimously)

FILE NUMBER: BDA 089-011

BUILDING OFFICIAL’S REPORT:

Application of Jeremy Fernandes, represented by Robert Baldwin, for a special exception to the parking regulation at 10051 Marsh Lane. This property is more fully described as Lot 1 in City Block A/6426 and is zoned CR & LO-1, which requires parking to be provided. The applicant proposes to construct and maintain a nonresidential structure for office use, personal service use, dry cleaning or laundry use, general merchandise or food store less than 3500 square feet use, general merchandise or food store greater than 3500 square feet use, financial institution with

drive-in window use, and restaurant without drive-in or drive-through service use and provide 332 of the required 372 parking spaces which when combined with 36 parking spaces currently not provided due to already existing nonconforming rights which will require a 4 space special exception to the parking regulations.

LOCATION: 10051 Marsh Lane

APPLICANT: Jeremy Fernandes
Represented by Robert Baldwin

January 21, 2009 Public Hearing Notes:

- The board members encouraged the applicant at the public hearing to consider submitting the following additional information if they were to hold action on the request until their next hearing:
 - An updated parking study that would include (but not be limited to) addressing a neighbor's concern with traffic patterns;
 - An elevation of the proposed ice house – an elevation that would show the relationship of the proposed ice house to the existing Jack-In-The-Box sign; and
 - An explanation of how the proposed ice house use is to be patronized.

REQUEST:

- A special exception to the off-street parking regulations of 4 spaces is requested in conjunction with constructing/maintaining a new “nonresidential structure” (or as noted on the submitted site plan as an “ice house ± 200 SF”) which will take away 3 of the existing parking spaces on the site, and create a need for one additional parking space for this new general merchandise use on the site. The site is currently developed with a shopping center (Marsh Lane Plaza).

STAFF RECOMMENDATION:

Denial

Rationale:

- The Development Services Senior Engineer recommends that this request be denied based on the lack of a parking study to justify the reduction and the fact that the parking table submitted by the applicant's representative did not include the proposed “ice house” shown on the site plan and appeared to exceed the “required 370 parking spaces” noted in the (original) Building Official's Report.
- The applicant had not substantiated how the parking demand generated by the existing and proposed uses 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.

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:

- According to a table submitted by the applicant's representative, the Dallas Development Code requires the following off-street parking requirements for the existing/proposed uses on the subject site:
 - 1 space is required per 100 square feet of floor area for a restaurant without drive-in or drive through service.
 - 1 space is required per 333 square feet of office.
 - 1 space is required per 333 square feet of bank w/drive thru (financial institution with drive-in window).
 - 1 space is required per 200 square feet of personal service.
 - 1 space is required per 200 square feet of dry cleaning or laundry (dry cleaning or laundry store).
 - 1 space is required per 200 square feet of floor area of a general merchandise or food store less than 3,500 square feet and greater than 3,500 square feet.

According to the revised Building Official's Report (see Attachment A), the applicant proposes to provide 332 of the required 372 parking spaces which when combined with 36 parking spaces currently not provided due to already existing nonconforming rights would require a special exception of 4 spaces.
- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment B). This information included the following:
 - a table that listed tenant, suite numbers, use, parking space requirement, and square footage of tenants in the existing center (but as noted by the Development Services Senior Engineer, does not appear to include the proposed "ice house" use shown on the submitted site plans); and
 - a revised site plan.

BACKGROUND INFORMATION:

Zoning:

- Site: CR, LO-1 (SUP 1100) (Commercial Retail, Limited Office, Specific Use Permit for Radio, Television, or Microwave Tower)
- North: CR (Community Retail)
- South: R-7.5(A) (Single family district, 7,500 square feet)
- East: CR (Community Retail)
- West: PD No. 31 (Planned Development District)

Land Use:

The subject site is developed as a shopping center (Marsh Lane Plaza). The areas to the north and east are developed with retail uses, and the areas to the south and west are developed with single family uses.

Zoning/BDA History:

1. BDA 067-057, 10051 Marsh Lane (the subject site) On April 18, 2007, the Board of Adjustment Panel B granted a request for a special

exception to the off-street parking regulations of 49 spaces whereby the applicant proposed to provide 416 (or 89%) of the required 465 parking spaces on the subject site. The board imposed the following condition with this request: The special exception shall automatically and immediately terminate if and when the catering service, restaurant with or without drive-in or drive through service, general merchandise of food store less than or greater than 3,500 square feet, office, and auto service center uses on the site are changed or discontinued. The case report stated that the request was made in conjunction addressing an existing retail center (Marsh Lane Plaza) that was "short of meeting the city's off-street parking requirements," and constructing / maintaining a vehicle inspection facility/auto service center use on the subject site.

2. BDA 95-042, 10065 Marsh Lane (the northern portion of the subject site)

On April 25, 1995, the Board of Adjustment granted a request for a special exception to the sign regulations. The board imposed the following condition with this request: Compliance with the submitted elevation and site plan is required; and any change to the elevation or site plan must be approved by the Board of Adjustment. The case report stated that the request was made in conjunction with erecting a new 50 square foot detached premise sign within an existing retail center that was allowed one detached premise sign by right.

Timeline:

Nov. 20, 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.

Dec. 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."

- Dec. 16, 2008: The Board Administrator emailed the applicant's representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the January 5th deadline to submit additional evidence for staff to factor into their analysis; the January 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- Jan. 6, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January 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, the Development Services Senior Engineer and the Assistant City Attorney to the Board.
- Jan. 7, 2009 The Building Inspection Development Code Specialist forwarded a revised Building Official's Report to the Board Administrator (see Attachment A).
- Jan. 7, 2009 The applicant's representative submitted information beyond what was submitted with the original application and discussed at the staff review team meeting (see Attachment B).
- Jan. 9, 2009 The Development Services Senior Engineer submitted a review comment sheet marked "Recommends that this be denied" with the following comments:
1. "Lack of a parking study/analysis to justify the reduction;
 2. The parking table provided on 1/7/09 did not include the prop. "ice house" shown in the site plan, and appeared to exceed the stated "required 370 parking spaces" in the Building Official's report."

STAFF ANALYSIS:

- This request focuses on a 4 space parking reduction triggered by the proposed construction and maintenance of a new approximately 200 square foot "ice house" (or general merchandise use) on a site developed with a shopping center. It appears from the information submitted by the applicant that the new "ice house" structure will involve removing 3 of the existing parking spaces on the site while simultaneously creating a need for 1 additional space to be provided.
- The Board of Adjustment Panel B granted a special exception to the parking regulations of 49 spaces on the site on April 18, 2007. The application at that time was made in conjunction with: 1) addressing an existing retail center that was "short

of meeting the city's off-street parking requirement;" and 2) constructing and maintaining a vehicle inspection facility whereby the applicant was proposing to provide 416 (or 89 percent) of the required 465 parking spaces on the site.

- The application for a special exception to the off-street parking regulations on the subject site returns to Board of Adjustment Panel B with the following changes:
 1. The application is no longer made to address an under-parked center or the construction of a proposed vehicle inspection facility – the application is now made to merely construct/maintain an approximately 200 square foot “ice house.”
 2. The application is no longer made for a special exception of 49 spaces whereby the applicant had provided 416 (or 89 percent) of the required 465 spaces - the application is now made for a special exception of 4 spaces whereby the applicant is providing 368 (through 332 parking spaces actually provided on-site combined with 36 parking spaces “provided” through delta credits or existing nonconforming rights) of the required 372 spaces.
 3. The application is no longer made for a site/center with the following uses: general merchandise, personal service, financial institution, office, restaurant, and auto service center – the application is now made for a site/center with the following uses: general merchandise, personal service, financial institution, office, restaurant, and dry cleaning or laundry.
- The Development Services Senior Engineer has submitted a review comment sheet marked “Recommends that this be denied” with the following comments: “Lack of a parking study/analysis to justify the reduction; the parking table provided on 1/7/09 did not include the prop. “ice house” shown in the site plan, and appeared to exceed the stated “required 370 parking spaces” in the Building Official’s report
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the office, personal service, dry cleaning or laundry, general merchandise or food store less than or greater than 3,500 square feet, financial institution with drive-in or drive through service, restaurant without drive-in or drive through service uses does not warrant the number of off-street parking spaces required, and
 - The special exception of 4 spaces (or 1% of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- Granting this request, subject to the condition that the special exception of 4 spaces automatically and immediately terminates if and when the office, personal service, dry cleaning or laundry, general merchandise or food store less than or greater than 3,500 square feet, financial institution with drive-in or drive through service, restaurant without drive-in or drive through service uses are changed or discontinued, would allow the construction of an approximately 200 square foot “ice house”/general merchandise use on the subject site.

BOARD OF ADJUSTMENT ACTION: January 21, 2009

APPEARING IN FAVOR: Victoria Radar, 401 Exposition, Dallas, TX

APPEARING IN OPPOSITION: No one

***Member Marla Beikman recused herself and did not hear or vote on this matter.**

MOTION: Gillespie

I move that the Board of Adjustment in Appeal No. **BDA 089-011**, hold this matter under advisement until **February 18, 2009**.

SECONDED: **Chernock**

AYES: 4– Reynolds, Gillespie, Chernock, Wilson

NAYS: 0 –

MOTION PASSED 4 – 0 (unanimously)

MOTION: **Wilson**

I move to adjourn this meeting.

SECONDED: **Chernock**

AYES: 4– Reynolds, Gillespie, Chernock, Gaspard

NAYS: 0 -

MOTION PASSED 4 – 0 (unanimously)

1:31 P.M. - Board Meeting adjourned for **January 21, 2009**.

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

Note: For detailed information on testimony, refer to the tape retained on file in the Department of Planning and Development.