

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN AUDITORIUM
WEDNESDAY, FEBRUARY 18, 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, Kyra Blackston, Senior Planner Chau Nguyen, 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, Kyra Blackston, Senior Planner Chau Nguyen, Traffic Engineer, Phil Erwin, Chief Arborist and Trena Law, Board Secretary

11:02 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **February 18, 2009 docket.**

1:10 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 January 21, 2009 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: February 18, 2009

MOTION: Beikman

I move approval of the Wednesday, **January 21, 2009** Board of Adjustment Public Hearing minutes.

SECONDED: Chernock

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

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 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. This letter and other information related to why the applicants feel that the filing fee should be waived has been included in this case report (see Attachment A).
- As of February 9, 2009, no additional information had been submitted to staff from the applicants.

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.
- Jan. 21, 2009 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.

- Jan. 21, 2009 The board members encouraged staff at the briefing to relay to the applicants (given their inability to attend the hearing) 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.
- Jan. 22, 2009: The Board Administrator emailed the applicants the following information:
- notice that the board delayed action on the request until February 18th;
 - an attachment that provided the new public hearing date; the February 2nd deadline to submit additional evidence for staff to factor into their analysis; and the February 6th 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 list of the information that the board encouraged the applicant to submit in conjunction with showing how payment of the filing fee would result in substantial financial hardship to them.

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)

BOARD OF ADJUSTMENT ACTION: February 18, 2009

MOTION: Gillespie

I move that the Board of Adjustment **deny** the request to waive the filing fee to be submitted in conjunction with a potential board of adjustment appeal.

SECONDED: Beikman

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

NAYS: 0 –

MOTION PASSED 5 – 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

February 18, 2009 Public Hearing Notes:

- The applicant provided photographs of the subject site to the board at the public hearing.

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:

- As of February 9, 2009, no additional information had been submitted by the applicant's representative since the January 21st hearing where staff had recommended that the board deny this request.
- 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.
- 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.

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.

- On January 21, 2009, the Board of Adjustment conducted a public hearing on this request and delayed action until February 18, 2009. The board members encouraged the applicant's representative at this hearing to consider submitting the following additional information to staff prior to the February 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.
- As of February 9, 2009, no additional information had been submitted to staff from the applicant's representative.

BACKGROUND INFORMATION:

Zoning:

- Site: CR, LO-1 (SUP 1100) (Community 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."
- Jan. 20, 2009 The board of adjustment conducted a public hearing on this request and delayed action until their February 18th public hearing.
- Jan. 22 & 28, 2009: The Board Administrator emailed the applicant's representative and sent a letter that conveyed the following information:
- the delayed public hearing date;
 - the February 2nd deadline to submit additional evidence for staff to factor into their analysis;
 - the February 6th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence;" and
 - the list of additional materials that the board was interested in having the applicant submit to staff/the board.
- Feb. 3, 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 Assistant Director of Development Services – Current Planning; 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.

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)

BOARD OF ADJUSTMENT ACTION: February 18, 2009

APPEARING IN FAVOR: Rob Baldwin, 401 Exposition, Dallas, TX

APPEARING IN OPPOSITION: No one

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

MOTION: **Wilson**

I move that the Board of Adjustment, in Appeal No. **BDA 089-011**, on application of Jeremy Fernandes, represented by Robert Baldwin, **deny** the special exception to the off-street parking regulations requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that the use warrants the number of off-street parking spaces required, and the special exception would create a traffic hazard and increase traffic congestion on adjacent and nearby streets.

SECONDED: **Chernock**

AYES: 3– Reynolds, Chernock, Wilson

NAYS: 1 – Gillespie

MOTION PASSED 3 – 1

FILE NUMBER: BDA 067-123

BUILDING OFFICIAL'S REPORT:

Application of Santos T. Martinez, represented by Masterplan, for a variance to the front yard setback regulations, variances to the side yard setback regulations, and for a special exception to the landscape regulations at 7342 La Vista Drive (aka 7219 East Grand Avenue). This property is more fully described as Lots 33, 34, & 35 in City Block A/2731 and is zoned CR which requires a front yard setback of 15 feet, a side yard setback of 20 feet where there is residential adjacency for new construction, and mandatory landscaping. The applicant proposes to maintain a structure and provide an 11 foot front yard setback which will require a 4 foot variance to the front yard setback regulations, and to construct and maintain a structure and provide a 7 foot side yard setback which will require a 13 foot variance to the side yard setback regulations, and provide a 2 foot side yard setback which will require an 18 foot variance to the side yard setback regulations, and provide an alternate landscape plan which will require a special exception to the landscape regulations.

LOCATION: 7342 La Vista Drive (aka 7219 East Grand Avenue).

APPLICANT: Santos T. Martinez
Represented by Masterplan

REQUESTS:

- The following appeals have been made in this application on a site currently developed with a nursery/garden shop/plant sales use (Ruibal's):
 1. A variance to the side yard setback regulations of 18' is requested in conjunction with constructing and maintaining an approximately 560 square foot "open air trellis" structure in the site's 20' northern side yard setback;
 2. A variance to the side yard setback regulations of 13' is requested in conjunction with constructing and maintaining an approximately 400 square foot "open air trellis" structure in the site's 20' western side yard setback;
 3. A variance to the side yard setback regulations of 11' is requested in conjunction with maintaining a portion of an existing approximately 1,300 square foot structure is the site's 20' western side yard setback;
 4. A variance to the front yard setbacks regulations of 4' is requested in conjunction with maintaining a portion of an approximately 850 square foot "existing wood trellis" structure in the site's 15' East Grand Avenue front yard setback; and
 5. A special exception to the landscape regulations is requested in conjunction with constructing and maintaining the two open air trellis structures on the subject site.

STAFF RECOMMENDATION (variances):

Approval of the requests, subject to the following conditions:

1. Compliance with the submitted revised site and landscape plan is required.

2. All items including but not limited to plant or landscape materials located on site or shown on the submitted revised site and landscape plan must be brought into compliance with the City's visual obstruction regulations.

Rationale:

- The site is restricted in its developable area (only 40 percent of the entire lot once setbacks are accounted for, according to the applicant), and is different from other parcels of land given its irregular shape. This feature creates hardship on the lot and prohibits the applicant's ability to maintain an existing structure in compliance with the front and side yard setbacks, and to construct/maintain two new structures in compliance with the side yard setbacks.

STAFF RECOMMENDATION (landscape special exception):

Approval, subject to the following conditions:

1. Compliance with the submitted revised site and landscape plan is required.
2. All items including but not limited to plant or landscape materials located on site or shown on the submitted revised site and landscape plan must be brought into compliance with the City's visual obstruction regulations.
3. The landscape special exception terminates if and when the nursery, garden, shop, or plant sales use on the site is changed or discontinued.

Rationale:

- The City's Chief Arborist supports the request.
- The applicant has substantiated how strict compliance with the requirements of the Landscape Regulations of the Dallas Development Code will unreasonably burden the use of the property; and that the special exception will not adversely affect neighboring property.

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.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

The board may grant a special exception to the landscape regulations of this article upon making a special finding from the evidence presented that:

- (1) strict compliance with the requirements of this article will unreasonably burden the use of the property;
- (2) the special exception will not adversely affect neighboring property; and
- (3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

In determining whether to grant a special exception, the Board shall consider the following factors:

- the extent to which there is residential adjacency;
- the topography of the site;
- the extent to which landscaping exists for which no credit is given under this article; and
- the extent to which other existing or proposed amenities will compensate for the reduction of landscaping.

GENERAL FACTS (variances):

- The subject site is zoned CR and is located at the southwest corner of LaVista Drive and East Grand Avenue. The site is bordered on the south by CR-zoned property on the west by R-7.5(A) zoned property. As a result of these characteristics, the subject site has two 15' front yard setbacks (one along LaVista Drive, another along East Grand Avenue), one 0' side yard setback on the south adjacent to CR zoned property, and one 20' side yard setback on the west adjacent to R-7.5(A) zoned property.
- The minimum front yard setback for structures zoned CR is 15'. A revised site and landscape plan has been submitted that indicates the location of a structure labeled on this plan as "existing wood trellis" as close as 11' from the site's front property line on East Grand Avenue (or as much as 4' into the 15' front yard setback). The revised site and landscape plan shows no encroachment into the site's 15' LaVista Drive front yard setback.
- The minimum side yard setback for structures on lots zoned CR where adjacent to or directly across an alley from an R, R(A), D, D(A), TH, TH(A), CH, MF, or MF(A) district is 20'. (The subject site is immediately adjacent to property to the west zoned R-7.5(A), otherwise no minimum side yard setback would be required). A revised site and landscape plan has been submitted that indicates the location of one "open air trellis" structure 7' from the site's western side property line (or 13' into the 20' side yard setback); another "open air trellis" structure located 2' from the site's northern side yard setback (or 18' into the 20' side yard setback), and the location of an "existing structure" 9' from the site's western side yard setback (or 11' into the 20' side yard setback).
- According to calculations taken from the revised site and landscape plan by the Board Administrator, approximately 280 square feet (or approximately 1/3) of the approximately 840 square foot existing wood trellis is located in the site's 15' East Grand Avenue front yard setback; approximately 770 square feet (or approximately 60 percent) of the approximately 1,260 square foot "existing structure" is located in the site's 20' western side yard setback; approximately 300 square feet (or

approximately 75 percent) of the approximately 400 square foot proposed open trellis is to be located in the site's western side yard setback; and all of the approximately 560 square foot proposed trellis structure is located in the site's 20' northern side yard setback.

- The site is somewhat sloped, L-shaped and 13,800 square feet in area. The site is zoned CR. The site has two front yard setbacks which is typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural.
- DCAD shows the site with no improvements.
- The applicant submitted information beyond what was submitted with the original application (see Attachments A and B). This information included the following:
 - a document that provided additional details about the request; and
 - annotated plans and photographs of the site showing the existing setbacks on the site and effect of the setbacks on existing and proposed development.

GENERAL FACTS (landscape special exception):

- 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 site and landscape plan has been submitted with the application that according to the City of Dallas Chief Arborist is deficient from mandatory and design standard requirements of the landscape ordinance.
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Chief Board of Adjustment Planner (see Attachment C). The memo stated the following:
 - The applicant is requesting relief from mandatory and design standard requirements of the landscape ordinance.
 - Trigger: Permitting of structure that creates a floor area addition exceeding 35 percent of the existing permitted floor area.
 - Deficiencies:
 1. Mandatory provisions for street trees, parking lot trees, and residential perimeter buffer:
The site has existing permanent trees in the area adjacent to the residential zone that are allowable as "site trees."
 2. Design standards are not met.
 - Factors for consideration:
 - The property is currently used as a nursery (garden shop) with multiple site improvements. It is heavily populated with commercial plants that are re-distributed on a seasonal and continuous basis that is dependent on consumer demand. Plants are arranged by the owner for visual appeal to the property.
 - Tall plant materials and other obstructions are currently in the visibility triangle at the corner of East Grand Avenue and La Vista Drive.
 - Existing screening exists along LaVista Drive. This will be required to be altered to comply with visibility screening regulations.

- Existing trees align the western portion of the property adjacent to existing residential zoning. Several of the trees are large protected species and the remaining are non-protected (but desirable shade trees) and non-protected invasive species (Chinaberry).
- Recommendation
 - No objection, subject to recommendations and the alternate landscape plan.
 - If approved, the conditions of the landscape special exception would cease for this property upon a change from nursery use. Article X standards would then apply.
 - All plant materials and other visual obstructions at the street corner of LaVista Drive and East Grand Avenue that are more than 2.5' in height above the nearest curb must be removed or reduced to conform with the city's visual obstruction regulations.
- The applicant submitted information beyond what was submitted with the original application (see Attachments A and B). This information included the following:
 - a document that provided additional details about the request; and
 - annotated plans and photographs of the site showing the existing setbacks on the site and effect of the setbacks on existing and proposed development.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail)
North: R-7.5(A) (Single family district 7,500 square feet)
South: CR (Community Retail)
East: MF-2(A) (Multifamily district)
West: R-7.5(A) (Single family district 7,500 square feet)

Land Use:

The subject site is developed with a nursery/garden shop/plant sales use (Ruibal's). The areas to the north and west are developed with single family uses; the area to the east is developed with multifamily uses; and the area to the south is developed with a motel use.

Zoning/BDA History:

1. BDA 067-114, Property at 7219 E. Grand Avenue (the lot that is now the southern portion of the subject site)

On January 6, 2009 the applicant withdrew an application to the Board of Adjustment Panel B for a special exception to the landscape regulations and a variance to the side yard setback regulations of 18' that had been requested in conjunction with constructing and maintaining an approximately 560 square foot open air trellis structure in the site's 20' northern side yard setback on a site currently developed

with a nursery/garden shop/plant sales use (Ruibal's).

Timeline:

- June 29, 2007 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 10, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B. The application was delayed for over a year because the application was deemed incomplete until October of 2008.
- 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 27, 2008 The Northeast District Manager of Code Compliance submitted a review comment sheet marked "Recommends that this be denied" commenting "This corner appears to violate the corner obstruction ordinance. The proposed setback will be in the "visibility triangle." (The applicant was forwarded this comment sheet and informed that the application as submitted would not provide any relief to the visual obstruction regulations of the Dallas City Code).
- October 29, 2008 The applicant requested that the application be postponed until Panel B's January 21, 2009 public hearing.
- Dec. 15, 2008 The applicant submitted a revised "Application/Appeal to the Board of Adjustment" and revised related documents which have been included as part of this case report and that have replaced the originally submitted documents of June of 2008.

- 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 requests;
 - 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. 6, 2009: The applicant simultaneously withdrew his application that was not originally part of the subject site (BDA067-114) and amended/expanded the application/subject site of BDA067-123. The amendment to BDA067-123 involved adding an approximately 25' long strip of land that had been immediately adjacent to the subject site originally submitted as BDA067-114. This additional area added to the redefined subject site of BDA067-123 created a need to redefine the area of notification hence a need to postpone scheduling the application until February.
- Jan. 22, 2009: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the February 2nd deadline to submit additional evidence for staff to factor into their analysis; and the February 6th deadline to submit additional evidence to be incorporated into the Board's docket materials; and
 - the criteria/standard that the board will use in their decision to approve or deny the requests.
- Jan. 30, 2009 The applicant submitted additional information beyond what was submitted with the original application (see Attachments A and B).
- Feb. 3, 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

Assistant Director of Development Services – Current Planning; 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.

The Development Services Program Manager – Long Range Planning submitted a review comment sheet marked “Has no objections.”

Feb. 6, 2009 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment C).

STAFF ANALYSIS (variances):

- These variance requests are made in conjunction with maintaining an existing nursery structure that is located in the site’s side and front yard setbacks, and constructing and maintaining two new open trellis structures in two of the site’s side yard setbacks.
- The site is somewhat sloped, L-shaped and 13,800 square feet in area where (according to the applicant) once front and side yard setbacks are accounted for, only 40 percent of the lot is left as “developable area.” The site is zoned CR. The site has two front yard setbacks which is typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural.
- According to calculations taken from the revised site and landscape plan by the Board Administrator, approximately 280 square feet (or approximately 1/3) of the approximately 840 square foot existing wood trellis is located in the site’s 15’ East Grand Avenue front yard setback; approximately 770 square feet (or approximately 60 percent) of the approximately 1,260 square foot “existing structure” is located in the site’s 20’ western side yard setback; approximately 300 square feet (or approximately 75 percent) of the approximately 400 square foot proposed open trellis is to be located in the site’s western side yard setback; and all of the approximately 560 square foot proposed trellis structure is located in the site’s 20’ northern side yard setback.
- The applicant has the burden of proof in establishing the following:
 - That granting the variances to the front and side yard setback regulations are 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 variances are necessary to permit development of the subject site (a site that is somewhat sloped, L-shaped and 13,800 square feet in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same CR zoning classification.
 - The variances would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in

developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the CR zoning classification.

- If the Board were to grant the front and side yard variance requests, imposing a condition whereby the applicant must comply with the submitted revised site and landscape plan, the structures in the front and side yard setback would be limited to that shown on this plan – which in this case is an existing nursery structure in the front and side yard setback and two new trellis structures in the site’s side yard setbacks.
- City staff has noted from field visits of the subject site what appear to be items that do not comply with the City’s visual obstruction regulations. Staff has informed the applicant that the application as submitted for variances to front and side yard setbacks and a landscape special exception would not provide any relief to these visual obstruction regulations.

GENERAL FACTS (landscape special exception):

- The request is made in conjunction with maintaining an existing nursery structure on the site.
- A revised site and landscape plan has been submitted with the application that according to the City of Dallas Chief Arborist is deficient from meeting mandatory and design standard requirements of the landscape ordinance.
- The City of Dallas Chief Arborist supports the request (with certain conditions being imposed) largely given that the property is a nursery (garden shop) that is heavily populated with commercial plants that add visual appeal to the property.
- The applicant has the burden of proof in establishing the following:
 - How strict compliance with the requirements of this landscape ordinance will unreasonably burden the use of the property, and that the special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose conditions that: 1) the applicant must comply with the submitted revised site and landscape plan; 2) all items including but not limited to plant or landscape materials located on site or shown on the submitted revised site and landscape plan must be brought into compliance with the City’s visual obstruction regulations; and 3) the landscape special exception terminates if and when the nursery, garden, shop, or plant sales use on the site is changed or discontinued; the site would be required to provide those landscape materials shown on the submitted plan, and would be “excepted” from full compliance with certain landscape requirements in the Landscape Ordinance for as long as it would remain a nursery, garden, shop, or plant sales use.

BOARD OF ADJUSTMENT ACTION: February 18, 2009

APPEARING IN FAVOR: Santos Martinez, 900 Jackson St., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Gillespie

I move that the Board of Adjustment, in Appeal No. **BDA 067-123**, on application of Santos T. Martinez, represented by Masterplan, **grant** the four foot variance to the

minimum front yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan and landscape plan is required.
- All items, including, but not limited to, plant or landscape materials located on site or shown on the submitted revised site and landscape plan must be brought into compliance with the city's visual obstruction regulations.

SECONDED: Beikman

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

NAYS: 0 –

MOTION PASSED 5 – 0(Unanimously)

MOTION #2: Gillespie

I move that the Board of Adjustment, in Appeal No. **BDA 067-123**, on application of Santos T. Martinez, represented by Masterplan, **grant** the 13 foot variance to the minimum side yard setback regulations requested by this applicant for the western side yard because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan and landscape plan is required.
- All items, including, but not limited to, plant or landscape materials located on site or shown on the submitted revised site and landscape plan must be brought into compliance with the city's visual obstruction regulations.

SECONDED: Beikman

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

NAYS: 0 –

MOTION PASSED 5 – 0(Unanimously)

MOTION #3: Gillespie

I move that the Board of Adjustment, in Appeal No. **BDA 067-123**, on application of Santos T. Martinez, represented by Masterplan, **grant** the 18 foot variance to the minimum side yard setback regulations requested by this applicant for the northern side yard because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this

applicant. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan and landscape plan is required.
- All items, including, but not limited to, plant or landscape materials located on site or shown on the submitted revised site and landscape plan must be brought into compliance with the city’s visual obstruction regulations.

SECONDED: Beikman

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

NAYS: 0 –

MOTION PASSED 5 – 0(Unanimously)

MOTION #4: Gillespie

I move that the Board of Adjustment, in Appeal No. **BDA 067-123** on application of Santos T. Martinez, represented by Masterplan, **grant** the request of this applicant to provide an alternate landscape plan as a special exception to the landscape requirements in the Dallas Development Code because our evaluation of the property and the testimony shows that: (1) strict compliance with the requirements will unreasonably burden the use of the property; (2) the special exception will not adversely affect neighboring property; and (3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan and landscape plan is required.
- All items, including, but not limited to, plant or landscape materials located on site or shown on the submitted revised site and landscape plan must be brought into compliance with the city’s visual obstruction regulations.
- This special exception terminates if and when the nursery, garden shop, or plant sales use on the site is changed or discontinued.

SECONDED: Beikman

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

NAYS: 0 –

MOTION PASSED 5 – 0(Unanimously)

FILE NUMBER: BDA 089-016(K)

BUILDING OFFICIAL’S REPORT:

Application of Denny McEvoy for a variance to the height regulations and for a special exception for tree preservation to the side yard setback regulations at 9310 Havencove

Drive. This property is more fully described as Lot 9 in City Block B/6736 and is zoned R-7.5(A), which requires a side yard setback of 5 feet and requires that the height of an accessory structure may not exceed the height of the main building. The applicant proposes to construct a single family residential accessory structure with a building height of 18 feet, 4 inches which will require a 1 foot variance to the maximum building height regulations, and to construct and maintain a single family residential accessory structure and provide a 4 foot, 6 inch side yard setback which will require a 6 inch special exception for tree preservation to the side yard setback regulations.

LOCATION: 9310 Havencove Drive

APPLICANT: Denny McEvoy

REQUEST:

- A variance to the maximum building height regulation for an accessory structure and a special exception to the side yard setback for tree preservation.

STAFF RECOMMENDATION (variance to maximum height):

Approval, subject to the following condition:

- Compliance with the submitted site plan and elevation is required.

Rationale:

- The site is different from other parcels of land in the R-7.5(A) zoning, in that it has an irregular shape.
- The variance to the maximum height is necessary to develop this parcel of land that has a restrictive slope.
- The applicant is requesting this variance to maintain an existing residential accessory structure that exceeds the height of the main structure by one foot.
- Granting this variance does not appear to be contrary to the public interest.

STAFF RECOMMENDATION (special exception for tree preservation):

Denial.

Rationale:

- The Chief Arborist has determined that the tree is a non-protected tree under Article X.

STANDARD FOR A VARIANCE:

To grant variances from the front yard, side yard, rear yard, lot width, lot depth, lot coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, 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 specific parcel of land that differs from other parcels of land by being of such 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.

STANDARD FOR A SPECIAL EXCEPTION FOR TREE PRESERVATION:

The board may grant a special exception to the minimum side yard requirements to preserve an existing tree. In determining whether to grant this special exception, the board shall consider the following factors:

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

GENERAL FACTS:

- Structures on lots zoned R 7.5(A) are required to provide a minimum side yard setback of 5 feet.
- The site is sloped, irregular in shape and approximately 19,500 square feet in area.
- According to DCAD, the site was developed in 1965 with a residential structure that is 1,763 square feet.
- The applicant submitted a site plan and elevations showing the proposed construction will be 4 feet and 6 inches from the western side property line.
- The Dallas Development Code states that an accessory structure cannot exceed the height of a main use in a residential zoning.
- The proposed accessory structure will be 18 feet and 4 inches, one foot taller than the main use.

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: R-7.5 (A) (Single family district 7,500 square feet)
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 single family structure. The properties to the north, south, east and west are developed with single family structures.

Zoning/BDA History:

There is no case history for this site or other properties in the immediate area.

Timeline:

- December 18, 2008 The applicant submitted an “Application to the Board of Adjustment” and related documents which have been included as part of this case report.
- January 22, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- January 26, 2009: The Board of Adjustment Senior Planner contacted the applicant and shared the following information by letter and telephone:
- the public hearing date and panel that will consider the application;
 - the criteria or standard that the board will use in their decision to approve or deny the request;
 - the February 2nd deadline to submit additional evidence for staff to factor into their analysis;
 - the February 6th 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 February public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.
- February 3, 2009 The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February 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 Chief Arborist, and the Assistant City Attorney to the Board.

STAFF ANALYSIS:

- The site is developed with a single family structure. According to DCAD this site, was developed in 1965, is in good condition, and is approximately 19,500 square feet in area.
- This site is different from other properties in the R-7.5(A) zoning in that it has an irregular shape and steep slope.
- The shape and the slope of the lot preclude it from being developed in the same manner as other properties in the R-7.5(A) zoning.

- The applicant is seeking the special exception to maintain an existing detached garage structure that sits 6 inches in the required side yard and that exceeds the maximum height for an accessory structure by 1 foot.
- The submitted elevation illustrates the proposed height of the structure to be 17 feet and 5 inches in height, requiring a 1 foot variance to the maximum height regulation.
- The Dallas Development Code states the height of a residential accessory structure cannot exceed the height of the single family structure.
- The applicant is seeking a variance to be able to maintain the current structure that exceeds the height of the residential structure by 1 foot.
- The applicant has submitted rendered elevations illustrating the completed accessory structure will have a design compatible with the main structure. The accessory structure will be constructed of similar materials and the same color as the main structure.
- The applicant has the burden of proof in establishing that granting the special exception to the side yard setback and a variance to the maximum height regulations to maintain an existing residential accessory structure is necessary to develop a specific parcel of land that differs from other parcels on land by being of a restrictive, shape and slope, that it cannot be developed in a manner commensurate with development of other parcels of land in the same R 7.5(A) zoning.
- Should the Board choose to grant the request for the special exception to the side yard setback and variance to height, staff recommends a condition of compliance with the submitted site plan.

BOARD OF ADJUSTMENT ACTION: February 18, 2009

APPEARING IN FAVOR: Denny McEvoy, 9310 Havencove, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Beikman**

I move that the Board of Adjustment, in Appeal No. **BDA 089-016**, **hold** this matter under advisement until **March 18, 2009**.

SECONDED: **Chernock**

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

NAYS: 0 –

MOTION PASSED 5 – 0(Unanimously)

FILE NUMBER: BDA 089-019

BUILDING OFFICIAL'S REPORT:

Application of John Hamilton, represented by Santos Martinez of Masterplan, for a variance to the front yard setback regulations at 3309 McKinney Avenue. This property is more fully described as part of Lot 11 in City Block 9/972 and is zoned PD-193 (LC) which requires a front yard setback of 10 feet. The applicant proposes to maintain a structure and provide a 0 foot front yard setback which will require a variance of 10 feet to the front yard setback regulations.

LOCATION: 3309 McKinney Avenue.

APPLICANT: John Hamilton
Represented by Santos Martinez of Masterplan

February 18, 2009 Public Hearing Notes:

- The applicant provided testimony at the public hearing that the existing original structure was most likely located in the front yard setback in addition to the recently added covered canopy dining area structure – information that was contrary to what was conveyed to the board in the docket material and conveyed on the submitted site plan and floor plan. Given this testimony, the Board Administrator cautioned the board from granting the request and imposing the submitted site plan as a condition to the variance since it was not clear whether the submitted site plan was an accurate representation of the location of the original and added structures on the site in relation to the front property line.

REQUEST:

- A variance to the front yard setback regulations of 10' is requested in conjunction with maintaining a covered canopy dining area structure recently added to an existing restaurant (Primo's Bar & Grille) and located in the 10 front yard setback.

STAFF RECOMMENDATION:

Denial

Rationale:

- Staff concluded that there was no property hardship to the site that warranted a front yard variance in this case requested to maintain the canopy covering an existing patio. The site is not irregular in shape whereby this characteristic (nor its size at over 16,000 square feet or its slope - flat) creates hardship or precludes the applicant from developing it in a manner commensurate with other developments found in the same PD No. 193 (LC) zoning district. There is no physical characteristic of the subject site that warrants a covered canopy dining area structure in the front yard setback on this site.

- The applicant had not substantiated how the physical features of the flat, parallelogram-shaped, 0.37 acre site constrain it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 193 (LC) zoning classification while simultaneously complying with code standards including front yard setback regulations. Although the applicant has provided a document that appears to be a list of patios in the Uptown area of the City compiled in 2007, this document list only provides business names, addresses, and phone numbers, and does not provide any qualitative or quantitative information such as whether the patios are covered, whether the patios are located in required setbacks, or the size of the patios relative to the structures that they are attached to and the lots that they are located on.

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 minimum front yard setback for “other permitted structures” (which would include the covered patio/enclosed dining area) on lots zoned PD No. 193 (LC Subdistrict) is 10’.
A site plan has been submitted denoting a “hatched area indicates the location of canopy over patio dining area” structure located on the site’s McKinney Avenue front property line (or 10’ into the 10’ front yard setback). The site plan also denotes a portion of this hatched area located in the public right of way – an area that according to the applicant’s representative was licensed by the City of Dallas in 2004.
An elevation has been submitted denoting a “canopy façade at McKinney Avenue” to be 31’ 9” long and 13’ high. The elevation describes the canopy with notes including “retractable canopy,” “permanent sail,” and “roll up curtains.”
- According to calculations taken by the Board Administrator from the site plan, the area of the canopied dining area structure located in the 10’ front yard setback is approximately 34’ long and 10’ wide. Virtually the entire recently added covered patio dining area structure is located in the 10’ front yard setback. The site plan

denotes that the existing restaurant structure (without the addition) is approximately 72' long and 82' wide.

- The site is flat, parallelogram-shaped, (100' x 163.50') and approximately 16,350 square feet (or 0.37 acres) in area. The site is zoned PD No. 193 (LC).
- DCAD records indicate that the site is developed with a 5,625 square foot restaurant structure in good condition built in 1935.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a letter that provided additional details about the request;
 - a site plan and photographs of the subject site; and
 - a document entitled "2007 Uptown Patios."

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (LC) (Planned Development Light Commercial)
North: PD No. 193 (LC) (Planned Development Light Commercial)
South: PD No. 193 (LC) (Planned Development Light Commercial)
East: PD No. 193 (LC) (Planned Development Light Commercial)
West: PD No. 193 (PDS 13) (Planned Development, Planned Development)

Land Use:

The subject site is developed with a restaurant use (Primo's Bar & Grille). The areas to the north, east, south, and west are developed with a mix of residential, retail, and office uses.

Zoning/BDA History:

1. BDA 989-020, Property 3309 McKinney Avenue (the subject site) On February 18, 2009, the Board of Adjustment Panel B will consider a request for a special exception to the landscape regulations requested in conjunction with maintaining an enclosed patio dining area structure added to an existing restaurant (Primo's Bar & Grille)..

Timeline:

- Dec. 18, 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.
- Jan. 22, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

- Jan. 22, 2009: 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 February 2nd deadline to submit additional evidence for staff to factor into their analysis; and the February 6th 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."

Feb. 3, 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 Assistant Director of Development Services – Current Planning; 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.

The Development Services Program Manager – Long Range Planning submitted a review comment sheet marked "Has no objections."

STAFF ANALYSIS:

- The focus of this front yard variance request is a covered canopy dining area structure that is located on the site's front property line (or 10' into the 10' front yard setback).
- According to calculations taken from the site plan, the area of the canopied dining area structure located in the 10' front yard setback is approximately 34' long and 10' wide. Virtually the entire recently added covered patio dining area structure is located in the 10' front yard setback. The site plan denotes that the existing restaurant structure (without the addition) is approximately 72' long and 82' wide
- The site is flat, parallelogram-shaped, (100' x 163.50') and approximately 16,350 square feet (or 0.37 acres) in area. The site is zoned PD No. 193 (LC).
- DCAD records indicate that the site is developed with a 5,625 square foot restaurant structure in good condition built in 1935.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations requested in conjunction with maintaining a canopy structure over an existing patio will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site (a site that is developed with a structure built in 1935, that is flat, parallelogram-shaped, and

approximately 16,350 square feet (or 0.37 acres in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 193 (LC) zoning classification.

- The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the PD No. 193 (LC) zoning classification.
- If the Board were to grant the front yard variance request, imposing a condition whereby the applicant must comply with the submitted site plan, the structure in the front yard setback would be limited to what is shown on this plan – which in this case is a structure located on the front property line (or 10’ into the 10’ front yard setback).
- If the board were inclined to additionally want to impose the submitted elevation of the existing canopy, the structure in the front yard setback would be limited to what is shown on this plan – which in this case is a structure described with the following notations: "canopy façade at McKinney Avenue" that is 31’ 9” long and 13’ high with "retractable canopy," "permanent sail," and "roll up curtains."

BOARD OF ADJUSTMENT ACTION: February 18, 2009

APPEARING IN FAVOR: Santos Martinez, 900 Jackson, Dallas, TX
Nick Galanos, 2630 Welborn, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Chernock**

I move that the Board of Adjustment, in Appeal No. **BDA 089-019**, **hold** this matter under advisement until **March 18, 2009**.

SECONDED: **Beikman**

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

NAYS: 0 –

MOTION PASSED 5 – 0(Unanimously)

FILE NUMBER: BDA 089-020

BUILDING OFFICIAL’S REPORT:

Application of John Hamilton, represented by Santos Martinez of Masterplan, for a special exception to the landscape regulations at 3309 McKinney Avenue. This property is more fully described as part of Lot 11 in City Block 9/972 and is zoned PD-193 (LC) which requires mandatory landscaping. The applicant proposes to maintain a structure and provide an alternate landscape plan which will require a special exception to the landscape regulations.

LOCATION: 3309 McKinney Avenue

APPLICANT: John Hamilton
Represented by Santos Martinez of Masterplan

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with maintaining a covered canopy dining area structure recently added to an existing restaurant (Primo's Bar & Grille) – a structure that triggers full compliance with the landscape regulations.

STAFF RECOMMENDATION:

Approval, subject to the following conditions:

1. Compliance with the submitted site/landscape plan is required.
2. The open pedestrian sidewalk nearest the curb must remain open at no less than its current width with no additional temporary or permanent obstructions.
3. All plant materials must be maintained in a healthy, growing condition at all times. Automatic irrigation is not required.

Rationale:

- The City's Chief Arborist recommends approval of this request whereby if the conditions mentioned above are imposed the special exception would not compromise the spirit and intent of the landscaping requirements of PD No. 193.

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 submitted a site/landscape plan that according to the City of Dallas Chief Arborist, is deficient in meeting the street tree, sidewalk, special planting area, and parkway planting area requirements of the PD No. 193 landscape regulations.

- 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 landscape plan (see Attachment B). The memo stated the following:
 - The applicant is requesting a special exception to the landscape requirements of PD 193 (LC), more specifically, relief is sought from most standards required in the ordinance including sidewalk, street tree, landscape site area, general planting area, and special planting area designations.
 - Trigger: Permitting of a canopy structure creating additional floor area to the property
 - Deficiencies (Street trees, sidewalk, landscape site area, general planting area, and parkway planting area):
 1. The applicant is required to provide 3 street trees in the required tree planting zone that is between 2.5' – 5' from curb.
The applicant is providing 0 street trees.
 2. The applicant is required to provide a 6' wide sidewalk between 5' – 12' from the back curb.
The applicant is providing a 5' 4" wide sidewalk located at the curb.
 3. The applicant is required to provide certain amounts of landscape site area, general planting area, and special planting area.
The applicant is deficient in all three areas.
 - Factors for consideration:
 - The property use is pre-existing. The permit requirements for the canopy structure create additional floor area for the restaurant use and triggers PD No. 193 landscape requirements.
 - The open passable sidewalk width has been measured by staff to be 5' 4" in width from back of curb to the fence line. PD 193 requires a minimum of 6' for non-residential areas. The provided landscape plan does not illustrate the correct width of the open sidewalk area.
 - The owner has established planters with mixed evergreen, and annual, plant materials, and decorative "hardscape" to enhance the visual appearance of the property.
 - Overhead utility lines exist over the required tree planting zone.
 - Recommendation:
 - No objection with recommendations for conditions:
 1. If approved, the open pedestrian sidewalk nearest the curb nearest the curb must remain open at no less than its current width with no additional temporary or permanent obstructions.
 2. If approved, all plant materials must be maintained in a healthy, growing condition at all times. Automatic irrigation is not required.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a letter that provided additional details about the request;
 - a site plan and photographs of the subject site; and
 - a document entitled "2007 Uptown Patios."

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (LC) (Planned Development Light Commercial)
North: PD No. 193 (LC) (Planned Development Light Commercial)
South: PD No. 193 (LC) (Planned Development Light Commercial)
East: PD No. 193 (LC) (Planned Development Light Commercial)
West: PD No. 193 (PDS 13) (Planned Development, Planned Development)

Land Use:

The subject site is developed with a restaurant use (Primo's Bar & Grille). The areas to the north, east, south, and west are developed with a mix of residential, retail, and office uses.

Zoning/BDA History:

1. BDA 989-019, Property 3309 McKinney Avenue (the subject site)
On February 18, 2009, the Board of Adjustment Panel B will consider a request for variance for a front yard setback regulations of 10' requested in conjunction with maintaining an enclosed patio dining area structure added to an existing restaurant (Primo's Bar & Grille) in the front yard setback. Note that if the board denies this variance request (019), there is no longer a need for the applicant to obtain the landscape special exception request (020) since the structure triggering full compliance with the landscape regulations will be required to be removed.

Timeline:

- Dec. 18, 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.
- Jan. 22, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Jan. 22, 2009: 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 February 2nd deadline to submit additional evidence for staff to factor into their analysis;

- and the February 6th 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."

Feb. 3, 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 Assistant Director of Development Services – Current Planning; 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.

The Development Services Program Manager – Long Range Planning submitted a review comment sheet marked "Has no objections."

Feb. 9, 2009 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment B).

STAFF ANALYSIS :

- This landscape special exception request is triggered by a covered canopy dining area structure recently added to an existing restaurant.
- If the separately filed request for a variance to the front yard setback regulations on the subject site (BDA089-019) is denied by the Board of Adjustment on February 18th, there is no longer a need for the applicant to obtain approval of this request for a landscape special exception on the subject site (BDA089-020) since the covered patio structure would be required to be removed and there would no longer be any new structure triggering full compliance with the PD No. 193 landscape ordinance.
- The applicant seeks exception from the landscape requirements in the following ways: 1) providing none of the required 3 street trees in their required locations; 2) providing a 5' 4" wide sidewalk located at the curb rather than a 6' wide sidewalk located 5' 12' from the curb; and; 3) not providing required amounts of landscape site area, general planting area, and special planting area.
- The City of Dallas Chief Arborist supports the request with conditions that if approved, the open pedestrian sidewalk nearest the curb must remain open at no less than its current width with no additional temporary or permanent obstructions, and that all plant materials must be maintained in a healthy, growing condition at all times.
- The applicant has the burden of proof in establishing the following:
 - The special exception (where an alternate site/landscape plan has been submitted that is deficient in meeting the street tree, sidewalk, special planting area, and parkway planting area requirements of the PD No. 193 landscape

regulations) 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 the submitted site/landscape plan and the two additional conditions suggested by staff/the Chief Arborist, the site would be clearly "excepted" from full compliance to street tree, sidewalk, special planting area, and parkway planting area requirements of the Oak Lawn PD landscape ordinance.

BOARD OF ADJUSTMENT ACTION: February 18, 2009

APPEARING IN FAVOR: Santos Martinez, 900 Jackson, Dallas, TX
Nick Galanos, 2630 Welborn, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Chernock**

I move that the Board of Adjustment, in Appeal No. **BDA 089-020**, **hold** this matter under advisement until **March 18, 2009**.

SECONDED: **Beikman**

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

NAYS: 0 –

MOTION PASSED 5 – 0(Unanimously)

MOTION: **Chernock**

I move to adjourn this meeting.

SECONDED: **Gillespie**

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

NAYS: 0 -

MOTION PASSED 5 – 0 (unanimously)

3:05 P.M. - Board Meeting adjourned for **February 18, 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.