

**BOARD OF ADJUSTMENT, PANEL B  
PUBLIC HEARING MINUTES  
CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM  
WEDNESDAY, MARCH 21, 2007**

MEMBERS PRESENT AT BRIEFING: Alice Cox, Vice-Chair, Taylor Brannon, Panel Vice-Chair, Samuel Gillespie, regular member, Marla Beikman, regular member and Christian Chernock, regular member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Alice Cox, Vice-Chair, Taylor Brannon, Panel Vice-Chair, Samuel Gillespie, regular member, Marla Beikman, regular member and Christian Chernock, 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, Chau Nguyen, Traffic Engineer, Phil Erwin, Interim Chief Arborist and Trena Law, Board Secretary

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

\*\*\*\*\*  
**10:04 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **March 21, 2007 docket.**

\*\*\*\*\*

**1:00 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 February 14, 2007 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: MARCH 21, 2007**

**MOTION: Gillespie**

I move approval of the Wednesday, February 14, 2007 Board of Adjustment Public Hearing minutes.

**SECONDED: Brannon**

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

**NAYS: 0 – None**

**MOTION PASSED 5 – 0 (Unanimously)**

\*\*\*\*\*

**FILE NUMBER: BDA 067-045**

**BUILDING OFFICIAL'S REPORT:**

Application of Santos T. Martinez for a variance to the front yard setback regulations at 4722 Walnut Hill Lane. This property is more fully described as Lot 45 in City Block 5543 and is zoned R-1ac(A), which requires a front yard setback of 40 feet. The applicant proposes to construct additions to an existing single family residence and provide a 20 foot 7 1/2 inch front yard setback which would require a variance of 19 foot 4 1/2 inches.

**LOCATION: 4722 Walnut Hill Lane**

**APPLICANT: Santos T. Martinez**

**REQUEST:**

- A variance to the front yard setback regulations of 19' 4.5" is requested in conjunction with adding and maintaining additions to an existing single family home that would be located in the site's 40' front yard setback.

**STAFF RECOMMENDATION:**

Approval, subject to compliance with the submitted site plan

Rationale:

- Although the site is rectangular in shape and slightly over an acre in area, development of the site is constrained by several mature trees and a creek (with a related drainage area resulting from an adjacent dedicated 30' floodway drainage easement) that runs through the south and west areas of the site. These features preclude the proposed additions to be located on the site other than in the site's 40' front yard setback.

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

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

### **GENERAL FACTS:**

- A 40' front yard setback is required on lots zoned R-1ac(A).  
The applicant has submitted a scaled site plan that indicates two additions proposed to attach to an existing single family home. These additions are located 20' 7.5" from the front property line (or 19' 4.5" into the 40' front yard setback).
- According to calculations taken from the submitted site plan by the Board Administrator, approximately 546 square feet of each of the approximately 952 square foot, two-story garage/room additions would be located in the site's 40' front yard setback. (The site plan indicates an "existing residence" with an approximately 4,000 square foot building footprint with a proposed approximately 740 square foot addition that is in compliance with setback requirements).
- The site is flat, rectangular in shape (240.13' in length and 220.5 in width), and approximately 52,948 square feet (or 1.21 acres) in area. The lot is zoned R-1ac(A) where the typical lot size is 43,560 square feet (or 1 acre) in area. The applicant's revised site plan indicates 17 trees that appear to be located on the site that have calipers ranging from 6" – 36". The site plan also shows contour lines that range at the site's highest point on the north near Walnut Hill Lane at 205' to 199' southward about 112'. The applicant has also submitted aerial photographs that indicate the location of trees and a drainage area on the site, as well as private ponds and a 30' storm drainage easement adjacent to the site.

- DCAD records indicate that the site is developed with the following:
  - a single family residence in “good” condition built in 1934 with 5,542 square feet of living area;
  - a 280 square foot cabana;
  - a pool;
  - a 301 square foot servants quarters; and
  - a 599 square foot “atted stg (ob)”.
- The applicant’s representative submitted additional information beyond what was submitted with the original application (see Attachments A, B, and C). This information included the following information:
  - a revised site plan/building elevation document;
  - photos of the site;
  - a letter that provided additional details about the request;
  - aerial photographs indicating the location of trees, private ponds, a drainage easement/drainage area on or adjacent to the subject site.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-1ac (A) (Single Family District 1 acre)  
North: R-1ac (A) (Single Family District 1 acre)  
South: R-1ac (A) (Single Family District 1 acre)  
East: R-1ac (A) (Single Family District 1 acre)  
West: R-1ac (A) (Single Family District 1 acre)

**Land Use:**

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

**Zoning/BDA History:**

- |  |  |
|--|--|
| 1. BDA 056-122, 4722 Walnut Hill Lane (the subject site) | On April 19, 2006, the Board of Adjustment Panel B granted a request for a special exception to the fence height regulations of 4 feet 10 inches, and imposed the following condition: compliance with the submitted site plan and fence elevation is required. The case report stated that the request was made in conjunction with constructing an 8’ high solid stucco fence with 8’ 10” high stucco columns and 8’ high metal gates. |
| 2. BDA 045-266, 4722 Walnut Hill Lane (the subject site) | On August 17, 2005, the Board of Adjustment Panel B granted a request for a special exception to the fence height regulations of 4 feet 10 inches, and imposed the following condition: compliance with the submitted site   |

plan and fence elevation is required. The case report stated that the request was made in conjunction with constructing an 8' high solid stucco fence with 8' 10" high stucco columns and 8' high metal gates.

**Timeline:**

- Jan. 26, 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.
- Feb. 15, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Feb. 15, 2007: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the March 2nd deadline to submit additional evidence for staff to factor into their analysis/recommendation;
  - the March 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- March 1 & 2, 2007: The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachments A, B, and C).
- March 5, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March 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, Development Services Senior Engineers, the Building Inspection Development Code Specialist, the Interim Chief Arborist, and the Assistant City Attorney to the Board.

The District Manager of Code Compliance submitted a Review Comment Sheet marked "Has no objections."

**STAFF ANALYSIS:**

- The site is flat, rectangular in shape (240.13' in length and 220.5 in width), and approximately 52,948 square feet (or 1.21 acres) in area. The lot is zoned R-1ac(A) where the typical lot size is 43,560 square feet (or 1 acre) in area. The applicant's revised site plan indicates 17 trees that appear to be located on the site that have calipers ranging from 6" – 36". The site plan also shows contour lines that range at the site's highest point on the north near Walnut Hill Lane at 205' to 199' southward about 112'. The applicant has also submitted aerial photographs that indicate the location of trees and a drainage area on the site, as well as private ponds and a 30' storm drainage easement adjacent to the site.
- According to calculations taken from the submitted site plan approximately 546 square feet of each of the approximately 952 square foot, two-story garage/room additions would be located in the site's 40' front yard setback. (The site plan indicates an "existing residence" with an approximately 4,000 square foot building footprint with a proposed approximately 740 square foot addition that is in compliance with setback requirements).
- The applicant has the burden of proof in establishing the following related to the front yard variance request:
  - That granting the variance to the front yard setback regulations of 19' 4.5" requested in conjunction with adding and maintaining additions to an existing single family home 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 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 R-1ac(A) zoning classification.
  - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the R-1ac(A) zoning classification.
- If the Board were to grant the front yard variance request of 19' 4.5", imposing a condition whereby the applicant must comply with the submitted site plan, the structures encroaching into the front yard setback would be limited to what is shown on this plan – additions that would be located 20' 7.5" from the site's front property line (or 19' 4.5" into the site's 40' front yard setback).

**BOARD OF ADJUSTMENT ACTION: MARCH 21, 2007**

**APPEARING IN FAVOR:**

No one

APPEARING IN OPPOSITION: No one

MOTION: **Beikman**

I move that the Board of Adjustment **grant** the following application listed on the uncontested docket because it appears, from our evaluation of the properties and all relevant evidence that the application satisfies all the requirements of the Dallas Development Code and are consistent with the general purpose and intent of the Code. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: **Brannon**

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

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

\*\*\*\*\*

FILE NUMBER: BDA 056-258

**BUILDING OFFICIAL'S REPORT:**

Application of Jeff and Sigrun Hukill for a special exception to the fence height regulations at 8603 Angora Street. This property is more fully described as Lot 30 in City Block 1/5222 and is zoned R-7.5(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to maintain an existing 6 foot fence in the required front yard setback which would require a special exception of 2 feet.

LOCATION: 8603 Angora Street

APPLICANT: Jeff and Sigrun Hukill

**March 21, 2007 Public Hearing Notes:**

- The applicant submitted a letter of support of his request from the Little Forest Hills Neighborhood Association.

**REQUEST:**

- A special exception to the fence height regulations of 2' is requested in conjunction with reconfiguring/maintaining a 6' high solid wood fence/wall and pedestrian gate in the site's 25' front yard setback along Angora Street. (The applicant has proposed to relocate the existing fence/wall to be in compliance with the City's visibility obstruction regulations).

**STAFF RECOMMENDATION:**

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

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

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

### **GENERAL FACTS:**

- The subject site is located at the intersection of Angora Street and Lakeland Drive. The site has a front yard setback along Angora Street given that this frontage is the shorter of the two street frontages, and a side yard setback along Lakeland Drive given that there is no continuity of an established setback that must be maintained on this street since the lot immediately northwest of the subject site faces north to Garland Road.
- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.  
The applicant submitted a site plan and elevation with the original application and a revised site plan and elevation on January 8, 2007 all of which indicate a solid wood fence/wall and pedestrian gate proposal that reaches a maximum height of 6' in the site's Angora Street front yard setback.
- The site plan submitted with the application indicated that the proposal in the site's Angora Street 25' front yard setback has the following additional characteristics:
  - Approximately 52' in length parallel to Angora Street and 25' on the "sides" perpendicular to Angora Street;
  - Located approximately on the site's front property line or about 18' from the pavement line;
  - Linear in design;
  - Portions of the fence located in the required visibility triangles at the Lakeland Drive/Angora Street intersection and the drive approach to the lot immediately to the northeast.
- On January 8, 2007, the applicant submitted a revised site plan and elevation that showed the fence location to be in compliance with the visibility obstruction regulations.
- There are two single family homes that would have direct/indirect frontage to the existing fence/wall located in the site's Angora Street front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area along Angora Street and noted no other fence above four (4) feet high which appeared to be located in the front yard setback.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
  - a petition signed by 20 neighbors/owners who support the request;
  - copies of letters that the applicant wrote to code enforcement;



- a copy of a letter addressed to the Building Inspection Development Code Specialist; and
- photos of the site and surrounding area.
- The Board of Adjustment conducted a public hearing on this matter on February 14, 2007. The board delayed action on this appeal until March 21, 2007, and strongly encouraged the applicant to obtain support of his request from the Little Forest Hills Neighborhood Association.
- The applicant has not submitted any additional information since the February 14<sup>th</sup> hearing other than one additional letter in support (see Attachment B).

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-7.5 (A) (Single family district 7,500 square feet)  
North: CR (Community Retail)  
South: PD No. 575 (Planned Development District)  
East: R-7.5 (A) (Single family district 7,500 square feet)  
West: R-10 (A) (Single family district 10,000 square feet)

**Land Use:**

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

**Zoning/BDA History:**

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

**Timeline:**

- Sept. 14, 2006: 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. 12, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Dec. 19, 2006: The Board Administrator contacted the applicant and shared the following information:
- the fact that the submitted site plan showed the existing fence in the 45’ visibility triangle at the intersection of Angora Street and Lakeland Drive, and in the 20’ visibility triangle at the drive approach to the neighboring property immediately northeast of the subject site;
  - Building Inspection’s inability to permit the fence if only the fence height were to be “special excepted;”

- A deadline of December 22<sup>nd</sup> to either submit a revised site plan and elevation (that shows the fence in compliance with the visibility obstruction regulations) or an additional \$600.00 filing fee for the board to consider a special exception to the visibility obstruction regulations;
- the criteria/standard that the board will use in their decision to approve or deny the request for both a fence height special exception and a visibility obstruction special exception;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the December 29<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
- the January 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the January public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Dec. 19, 2006: The applicant emailed the Board Administrator requesting that this appeal be postponed from Panel B's January 17<sup>th</sup> public hearing to Panel B's February 14<sup>th</sup> public hearing.

Jan. 8, 2007: The applicant submitted a revised site plan and elevation "showing fence cutbacks on the east side of the property to be in compliance with the visibility obstruction requirements."

Jan. 24, 2007: The applicant submitted additional information to staff (see Attachment A).

Jan. 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, 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 Interim Chief Arborist, and the Assistant City Attorney to the Board.

The District Manager of Code Compliance submitted a Review Comment Sheet marked "Has no objections," and the Development Services Senior Engineer submitted a Review Comment Sheet marked "No comments."

- Feb. 14, 2007: The Board of Adjustment held a public hearing on this matter where the board delayed action until their next hearing to be held on March 21, 2007.
- Feb. 20, 2007: The applicant submitted additional information to staff (see Attachment B).
- Feb. 22, 2007: The Board Administrator wrote the applicant a letter that conveyed the following information:
- the board delayed action on the request until March 21<sup>st</sup>;
  - the March 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis/recommendation; and
  - the March 9<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials.
- March 5, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March 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, Development Services Senior Engineers, the Building Inspection Development Code Specialist, the Interim Chief Arborist, and the Assistant City Attorney to the Board.

### **STAFF ANALYSIS:**

- A revised site plan has been submitted that indicates the proposed wall/gate to be located in the site's front yard setback. This plan shows that the wall will be reconfigured outside required visibility triangles whereby the wall will about 52' in length parallel to Angora Street (approximately on the property line) and about 25' on either side of the site in the front yard setback.
- A revised fence elevation has been submitted that indicates the maximum height of the fence/wall and pedestrian gate (6'). The revised elevation denotes the materials of the fence/wall and pedestrian gate (solid wood).
- There are two single family homes that would have direct/indirect frontage to the existing fence/wall located in the site's Angora Street front yard setback.
- No other fence above four (4) feet high which appeared to be located in the front yard setback was noted in the immediate area.
- As of March 12<sup>th</sup>, one letter had been submitted in opposition to the request, and one petition signed by 20 neighbors/owners and two letters had been submitted in support of the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 2' (whereby the proposal in the front yard setback that would exceed 4' in height) will not adversely affect neighboring property.
- Granting this special exception to the fence height regulations of 2' with conditions imposed that the applicant complies with the submitted revised site plan and revised elevation would provide assurance that the fence/wall and gate located in the site's Angora Street front yard setback would be reconfigured and maintained in the location and of the heights and materials as shown on these documents.
- Granting the special exception to the fence height special exception would not provide any relief to the applicant with regard to City's visibility obstruction

regulations. The existing fence that is located in required visibility triangles would only be able to achieve a permit if the fence is reconfigured (per the submitted revised plan and elevation) to comply with the City's visibility obstruction regulations.

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 14, 2007**

APPEARING IN FAVOR: Sigrun Hukill, 8603 Angora St., Dallas, TX  
Jeff Hukill, 8603 Angora St, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Gillespie

I move that the Board of Adjustment in Appeal No. **BDA 056-258**, hold this matter under advisement until **March 21, 2007**.

SECONDED: Beikman

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

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

**BOARD OF ADJUSTMENT ACTION: MARCH 21, 2007**

APPEARING IN FAVOR: Sigrun Hukill, 8603 Angora St., Dallas, TX  
Jeff Hukill, 8603 Angora St, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Chernock

I move that the Board of Adjustment, in Appeal No. **BDA 056-258**, on application of Jeff and Sigrun Hukill, **grant** the request of this applicant to reconfigure and maintain a six-foot-high fence on the property as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. 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 site plan and revised elevation is required.

SECONDED: Brannon

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

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

\*\*\*\*\*

FILE NUMBER: BDA 067-040

**BUILDING OFFICIAL'S REPORT:**

Application of Bentley Tibbs for a variance to the off-street parking regulations at 6939 Pasadena Avenue. This property is more fully described as Lot 10 in City Block B/2808

and is zoned R-10(A) which requires that a parking space must be located at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley. The applicant proposes to provide enclosed parking spaces with a setback of 10 feet which would require a variance of 10 feet.

**LOCATION:** 6939 Pasadena Avenue

**APPLICANT:** Bentley Tibbs

**REQUEST:**

- A variance to the off-street parking regulations of 10' is requested in conjunction with constructing and maintaining an attached garage on a proposed single family home whereby the enclosed parking spaces in the garage would be less than 20' from the West Shore Drive right-of-way line. The subject site is currently developed with a single family home/attached garage that the applicant intends to replace with a new home/attached garage.

**STAFF RECOMMENDATION:**

Approval, subject to the following conditions:

1. Compliance with the submitted site plan is required.
2. Automatic garage doors must be installed and maintained in working order at all times.
3. At no time may the area in front of the garage be utilized for parking of vehicles.
4. All applicable permits must be obtained.
5. The applicant must comply with the Dallas Development Code visibility obstruction regulations.

Rationale:

- Although there is only a proposed 10' distance between the proposed parking spaces (garage doors) and the West Shore Drive right-of-way line, the submitted site plan indicates a 19' distance to be provided between the proposed enclosed parking spaces and the West Shore Drive projected curb line - a distance that should accommodate the length of a standard-sized vehicle at 17' 10".
- The proposed structure is in compliance with the front, side and rear yard setback regulations. The only variance need in this case is to the off-street parking regulations, specifically the parking regulation regarding the distance that must be provided between an enclosed parking space (garage door) and a right-of-way line.
- The site is sloped, irregular in shape (33.3' on the north; 70.0' on the south; 157.65' on the east; and 147.2' on the west), and, according to the application, 10,290 square feet in area. The applicant has denoted a 32" Pecan tree on a site plan that would appear to be in jeopardy if the garage were shifted westward on the site in compliance with the parking regulations.
- There would be an approximate range of 11' – 21' of width left on the north side of the lot if the proposed enclosed parking space were to comply with the 20' enclosed

parking space on the east side of the lot and 6' side yard setback requirement on the west side of the lot since the lot's width at its narrowest point on the north is 33'.

- The proposed home/garage on the site is of a size that is commensurate with other homes in the zoning district. The proposed home/garage structure is to have a living area size of 3,406 square feet – a size slightly lower than that of the average living area of 5 homes that the applicant surveyed in the immediate area/zoning district at 3,698 square feet.

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

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

### **GENERAL FACTS:**

- The Dallas Development Code requires that a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley.

The applicant has submitted a site plan with a notation indicating a two-bay garage that would attach to a proposed single family home that would replace an existing single family home/attached garage on the site. (According to observations by the Board Administrator on his field visit, it appears that the existing enclosed parking space proposed to be demolished is not in compliance with the 20' distance requirement from West Shore Drive. The applicant's representative has stated that the existing garage provides a range of distance of 18' 3" – 20' 0" from the street). This site plan indicates that enclosed parking spaces in the new garage would be located 10' from the West Shore Drive right-of-way line or approximately 19' from the projected pavement line).

- The applicant could build the garage structure without garage doors (or enclosed parking spaces) if the board were to deny the variance request since the structure appears to comply with the 6' side yard setback required for lots zoned R-10(A). The need for the parking variance is merely to allow the parking spaces in the single family structure to be enclosed with garage doors.
- According to calculations taken from the submitted site plan by the board administrator, there would be an approximate range of 11' – 21' of width left on the

north side of the lot if the proposed enclosed parking space were to comply with the 20' enclosed parking space on the east side of the lot and 6' side yard setback requirement on the west side of the lot since the lot's width at its narrowest point on the north is 33'.

- The site is sloped, irregular in shape (33.3' on the north; 70.0' on the south; 157.65' on the east; and 147.2' on the west), and, according to the application, 10,290 square feet in area. The applicant has denoted a 32" Pecan tree that he argues is an encumbrance in meeting the parking requirements). The site is zoned R-10(A) where lots are typically 10,000 square feet in area.
- According to DCAD records, the property is developed with the following:
  - a single family home in "good" condition built in 1938 with 1,442 square feet of living area;
  - a 168 square foot glass patio; and
  - a 400 square foot attached garage.
- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachments A and B). This information included the following:
  - documents that provided additional details about the request;
  - 2 color images of a pecan tree on the site that the applicant is trying to save;
  - An aerial photo of the site with information showing the livable areas of 5 nearby homes.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: R-10 (A) (Single family district 10,000 square feet)  
North: R-10 (A) (Single family district 10,000 square feet)  
South: R-10 (A) (Single family district 10,000 square feet)  
East: R-7.5(A) (Single family district 7,500 square feet)  
West: R-10 (A) (Single family district 10,000 square feet)

### **Land Use:**

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

### **Zoning/BDA History:**

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

### **Timeline:**

Jan. 24, 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.

- Feb. 15, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Feb. 15, 2007: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the March 2nd deadline to submit additional evidence for staff to factor into their analysis;
  - the March 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- March 5, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March 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, Development Services Senior Engineers, the Building Inspection Development Code Specialist, the Interim Chief Arborist, and the Assistant City Attorney to the Board.
- The District Manager of Code Compliance submitted a Review Comment Sheet marked "Has no objections."
- March 6 & 8, 2007 The applicant's representative submitted information beyond what was submitted with the original application (see Attachments A and B).
- March 7, 2007 The Development Services Senior Engineer forwarded an unmarked review comment sheet and made the following comments:
- "No recommendation is made. Some observations:
1. No sidewalk on West Shore Drive.
  2. Site plan shows 19' from front of garage to street curb (a standard-size vehicle is 17' 10" is commonly used by the city."



## **STAFF ANALYSIS:**

- The site is sloped, irregular in shape (33.3' on the north; 70.0' on the south; 157.65' on the east; and 147.2' on the west), and, according to the application, 10,290 square feet in area. The applicant has denoted a 32" Pecan tree that he argues is an encumbrance in meeting the parking requirements). The site is zoned R-10(A) where lots are typically 10,000 square feet in area.
- The submitted site plan indicates that enclosed parking spaces in the new garage will be located 10' from the West Shore Drive right-of-way line and 19' from the projected pavement line of West Shore Drive. (The proposed garage would replace an existing garage that, according to the applicant's representative, provides an 18' 3" – 20' 0" distance between it and the street).
- According to calculations taken from the submitted site plan by the board administrator, there would be an approximate range of 11' – 21' of width left on the north side of the lot if the proposed enclosed parking space were to comply with the 20' enclosed parking space on the west side of the lot and 6' side yard setback requirement on the east side of the lot since the lot's width at it narrowest point on the north is 33'.
- The applicant has stated that the livable area of the home proposed on the site is 3,406 square feet. This size is below the average size of livable areas of 5 other homes the applicant obtained from DCAD in the area/in the same zoning district at 3,698 square feet
- The applicant could build the garage structure without garage doors (or enclosed parking spaces) if the board were to deny the variance request. The need for the parking variance is merely to allow the parking spaces in the proposed single family home to be enclosed with garage doors. Granting the request will allow the applicant to enclose parking spaces with garage doors which otherwise could be constructed as open garages (or carports) with unenclosed parking spaces.
- The Development Services Senior Engineer has submitted an unmarked review comment sheet with no recommendation made. The engineer has commented that there is no sidewalk on West Shore Drive and that the 19' distance shown on the site plan between the front of the garage and street curb is longer than a standard-sized vehicle at 17' 10".
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the parking regulations of 10' to enclose parking spaces in a new attached garage structure will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance to the parking regulations of 10' requested to enclose parking spaces in a new attached garage structure is necessary to permit development of the subject site (that is sloped, irregular in shape, and, according to the application, 10,290 square feet in area with a Pecan tree that is intended to be preserved) 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 R-10(A) zoning classification.
  - The variance to the parking regulations of 10' requested to enclose parking spaces in a new attached garage structure would not be granted to relieve a self

created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-10 (A) zoning classification.

- Typically, when the Board has found that this type of variance request is warranted, they have imposed the following conditions:
  1. Compliance with the submitted site plan is required.
  2. Automatic garage doors must be installed and maintained in working order at all times.
  3. At no time may the area in front of the garages be utilized for parking of vehicles.
  4. All applicable permits must be obtained.

These conditions are imposed to help assure that the variance will not be contrary to public interest.

An additional condition that staff would suggest in this particular case is that the applicant must comply with the Dallas Development Code visibility obstruction regulations. Currently there appears to be a fence and shrubbery located in the 20' visibility triangle at the drive approach into the site from West Shore Drive. The owner has informed the Board Administrator that he intends to remove these items, and the submitted site plan shows no items shown to be located in the required visibility triangles.

**BOARD OF ADJUSTMENT ACTION: MARCH 21, 2007**

APPEARING IN FAVOR: Bentley Tibbs, 6939 Pasadena, Dallas, TX

APPEARING IN OPPOSITION: Masashi Kawasaki, 6968 Tokalon, Dallas, TX

MOTION: **Beikman**

I move that the Board of Adjustment, in Appeal No. **BDA 067-040**, on application of Bentley Tibbs, **grant** the 10-foot variance to the off-street parking regulations, 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 site plan is required.
- Automatic garage doors must be installed and maintained in working order at all times.
- At no time may the area in front of the garage be utilized for parking of vehicles.
- All applicable permits must be obtained.
- The applicant must comply with the Dallas Development Code visibility obstruction regulations.

SECONDED: **Brannon**

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

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

\*\*\*\*\*

**FILE NUMBER:** BDA 067-039

**BUILDING OFFICIAL'S REPORT:**

Application of Stephanie Gonzalez, represented by Elias Rodriguez, for a variance to the side yard setback regulations at 1435 Plowman Avenue. This property is more fully described as Lot 16 in City Block 25/3347 and is zoned PD-468, Subdistrict D, which requires a 10 foot side yard setback. The applicant proposes to construct a single family residence and provide a 5 foot 6 inch side yard setback which would require a variance of 4 foot 6 inches.

**LOCATION:** 1435 Plowman Avenue

**APPLICANT:** Stephanie Gonzalez  
Represented by Elias Rodriguez

**REQUEST:**

- A variance to the side yard setback regulations of 4.5' is requested in conjunction with obtaining a final building permit on a recently added 2<sup>nd</sup> floor addition and covered patio attached to a single family home that was constructed in the 20's.

**STAFF RECOMMENDATION:**

Denial

Rationale:

- Even though the site is not completely flat, neither the site's moderate slope nor any other physical site constraint warrants a variance to maintain a covered patio and 2<sup>nd</sup> floor addition in the side yard setback. The subject site is rectangular in shape (50' x 185'), and 9,250 square feet in area.
- The applicant has not substantiated how the site's restrictive area, shape and/or slope preclude the site to be developed in a way that meets the applicable development standards, including the side yard setback provisions, commensurate with other developments found on similarly-zoned PD No. 468 lots.

**STANDARD FOR A VARIANCE:**

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area ratios, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations that will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done. The variance must be necessary to permit development of a specific parcel of land which differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same zoning classification. A variance

may not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land in districts with the same zoning classification.

### **GENERAL FACTS:**

- A 10' side yard setback is required on lots in Subdistrict D of the PD No. 468 zoning district.  
The applicant has submitted a site plan indicating that the existing home and "new addition second floor" is located 5' 6" from the site's southern side property line (or 4' 6" into the site's 10' side yard setback). The 2<sup>nd</sup> floor addition and covered patio (shown in detail on a submitted floor plan) are not located closer to the side property line than the existing home that was constructed in the 20's.
- On March 12, 2007, the applicant informed the Board Administrator that he only chose to seek a variance for the recently constructed covered patio and 2<sup>nd</sup> floor addition located in the 10' side yard setback. The applicant has chosen not to make application for a variance to remedy what appears to be the nonconforming structure on the site – a structure that does not conform to the current setback regulations but was lawfully constructed under the regulations in force at the time of construction. (The Dallas Development Code states that the right to rebuild a nonconforming structure ceases if the structure is destroyed by the intentional act of the owner or the owner's agent. However, except in the scenario where the structure is destroyed by the intentional act of the owner, a person may renovate, remodel, repair, rebuild, or enlarge a nonconforming structure if the work does not cause the structure to become more nonconforming as to the yard, lot, and space regulations).
- DCAD records indicate that the site is developed with a single family home in "unsound" condition built in 1925 with 1,927 square feet of living space, and a 608 square foot attached carport.
- According to archive zoning maps in the City's Development Services Department, the site was zoned O-2 in 1985 (prior to the City-wide zoning transition in the late 80's) where the side yard setback for a single family home was 0 feet. PD No. 468, created in 1999, imposed a 10' side yard setback for lots located in its D Subdistrict.
- According to calculations taken from the submitted floor plan by the Board Administrator, the existing house is 46' in length and the covered patio is an additional 20' in length. This 66' length multiplied by 4.5' (the amount of the footprint in the 10' side yard setback) results in an approximately 300 square foot area that is located in the site's southern side yard setback (i.e. the recently added second floor of the house and the expanded first floor covered patio).
- The Building Inspection Development Code Specialist stated that a permit was applied for a 2<sup>nd</sup> floor addition with 1<sup>st</sup> floor remodel but "not approved."
- The subject site is partially/moderately sloped, rectangular in shape (50' x 185'), and 9,250 square feet in area. The site is zoned PD No. 468 (Subdistrict D).

### **BACKGROUND INFORMATION:**

#### **Zoning:**

Site: PD No. 468 (Planned Development District)  
North: PD No. 468 (Planned Development District)  
South: PD No. 468 (Planned Development District)  
East: PD No. 468 (Planned Development District)  
West: PD No. 468 (Planned Development District)

**Land Use:**

The subject site is developed with a single family home. The areas to the north and west are undeveloped, the area to the east is developed with multifamily uses; and the area to the south appears to be developed with a single family use.

**Zoning/BDA History:**

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

**Timeline:**

- Dec. 5, 2006: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- Feb. 15, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Feb. 15, 2007: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the March 2nd deadline to submit additional evidence for staff to factor into their analysis/recommendation;
  - the March 9th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

March 5, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March 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, Development Services Senior Engineers, the Building Inspection Development Code Specialist, the Interim Chief Arborist, and the Assistant City Attorney to the Board.

The District Manager of Code Compliance submitted a Review Comment Sheet marked "Has no objections."

The Senior Program Manager of the Trinity Planning and Development Office submitted a Review Comment Sheet marked "Recommends that this be delayed" commenting "Recommend delay of hearing until review of Planned Development District 468 is complete. Contingent upon approval by full City Plan Commission, staff will begin review of PDD 468 to review adequacy of zoning standards in the Oak Cliff Gateway. Draft recommendations for revised standards are due in May/June 2007 and final zoning recommendations are scheduled for consideration of the City Plan Commission by October 2007."

#### **STAFF ANALYSIS:**

- The subject site is partially/moderately sloped, rectangular in shape (50' x 185'), and 9,250 square feet in area. The site is zoned PD No. 468 (Subdistrict D). According to archive zoning maps in the City's Development Services Department, the site was zoned O-2 in 1985 (prior to the City-wide zoning transition in the late 80's) where the side yard setback for a single family home was 0 feet. PD No. 468, created in 1999, imposed a 10' side yard setback for lots located in its D Subdistrict.
- DCAD records indicate that the site is developed with a single family home in "unsound" condition built in 1925 with 1,927 square feet of living space, and a 608 square foot attached carport.
- According to calculations taken from the submitted floor plan by city staff, the existing house is 46' in length and the covered patio is an additional 20' in length. This 66' length multiplied by 4.5' (the amount of the footprint in the 10' side yard setback) results in an approximately 300 square foot area that is located in the southern side yard setback (i.e. the recently added second floor of the house and the expanded first floor covered patio).
- Neither the covered patio nor 2<sup>nd</sup> floor addition is located closer to the side property line than the existing home that was constructed in the 20's.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the side yard setback regulations of 4.5' will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance to the side yard setback regulations is necessary to permit development of the subject site (a site that is developed with a single family home, and a site that is sloped, rectangular in shape, and about 9,300 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 PD No. 468 zoning classification.

- The variance to the side yard setback regulations would not to 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 not permitted by this chapter to other parcels of land in districts with the same PD No. 468 zoning classification.
- If the Board were to grant the side yard variance, imposing a condition whereby the applicant must comply with the submitted site plan, the covered patio and 2<sup>nd</sup> floor addition shown on this plan would be “varied” into the side yard setback at a distance that is 5.5’ from the southern side property line (or 4.5’ into the 10’ southern side yard setback). Since the applicant has chosen not to seek variance to remedy the existing nonconforming structure in the side yard setback, the existing nonconforming single family structure could only be replaced in the same building footprint if it were destroyed by a casualty loss or natural consequence such as wind or fire.

**BOARD OF ADJUSTMENT ACTION: MARCH 21, 2007**

APPEARING IN FAVOR: Elias Rodriquez, 323 E. Jefferson, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Gillespie

I move that the Board of Adjustment, in Appeal No. **BDA 067-039**, on application of Stephanie Gonzalez, represented by Elias Rodriquez, **grant** the four-and-a-half foot variance to the side yard setback regulations 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 condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: Brannon

AYES: 2–Brannon, Gillespie,

NAYS: 3 – Cox, Beikman, Chernock

MOTION FAILED 2 – 3

**\*Since the motion to grant did not get four concurring votes, the motion failed and is therefore deemed denied with prejudice since no subsequent motion was made.**

\*\*\*\*\*

FILE NUMBER: BDA 067-046

**BUILDING OFFICIAL'S REPORT:**

Application of H. E. B., represented by Santos Martinez of Masterplan, for a variance to the front yard setback regulations and for a special exception to the landscape regulations at 5750 E. Lovers Lane. This property is more fully described as Lot 1A in City Block G/5402 and is zoned PD-610, which requires a front yard setback of 15 feet and requires mandatory landscaping. The applicant proposes to construct additions to an existing nonresidential structure and provide a zero front yard setback which would require a variance of 15 feet to the front yard setback regulations, and to amend a previously submitted landscape plan which would require a special exception to the landscape regulations.

**LOCATION:** 5750 E. Lovers Lane

**APPLICANT:** H. E. B.  
Represented by Santos Martinez of Masterplan

**March 21, 2007 Public Hearing Notes:**

- The applicant's representative submitted photos of the site that will be available for review at the April 18<sup>th</sup> briefing/public hearing.

**REQUESTS:**

- The following appeals have been made in this application:
  1. a special exception to the landscape regulations; and
  2. variances to the front yard setback regulations of 15 feet.These appeals are requested in conjunction with constructing and maintaining additions to an existing retail structure/use (Central Market).

**STAFF RECOMMENDATION: (Landscape Special Exception)**

Delay action until April 18, 2007

Rationale:

- The City's Acting Chief Arborist recommends delay pending the following:
  1. The applicant produces a landscape plan for approval by the board that:
    - Complies with the provisions granted by the board in 2002 where feasible; and
    - Accounts for the relocation and removal of plant materials necessary for the construction of the proposed building expansion and courtyard – a plan that complies with Article X in all matters except as addressed in board case BDA023-008; and
  2. The owner installs and maintains all required landscaping as shown on the approved 2002 landscape plan except those plant materials that would directly interfere with the construction of the proposed building expansion and courtyard.



**STAFF RECOMMENDATION: (Front Yard Variances)**

Approval, subject to the submitted site plan

Rationale:

- The site’s six front yard setbacks and irregular shape are physical site constraints that preclude the applicant from developing his site completely outside the site’s six 15’ front yard setback areas. In addition, granting these variances would not be contrary to the public interest given that the new construction/additions proposed to be located in two of the site’s six front yard setbacks are not near the functioning section of where Matilda Street on the east side of the site meets Lovers Lane on the north side of the site. (According to the applicant’s representative, the new construction is 50’ to Matilda Street (that runs north-south on the east side of the site) and 375’ to Lovers Lane (that runs east-west on the north side of the site). In addition, a TXU right-of-way provides a buffer of over 100’ from where the new additions are to be located on the site to adjacent multifamily property immediately east.

**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.

**STANDARD FOR A VARIANCE:**

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

upon other parcels of land in districts with the same zoning classification. A variance may not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land in districts with the same zoning classification.

**GENERAL FACTS (related to the landscape special exception):**

- The Dallas Development Code requires full compliance with the Landscape Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet.  
According to the City's Acting Chief Arborist, a special exception to the landscape requirements of Article X: The Landscape Regulations is made related to revisions that applicant seeks to make to an alternate landscape plan granted on the site on November 12, 2002, and related to new site changes/additions to the existing structure on the site.
- On March 2, 2007, 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 that provided additional details about the requests;
  - A copy of a "development plan;"
  - A copy of an "overall landscape plan;"
  - A copy of a "courtyard hardscape plan;" and
  - A copy of a "courtyard landscape plan."
- On March 7, 2007, the applicant's representative submitted additional information beyond what was submitted with the original application, and beyond what was discussed at the staff review team meeting (see Attachment B). This information included the following:
  - A letter that provided additional details about the requests; and
  - A revised copy of the "courtyard landscape plan."
- On March 12, 2007, the applicant's representative submitted additional information beyond what was submitted with the original application, and beyond what was discussed at the staff review team meeting (see Attachment C). This information included a letter that provided additional details about the landscape special exception request.
- On March 12, 2007, the City's Acting Chief Arborist submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner (see Attachment D). The memo stated the following with regard to the originally submitted landscape plan:
  - Trigger:  
The applicant is seeking a special exception to Article X and a revision to a previously approved alternate landscape plan (BDA023-008) in November of 2002. The requested setback variance and site changes in general require that landscaping be revised for approval by the Board of Adjustment. A future building permit for an additional square footage over 10,000 square feet would trigger Article X requirements.
  - Deficiencies:
    1. The site does not comply with Article X because landscaping does not meet residential adjacency requirements due to stated Oncor requirements in 2002

- to remove all planted trees from the utility easement. Article X street tree requirements also could not be met with the needed adjustments.
2. An alternate landscape plan was approved by the Board of Adjustment in 2002. At the time of this report, the site was not in complete compliance with this plan. Some trees and other plant materials that were required in various locations on the property were not installed. The applicant has stated in a letter that they will bring the site into compliance with the current requirements to address missing landscaping.
  3. The proposed landscape plan revisions submitted for approval at the time of this report is incomplete and does not address the removal of plant materials including site trees in the vicinity of Matilda Street near the proposed building addition.

Factors:

- The location of new plant materials in the revised landscaping is partially dependent on the board approval of a building setback variance.
- The applicant is proposing an optional block of crape myrtles to be located on utility company property and would be subject to electric utility approval.
- Staff requires a full site landscape plan for the building permit process to address all Article X compliance issues on site that is not given a special exception by the board.
- Recommendation:
  - Delay for one month pending the following:
    1. The applicant can produce a revised landscape plan for approval by the board that: a) complies with the provisions granted by the board in 2002, where feasible, and b) accounts for the relocation and removal of plant materials necessary for the construction of the proposed building expansion and courtyard. The plan should comply with Article X in all matters addressed in board case #023-008.
    2. The owner installs and maintains all required landscaping as shown on the approved 2002 landscape plan except those plant materials that would directly interfere with the construction of the proposed building expansion and courtyard.

**GENERAL FACTS (related to the variances):**

- A 15' front yard setback must be provided for lots zoned PD No. 610. The applicant has submitted a site plan indicating two additions that would be located on two of the site's three Matilda Street front property lines (or 15' into these 15' front yard setbacks).
- According to calculations taken from the submitted site plan by the Board Administrator, the site is developed with an approximately 66,000 square foot structure of which about 1,300 square feet of total approximately 9,300 square foot additions would be located in two of the site's three Matilda Street 15' front yard setbacks.
- The site is flat, irregular in shape, and, according to the application, 7.208 acres in area. The site has six street frontages: one along Greenville Avenue, one along

Lovers Lane, three along Matilda Street, and one along Milton Drive. The site is zoned PD No. 610.

- On March 2, 2007, 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 that provided additional details about the requests;
  - A copy of a "development plan;"
  - A copy of an "overall landscape plan;"
  - A copy of a "courtyard hardscape plan;" and
  - A copy of a "courtyard landscape plan."
- On March 7, 2007, the applicant's representative submitted additional information beyond what was submitted with the original application, and beyond what was discussed at the staff review team meeting (see Attachment B). This information included the following:
  - A letter that provided additional details about the requests; and
  - A revised copy of the "courtyard landscape plan."
- On March 12, 2007, the applicant's representative submitted additional information beyond what was submitted with the original application, and beyond what was discussed at the staff review team meeting (see Attachment C). This information included a letter that provided additional details about the landscape special exception request, specifically, that the applicant intends to bring the entire site into compliance with the landscape plan approved by the board in December of 2002, and that they will proceed in planting the trees that do not create a conflict with the proposed new construction.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: PD No. 610 (Planned Development District)  
North: MU-3 (Mixed Use)  
South: PD No. 333 (Planned Development District)  
East: MF-2(A) (Multifamily residential)  
West: MU-3 (Mixed Use)

### **Land Use:**

The subject site is developed with a retail use (Central Market). The areas to the north, south, and west are developed with retail/commercial uses; and the area to the east is developed with multifamily uses.

### **Zoning/BDA History:**

1. BDA 023-008, 5750 E. Lovers Lane (the subject site)      On November 12, 2002, the Board of Adjustment Panel B granted a request for a special exception to the landscape regulations. The board imposed the following conditions with this request: 1) compliance

with the submitted revised landscape plan is required; and 2) this special exception will become effective only after: the board administrator notifies the applicant in writing that the administrator has received letters authorizing the applicant to make a request on behalf of all owners of property for this special exception; or the applicant indemnifies the City of Dallas, the Board of Adjustment, and their officers and employees against any action arising out of the granting of this special exception without the signature of all the owners; or evidence of legal authority of the applicant to request and receive a special exception in a form acceptable to the city attorney.

**Timeline:**

- Jan. 26, 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.
- Feb. 15, 2007: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working 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."
- Feb. 15, 2007: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the March 2nd deadline to submit additional evidence for staff to factor into their analysis;
  - the March 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and

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

March 2, 2007 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).

March 5, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March 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, Development Services Senior Engineers, the Building Inspection Development Code Specialist, the Interim Chief Arborist, and the Assistant City Attorney to the Board.

The District Manager of Code Compliance submitted a Review Comment Sheet marked "Has no objections."

March 7 & 12, 2007 The applicant's representative submitted information beyond what was submitted with the original application and beyond what was discussed at the staff review team meeting (see Attachments B and C).

March 12, 2007 The City's Acting Chief Arborist submitted a memo that provided his comments regarding the special exception to the landscape regulations (see Attachment D).

**STAFF ANALYSIS (related to the landscape special exception):**

- The landscape requirements on this site are not imposed by a site-specific landscape plan approved by the city plan commission or city council.
- According to the City's Acting Chief Arborist, the applicant is seeking a special exception to Article X and a revision to a previously approved alternate landscape plan (BDA023-008) in November of 2002 where some trees and other plant materials that were required on the property as part of this approved special exception were not installed on the site.
- According to the City's Acting Chief Arborist, this request should be delayed a month pending the following:
  1. The applicant can produce a landscape plan for approval by the board that:
    - Complies with the provisions granted by the board in 2002 where feasible; and
    - Accounts for the relocation and removal of plant materials necessary for the construction of the proposed building expansion and courtyard – a plan that complies with Article X in all matters except as addressed in board case BDA023-008.
  2. The owner installs and maintains all required landscaping as shown on the approved 2002 landscape plan except those plan materials that would directly interfere with the construction of the proposed building expansion and courtyard.

- The applicant has the burden of proof in establishing the following:
  - The special exception will unreasonably burden the use of the property; and the special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted partial alternate landscape plan, the additions could be made to the site where the site would be “excepted” from both full compliance with Article X: The Landscape Regulations, and from specific landscape provisions that were “excepted” in conjunction with a landscape special exception granted by the board in 2002 where a condition was imposed (among other things) that the applicant comply with the submitted landscape plan – some of which were never installed on the site.

**STAFF ANALYSIS (related to the variances):**

- The site is flat, irregular in shape, and, according to the application, 7.208 acres in area. The site has six street frontages: one along Greenville Avenue, one along Lovers Lane, three along Matilda Street, and one along Milton Drive. The site is zoned PD No. 610.
- According to calculations taken from the submitted site plan by the Board Administrator, the site is developed with an approximately 66,000 square foot structure of which about 1,300 square feet of total approximately 9,300 square foot additions would be located in two of the site’s three Matilda Street 15’ front yard setbacks.
- The applicant has the burden of proof in establishing the following with regard to the front yard variance request:
  - That granting the variances to the front yard setback regulations of 15’ requested to construct and maintain additions that would total approximately 9,300 square feet in area 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 variances are necessary to permit development of the subject site (a site developed with an approximately 66,000 square foot retail structure, and a site that is irregular in shape, approximately 7 acres in area, and with 6 front yard setbacks) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 610 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 same PD No. 610 zoning classification.
- If the Board were to grant the front yard variance requests of 15’, imposing a condition whereby the applicant must comply with the submitted site/development plan, the additions would be limited to what is shown on this plan – additions that would be located on two of the site’s three Matilda Street front property lines (or 15’ into these Matilda Street 15’ front yard setbacks).

**BOARD OF ADJUSTMENT ACTION: MARCH 21, 2007**

APPEARING IN FAVOR: Willie Cothrum, 900 Jackson St., #640, Dallas, TX  
Santos Martinez, 900 Jackson St., #640, Dallas, TX

APPEARING IN OPPOSITION: No one

**MOTION #1: Brannon**

I move that the Board of Adjustment in Appeal No. **BDA 067-046**, suspend the rules and accept the evidence that is being presented to us today.

SECONDED: No one  
MOTION FAILED FOR LACK OF A SECOND

**MOTION #2: Chernock**

I move that the Board of Adjustment in Appeal No. **BDA 067-046**, hold the landscape special exception under advisement until **April 18, 2007**.

SECONDED: **Beikman**  
AYES: 5–Cox, Brannon, Gillespie, Beikman, Chernock  
NAYS: 0 – None  
MOTION PASSED 5 – 0 (Unanimously)

**MOTION #3: Chernock**

I move that the Board of Adjustment, in Appeal No. **BDA 067-046**, on application of H.E.B., represented by Santos Martinez of Masterplan, **grant** the 15 foot variances to the front yard setback regulations 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 condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site/development plan is required.

SECONDED: **Brannon**  
AYES: 5–Cox, Brannon, Gillespie, Beikman, Chernock  
NAYS: 0 – None  
MOTION PASSED 5 – 0 (Unanimously)

\*\*\*\*\*



**FILE NUMBER:** BDA 067-054

**BUILDING OFFICIAL'S REPORT:**

Application of Dick P. Wood, Jr., represented by Robert Baldwin, for variances to the floor area ratio and height regulations at 8623 Hillcrest Road. This property is more fully described as City Block 5464 and is zoned CR and MC-1 which limits the floor area ratio to 0.75 for all uses combined in the CR zoning and limits the floor area ratio to 0.90 for a mix of 2 categories (office use & retail/personal service use) in the MC-1 zoning. The zoning districts also limit the height of the structure to 47 feet 3 1/2 inches due to the residential proximity slope. The applicant proposes to construct a nonresidential structure with combined uses with a floor area ratio of 0.81 in the CR zoning which would require a variance of 0.06 to the floor area ratio regulations for the portion of the site zoned CR; and proposes to construct a nonresidential structure with a mix of 2 categories (office use & retail/personal service use) with a floor area ratio of 0.95 in the MC-1 zoning which would require a variance of 0.05 to the floor area regulations for the portion of the site zoned MC-1. Lastly, the applicant proposes to construct a nonresidential structure with a height of 63 feet which would require a variance of 15 feet 8 1/2 inches to the height regulations due to the residential proximity slope regulations.

**LOCATION:** 8623 Hillcrest Road

**APPLICANT:** Dick P. Wood, Jr.,  
Represented by Robert Baldwin

**March 21, 2007 Public Hearing Notes:**

- The Board Administrator circulated an email from the applicant's representative to the board members at the briefing (see Attachment F). This email conveyed the applicant's representative's intent to seek a delay on the variance request until April in order for him to determine if he additionally needed to request a special exception to the landscape regulation on the site.

**REQUESTS:**

- The following appeals have been made in this application:
  1. A variance to the FAR (Floor Area Ratio) regulations of 0.06 is requested for proposed development located on the portion of the site zoned CR.
  2. A variance to the FAR (Floor Area Ratio) regulations of 0.05 is requested for proposed development located on the portion of the site zoned MC-1.
  3. A variance to the height regulations (specifically to the residential proximity slope or RPS) of 15' 8.5" is requested for the entire site where structures are proposed to reach 63' in height.

These appeals are requested in conjunction with constructing and maintaining a retail/office development on a site that is undeveloped.

The applicant had originally submitted merely a variance to the FAR (Floor Area Ratio) regulations of 0.31, however, the additional/revised variance needs described above and in the revised Building Official's Report (Attachment B) were determined upon further plan review by the Building Inspection Development Code Specialist.

**STAFF RECOMMENDATION:**

Denial

Rationale:

- There are no physical site constraints or special conditions of the subject site whereby a literal enforcement of the code regulations results in unnecessary hardship: the subject site is flat, generally rectangular in shape (approximately 130' wide and approximately 740' long), and 2.2 acres in area. Although the applicant contends that the variances are directly related to narrowness of the lot, the site's approximately 130' width does not constrain the site from being developed in a manner commensurate with the development upon other parcels of land in districts with the same CR and MC-1 zoning classifications while simultaneously complying with development code standards including setback, height, and FAR regulations.
- The alleged narrowness of the site at approximately 130' in width should not encumber the developer from reducing his FAR in the CR zoned portion of the site by 0.06 and in the MC-1 zoned portion of the site by 0.05; nor relocating what the applicant describes as "fancy screening area for mechanical equipment" outside/below the residential proximity slope line.

**STANDARD FOR A VARIANCE:**

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

**GENERAL FACTS:**

- The Dallas Development Code defines the term "floor area ratio" has the ratio of floor area to lot area. (Note: A 1:1 FAR is stated at "1.0," 2:1 is stated as "2.0," 2.5:1 is stated as "2.5," etc.)

- The subject site is zoned CR (Community Retail) and MC-1 (Multiple Commercial). The maximum floor area for CR zoned properties is 0.5 for office uses and 0.75 for all uses combined; and the maximum floor area for MC-1 zoned properties that incorporate a mix of 2 use categories is 0.9. A site plan has been submitted indicating that the proposed FAR for the portion of the site zoned CR is 0.81 (or 0.06 greater than what is permitted by right); and that the proposed FAR for the portion of the site zoned MC-1 is 0.95 (or 0.05 greater than what is permitted by right).
- CR zoning establishes that the maximum structure height is 54 feet; and MC-1 zoning establishes that the maximum structure height is 70 feet. Both zoning districts provide further height restrictions related to the residential proximity slope, specifically that if any portion of a structure is over 26 feet in height, that portion may not be located above a residential proximity slope. Exception: Except for chimneys, structures listed in Section 51A-4.408(a)(2) may project through the slope to a height not to exceed the maximum structure height, or 12' above the slope, whichever is less. Note that this exception applies in districts in which building height is limited to 36 feet in height or less, which is neither the case on the site's CR and MC-1 zoned areas. (Although the applicant's representative had written in his March 2<sup>nd</sup> letter that 12' of the "fancy screening area for mechanical equipment" is allowed to encroach above/beyond the RPS line, he informed the Board Administrator on March 13<sup>th</sup> that upon his further review of the code provisions, this statement was incorrect). Both the CR and MC-1 zoning district establish provisions related to residential proximity slope, specifically that if any portion of a structure is over 26 feet in height, that portion may not be located above a residential proximity slope. The Dallas Development Code establishes a residential proximity slope that limits height to 1 foot in height for every 3 feet away from private property in a residential zoning district (or a portion of a PD district which is restricted to residential uses). The revised Building Official's Report states that the applicant proposes to construct structures that would reach 63' in height which is 15' 8.5" above the maximum height allowed due to the residential proximity slope of 47' 3.5". (Staff has interpreted that the residential proximity slope was created to discourage incompatibility/privacy disruptions that may be caused by high office towers overlooking into single family lots).
- The site is flat, generally rectangular in shape site (approximately 130' on the north, 127' on the south, approximately 740' on the east, and approximately 743' on the west) and, according to the application is 2.2 acres in area. The site is zoned both CR and MC-1.
- DCAD records indicate that property located at 8623 Hillcrest Road is developed with a "converted service station" built in 1966 that is 1,554 square feet in area.
- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment C). This information included a letter that provided additional details about the request.
- The Building Inspection Development Code Specialist forwarded copies of elevations of the proposal to staff at the March 5<sup>th</sup> staff review team meeting (see Attachment D). The code specialist created his revised Building Official's Report of February 27<sup>th</sup> on these elevations.
- The applicant's representative submitted additional information beyond what was submitted with the original application and beyond what was discussed at the March

5<sup>th</sup> staff review team meeting (see Attachment E). This information included a legible plat map of the subject site.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: CR (Community Retail) and MC-1 (Multiple Commercial)  
North: LO-1, SUP 307 (Limited Office, Specific Use Permit for telephone center)  
South: City of University Park  
East: R-7.5 (A) (Single family residential 7,500 square feet)  
West: CR (Community Retail)

### **Land Use:**

The subject site is undeveloped. The area to the north is developed with office uses; the area to the west is developed with a church use (Temple Emanu-el); the area to the south is developed with residential uses; and the area to the west is developed with office and retail uses.

### **Zoning/BDA History:**

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

### **Timeline:**

- Jan. 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.
- Feb. 15, 2007:            The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Feb. 16, 2007:            The Board Administrator emailed the applicant’s representative the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the March 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis/recommendation;
  - the March 9<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;

- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Feb. 26, 2007: The Board Administrator emailed the applicant’s representative with questions/concerns about the application (see Attachment A).

Feb. 27, 2007 The Building Inspection Development Code Specialist forwarded a revised Building Official’s Report to the Board Administrator (see Attachment B).

March 2, 2007 The applicant’s representative submitted information beyond what was submitted with the original application (see Attachment C).

March 5, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March 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, Development Services Senior Engineers, the Building Inspection Development Code Specialist, the Interim Chief Arborist, and the Assistant City Attorney to the Board.

The Building Inspection Development Code Specialist submitted copies of elevations of the proposal to staff at this meeting (see Attachment D).

The District Manager of Code Compliance submitted a Review Comment Sheet marked “Has no objections.”

March 7, 2007 The applicant’s representative submitted information beyond what was submitted with the original application and beyond what was discussed/considered at the March 5<sup>th</sup> staff review team meeting where staff formed a recommendation of denial of the request (see Attachments E).

**STAFF ANALYSIS:**

- The site is flat, generally rectangular in shape site (approximately 130’ on the north, 127’ on the south, approximately 740’ on the east, and approximately 743’ on the west) and, according to the application is 2.2 acres in area. The site is zoned both CR and MC-1.
- The applicant has the burden of proof in establishing the following:
  - That granting the variances to FAR regulations and the height regulations due to the residential proximity slope requested to construct and maintain a 63’ high, retail/office development 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 variances are necessary to permit development of the subject site (an undeveloped site that is flat, generally rectangular in shape, and 2.2 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 CR and MC-1 zoning classifications.
- 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 same CR and MC-1 zoning classifications.
- If the Board were to grant the FAR requests of 0.06 and 0.05, and the height variance of 15' 8.5", imposing a condition whereby the applicant must comply with the submitted site plan and section elevations, the structures would be limited to that shown on these submitted plans – structures in the CR zoned portion of the site with an FAR of 0.81; structures in the MC-1 zoned portion of the site with an FAR of 0.95; and structures in both zoning districts on the site that would be 15' 8.5" above the residential proximity slope line.

**BOARD OF ADJUSTMENT ACTION: MARCH 21, 2007**

**APPEARING IN FAVOR:** No one

**APPEARING IN OPPOSITION:** No one

**MOTION:** **Beikman**

I move that the Board of Adjustment, in Appeal No. **BDA 067-054**, hold this matter under advisement until **April 18, 2007**.

**SECONDED:** **Brannon**

**AYES:** 5–Cox, Brannon, Gillespie, Beikman, Chernock

**NAYS:** 0 – None

**MOTION PASSED** 5 – 0 (Unanimously)

\*\*\*\*\*

**FILE NUMBER:** BDA 067-053

**BUILDING OFFICIAL'S REPORT:**

Application of Lake Cliff Neighborhood Association, represented by Beverly Mendoza, to require compliance of a nonconforming use at 465 S. R. L. Thornton Freeway. This property is more fully described as Lots 5A, 5, and 8 in City Block 85B/3068 and is zoned MU-1 which limits the legal uses in a zoning district. The applicant requests that the board establish a compliance date for a nonconforming hotel or motel use.

**LOCATION:** 465 S. R. L. Thornton Freeway

**APPLICANT:** Lake Cliff Neighborhood Association  
Represented by Beverly Mendoza

**REQUEST:**

- A request is made for the Board of Adjustment to establish a compliance date for a nonconforming motel use (The Mustang Inn) on the subject site. (According to information submitted by the applicant, the motel is comprised of approximately 42 rooms).

**COMPLIANCE REGULATIONS FOR NONCONFORMING USES:** SEC. 51A-4.704. NONCONFORMING USES AND STRUCTURES of the Dallas Development Code provides the following provisions:

- (a) Compliance regulations for nonconforming uses. It is the declared purpose of this subsection that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property

rights of the persons affected, the public welfare, and the character of the surrounding area.

(1) Amortization of nonconforming uses.

- (A) Request to establish compliance date. The city council may request that the board of adjustment consider establishing a compliance date for a nonconforming use. In addition, any person who resides or owns real property in the city may request that the board consider establishing a compliance date for a nonconforming use. Upon receiving such a request, the board shall hold a public hearing to determine whether continued operation of the nonconforming use will have an adverse effect on nearby properties. If, based on the evidence presented at the public hearing, the board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for the nonconforming use; otherwise, it shall not.
- (B) Factors to be considered. The board shall consider the following factors when determining whether continued operation of the nonconforming use will have an adverse effect on nearby properties:
- (i) The character of the surrounding neighborhood.
  - (ii) The degree of incompatibility of the use with the zoning district in which it is located.
  - (iii) The manner in which the use is being conducted.
  - (iv) The hours of operation of the use.
  - (v) The extent to which continued operation of the use may threaten public health or safety.
  - (vi) The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust, and odor.
  - (vii) The extent to which public disturbances may be created or perpetuated by continued operation of the use.
  - (viii) The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use.
  - (ix) Any other factors relevant to the issue of whether continued operation of the use will adversely affect nearby properties.
- (C) Finality of decision. A decision by the board to grant a request to establish a compliance date is not a final decision and cannot be immediately appealed. A decision by the board to deny a request to establish a compliance date is final unless appealed to state court within 10 days in accordance with Chapter 211 of the Local Government Code.
- (D) Determination of amortization period.
- (i) If the board determines that continued operation of the nonconforming use will have an adverse effect on nearby properties, it shall, in accordance with the law, provide a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.
  - (ii) The following factors must be considered by the board in determining a reasonable amortization period:
    - (aa) The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly



- transferred to another site) on the property before the time the use became nonconforming.
- (bb) Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
  - (cc) Any return on investment since inception of the use, including net income and depreciation.
  - (dd) The anticipated annual recovery of investment, including net income and depreciation.
- (E) Compliance requirement. If the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.
- (F) For purposes of this paragraph, "owner" means the owner of the nonconforming use at the time of the board's determination of a compliance date for the nonconforming use.

### **GENERAL FACTS:**

- City records indicate that the motel use on the subject site became nonconforming on November 12, 2003 (Ordinance No. 25435).
- The Dallas Development Code states that "nonconforming use" means "a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time."
- The subject site is zoned MU-1 (Mixed Use -1) that permits a "hotel or motel" use by SUP (Specific Use Permit) only if the hotel or motel use has 60 or fewer guest rooms.
- The Dallas Development Code establishes the following provisions for "hotel or motel" use in Section 51A-4.205 (1):
  - "Hotel or motel."
    - (A) Definition: A facility containing six or more guest rooms that are rented to occupants on a daily basis.
    - (B) Districts permitted:
      - (i) Except as otherwise provided in Subparagraphs (B)(iii) or (B)(iv), by right in MO(A), GO(A), RR, CS, LI, IR, IM, central area, MU-1, MU-1(SAH), MU-2, Mu-2(SAH), MU-3, MU-3(SAH) and multiple commercial districts.
      - (ii) By SUP only in the CR district.
      - (iii) By SUP only for a hotel or motel use that has 60 or fewer guest rooms.
      - (iv) If an SUP is not required, RAR required in MO(A), GO(A), RR, CS, LI, IR, IM, MU-1, MU-1(SAH), MU-2, MU-2(SAH), MU-3, MU-3(SAH), and multiple commercial districts.
- The owner of the site could eliminate the nonconforming use status of the existing motel use by obtaining an SUP (Specific Use Permit) from City Council.
- The owner of the site could transition the use of the site from motel use to any use that is permitted by right in the site's existing MU-1 (Mixed Use-1) zoning classification. Uses permitted by right in this zoning district include a number of commercial and business service uses; institutional and community service uses;

office uses; recreation uses; residential uses; retail and personal service uses; transportation uses; utility and public service uses; and wholesale, distribution, and storage uses.

- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following exhibits and documents to support the applicant's appeal:
  - A number of exhibits (including CO's, ordinances, affidavit, and photos);
  - Information related to 6 Code Compliance Service Request summary;
  - Information related to 11 Dallas Police Department Call for Service Reports for the subject site;
  - Information related to 156 Dallas Police Department Miscellaneous Incident Reports for the subject site;
  - Information related to 89 Dallas Police Department Offense Incident Reports for the subject site;
  - Information related to 50 Dallas Police Department Arrest Reports for the subject site;
  - Information related to 33 Dallas Police Department Vice Unit Arrest Reports; and
  - Information related to 7 Dallas Police Department S.A.F.E. Team Reports.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: MU-1 (Mixed Use)  
North: MU-1 (Mixed Use)  
South: MU-1 (Mixed Use)  
East: PD No. 388 (Planned Development District)  
West: MU-1 (Mixed Use)

### **Land Use:**

The site is currently developed with a motel use that according to the applicant is comprised of approximately 42 guest rooms (The Mustang Inn). The areas to the north and south are developed with commercial uses; the area to the east is a freeway (R.L. Thornton Freeway); and the area to the west is developed with residential uses.

### **Zoning/BDA History:**

1. BDA 91T-107, 465 S. R.L. Thornton Freeway (the subject site) On October 22, 1991, the Board of Adjustment held an application requesting a termination date for the nonconforming motel being operated on the site under advisement until the City Council acts on a zoning case (an SUP for a motel/hotel).
2. SUP No. 1152, 465 S. R.L. Thornton Freeway (the subject site) On May 6, 1993, the City Council passed an ordinance establishing SUP No. 1152 for a one year time period for a motel that has fewer than 80 guest rooms on property

zoned MU-1. According to Building Inspection staff, this SUP was deemed to invalid given a district court decision regarding specific code provisions related to SUP requirements for certain motels in the city.

**Timeline:**

- Jan. 26, 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.
- Feb. 15, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Feb 16, 2007: The Board Administrator contacted the applicant’s representative and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the March 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board’s docket;
  - the March 9<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Feb. 16, 2007: The Board Administrator wrote/sent the owner of the site (Ketan and Kusum Masters) a certified letter that informed them that a Board of Adjustment case had been filed against his property. The letter included following enclosures:
- a copy of the Board of Adjustment application and related materials that had been submitted in conjunction with the application;
  - a copy of the section of the Dallas Development Code that described the Board of Adjustment (Section 51A-3.102);

- a copy of the section of the Dallas Development Code that provides the definition of “nonconforming use” (Section 51A-2.102(90));
- a copy of the section of the Dallas Development Code that provides the definition and provisions set forth for “hotel or motel” use (Section 51A-4.205(1));
- a copy of the section of the Dallas Development Code that provides provisions for “nonconforming uses and structures” (Section 51A-4.704); and
- a copy of the section of the Dallas Development Code that provides provisions regarding the Board of Adjustment hearing procedures (51A-4.703).

The letter also informed the owner of the date, time, and location of the briefing/public hearing.

March 1, 2007           The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).

March 5, 2007:       The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March 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, Development Services Senior Engineers, the Building Inspection Development Code Specialist, the Interim Chief Arborist, and the Assistant City Attorney to the Board.

The District Manager of Code Compliance submitted a Review Comment Sheet marked “Recommends that this be denied” commenting “Haven for crack addicts. School within 1,000 feet. Owner does not screen tenants, prostitutes work out of there without regard or supervision.”

March 7, 2007:       The Board Administrator sent the owner of the site (Ketan and Kusum Masters) and the applicant a copy of the procedures for the March 21, 2007 hearing (see Attachment B).

**STAFF ANALYSIS:**

- The motel use on the subject site is a nonconforming use. The motel use on the subject site was issued a CO (Certificate of Occupancy) in 1978 but became a nonconforming use on November 12, 2003 when the City Council passed Ordinance No. 25435 – an ordinance that required an SUP (Specific Use Permit) for motel uses with 60 or fewer guest rooms located in MU-1 zoning districts.
- The Dallas Development Code states that it is the declared purpose of this subsection (Sec. 51A-4.704. Nonconforming Uses and Structures) that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.
- The owner of the site could eliminate the nonconforming use status of the existing motel use that has 60 or fewer guest rooms by obtaining an SUP from City Council.

- The owner of the site could transition the use of the site from motel use to any use that is permitted by right in the site's existing MU-1 (Mixed Use-1) zoning classification. Uses permitted by right in this zoning district include a number of commercial and business service uses; institutional and community service uses; office uses; recreation uses; residential uses; retail and personal service uses; transportation uses; utility and public service uses; and wholesale, distribution, and storage uses.
- The applicant has the burden of proof in establishing the following:
  - Continued operation of the nonconforming motel use will have an adverse effect on nearby properties.

The purpose of the Board of Adjustment's March 21<sup>st</sup> public hearing shall be to determine whether continued operation of the nonconforming motel use will have an adverse effect on nearby properties. The Dallas Development Code states that if, based on the evidence presented at the public hearing, the board determines that continued operation of this use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for the nonconforming use (at a subsequent public hearing); otherwise, it shall not.

**BOARD OF ADJUSTMENT ACTION: MARCH 21, 2007**

**APPEARING IN FAVOR:**

Gregory Mays, 824 N Marsalis, Dallas, TX  
 Ross Emmett, 11503 Gatewood Dr, Dallas, TX  
 Efrain Marquez, 908 E 9<sup>th</sup> St., Dallas, TX  
 RD Pollard, 4230 W Illinois, Dallas, TX  
 Rose Cardenas, 421 W Page Ave, Dallas, TX

**APPEARING FOR THE CITY:**

Tania Alavera, City Attorney's office  
 Bill Jordan, Code Compliance, City of Dallas  
 Michael A Mendez, 1400 S Lamar, Dallas, TX

**APPEARING IN OPPOSITION:**

Thomas Keen, 2609 Banner Elk Cr., Plano, TX  
 Ketan Masters, 2601 Oates Ln, Arlington TX  
 Kaushue Masters, 2924 Clyupia Dr, GP, TX

**4:28 P.M. Executive Session Begins**

**4:35 P.M. Executive Session Ends**

**MOTION #1: Taylor**

I move that the Board of Adjustment in Appeal No. **BDA 067-053**, hold this case under advisement until **April 18, 2007**.

**SECONDED: Beikman**

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

**NAYS:** 0 – None

**MOTION PASSED** 5 – 0 (Unanimously)

\*\*\*\*\*

**MISCELLANEOUS ITEM NO. 2**

**FILE NUMBER:** BDA067-053

**REQUEST:** To reimburse the \$1,000.00 filing fee submitted in conjunction with the Board of Adjustment appeal to establish a compliance date for a nonconforming motel use

**LOCATION:** 465 South R.L. Thornton Freeway

**APPLICANT:** Lake Cliff Neighborhood Association  
Represented by Beverly Mendoza

**March 21, 2007 Public Hearing Notes:**

- The applicant requested that the board delay action on this request until April 18, 2007.

**STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT TO ESTABLISH A COMPLIANCE DATE FOR A NONCONFORMING USE:**

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. In making this determination, the board may require the production of financial documents. Notwithstanding the above, the board may waive the fee for a request to establish a compliance date under Section 51A-4.704(a)(1) only if:

- (A) the applicant is a corporeal person for whom payment of the fee would result in substantial financial hardship; or
- (B) a written request for a fee waiver is signed by owners, as evidenced by the last approved city tax roll, of 20 percent or more of real property within 200 feet, including streets and alleys, of the boundary of the lot containing the nonconforming use.

**GENERAL FACTS:**

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waiver/s 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.
- Notwithstanding the above, the board may waive the fee for a request to establish a compliance date under Section 51A-4.704(a)(1) only if:
  - (A) the applicant is a corporeal person for whom payment of the fee would result in substantial financial hardship; or
  - (B) a written request for a fee waiver is signed by the owners, as evidenced by the last approved tax roll, of 20 percent or more of real property within 200 feet, including streets and alleys, of the boundary of the lot containing the nonconforming use.
- The applicant submitted an email to staff requesting a reimbursement of the filing fee submitted in conjunction with this Board of Adjustment case (see Attachment A). This letter contained some details on the applicant's finances.

**Timeline:**

- Feb. 15, 2007:       The Board of Adjustment Secretary randomly assigned the request to require compliance of the nonconforming use on this site to Board of Adjustment Panel B.
- March 7, 2007        The applicant submitted an email requesting a fee reimbursement of \$1,000.00 for the Board of Adjustment application requesting a compliance for the nonconforming motel use located at 465 South R.L. Thornton Freeway (see Attachment A).
- March 7, 2007:      The Board Administrator emailed the applicant the following information:
- Advising her that the request would be placed on the board's March 21<sup>st</sup> agenda;
  - Attaching the criteria/standard that the board will use in their decision to approve or deny the fee waiver request; and
  - Informing her of the March 9<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials.

**BOARD OF ADJUSTMENT ACTION: MARCH 21, 2007**

APPEARING IN FAVOR:                   Gregory Mays, 824 N Marsalis, Dallas, TX

APPEARING IN OPPOSITION:         No one

MOTION:   **Beikman**

I move that the Board of Adjustment in Appeal No. **BDA 067-053**, hold this fee reimbursement matter under advisement until **April 18, 2007**.

SECONDED: **Brannon**

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

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

\*\*\*\*\*

MOTION: **Brannon**

I move to adjourn this meeting.

SECONDED: **Chernock**

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

NAYS: 0 -

MOTION PASSED 5 – 0 (unanimously)

**5:10 P.M.** - Board Meeting adjourned for March 21, 2007.

\_\_\_\_\_  
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.