

**BOARD OF ADJUSTMENT, PANEL B  
PUBLIC HEARING MINUTES  
CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM  
WEDNESDAY, JUNE 13, 2007**

MEMBERS PRESENT AT BRIEFING: Alice Cox, Vice-Chair, Taylor Brannon, Panel Vice-Chair, Samuel Gillespie, regular member, Marla Beikman, regular member, 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, 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, Todd Duerksen, Development Code Specialist, Donnie Moore, Chief Planner, Chau Nguyen, Traffic Engineer, and Trena Law, Board Secretary

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**10:15 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **June 13, 2007 docket.**

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**1:03 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.

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel B May 16, 2007 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: JUNE 13, 2007**

**MOTION: Chernock**

I move approval of the Wednesday, May 16, 2007 Board of Adjustment Public Hearing minutes.

**SECONDED: Brannon**

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

**NAYS: 0 – None**

**MOTION PASSED 5 – 0 (Unanimously)**

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**MISCELLANEOUS ITEM NO. 3**

**FILE NUMBER: Unassigned**

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

**LOCATION: 2875 Merrell Road**

**APPLICANT: North Dallas Shared Ministries (NDSM)  
Represented by David Stack of Staubach**

**STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:**

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

**GENERAL FACTS:**

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waiver/s reimbursements:



**FILE NUMBER:** BDA 067-067

**BUILDING OFFICIAL'S REPORT:**

Application of Alejandro Morales for a special exception to the fence height and the visibility obstruction regulations at 538 Elwayne Avenue. This property is more fully described as Lot 22 in City Block 6250 and is zoned R-7.5(A), which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at a street and driveway intersection. The applicant proposes to maintain a 6 foot fence in a required front yard setback which would require a special exception of 2 feet to the fence regulations, and maintain a fence in a visibility triangle which would require a special exception to the visibility obstruction regulations.

**LOCATION:** 538 Elwayne Avenue

**APPLICANT:** Alejandro Morales

**REQUEST:**

- A special exception to the fence height regulations of 2' and a special exception to the visibility obstruction regulations are requested in conjunction with constructing and maintaining the following in the site's 25' front yard setback and within the 20' x 20' street/driveway visibility triangles:
  - a 5'6" steel fence with 5'6" brick columns
  - a 6' steel gateThe subject site is developed with a single family home.

**STAFF RECOMMENDATION (fence):**

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.

**STAFF RECOMMENDATION (visibility obstruction):**

Approval

Rationale:

- The Development Services Senior Engineer submitted a comment sheet stating that he does not object.

**STANDARD FOR A SPECIAL EXCEPTION TO THE VISIBILITY OBSTRUCTION REGULATIONS:**

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

**GENERAL FACTS:**

- The 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 has submitted a scaled partial fence elevation that denotes the fence and a gate as described above.
- The site plan shows the location of the existing fence in the property's front and side yards. The existing fence is located approximately 0' from the front and side property lines. The amount of the existing fence that is the subject of the special exception request is approximately 60' parallel to Elwayne Avenue, inclusive of the gate, and 25' perpendicular to Elwayne Avenue on each side of the site's side property lines. The total linear feet of fence is approximately 110'. The remainder of the fence located on the side property lines is allowed to exceed 4' in height.
- There are two single family homes that have direct frontage to the existing fence. Both houses have fences in their front yard that appear to be between 4' and 6' in height.
- There are many other fences in the immediate area at or above four (4) feet high which appeared to be located in the front yard setback.
- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
  - in a visibility triangle as defined in the Code (45-foot visibility triangles at intersections and 20-foot visibility triangles at drive approaches); and
  - between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- The applicant has submitted a site plan and an elevation denoting a 5'6" steel fence with 5'6" brick columns in the 20' visibility triangle at the intersection Elwayne Avenue and the request site's driveway.

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

The subject site is developed with a single family 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:**

March 23, 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.

April 19, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

May 22, 2007: The Board Senior Planner contacted with the applicant and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the 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 May 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and discuss at the staff review team meeting;
- the June 1st 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 June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

The applicant requested the above information to be conveyed in Spanish. A Current Planning Senior Planner called and delivered this information in Spanish. A letter with this same information in Spanish was also mailed to the applicant on May 24, 2007.

May 29, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Acting Building Official, the Board of Adjustment Chief Planner, the

Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Acting Chief Arborist, and the Assistant City Attorney to the Board.

The Development Services Senior Engineer submitted a review comment sheet showing he has no objection.

**STAFF ANALYSIS:**

- Scaled site plans and an elevation have been submitted that document the location and materials of the proposal that exceeds 4' in height and is located in the front yard setback. The document shows the existing fence is an approximately a 5'6" steel fence with 5'6" brick columns and a 6' gate. The existing fence is located about 0' from the property line.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 2' (whereby the proposal that would exceed 4' in height) will not adversely affect neighboring property.
- Granting this special exception of 2' with conditions imposed that the applicant complies with the submitted site plans and elevation would assure that the existing fence, columns and gate would be maintained of the materials and locations shown on these documents.
- The applicant has the burden of proof in establishing the following:
  - Granting the special exception to the visibility obstruction regulations (whereby, according to the submitted site plan and elevation, a 5'6" steel fence with 5'6" brick columns) does not constitute a traffic hazard.
- If this request is granted, subject to compliance with the submitted site plan and elevation, about 8' of the fence would be "excepted" into the 20' visibility triangle at the intersection Elwayne Avenue and the request site's driveway.

**BOARD OF ADJUSTMENT ACTION: JUNE 13, 2007**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

**MOTION: Beikman**

I move that the Board of Adjustment grant application **BDA 067-067** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

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

**SECONDED: Brannon**

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

NAYS: 0 – None  
MOTION PASSED 5 – 0 (Unanimously)

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**FILE NUMBER:** BDA 067-090

**BUILDING OFFICIAL'S REPORT:**

Application of David Kirgis for a special exception to the fence height regulations at 4724 Alta Vista Lane. This property is more fully described as Lot 11 in City Block 6/6392 and is zoned R-16(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 7 foot fence in a required front yard setback, which will require a special exception of 3 feet.

**LOCATION:** 4724 Alta Vista Lane

**APPLICANT:** David Kirgis

**REQUEST:**

- A special exception to the fence height regulations of 3' is requested in conjunction with constructing and maintaining the following in the site's 35' front yard setback an approximately 6' 6" wood fence with 7' brick columns on a site is developed with a single family home.

**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 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 has submitted fence elevations for the north, south and east sides of the proposed fence that show that the maximum height of the brick columns is 7'. The elevations also show the brick columns are proposed to be 2' x 2' in width and depth.
- According to the Development Code front yard provisions, this site has only one required front yard because the site's shorter frontage is on Alta Vista Circle and the

property to the west does not have a required front yard on Alta Vista Lane because its shorter frontage is College Park Drive.

- The site plan shows the location of the proposed fence in the site's Alta Vista Circle front yard setback. The plan identifies the distance between the columns and a 4' wide gate. The fence is proposed to be located on the property's Alta Vista Circle front property line, at a distance of 87' parallel to Alta Vista Circle; at an angle from the front property line connecting to the southern property line at a distance of 18'; and perpendicular to Alta Vista Circle, connecting to the residential structure at a distance of 40' (only 35' of this distance is part of the special exception request).
- There are three single family homes that would have direct frontage to the proposed fence. The house immediately east of the site appears to have solid screening with landscaping that exceeds 4' in height in their required front yard (Alta Vista Circle); it is unknown if there is a fence behind the landscaping. The houses to the north do not appear to have fences in their required front yards.
- In addition, one other fence/wall in the immediate area above four (4) feet high which appeared to be located in a front yard setback. The adjacent property to the west appears to have a fence in its College Park Drive front yard setback.

### **BACKGROUND INFORMATION:**

#### **Zoning:**

<u>Site:</u>	R-16 (A) (Single family district 16,000 square feet)
<u>North:</u>	R-16 (A) (Single family district 16,000 square feet)
<u>South:</u>	R-16 (A) (Single family district 16,000 square feet)
<u>East:</u>	R-16 (A) (Single family district 16,000 square feet)
<u>West:</u>	R-16 (A) (Single family district 16,000 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:**

April 27, 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.

May 17, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

- May 22, 2007: The Board Senior Planner contacted with 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 May 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and discuss at the staff review team meeting;
  - the June 1st 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 June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 29, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Acting Building Official, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Acting Chief Arborist, and the Assistant City Attorney to the Board.

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

### **STAFF ANALYSIS:**

- Scaled site plans and an elevation have been submitted that document the location and materials of the proposal that exceeds 4' in height and is located in the front yard setback which in this case is an approximately 6'6" wood fence with 7' brick columns.
- The applicant submitted 9 letters in support of the special exception with his application materials.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 3' (whereby the proposal that would exceed 4' in height) will not adversely affect neighboring property.
- Granting this special exception of 3' with conditions imposed that the applicant complies with the submitted site plans and elevation would assure that the proposed

fence and columns would be limited to/constructed/maintained of the materials and locations shown on these documents.

**BOARD OF ADJUSTMENT ACTION: JUNE 13, 2007**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Beikman**

I move that the Board of Adjustment grant application **BDA 067-090** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

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

SECONDED: **Brannon**

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

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

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FILE NUMBER: BDA 067-078

**BUILDING OFFICIAL'S REPORT:**

Application of Felix Limited, represented by Masterplan, for a special exception to the landscape regulations and a special exception to the visibility obstruction regulations at 2701 Harry Hines Blvd. This property is more fully described as Lot 24 in City Block 927 and is zoned PD-193 (I-2) which requires mandatory landscaping and visibility triangles at street intersections and drive approaches. The applicant proposes to construct a nonresidential structure and provide an alternate landscape plan which would require a special exception to the landscape regulations, and to construct and maintain items within required visibility triangles which will require special exceptions to the visibility obstruction regulations.

LOCATION: 2701 Harry Hines Boulevard

APPLICANT: Felix Limited  
Represented by Masterplan

**REQUESTS:**

- The following appeals have been made in this application:

1. a special exception to the landscape regulations is requested in conjunction with obtaining a final Certificate of Occupancy on a lot developed with a surface parking lot; and
2. special exceptions to the to the visibility obstruction regulations are requested in conjunction with, according to a revised landscape plan dated 05-31-07, locating a parked vehicle in one of the site's two 20' visibility triangles at the drive approach into the site from Harry Hines Boulevard, and locating a parked vehicle in the 45' visibility triangle at the intersection of Harry Hines Boulevard and Payne Street.

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

Denial

Rationale:

- The City's Acting Chief Arborist recommends that this request be denied.
- The applicant has not substantiated how granting this request would not compromise the spirit and intent of the landscaping requirements of PD No. 193.

**STAFF RECOMMENDATION (related to visibility obstruction special exceptions):**

Approval, subject to the following conditions:

1. Compliance with the submitted "American Airlines Center Traffic Management Plan for Parking Lots Located Along Harry Hines Boulevard" is required.
2. The 2 drive approaches on Payne Street must be removed and curb installed.
3. Compliance with the submitted revised site/landscape plan dated 5-31-07 is required as this plan relates to allowing deviations from City visibility obstruction requirements (as opposed to allowing deviations from City landscape regulations).

Rationale:

- The City's Development Services Senior Engineer has indicated that he "has no objections if certain conditions are met" those being the conditions 1 and 2 described above.

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

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

**STANDARD FOR A SPECIAL EXCEPTION TO THE VISIBILITY OBSTRUCTION REGULATIONS:**

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

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

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

The applicant's representative has submitted an alternate landscape plan that, according to the Acting City of Dallas Chief Arborist, is deficient in meeting the street tree, sidewalk location, and off-street parking screen requirements of the PD No. 193 landscape regulations.

- The Acting City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner (see Attachment D). The memo stated the following:
  - The special exception request is triggered by new construction.
  - Deficiencies:
    1. The applicant is required to provide 5 street trees and a 6' wide sidewalk between 5' – 12' from the back of curb.  
The applicant is proposing to provide 2 street trees and up to a 4' wide sidewalk between 13' -15' from the back of curb.
    2. The applicant is required to provide a 3.5' high off-street parking screen.  
The applicant is proposing to provide no screening of off-street parking.
  - Factors for consideration:
    - The owner is proposing to install two planting beds for a total of 624 square feet and an additional 82 square foot grass area in the parkway.
    - The owner proposes two 3" caliper crape myrtle trees and Asian jasmine ground cover for the planting beds within the lot.
    - The owner proposes to replace the corner sidewalk at the street intersection with 124 square feet of new sidewalk.
    - The north parking spaces cross the lot line and face into a rock and soil ledge that rises up to an adjacent car lot. This screens the parking lot from the parking lot to the north.
    - Overhead utility lines run along the property in the parkway on Payne Street and Harry Hines Boulevard. Small trees can be planted in the tree planting zone beneath the utilities but their growth habits may create pedestrian obstructions along the sidewalks as they grow out and could become a public safety concern with vehicle-to-pedestrian visual interaction at the busy intersection during heavy traffic times.
  - Recommendation:
    - Denial:
      - PD No. 193 requires significant landscaping throughout the district along street frontages to buffer the uses on the property. Only the minimum requirements within PD No. 193 area expected for the I-2 zoning

subdistrict which are the planting zone, the sidewalk widths, and the screening of off-street parking.

- Although the reduction and relocation of street trees seems justified (given their proximity to overhead utility lines), the screening of off-street parking should be required for all parking facing Payne Street and Harry Hines Boulevard.

**GENERAL FACTS (related to the visibility obstruction special exceptions):**

- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
  - in a visibility triangle as defined in the Code (45-foot visibility triangles at intersections and 20-foot visibility triangles at drive approaches); and
  - between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).A revised site/landscape plan dated 05-31-07 indicates that a parked vehicle is located in one of the site's two 20' visibility triangles at the drive approach into the site from Harry Hines Boulevard, and another parked vehicle is located in the 45' visibility triangle at the intersection of Harry Hines Boulevard and Payne Street.
- 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:
  - a letter that provided additional details about the request; and
  - a revised site/landscape plan.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD No. 193 (I-2 Subdistrict) (Planned Development District, Industrial)  
North: PD No. 193 (I-2 Subdistrict) (Planned Development District, Industrial)  
South: PD No. 582 (Planned Development District)  
East: PD No. 193 (I-2 Subdistrict) (Planned Development District, Industrial)  
West: PD No. 193 (I-2 Subdistrict) (Planned Development District, Industrial)

**Land Use:**

The subject site is developed as a parking lot. The areas to the north, south, and west are developed with parking lots; and the area to the east is developed with office uses.

**Zoning/BDA History:**

1. BDA 012-144, 2635 Harry Hines Boulevard (the lot immediately southeast of the subject site) On May 20, 2002, the Board of Adjustment Panel C denied a request for a variance to the landscape regulations without prejudice and granted a request for a special exception to the landscape regulations

2. BDA 012-143, 2722-2728 Akard Street, 2721-2727 Harry Hines Boulevard (the lot immediately northwest of the subject site)

imposing the following condition to the request: Compliance with the submitted revised landscape plan is required. The case report stated that the requests were made to maintain a surface parking lot.

On August 27, 2002, the Board of Adjustment Panel A granted a request for a variance to the landscape regulations imposing the following condition to the request: Compliance with the submitted revised landscape plan is required. The case report stated that the requests were made to construct and maintain a surface parking lot on a site that was undeveloped.

**Timeline:**

- April 10, 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.
- May 17, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- May 17, 2007: The Board Administrator met with 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 May 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and discuss at the staff review team meeting;
  - the June 1<sup>st</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 June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

- May 29 & June 4, 2007 The applicant's representative submitted additional information to the Board Administrator (see Attachments A and B).
- May 29, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Acting Building Official, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Acting Chief Arborist, and the Assistant City Attorney to the Board.
- May 31, 2007 The Development Services Senior Engineer submitted a Review Comment Sheet marked "Has no objections if certain conditions are met" commenting:
- 1) The current traffic management plan must be used. (Ref. letter dated 5/17/07 from applicant).
  - 2) The 2 drive approaches on Payne Street must be removed and curb installed.
- (A copy of the traffic management plan that that the senior engineer references above was obtained from the applicant's representative – see Attachment C).
- June 5, 2007 The Acting City of Dallas Chief Arborist submitted a memo that provided his comments regarding the special exception to the landscape regulations (see Attachment D).

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

- An alternate landscape plan has been submitted that, according to the Acting City of Dallas Chief Arborist, is deficient in meeting the street tree, sidewalk location, and parking screen requirements of the PD No. 193 landscape regulations.
- The applicant has the burden of proof in establishing the following:
  - The special exception (where an alternate plan has been submitted that, according to the Chief Arborist, provides 2 of 5 required street trees, a 4' wide sidewalk located between 13' – 15" from the back of the curb as opposed to a 6' wide sidewalk located between 5' – 12' from the back of the curb, and none of the required 3.5' high parking lot screen) will not compromise the spirit and intent of the section of the ordinance (Section 26: Landscape, streetscape, screening, and fencing standards).
- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted alternate landscape plan, the final Certificate of Occupancy could be issued on the site, where the site would be "excepted" from full compliance to the street tree, sidewalk location, and off-street parking screen requirements of the Oak Lawn PD landscape ordinance.

**STAFF ANALYSIS (related to the visibility obstruction special exception):**

- The Development Services Senior Engineer has commented that he has no objections to the requests for special exceptions to the visibility obstruction regulations upon the board imposing 2 conditions: 1) that the current traffic management plan submitted by the applicant be used; and 2) that the 2 drive approaches on Payne Street be removed and curb installed.
- The applicant has the burden of proof in establishing the following:
  - Granting the special exceptions to the visibility obstruction regulations (whereby, according to the submitted revised 5-31-07 site/landscape plan, a parked vehicle would be located in the one of the site's two 20' visibility triangles at the drive approach into the site from Harry Hines Boulevard, and another parked vehicle would be located in the 45' visibility triangle at the intersection of Harry Hines Boulevard and Payne Street) will not constitute a traffic hazard.
- If these requests are granted, subject to compliance with the submitted revised site/landscape plan dated 5-31-07 (as it relates to allowing deviations to the City visibility obstruction regulations) and the submitted "American Airlines Center Traffic Management Plan for Parking Lots Located Along Harry Hines Boulevard", and the condition that the 2 drive approaches on Payne Street must be removed and curb installed, then a parked vehicle would be "excepted" into one of the two, 20' drive approach visibility triangles into the site from Harry Hines Boulevard, and into the 45' intersection visibility triangle at Payne Street and Harry Hines Boulevard.

**BOARD OF ADJUSTMENT ACTION: JUNE 13, 2007**

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

APPEARING IN OPPOSITION: No one

MOTION: **Chernock**

I move that the Board of Adjustment in Appeal No. **BDA 067-078**, hold this matter under advisement until **August 15, 2007**.

SECONDED: **Beikman**

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

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

\*\*\*\*\*

FILE NUMBER: BDA 067-084

**BUILDING OFFICIAL'S REPORT:**

Application of Brian Roughton for a special exception to the landscape regulations, a special exception to the fence height regulations and for a variance to the front yard setback regulations at 3702 Fairmount Street. This property is more fully described as Lot 1 in City Block 3/1009 and is zoned PD-193 (O-2) which requires mandatory landscaping, limits the height of a fence to 9 feet, and requires a 20 foot front yard setback. The applicant proposes to construct and maintain a nonresidential structure

and provide an alternate landscape plan which will require a special exception to the landscape regulations, to construct a 15 foot fence which will require a special exception of 6 feet to the fence regulations, and to provide a 12 foot 2 inch front yard setback which will require a 7 foot 10 inch variance to the front yard setback regulations.

**LOCATION:** 3702 Fairmount Street

**APPLICANT:** Brian Roughton

**REQUESTS:**

- The following appeals have been made in this application:
  1. a variance to the front yard setback regulations of 7' 10";
  2. a special exception to the landscape regulations; and
  3. a special exception to the fence height regulations of 6'.\*

The variance and landscape special exception are requested in conjunction with constructing and maintaining a cabana structure in the site's 20' front yard setback on Fairmount Street, and the fence height special exception is requested in conjunction with constructing and maintaining a 14' 5" high stone wall in the site's Fairmont Street front yard setback. (The site is developed as an art gallery).

- \* Although the applicant has requested a fence height special exception of 6' that would allow a 15' high fence, the applicant's submitted elevation denotes a fence that is 14' 5" high.

**STAFF RECOMMENDATION (related to the variance):**

Denial without prejudice

Rationale:

- There are no physical site constraints with regard to the subject site's size, shape, or slope that preclude it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 193 (O-2 Subdistrict) zoning classification: the subject site is relatively flat, rectangular in shape (130' x 53'), and 6,890 square feet in area.

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

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan is required with the following specifications/modifications:
  - any tree planted within 10' proximity to overhead utility lines should be limited to small tree species as allowed under PD No. 193;
  - all plants located adjacent to the sidewalk that can limit accessibility can not overhang the sidewalk; and
  - the proposed street tree shown on this plan at the corner on the Fairmount Street side of the site is waived if small trees are planted in the tree planting zone.

Rationale:

- The City's Acting Chief Arborist supports the request in that if the special exception is granted (with the conditions mentioned above imposed), the special exception will not compromise the spirit and intent of the landscaping requirements of PD No. 193.

**STAFF RECOMMENDATION (related to fence height special exception):**

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

**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.

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

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

**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 (related to variance):**

- A 20' front yard setback is required for structures located on properties zoned PD No. 193 (O-2 Subdistrict).

A site plan has been submitted indicating an existing structure and a proposed cabana structure (33' long, 10' wide) located 12' 2" from the site's Fairmont Street front property line (or 7' 10" into the 20' front yard setback).

- The site is relatively flat, rectangular in shape (130' x 53') and 6,890 square feet in area. The site is zoned PD No. 193 (O-2 Subdistrict).
- The site is located at the corner of Fairmont Street and Welborn Street and has two front yard setbacks which is a typical characteristic of any lot that has a street frontage and is not zoned single family, duplex, or agricultural. The variance in this application is only being requested for a structure that is proposed to encroach into the site's Fairmont Street front yard setback.
- DCAD records indicate that the site is developed with a "converted residence" built in 1930 that is 1,730 square feet in area.
- Although an existing structure on the site is located in the Fairmont Street 20' front yard setback, the applicant has chosen not to make application for a variance to remedy what appears to be this nonconforming structure – 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).
- According to calculations taken from the submitted site plan by the Board Administrator, about 234 square feet of the proposed 330 square foot cabana structure is proposed to be located in the Fairmont Street 20' front yard setback.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included a letter that provides additional details about the requests.

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

- PD No. 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot is performed that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood tornado, riot, act of the public enemy, or accident of any kind.  
The applicant has submitted a "survey plat"/landscape plan that, according to the Acting City of Dallas Chief Arborist, is deficient in meeting the street tree, general planting area, special planting area, and sidewalk location requirements of the PD No. 193 landscape regulations.
- The Acting City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner (see Attachment B). The memo stated the following:

- The applicant is requesting relief from the street tree, general planting area, special planting area, and sidewalk location requirements of PD No. 193 landscape regulations.
- The special exception request is triggered by new construction.
- Deficiencies:
  1. The applicant is required to provide 6 street trees and a 6' wide sidewalk between 5' – 12' from the back of curb.  
The applicant is proposing to provide 5 street trees and a 4' wide sidewalk between 4' -6' from the back of curb.
  2. The applicant is required to designate 689 square feet of lot area and 1,098 square feet of required front yard area as "general planting area."  
The applicant is proposing to provide 435 square feet of lot area and 174 square feet of required front yard as "general planting area."
  3. The applicant is required to designate 138 square feet of lot area and 220 square feet of required front yard area as "special planting area."  
The applicant is proposing to provide 170 square feet of lot area and 12 square feet of required front yard as "special planting area."
- Factors for consideration:
  - Head-in street parking and a city sidewalk exists on site. The sidewalk is situated within the lot lines of the property for most of its distance.
  - The applicant is proposing large cedar elm trees for the street frontage. Low-lying overhead utility lines are situated near the planting locations. Small tree species, as allowed in PD No. 193, by Oncor and the Public Utilities Commission, are recommended in situations where there is tree planting within 10' of a utility line. The tree planting size should be according to, at least, the minimum PD 193 specifications.
  - The visibility triangle located at the corner of Welborn and Fairmount is 30'. Although it appears both trees shown on the plan would currently conform to regulations, a tree selection change to small trees may create future vision impairments as the tree grows. Trees planted at the corner locations should not limit access to the sidewalk or impair vision for vehicular traffic. For public safety purposes, the tree proposed for the Fairmount Street side at the street corner could be considered for removal from the plan. This would reduce the total street tree count to 4 trees but keep the corner visually clear to traffic.
  - Plant materials situated adjacent to sidewalks need to be maintained so they do not overhang the sidewalk in order to conform to city sidewalk clearance regulations. Some existing plant materials must be cut back to comply.
- Recommendation:
  - Approval, subject to the following:
    1. trees planted within 10' proximity to overhead utility lines would be limited to small tree species as allowed under PD No. 193;
    2. all plants located adjacent to the sidewalk that can limit accessibility will not be allowed to overhang the sidewalk; and
    3. the proposed street tree on the corner on the Fairmount Street side will not be planted if small trees are planted in the tree planting zone.

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

- The Dallas Development Code states that fences located in front yard setbacks on properties zoned PD 193 (O-2 Subdistrict) shall not exceed 9' above grade. A site plan and elevation have been submitted that denotes a 14' 5" high stone wall to be located in the site's Fairmount Street.
- The scaled site plan and elevation show that the proposed fence in the Fairmount Street 20' front yard setback is approximately 66' in length parallel to Fairmount Street located approximately 12' 2" from the property line (or approximately 23' from the pavement line).
- Immediately across the street from the proposed 15' high stone wall is a convenience store (On The Run) that is oriented north to Oak Lawn Avenue.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences above nine (9) feet high which appeared to be located in the front yard setback.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD No. 193 (O-2 Subdistrict) (Planned Development District, Office)  
North: PD No. 193 (GR Subdistrict) (Planned Development District, General Retail)  
South: PD No. 193 (O-2 Subdistrict) (Planned Development District, Office)  
East: PD No. 193 (O-2 Subdistrict) (Planned Development District, Office)  
West: PD No. 193 (O-2 Subdistrict) (Planned Development District, Office)

**Land Use:**

The subject site is developed as an art gallery (The Roughton Galleries). The areas to the north and west are developed with retail/commercial uses; and the areas to the east and south are developed with residential 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:**

- April 25, 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.
- May 17, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- May 21, 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 requests;
- 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 May 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and discuss at the staff review team meeting;
- the June 1<sup>st</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 June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 25, 2007            The applicant submitted additional information to the Board Administrator (see Attachment A).

May 29, 2007:            The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Acting Building Official, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Acting Chief Arborist, and the Assistant City Attorney to the Board.

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

June 5, 2007            The Acting City of Dallas Chief Arborist submitted a memo that provided his comments regarding the special exception to the landscape regulations (see Attachment B).

**STAFF ANALYSIS (related to variance):**

- The site is relatively flat, rectangular in shape (130' x 53') and 6,890 square feet in area. The site is zoned PD No. 193 (O-2 Subdistrict).
- According to calculations taken from the submitted site plan by the Board Administrator, about 234 square feet of the proposed 330 square foot cabana structure is proposed to be located in the Fairmount Street 20' front yard setback.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the front yard setback regulations of 7' 10" requested to construct and maintain a cabana structure in the site's Fairmount

Street 20' front yard setback will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.

- The variance is necessary to permit development of the subject site (a site that is developed with an art gallery, and a site that is relatively flat, rectangular in shape (130' x 53'), and 6,890 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. 193 (O-2 Subdistrict) 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 same PD No. 193 (O-2 Subdistrict) zoning classification.
- If the Board were to grant the variance request, imposing a condition whereby the applicant must comply with the submitted site plan, the encroachment would be limited to the approximately 330 square foot proposed cabana structure located 12' 2" from the site's Fairmount Street front property line (or 7' 10" into the 20' front yard setback) shown on this document.

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

- An alternate landscape plan has been submitted that, according to the Acting City of Dallas Chief Arborist, is deficient in meeting the street tree, general planting area, special planting area, and sidewalk location requirements of the PD No. 193 landscape regulations.
- The applicant has the burden of proof in establishing the following:
  - The special exception (where an alternate plan has been submitted that, according to the Chief Arborist, is not fully providing the required 6' wide sidewalk between 5' – 12' from the back of curb on the site, the general and special planting areas of the lot area and in the required front yard) will not compromise the spirit and intent of the section of the ordinance (Section 26: Landscape, streetscape, screening, and fencing standards).
- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted alternate landscape plan with the following specifications/modifications (any tree planted within 10' proximity to overhead utility lines should be limited to small tree species as allowed under PD No. 193; all plants located adjacent to the sidewalk that can limit accessibility can not overhang the sidewalk; and the proposed street tree shown on this plan at the corner on the Fairmount Street side of the site is waived if small trees are planted in the tree planting zone), the site would be "excepted" from full compliance to the street tree, general planting area, special planting area, and sidewalk location requirements of the Oak Lawn PD landscape ordinance.

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

- A scaled site plan has been submitted that indicates that the proposed wall exceeding the 9' maximum height allowed in the zoning district is approximately 66' in length parallel to Fairmount Street, located approximately 12' 2" from the property line (or approximately 23' from the pavement line).
- A scaled elevation has been submitted that indicates the materials and maximum height of the proposed wall: a 14' 5" high stone wall.
- Immediately across the street from the proposed 15' high stone wall is a convenience store (On The Run) that is oriented north to Oak Lawn Avenue.
- No other fences above nine (9) feet high which appeared to be located in the front yard setback were noted in the surrounding area. As of June 4<sup>th</sup>, no letters had been submitted in support or in opposition to the special exception.
- As of June 6<sup>th</sup>, no letters had been submitted in support or in opposition to the special exception.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 6' (whereby the proposed fence/wall in the front yard setback that would exceed 9' in height) will not adversely affect neighboring property.
- Granting this special exception to the fence height regulations of 6' with conditions imposed that the applicant complies with the submitted site plan and elevation would provide assurance that the proposed wall to be located in the site's Fairmount Street front yard setback exceeding 9' in height would be constructed and maintained in the location, and of the heights and materials shown on these documents.

**BOARD OF ADJUSTMENT ACTION: JUNE 13, 2007**

APPEARING IN FAVOR: Brian Roughton, 2505 Welborn, Dallas, TX  
Randy Mobley, 4732 Nashwood, Dallas, TX

APPEARING IN OPPOSITION: No one

**MOTION #1: Beikman**

I move that the Board of Adjustment, in Appeal No. **BDA 067-084**, on application of Brian Roughton, **grant** the request of this applicant to provide an alternate landscape plan as a special exception to the landscaping requirements contained in PD 193, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that this special exception will not compromise the spirit and intent of Section 51P-193.126 of the Dallas Development Code. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted alternate landscape plan is required with the following specifications/modifications:
- Any tree planted within a 10 foot proximity to an overhead utility line must be limited to small tree species as allowed under PD 193;
- All plants located adjacent to the sidewalk that can limit accessibility cannot overhang the sidewalk; and

- The proposed street tree shown on this plan at the corner on the Fairmount Street side of the site is waived if small trees are planted in the tree planting zone.

**SECONDED: Brannon**

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

**NAYS:** 0 – None

**MOTION PASSED** 5 – 0 (Unanimously)

**MOTION #2: Beikman**

I move that the Board of Adjustment, in Appeal No. **BDA 067-084**, on application of Brian Roughton, **grant** the request of this applicant to construct and maintain a 15-foot-tall 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 site plan and elevation is required and will cease if the joint use agreement terminates or changes.

**SECONDED: Brannon**

**AYES:** 4–Cox, Brannon, Beikman, Chernock

**NAYS:** 1 – Gillespie

**MOTION PASSED** 4 – 1

**MOTION #3: Beikman**

I move that the Board of Adjustment, in Appeal No. **BDA 067-084**, on application of Brian Roughton, **deny** the variance requested by this applicant **without** prejudice, because our evaluation of the property and the 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 not result in unnecessary hardship to this applicant.

**SECONDED: Brannon**

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

**NAYS:** 0 –

**MOTION PASSED** 5 – 0 (unanimously)

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**FILE NUMBER:** BDA 067-098

**BUILDING OFFICIAL'S REPORT:**

Application of Dick P. Wood, Jr. represented by Baldwin Associates for a variance to the height regulations at 8623 Hillcrest Road. This property is more fully described as a 2.2 acre tract in City Block 5464 and is zoned CR and MC-1, which limits the height of a

structure to 47 feet 3 1/2 inches due to the residential proximity slope regulations. 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.

**LOCATION:** 8623 Hillcrest Road

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

**REQUEST:**

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 is requested in conjunction with constructing a retail/office development on a site that is undeveloped.

**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 variance is 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 relocating the 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 subject site is zoned CR (Community Retail) and MC-1 (Multiple Commercial).
- 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.
- The applicant's representative has verbally indicated the purpose of the additional height will allow for screening area for mechanical equipment.
- 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 (RPS) 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 residentially zoned property that the RPS is originating from is located east of the request site across Hillcrest Road and is developed with a religious institution. The plat map and the site plan show the distance from the request site's eastern property line to the originating property line of the religious institution site is 90 feet. The site plan shows the distance from the eastern property line to the eastern side of the proposed building is approximately 52 feet.
- The 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 request 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.

### **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 religious institution 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:**

BDA067-054                      On April 18, 2007, the Board of Adjustment Panel B on took the following actions at 8623 Hillcrest Road (the request site): Denied a variance to the floor area ratio without prejudice; Denied a variance to the height regulations of 15 feet, eight-and-a-half inches without prejudice; and Granted an alternate landscape plan as a special exception to the landscape requirements, subject to the following conditions: compliance with the submitted alternate landscape plan is required and the applicant/owner must meet all private licensing and permit requirements for planting in the parkway.

**Timeline:**

April 27, 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.

May 17, 2007:                      The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B according to the rules of procedure.

May 22, 2007:                      The Board Administrator called and gave 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 May 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and discuss at the staff review team meeting;
- the June 1st 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 June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 29, 2007:

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

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

### **STAFF ANALYSIS:**

- 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 variance to 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 variance 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 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 both zoning districts on the site that would be 15' 8.5" above the residential proximity slope line.

**BOARD OF ADJUSTMENT ACTION: JUNE 13, 2007**

**APPEARING IN FAVOR:** Robert Baldwin, 401 Exposition, Dallas, TX

**APPEARING IN OPPOSITION:** Jonathan Vinson, 900 Main St., Dallas, TX

**MOTION:** Gillespie

I move that the Board of Adjustment in Appeal No. **BDA 067-078**, hold this matter under advisement until **August 15, 2007**.

**SECONDED:** Brannon

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

**NAYS:** 0 – None

**MOTION PASSED** 5 – 0 (Unanimously)

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**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

**June 13, 2007 Public Hearing Notes:**

- The owner of the nonconforming motel use and his attorney testified at the public hearing that although the staff report mailed to the board approximately a week prior to the hearing had stated that the owner's estimated date of full amortization for the nonconforming use on the subject site was December 2011, the owner's actual

answer in his returned interrogatories for full amortization of this use was December 2014.

The Assistant City Attorney who prepared the subpoena duces tecum/interrogatories to the owner of the motel and procured a Certified Public Accountant to review the motel owner's answers/financial documentation, submitted additional documentary evidence to the board at the public hearing. This information included documents prepared by the accountant, and a conclusion that the nonconforming use on the subject site was "fully amortized."

### **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.
- On March 21, 2007, the Board of Adjustment Panel B conducted a public hearing on this matter, and delayed action until April 18, 2007. No additional information was submitted to staff from either the applicant or the owner of the motel on the subject site.
- The Board of Adjustment conducted a public hearing on this appeal on April 18, 2007. The board determined based on the evidence and testimony presented to them at the public hearing that continued operation of the nonconforming motel use would have an adverse effect on nearby properties, and set a hearing date June 13, 2007 for the purpose of establishing a compliance date for this nonconforming use.
- Prior to the March 21<sup>st</sup> and April 18<sup>th</sup> public hearings on this appeal, the applicant had submitted information beyond what was submitted with the original application which was entitled as “Attachment A”. (This and all other information submitted prior to or at the March and April public hearings have been retained in the case file and is available for review upon request).
- On April 20, 2007, a subpoena duces tecum and interrogatories were sent to the owner of the nonconforming motel use.
- On May 21, 2007, the owner of the nonconforming motel use submitted a response to the subpoena duces tecum and interrogatories (see Attachment C). This information included documents assembled by the owner of the nonconforming motel use on the site, including an estimated date of full amortization for the nonconforming use on the subject site of December 2011.

## **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).
- March 21, 2007: The Board of Adjustment Panel B conducted a public hearing on this matter and delayed action on the application until April 18, 2007.
- March 23, 2007: The Board Administrator left a message with the owner of the motel on the site's attorney informing him of the April 9<sup>th</sup> deadline to submit information for the board's docket and the board's rule pertaining to documentary evidence.
- March 23, 2007: The Board Administrator spoke with the applicant informing her of the April 9<sup>th</sup> deadline to submit information for the board's docket and reminding her about the board's rule pertaining to documentary evidence.
- April 2, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Acting Chief Arborist, and the Assistant City Attorney to the Board.
- April 18, 2007: The Board of Adjustment conducted a public hearing on this appeal on April 18, 2007. The board determined based on the evidence and testimony presented to them at the public hearing that continued operation of the nonconforming motel use would have an adverse effect on nearby properties, and set a hearing date June 13, 2007 for the purpose of establishing a compliance date for this nonconforming use
- April 20, 2007: A subpoena duces tecum and interrogatories were sent to the owner of nonconforming use on the subject site.

May 21, 2007: The owner of the nonconforming use on the subject site submitted answers and responses to the subpoena duces tecum and interrogatories (see Attachment C).

May 29, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Acting Building Official, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Acting Chief Arborist, and the Assistant City Attorney to the Board.

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

### **STAFF ANALYSIS:**

- 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.
- On April 18, 2007, the Board of Adjustment determined at their public hearing that continued operation of the nonconforming motel use would have an adverse effect on nearby property, and set a hearing date of June 13, 2007 for the purpose of establishing a compliance date for this nonconforming use.
- The purpose of the Board of Adjustment's June 13<sup>th</sup> public hearing is to establish 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. (The Dallas Development Code states that 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).

- The Dallas Development Code states that following factors must be considered by the board in determining a reasonable amortization period:
  - 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.
  - 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.
  - Any return on investment since inception of the use, including net income and depreciation.
  - The anticipated annual recovery of investment, including net income and depreciation.
- The Dallas Development Code additionally states that 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.
- On May 21, 2007, the owner of the nonconforming motel use submitted a response to the subpoena duces tecum and interrogatories (see Attachment C). This information included documents assembled by the owner of the nonconforming motel use on the site, including an estimated date of full amortization for the nonconforming use on the subject site of December 2011.

**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)

**BOARD OF ADJUSTMENT ACTION: APRIL 18, 2007**

APPEARING IN FAVOR: Beverly Mendoza, 520 E 5<sup>th</sup> St., Dallas, TX

APPEARING FOR THE CITY: Tania Alavera, City Attorney’s office

APPEARING IN OPPOSITION: Thomas Keen, 2609 Banner Elk Cr., Plano, TX  
Kaye Parks, 465 S RL Thornton Frwy, Dallas, TX  
Kaushue Masters, 2924 Clyupia Dr, GP, TX  
Ketan Masters, 2601 Oates Ln, Arlington TX

**MOTION #1: Taylor**

I move that the Board of Adjustment in Appeal No. **BDA 067-053**, based on the evidence presented at the public hearing, find that continued operation of this nonconforming use will have an adverse effect on nearby properties, and set a hearing date of **May 16, 2007** for the purpose of establishing a compliance date for this nonconforming use.

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

**MOTION #2: Beikman**

I move to **reconsider** the previous motion made on this matter.

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

**MOTION #3: Brannon**

I move that the Board of Adjustment in Appeal No. **BDA 067-053**, based on the evidence presented at the public hearing, find that continued operation of this nonconforming use will have an adverse effect on nearby properties, and set a hearing date of **June 13, 2007** for the purpose of establishing a compliance date for this nonconforming use.

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

**BOARD OF ADJUSTMENT ACTION: JUNE 13, 2007**

**APPEARING IN FAVOR:** No one

**APPEARING FOR THE CITY:** Shereen El Domeiri, CAO's office, 7DN, City Hall  
Jim Jenkins, 600 N Pearl St., #2270, Dallas, TX

**APPEARING IN OPPOSITION:** Thomas Keen, 2609 Banner Elk Cr., Plano, TX  
Ketan Masters, 2601 Oates Ln, Arlington TX

**MOTION:** Brannon

I move that the Board of Adjustment, in Appeal No. **BDA 067-053**, provide a compliance date of **June 13, 2007** for the nonconforming hotel or motel use currently being operated on the property located at 465 South R.L. Thornton Freeway, because the facts and testimony show that the owner's actual investment in the use, before the time that the use became nonconforming, can be amortized within this time period. I further move that the owner's certificate of occupancy for the hotel or motel use be revoked on **June 13, 2007**, unless the hotel or motel use becomes a conforming use.

**SECONDED:** Beikman

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

**NAYS:** 0 – None

**MOTION PASSED** 5 – 0 (Unanimously)

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**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

**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.
- On March 21, 2007, the Board of Adjustment Panel B conducted a public hearing on this matter and delayed action until April 18, 2007. The applicant has submitted no additional information on this request.
- On April 18, 2007, the Board of Adjustment Panel B conducted a public hearing on this matter and delayed action until June 13, 2007. The applicant was informed of the specific code provision related to the board waiving or reimbursing a filing fee for a request to establish a compliance date (i.e. the board may waive the fee for a request to establish a compliance date under Section 51A-4.704(a)(1) only if the applicant is a corporeal person for whom payment of the fee would result in substantial financial hardship; or 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).
- The applicant has submitted no additional information on this request.

**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.
- March 21, 2007: The Board of Adjustment Panel B conducted a public hearing on this matter and delayed action on the request until April 18, 2007.
- April 18, 2007: The Board of Adjustment Panel B conducted a public hearing on this matter and delayed action on the request until June 13, 2007. The applicant was informed of the standard for waiving/reimbursing a fee for a request to establish a compliance date.

**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)

**BOARD OF ADJUSTMENT ACTION: APRIL 18, 2007**

APPEARING IN FAVOR: Beverly Mendoza, 520 E. 5<sup>th</sup> St., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Brannon**

I move that the Board of Adjustment in Appeal No. **BDA 067-053**, hold this fee reimbursement matter under advisement until **June 13, 2007**.

SECONDED: **Beikman**

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

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

**BOARD OF ADJUSTMENT ACTION: JUNE 13, 2007**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Brannon**

I move that the Board of Adjustment in Appeal No. **BDA 067-053**, **deny** the request to reimburse the filing fee submitted in conjunction with the Board of Adjustment appeal to establish a compliance date for a nonconforming motel use.

SECONDED: **Beikman**

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

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

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MOTION: **Brannon**

I move to adjourn this meeting.

SECONDED: **Chernock**

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

NAYS: 0 -

MOTION PASSED 5 – 0 (unanimously)

**3:55 P.M.** - Board Meeting adjourned for **June 13, 2007**.

\_\_\_\_\_  
CHAIRPERSON

\_\_\_\_\_  
BOARD ADMINISTRATOR

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BOARD SECRETARY

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