

**NOTICE FOR POSTING**  
**MEETING OF**  
**BOARD OF ADJUSTMENT, PANEL C**  
**MONDAY, DECEMBER 10, 2007**

**Briefing: 10:00 A.M. 5/E/S**  
**Public Hearing: 1:00 P.M. COUNCIL CHAMBERS**

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

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

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

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12-10-2007

ZONING BOARD OF ADJUSTMENT, PANEL C  
MONDAY, DECEMBER 10, 2007  
AGENDA

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BRIEFING	5ES	10:00 A.M.
LUNCH		
PUBLIC HEARING	COUNCIL CHAMBERS	1:00 P.M.

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

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**MISCELLANEOUS ITEMS**

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	Approval of the <b>Monday, November 12, 2007</b> Board of Adjustment Public Hearing Minutes	M1
BDA 067-167	7362 Dominique Drive <b>REQUEST:</b> Of Gay Carranza, represented by Vince Mongaras, to reimburse the filing fee submitted in conjunction with a request for a special exception to the single family regulations	M2
BDA 067-168	3250 N. Hampton Road <b>REQUEST:</b> Of Lisa Lamkin of BRW Architects, to reimburse the filing fee submitted in conjunction with a request for a special exception to the off-street parking regulations	M3

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**UNCONSTESTED CASES**

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BDA 067-167	7362 Dominique Drive <b>REQUEST:</b> Application of Gay Carranza, represented by Vince Mongaras, for a special exception to the single family regulations	1
BDA 067-168	3250 N. Hampton Road <b>REQUEST:</b> Application of Lisa Lamkin, BRW Architects, for a special exception to the parking regulations	2
BDA 067-169	2035 Cullen Avenue <b>REQUEST:</b> Application of Jeff Dworkin for a variance to the front yard setback regulations	3

BDA 067-174	4116, 4122, 4130, and 4204 Gaston Avenue <b>REQUEST:</b> Application of Greenway Gaston, LP, represented by Karl A. Crawley, Masterplan, for a special exception to the parking regulations	4
BDA 067-175	9403 Biscayne Boulevard <b>REQUEST:</b> Application of Misty Ventura for a special exception to the fence height regulations	5

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**REGULAR CASES**

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BDA 067-172(K)	1601 S. Lamar Street <b>REQUEST:</b> Application of Deshazo, Tang & Associates, represented by John J. Deshazo, Jr., for a special exception to the parking regulations	6
BDA 067-173(K)	6405 Del Norte Lane <b>REQUEST:</b> Application of Jeff Nelson for a variance to the front yard setback regulations	7
BDA 067-176(K)	17601 Harbord Oaks Circle <b>REQUEST:</b> Application of Katherine Nicholas for a variance to the front yard setback regulations	8

## EXECUTIVE SESSION NOTICE

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

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

**(Rev. 6-24-02)**

**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel C November 12, 2007 public hearing minutes.

**MISCELLANEOUS ITEM NO. 2**

**FILE NUMBER:** BDA067-167

**REQUEST:** To reimburse the filing fee submitted in conjunction with a request for a special exception to the single family regulations.

**LOCATION:** 7362 Dominique Drive

**APPLICANT:** Gay Carranza, represented by Vince Mongaras

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

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

**GENERAL FACTS:**

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waivers/reimbursements:
  - The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.
  - The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board's miscellaneous docket for predetermination.
  - If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.
  - In making this determination, the board may require the production of financial documents.

**Timeline:**

October 19, 2007 The applicant's representative submitted a letter to the board administrator requesting a reimbursement of the \$600.00 filing fee submitted in conjunction with a request for special exception to the single family regulations (see Attachment A).

Nov. 15, 2007: The Board of Adjustment Secretary assigned BDA067-167 to Board of Adjustment Panel C.

Nov. 15 & 29, 2007: The Board Administrator contacted the applicant's representative and shared the following information by phone and email:

- 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 November 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
- the November 30<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 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 December public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

**MISCELLANEOUS ITEM NO. 3**

**FILE NUMBER:** BDA067-168

**REQUEST:** To reimburse the filing fee submitted in conjunction with a request for a special exception to the off-street parking regulations.

**LOCATION:** 3250 N. Hampton Road

**APPLICANT:** Lisa Lamkin of BRW Architects

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

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

**GENERAL FACTS:**

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waivers/reimbursements:
  - The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.
  - The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board's miscellaneous docket for predetermination.
  - If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.
  - In making this determination, the board may require the production of financial documents.

**Timeline:**

October 29, 2007 The applicant submitted a letter to the board administrator requesting a reimbursement of the \$9,300.00 filing fee submitted in conjunction with a request for special exception to the off-street parking regulations (see Attachment A).

Nov. 15, 2007: The Board of Adjustment Secretary assigned BDA067-168 to Board of Adjustment Panel C.

Nov. 15, 2007: The Board Administrator contacted the applicant and shared the following information by phone and email:



- 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 November 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
- the November 30<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 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 December public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

**FILE NUMBER:** BDA 067-167

**BUILDING OFFICIAL'S REPORT:**

Application of Gay Carranza, represented by Vince Mongaras, for a special exception to the single family regulations at 7362 Dominique Drive. This property is more fully described as Lot 41 in City Block D/2998 and is zoned R-16(A) which limits the number of dwelling units to one. The applicant proposes to construct and maintain an additional dwelling unit which will require a special exception.

**LOCATION:** 7362 Dominique Drive

**APPLICANT:** Gay Carranza  
Represented by Vince Mongaras

**REQUEST:**

- A special exception to the single family regulations is requested in conjunction with completing and maintaining an existing structure as a second dwelling unit on a site developed with a single family home.

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to authorize an additional dwelling unit in any single family zoning district since the basis for this type of appeal is *when in the opinion of the board*, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties. In granting a special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

**STANDARD FOR A SPECIAL EXCEPTION TO THE SINGLE FAMILY USE REGULATIONS TO AUTHORIZE AN ADDITIONAL DWELLING UNIT IN A SINGLE FAMILY ZONING DISTRICT:**

The board may grant a special exception within the single family use regulations to authorize an additional dwelling unit in any single family zoning district when, in the opinion of the board, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties. In granting a special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

**GENERAL FACTS:**

- The Dallas Development Code limits the number of dwelling units on a lot zoned R-16 (A). In addition, the Dallas Development Code defines “single family” use as “one dwelling unit located on a lot;” and a “dwelling unit” as “one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms.”  
A site plan has been submitted that denotes a “2 car garage/office/exer. above” structure that is located in the south central portion of the site on a site developed with existing single family home/dwelling unit.  
Building Inspection has determined from the submitted site and floor plans that this structure is a “dwelling unit.”
- Submitted floor plans indicate that first floor of the structure is comprised of/will be completed with a two car garage and a laundry room; and that the second floor is comprised of/will be completed with an office/kitchen, exercise room, conservatory, closet, and bath.
- According to the submitted “ground level plan”, the site has 2,592 square feet of ground level “existing conditioned area” with “new const. conditioned area” to total 1,370 square feet (585 square feet of ground level and 785 square feet of second level).
- Submitted elevations of the proposed structure indicate a 2-story structure that is approximately 21.5’ high. (Note that the completion of the 2-story accessory structure does not require a height variance even though the main structure on the site is 1-story since Building Inspection has stated that a building permit for the 2-story accessory structure was issued prior to the code revisions in May of 2005 which states that the height of an accessory structure cannot exceed the height of the main structure).
- The site plan states that the site is 14,805 square feet in area.
- The subject site is developed with, according to DCAD records, the following:
  - a single family home in average condition built in 1973 with 3,228 square feet of living area;
  - a 594 square foot detached servants quarters;
  - a 594 square foot detached garage;
  - a 522 square foot enclosed patio;
  - a 234 square foot enclosed patio; and
  - a 420 square foot attached garage.
- The site plan indicates that the additional “dwelling unit” structure is located not closer than 11’ from the site’s southern property line.

## **BACKGROUND INFORMATION:**

### **Zoning:**

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

### **Land Use:**

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

### **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:**

- October 19, 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.
- Nov. 15, 2007:     The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- Nov. 15, 2007:     The Board Administrator contacted the applicant and shared the following information by phone and email:
- 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 November 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
  - the November 30<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 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 December public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Nov. 27, 2007:     The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

**STAFF ANALYSIS:**

- The site is zoned R-16(A) where the Dallas Development Code permits one dwelling unit per lot. The site is developed with a single family home/dwelling unit, and the applicant proposes to complete/maintain an existing structure as a second dwelling unit on the site hence the special exception request.
- The request is to allow an additional dwelling unit on the subject site – a structure that according to the applicant is necessary because of overcrowding (with seven people) in the existing house. This request centers on the function of what is proposed inside the structure. Building Inspection has deemed the proposed structure a “dwelling unit” based on what is shown on the submitted floor plans. If the board were to deny this request, the structure could be maintained with modifications to the function/use inside the structure (or to the floor plans). If the board were to deny the request, no modifications to structure’s footprint, height, or location would be necessary since the structure complies with the applicable zoning code development standards at the time the permit was filed according to information submitted by the applicant over five years ago.
- The applicant has the burden of proof in establishing that the additional dwelling unit will not be used as rental accommodations (by providing deed restrictions, if approved) and will not adversely affect neighboring properties.
- If the Board were to approve the request for a special exception to the single family regulations, subject to imposing a condition that the applicant comply with the submitted site plan, the “dwelling unit” structure would be restricted to the specific location and footprint shown on this plan, which in this case is a “dwelling unit” structure with an approximately 830 square foot building footprint situated on an approximately 15,000 square foot site with a single family home (with an approximately 2,900 square foot building footprint) that is located not closer than 11’ from the site’s southern property line.
- The Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

**FILE NUMBER:** BDA 067-168

**BUILDING OFFICIAL'S REPORT:**

Application of Lisa Lamkin, BRW Architects, for a special exception to the parking regulations at 3250 N. Hampton Road. This property is more fully described as a 7.197 acre tract of land in City Block 7129 and is zoned CR which requires parking to be provided. The applicant proposes to construct a college, university, or seminary use and provide 253 of the 337 parking spaces required which will require a special exception of 84 spaces.

**LOCATION:** 3250 N. Hampton Road

**APPLICANT:** Lisa Lamkin, BRW Architects

**REQUEST:**

- A special exception to the off-street parking regulations of 84 parking spaces (or 24% of the required off-street parking) is requested in conjunction with constructing and maintaining a 14 classroom "college, university, or seminary" use (El Centro College West Campus) on a site that is partially undeveloped and partially developed with retail, commercial, and vacant uses.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- The special exception shall automatically and immediately terminate if and when the "college, university, or seminary" use is changed or discontinued.

Rationale:

- The Development Services Senior Engineer has no objections to the request based the November 28, 2007 parking utilization analysis submitted by the applicant.
- The applicant has substantiated how the parking demand generated by the use does not warrant the number of off-street parking spaces required, and that the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

**STANDARD FOR A SPECIAL EXCEPTION TO THE OFF-STREET PARKING REGULATIONS:**

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception

would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.

- 2) In determining whether to grant a special exception, the board shall consider the following factors:
  - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
  - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
  - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
  - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
  - (E) The availability of public transit and the likelihood of its use.
  - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
  - (A) establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
  - (B) impose restrictions on access to or from the subject property; or
  - (C) impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
  - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
  - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

### **GENERAL FACTS:**

- The Dallas Development Code requires the following off-street parking requirements:

- College, university, or seminary: 1 space per 25 square feet of classroom. If more than ten off-street parking spaces are required for this use, handicapped parking must be provided pursuant to code.

The application materials and Building Official's Report state that 253 (or 75 percent) of the required 337 spaces are proposed to be provided.

- The applicant submitted additional information beyond what was submitted with the original application, and beyond what was discussed at the November 27<sup>th</sup> staff review team meeting (see Attachment A). This information included a detailed report entitled "El Centro West Campus Parking Utilization Analysis."

## **BACKGROUND INFORMATION:**

### **Zoning:**

<u>Site:</u>	CR (Community Retail)
<u>North:</u>	CR (Community Retail)
<u>South:</u>	MF-2(A) (Multifamily)
<u>East:</u>	R-5(A) (Single family district 5,000 square feet)
<u>West:</u>	PD No. 508(Planned Development)

### **Land Use:**

The subject site is partially undeveloped and partially developed with retail, commercial, and vacant uses. The areas to the north and west appear to be vacant; and the areas to the east and south are developed with single family and multifamily uses.

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

1. Miscellaneous Item #2, 3250 N. Hampton Road (the subject site)      On December 10, 2007, the Board of Adjustment Panel C will consider granting a fee reimbursement in conjunction with this application.

### **Timeline:**

- October 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.
- Nov. 15, 2007: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- Nov. 15, 2007: The Board Administrator contacted the applicant and shared the following information by phone and email:
- 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 November 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
- the November 30<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 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 December public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Nov. 27, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

Nov. 28, 2007 The applicant submitted additional information to the Board Administrator (see Attachment A).

Nov. 30, 2007 The Development Services Senior Engineer submitted a review comment sheet marked "Has no objections" with the following comments: "Based the parking utilization analysis dated 11/28/07, 14 classrooms, 24 students avg. per class, etc."

### **STAFF ANALYSIS:**

- The applicant proposes to provide 253 (or 75 percent) of the required 337 spaces for a new 14 classroom "college, university, or seminary" use (El Centro College West Campus) on a site developed with retail, commercial, and vacant uses.
- According to the applicant, the code requirement for this use is excessive since the service area for the proposed campus is predominated by a population that does not have multiple cars per family, and since many of the students will be dropped off or use public transportation. In addition, the applicant contends that providing the code required parking would result in the construction of an inordinately high number of parking spaces when compared to other surrounding educational campuses; and that the maximum parking demand at peak building usage would be 148 spaces (or 105 less than the proposed 253 parking spaces to be provided).
- Granting this request, subject to the condition that the special exception of 84 spaces automatically and immediately terminates if and when the "college, university, or seminary" use is changed or discontinued, would allow the development of the site (that is partially undeveloped and partially developed with

retail, commercial and vacant uses) with a campus use that provides 25 percent less off-street parking spaces than what the code requires.

- The applicant has the burden of proof in establishing the following:
  - The parking demand generated by the “college, university, or seminary” use does not warrant the number of off-street parking spaces required, and
  - The special exception of 84 spaces (or 25 percent of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- The Development Services Senior Engineer has indicated that he has no objections to this request.

**FILE NUMBER:** BDA 067-169

**BUILDING OFFICIAL'S REPORT:**

Application of Jeff Dworkin for a variance to the front yard setback regulations at 2035 Cullen Avenue. This property is more fully described as Lot 1 in City Block C/1978 and is zoned R-7.5(A) which requires a front yard setback of 25 feet. The applicant proposes to construct a single family residential structure and provide a 5 foot front yard setback which will require a variance of 20 feet.

**LOCATION:** 2035 Cullen Avenue

**APPLICANT:** Jeff Dworkin

**REQUEST:**

- A variance to the front yard setback regulations of 20' is requested in conjunction with constructing and maintaining a single family home in the site's Melrose Avenue 25' front yard setback on a site that is undeveloped.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The site is different from other parcels of land in that it has two 25' front yard setbacks (one on its eastern boundary along Cullen Avenue, another on its northern boundary along Melrose Avenue). The lot's Melrose Avenue front yard setback leaves only 20' of developable space on the 50' wide site once a 25' front yard setback is accounted for on the north and a 5' side yard setback is accounted for on the south – a width that, according to the applicant, leaves the lot “unbuildable for its intended single family use.”
- Granting this variance does not appear to be contrary to the public interest for the following reasons:
  - It appears that the proposed encroachment into the site's Melrose Avenue front yard setback would not violate a prevailing 25' setback of homes in the blockface between Cullen Avenue and Glencoe Street. In this particular case, there are only two houses located immediately west of the site that front Melrose Avenue. It is these two houses (that do not appear to provide a 25' front yard setback) fronting Melrose Avenue that establishes a front yard setback that must be maintained between Cullen Avenue and Glencoe Street.
  - The building footprint on the submitted site plan shows a structure that is in compliance with the site's 25' front yard setback along Cullen Avenue – the front

yard setback of the two on the site that functions more as a typical front yard in that it is the shorter of the site's two street frontages; and a footprint that would be in compliance with the 5' side yard setback on Melrose Avenue if indeed this longer frontage could be construed as a side yard (as that of the lot immediately east with only one front yard setback on Cullen Avenue).

### **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:**

- Structures on lots zoned R-7.5(A) are required to provide a minimum front yard setback of 25'. The site (located at the southwest corner of Cullen Avenue and Melrose Avenue) has two front yard setbacks: one along Cullen Avenue (the shorter of the lot's two frontages), and the other along Melrose Avenue (the longer of the two frontages but a front yard setback nonetheless in order to maintain continuity of the established setback of two homes directly west that front northward onto Melrose Avenue).  
A scaled site plan has been submitted that shows that the home will be located 5' from the site's Melrose Avenue front property line (or 20' into the 25' front yard setback). According to calculations taken from the site plan by the Board Administrator, the proposed home has an approximately 3,280 square foot building footprint of which approximately 1,400 square foot (or 70' x 20') of the home is proposed to be located in the site's Melrose Avenue 25' front yard setback. A submitted floor plan (that the applicant says is actually a reverse plan of what is proposed) indicates that about the entire study, dining, kitchen, nook, and family room of the house would be located in this Melrose Avenue front yard setback.
- The site is flat, rectangular in shape (150' x 50') and 7,500 square feet in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area. The site has two 25' front yard setbacks. (No encroachment is shown or requested to be located in the site's Cullen Avenue 25' front yard setback).
- DCAD states that there are no main improvements on the subject site.

- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included a letter that provided additional details about the request.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-7.5 (A) (Single family district 7,500 square feet)  
North: TH-3 (A) (Townhouse)  
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 undeveloped. The areas to the north, south, east, 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:**

- October 24, 2007 The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- Nov. 15, 2007: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- Nov. 15, 2007: The Board Administrator contacted the applicant and shared the following information by phone and email:
- 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 November 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
  - the November 30<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 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 December public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Nov. 19, 2007      The applicant submitted additional information to the Board Administrator (see Attachment A).

Nov. 27, 2007:      The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

**STAFF ANALYSIS:**

- This variance request is made to allow approximately half of a single family structure footprint to be located in one of the site's front yard setbacks – the 25' front yard setback on Melrose Avenue.
- According to calculations taken from the site plan by the Board Administrator, the proposed building footprint is approximately 3,300 square feet of which approximately 1,400 square feet is to be located in the site's Melrose Avenue 25' front yard setback. (No encroachment is shown or requested to be located in the site's Cullen Avenue front yard setback).
- According to the applicant, the proposed house is going to be situated on the lot similar to the home that was recently demolished on the site – a home that faced Cullen Avenue.
- The site is flat, rectangular in shape (150' x 50') and 7,500 square feet in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area. But unlike typical residentially-zoned lots that have one front yard setback, the site has two – one along the shorter of the frontages on Cullen Avenue that is typically a front yard, and another along the longer of the frontages on Melrose Avenue that is typically a side yard but in this lot is a front yard in order to maintain continuity of the established setback of two homes directly west that front northward onto Melrose Avenue.
- Once a 25' front yard setback is accounted for on the north and a 5' side yard setback is accounted for on the south, the developable width remaining on the 50' wide site is 20'. Other 50' wide lots with a more typical scenario of having *one* front yard setback would have a developable width of 40' once two 5' side yard setbacks are accounted for.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the front yard setback regulations of 20' requested in conjunction with constructing/maintaining about half of a single family home

building footprint in the site's Melrose Avenue 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 undeveloped, and a site that is rectangular in shape, 7,500 square feet in area with two front yard setbacks) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.
- The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the R-7.5(A) zoning classification.
- If the Board were to grant the front yard variance request of 20', imposing a condition whereby the applicant must comply with the submitted site plan, the structure in the front yard setback would be limited to that shown on this plan – which in this case is a single family structure building footprint that is located 5' from the site's Melrose Avenue front property line (or 20' into the site's Melrose Avenue 25' front yard setback).

**FILE NUMBER:** BDA 067-174

**BUILDING OFFICIAL'S REPORT:**

Application of Greenway Gaston, LP, represented by Karl A. Crawley, Masterplan, for a special exception to the parking regulations at 4116, 4122, 4130, and 4204 Gaston Avenue. This property is more fully described as a Lots 8-11 in City Block 6/774 and is zoned PD-298, Subarea 13, which requires parking to be provided. The applicant proposes to construct a general merchandise or food store greater than 3500 square feet use and provide 74 of the 83 required parking spaces which will require a special exception of 9 spaces.

**LOCATION:** 4116, 4122, 4130, and 4204 Gaston Avenue

**APPLICANT:** Greenway Gaston, LP  
Karl A. Crawley, Masterplan

**REQUEST:**

- A special exception to the off-street parking regulations of 9 parking spaces (or 11% of the required off-street parking) is requested in conjunction with constructing and maintaining an approximately 17,000 square foot "general merchandise or food store greater than 3,500 square foot" (Aldi Food Market) on a site that is undeveloped.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- The special exception shall automatically and immediately terminate if and when the "general merchandise or food store greater than 3,500 square feet" use limited to the store selling grocery products on the site is changed or discontinued.

Rationale:

- The Development Services Senior Engineer has no objections to the request if the use is limited to a specific grocery brand based on dialogue he had with the design engineer who described the proposed use on the site to be an "Aldi" store – a discount store popular in Europe.
- The applicant has substantiated how the parking demand generated by the use does not warrant the number of off-street parking spaces required, and that the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

**STANDARD FOR A SPECIAL EXCEPTION TO THE OFF-STREET PARKING REGULATIONS:**



- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
  - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
  - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
  - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
  - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
  - (E) The availability of public transit and the likelihood of its use.
  - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
  - (A) establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
  - (B) impose restrictions on access to or from the subject property; or
  - (C) impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
  - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
  - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

**GENERAL FACTS:**

- The Dallas Development Code requires the following off-street parking requirements:
  - General merchandise or food store greater than 3,500 square feet: 1 space per 200 square feet of floor area. If more than ten off-street parking spaces are required for this use, handicapped parking must be provided pursuant to code.
 The application and Building Official's Report state that 74 (or 89 percent) of the required 83 spaces will be provided in conjunction with the proposed 16,623 square foot grocery.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD No. 298 (Planned Development)  
North: PD No. 298 (Planned Development)  
South: PD No. 298 (Planned Development)  
East: PD No. 98 (Planned Development)  
West: PD No. 298 (Planned Development)

**Land Use:**

The subject site is undeveloped. The areas to the north, south, and west are developed with commercial/retail uses; and the area to the east is developed with a church and a child care facility.

**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:**

- October 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.
- Nov. 15, 2007: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- Nov. 15, 2007: The Board Administrator contacted the applicant's representative and shared the following information by phone and email:
- 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 November 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
- the November 30<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 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 December public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Nov. 27, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

Nov. 30, 2007 The Development Services Senior Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments: "The parking study dated 10/25/07 does not specify the name of the grocery store chain. Based on my dialogue with the design engineer, it was proposed to be "Aldi" store, a discount store popular in Europe. Therefore I recommend approval only for this specific brand: Aldi."

**STAFF ANALYSIS:**

- The applicant proposes to provide 74 (or 89 percent) of the required 83 spaces for a new approximately 17,000 square foot "general merchandise or food store greater than 3,500 square feet" use (Aldi Food Market) on a site that is undeveloped.
- According to information submitted by the applicant, the site would be providing about 60 percent more (i.e. 27 spaces) than the 85<sup>th</sup> percentile peak parking demand (i.e. 47 spaces) estimated or almost double than that of the average peak parking demand using ITE published *Parking Generation, 3<sup>rd</sup> Edition*. Additionally the site is surrounded by high density residential developments where a significant number of walk trips are expected, and in close proximity to two bus stops where a significant number of transit trips are expected.
- Granting this request, subject to the condition that the special exception of 9 spaces automatically and immediately terminates if and when the "general merchandise or food store greater than 3,500 square feet" use limited to the store selling grocery products is changed or discontinued, would allow the development of vacant tract of land with an approximately 17,000 square foot grocery store.
- The applicant has the burden of proof in establishing the following:

- The parking demand generated by the “general merchandise or food store greater than 3,500 square feet” use does not warrant the number of off-street parking spaces required, and
- The special exception of 9 spaces (or 11 percent of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- The Development Services Senior Engineer has indicated that he has no objections to this request if the special exception is conditioned to a specific brand grocery store use: “Aldi.”

**FILE NUMBER:** BDA 067-175

**BUILDING OFFICIAL'S REPORT:**

Application of Misty Ventura for a special exception to the fence height regulations at 9403 Biscayne Boulevard. This property is more fully described as Lot 12 in City Block 9/5388 and is zoned R-7.5(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to maintain a 5 foot 10 inch fence in a required front yard setback which will require a 1 foot 10 inch special exception.

**LOCATION:** 9403 Biscayne Boulevard.

**APPLICANT:** Misty Ventura

**REQUEST:**

- A special exception to the fence height regulations of 1' 10" is requested in conjunction with maintaining a 5' 10" high open wrought iron fence in the site's 25' Biscayne Boulevard front yard setback on a site 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 subject site is located at the northwest corner of Biscayne Boulevard and Tiffany Way. The site has a 25' front yard setback along Biscayne Boulevard (since this frontage is the shorter of the two street frontages) and a 5' side yard setback along Tiffany Way (since this frontage is the longer of the two street frontages and there is no continuity of an established front yard setback along this street to be maintained).

The applicant has submitted a scaled site plan and a revised elevation indicating a fence in the required front yard setback that reaches a maximum height of 5' 10".

- The submitted scaled site plan indicates that the existing fence located in the site's front yard setback has the following additional characteristics:
  - approximately 55' in length parallel to Biscayne Boulevard, and approximately 25' perpendicular to the street on the north and south sides of the site;
  - approximately on the site's front property line (or approximately 22' from the pavement line); and
  - linear in design.
- The submitted revised fence elevation denotes an "open iron fence-maximum height of 5' 10".
- There is one single family home that has direct frontage to the existing fence.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences above four (4) feet high which appeared to be located in a front yard setback.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
  - a revised fence elevation;
  - photos of the fence on the site and surrounding area; and
  - a petition signed by 10 supporting neighbors/owners (with related map showing where the neighbors/owners area located in relation to the subject site).

## **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:**

October 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.

Nov. 15, 2007: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

Nov. 15, 2007: The Board Administrator contacted the applicant and shared the following information by phone and email:

- 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 November 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
- the November 30<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 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 December public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Nov. 19 & 30, 2007 The applicant submitted additional information to the Board Administrator (see Attachment A).

Nov. 27, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

### **STAFF ANALYSIS:**

- The request is made to maintain a 5' 10" high open wrought iron fence in the site's 25' Biscayne Boulevard front yard setback on a site developed with a single family home.
- Although the existing 5' 10" high open wrought iron fence on the site is located along the site's Biscayne Boulevard and Tiffany Way street frontages (given that the site is located on the northwest corner of these two streets), the special exception request is only needed to maintain the 5' 10" high fence in the site's *front* yard setback which in this case is on Biscayne Boulevard. (The site's Tiffany Way frontage is a side yard where a 9' high fence is permitted by right).

- A scaled site plan indicates that the existing fence located in the site's 25' front yard setback is approximately 55' in length parallel to Biscayne Boulevard and approximately 25' perpendicular to the street on the north and south sides of the site; and is located approximately on the front property line (or approximately 22' from the pavement line).
- A revised fence elevation has been submitted that denotes an "open iron fence-maximum height of 5' 10".
- There is one single family home that has direct frontage to the existing fence.
- No other fences were noted in the immediate area above four (4) feet high which appeared to be located in a front yard setback.
- As of December 3, 2007, a petition signed 10 neighbors/owners had been submitted in support, and no letters had been submitted in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 1' 10" (whereby the existing 5' 10" high open wrought iron fence in the site's front yard setback) does not adversely affect neighboring property.
- Granting this special exception to the fence height regulations of 1' 10" with a condition imposed that the applicant complies with the submitted site plan and revised elevation would provide assurance that the existing fence would be maintained in the location and of the height/material shown on these documents.



**FILE NUMBER:** BDA 067-172(K)

**BUILDING OFFICIAL'S REPORT:**

Application of Deshazo, Tang & Associates, represented by John J. Deshazo, Jr., for a special exception to the parking regulations at 1601 S. Lamar Street. This property is more fully described as a 1.628 acre tract in City Block 3/1087 and is zoned PD-317, Subdistricts 3A and 4, which require parking to be provided. The applicant proposes to construct and maintain an office use and provide 181 of the 242 parking spaces required which will require a special exception of 61 spaces (25% reduction).

**LOCATION:** 1601 S. Lamar Street

**APPLICANT:** Deshazo, Tang & Associates  
Represented by John J. Deshazo, Jr

**REQUEST:**

- A special exception to the off-street parking regulations of 61 parking spaces (or 25% of the required off-street parking) is requested in conjunction with constructing and maintaining an approximate 80,522-square foot "office building" on a site that is developed with a vacant commercial structure.

**STAFF RECOMMENDATION:**

Denial

Rationale:

- The Development Services Senior Engineer has no recommendation to the request based on letters submitted by the applicant's representative.
- The applicant has not substantiated how the parking demand generated by the use does not warrant the number of off-street parking spaces required, and that the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- The Traffic Engineer has made the following comments:
  - "The parking analysis dated 10/26/07 does not provide information such as:
    1. Percent of employees expected to use transit system (light rail, bus)
    2. number of visitors expected (site plan shows 12+12+3+13 future)
    3. maximum number of 164 employees expected to park in the remote lot."

**STANDARD FOR A SPECIAL EXCEPTION TO THE OFF-STREET PARKING REGULATIONS:**

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
  - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
  - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
  - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
  - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
  - (E) The availability of public transit and the likelihood of its use.
  - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
  - (A) establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
  - (B) impose restrictions on access to or from the subject property; or
  - (C) impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
  - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
  - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

**GENERAL FACTS:**

- The Dallas Development Code requires the following off-street parking requirements:
  - Office: One space per 333 square feet of floor area. If more than ten off-street parking spaces are required for this use, handicapped parking must be provided pursuant to code.

The application and Building Official's Report state that 181 (or 25 percent) of the required 242 spaces will be provided in conjunction with the proposed 80,522-square foot office building.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: PD-317 (Planned Development)  
North: PD-317 (Planned Development)  
South: PD-317 (Planned Development)  
East: PD-317 (Planned Development)  
West: PD-317 (Planned Development)

### **Land Use:**

The subject site is developed with a vacant commercial structure. The areas to the west are developed with multi-family residential use. The areas to the north are developed with a public service use. The areas to the east are developed with non residential commercial use. The areas to the south are developed with nonresidential commercial 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:**

October 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.

Nov. 15, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

Nov. 16, 2007: The Board Administrator contacted the applicant's representative and shared the following information by phone and email:

- 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 November 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
- the November 30<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 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 December public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Nov. 20, 2007      The Historic Preservation staff submitted a review comment sheet marked "Has no objections" with the following comments: "This is located in the Historic Sears Building Historic District. This should have no adverse affect on the district."

Nov. 27, 2007:      The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

**STAFF ANALYSIS:**

- The applicant proposes to provide 181 of the 242 parking spaces required for a 80,522-square foot "office" use (DCCCD) on a site developed with a vacant commercial structure.
- According to the applicant "the majority of the site parking is planned to be provided remotely, across Lamar Street, in a 155-space surface parking lot also owned by DCCCD."
- Granting this request, subject to the conditions that the special exception of 61 spaces automatically and immediately terminates if and when the "office" use is changed or discontinued, would allow the development of the proposed 80,522-square foot structure with this specific use.
- The applicant has the burden of proof in establishing the following:
  - The parking demand generated by the "office" use does not warrant the number of off-street parking spaces required, and
  - The special exception of 61 spaces (or 25 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- The Development Services Senior Engineer has indicated that he has no recommendation for this request.



**FILE NUMBER:** BDA 067-173(K)

**BUILDING OFFICIAL'S REPORT:**

Application of Jeff Nelson for a variance to the front yard setback regulations at 6405 Del Norte Lane. This property is more fully described as Lot 1 in City Block 3/5464 and is zoned D(A) which requires a front yard setback of 25 feet. The applicant proposes to construct a residential duplex structure and provide a 10 foot front yard setback which will require a variance of 15 feet.

**LOCATION:** 6405 Del Norte Lane

**APPLICANT:** Jeff Nelson

**REQUEST:**

- A variance to the front yard setback regulations of 15' is requested in conjunction with constructing and maintaining a duplex in the site's Edgemere Rd. 25' front yard setback on a site that is a vacant duplex structure.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The site is different from other parcels of land in that it has two 25' front yard setbacks (one along Edgemere Road, another along Del Norte Lane). The two front yard setbacks leave 56' of developable space left on the 86' wide site once a 25' setback is accounted for on the west side of the site, and a 5' side yard setback is accounted for on the east side of the site.
- Granting this variance does not appear to be contrary to the public interest for the following reasons:
  - It appears that the proposed encroachment into the site's Edgemere Road front yard setback would not violate any existing established 25' setback of homes.
  - The building footprint on the submitted site plan shows compliance with the site's 25' front yard setback along Del Norte Lane – the front yard setback of the two on the site that functions more as a typical front yard.

**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:**

- Structures on lots zoned D(A) are required to provide a minimum front yard setback of 25'. The site is located at the southwest corner of Edgemere Road and Del Norte Lane and has two front yard setbacks: one along Del Norte (the shorter of the lot's two frontages), and the other along Edgemere Road (the longer of the two frontages but a front yard setback nonetheless.)
- A scaled plan has been submitted that shows that the home will be located 10' from the site's Edgemere Road front property line (or 15' into the 25' front yard setback). According to calculations taken from the site plan by the Board Administrator, the proposed Unit "A" has approximately, 1320-square foot building footprint of which approximately 495-square feet (or 15' x 33') of the home is located in the site's Edgemere Road 25' front yard setback.
- The site is flat, rectangular in shape (86' x 97.50') and 8,482.5 square feet in area. The site is zoned D(A) where lots have a minimum requirement of 6,000 square feet in area. The site has two 25' front yard setbacks. (No encroachment is shown or requested to be located in the site's Del Norte Lane 25' front yard setback).
- Once a 25' front yard setback is accounted for on the west and a 5' side yard setback is accounted for on the east, the developable width remaining on the 86' wide site is 56'.

### **BACKGROUND INFORMATION:**

#### **Zoning:**

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

#### **Land Use:**

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

November 6, 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.

Nov. 15, 2007: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

Nov. 19, 2007: The Board Administrator contacted the applicant and shared the following information by phone and email:

- 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 November 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
- the November 30<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 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 December public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Nov. 27, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

### **STAFF ANALYSIS:**



- The submitted site plan indicates that about one-third of the proposed duplex structure's unit "A" 1,320 square foot building footprint is to be located in the site's Edgemere Road 25' front yard setback.
- The site is flat, rectangular in shape (97.50' x 86') and 8,385 square feet in area. The site is zoned D(A) where lots are a minimum 6,000 square feet in area. The site has two 25' front yard setbacks. (No encroachment is shown or requested to be located in the site's Del Norte 25' 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 15' requested in conjunction with constructing/maintaining a duplex in the site's Edgemere Road 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 flat, rectangular in shape (97.50' x 86') and 8,385 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 D(A) zoning classification.
  - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the D(A) zoning classification.
- If the Board were to grant the front yard variance request of 15', imposing a condition whereby the applicant must comply with the submitted site plan, the structure in the front yard setback would be limited to that shown on this plan – which in this case is a single family structure located 10' from the site's Edgemere Road front property line (or 15' into one of the site's two 25' front yard setbacks).

**FILE NUMBER:** BDA 067-176(K)

**BUILDING OFFICIAL'S REPORT:**

Application of Katherine Nicholas for a variance to the front yard setback regulations at 17601 Harbord Oaks Circle. This property is more fully described as Lot 1 in City Block P/8731 and is zoned PD-228 which requires a front yard setback of 25 feet. The applicant proposes to construct and maintain a residential single family structure and provide a 7 foot front yard setback which will require a variance of 18 feet.

**LOCATION:** 17601 Harbord Oaks Circle

**APPLICANT:** Katherine Nicholas

**REQUEST:**

- A variance to the front yard setback regulations of 18' is requested in conjunction with constructing and maintaining a single family structure in the site's Harbord Oaks Circle 25' front yard setback on a site with a single family structure.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The site is different from other parcels of land in that is irregular in shape and it has two 25' front yard setbacks (one along Harbord Oaks Circle, another along Cedar Creek Canyon Drive).
- Granting this variance does not appear to be contrary to the public interest because it appears that the proposed encroachment into the site's Harbord Oaks front yard setback would not violate any existing established 25' setback of homes.

**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 located at the corner of Cedar Creek Canyon Drive and Harbord Oaks Circle. The site is irregular in shape and total square footage according to DCAD is 20,238 ft<sup>2</sup>.
- DCAD records indicate the site has the following additional improvements:
  - a. Attached garage 850 ft<sup>2</sup>
  - b. Pool unassigned square footage.
- The proposed structure would be located on a site where three single family homes would have direct or indirect frontage to the proposed structure.
- According to site plans submitted, the proposed structure is a 324 square foot (18' x18') arbor and fireplace constructed of brick materials.

### **BACKGROUND INFORMATION:**

#### **Zoning:**

Site: PD-228 (Planned Development)  
North: PD-228 (Planned Development)  
South: PD-228 (Planned Development)  
East: PD-228 (Planned Development)  
West: PD-228 (Planned Development)

#### **Land Use:**

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

#### **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:**

October 29, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

Nov. 15, 2007: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

- Nov. 19, 2007: The Board Administrator contacted the applicant and shared the following information by phone and email:
- 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 November 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
  - the November 30<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 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 December public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

- Nov. 27, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

### **STAFF ANALYSIS:**

- The site is flat, irregular in shape and 20,238 square feet in area. The site is zoned PD-228 where lots are a minimum 7,500 square feet in area. The site has two 25' front yard setbacks. (No encroachment is shown or requested to be located in the site's Cedar Creek Canyon Drive 25' 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 18' requested in conjunction with constructing and maintaining a single family structure in the site's Harbord Oaks Circle 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 flat, irregular in shape and 20,238 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-228 zoning classification.

- The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the PD-228 zoning classification.
- If the Board were to grant the front yard variance request of 18', imposing a condition whereby the applicant must comply with the submitted site plan, the structure in the front yard setback would be limited to that shown on this plan – which in this case is a single family structure located 7' from the site's Harbord Oaks Circle front property line (or 18' into one of the site's two 25' front yard setbacks).