

**NOTICE FOR POSTING**  
**MEETING OF**  
**BOARD OF ADJUSTMENT, PANEL C**  
**MONDAY, APRIL 16, 2007**

**Briefing:** 11:00 A.M. **5ES**  
**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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04-16-2007

ZONING BOARD OF ADJUSTMENT, PANEL C  
MONDAY, APRIL 16, 2007  
AGENDA

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|                |                         |            |
|----------------|-------------------------|------------|
| BRIEFING       | <b>5ES</b>              | 11:00 A.M. |
| LUNCH          |                         |            |
| PUBLIC HEARING | <b>COUNCIL CHAMBERS</b> | 1:00 P.M.  |

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**Donnie Moore, Chief Planner**  
**Steve Long, Board Administrator**

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**MISCELLANEOUS ITEMS**

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| Approval of the <b>Monday, March 19, 2007</b><br>Board of Adjustment Public Meeting Minutes | M1 |
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**UNCONTESTED CASES**

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|----------------|--|---|
| BDA 067-048(J) | 1511 N. Buckner Blvd<br><b>REQUEST:</b> Application of Julia Fraga for a special<br>exception to the fence height regulations              | 1 |
| BDA 067-062(J) | 9635 Meadowbrook Drive<br><b>REQUEST:</b> Application of Randall Underwood for<br>a special exception to the single family use regulations | 2 |

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**HOLDOVER CASE**

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| BDA 067-052(J) | 8070 Park Lane<br><b>REQUEST:</b> Application of DeShazo, Tang & Associates,<br>Inc. represented by John J. DeShazo, Jr. for a special<br>exception to the parking regulations | 3 |
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**REGULAR CASES**

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| BDA 067-049(J) | 2331 W. Northwest Hwy<br><b>REQUEST:</b> Application of Angel Reyes III represented by Masterplan for a variance to the front yard setback regulations and for a special exception to the parking regulations | 4 |
| BDA 067-060(J) | 6625 Avalon Avenue<br><b>REQUEST:</b> Application of Roger A. Said for a variance to the off-street parking regulations   | 5 |

## 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 March 19, 2007 public hearing minutes.

**FILE NUMBER:** BDA 067-048(J)

**BUILDING OFFICIAL'S REPORT:**

Application of Julia Fraga for a special exception to the fence height regulations at 1511 N. Buckner Blvd. This property is more fully described as Lot 1 in City Block H/5316 and is zoned R-10(A) which limits the height of a fence in a required front yard to 4 feet. The applicant proposes to maintain a 6 foot 10 inch fence in a required front yard setback which would require a special exception of 2 feet 10 inches.

**LOCATION:** 1511 N. Buckner Blvd.

**APPLICANT:** Julia Fraga

**REQUEST:**

- A special exception to the fence height regulations of 2'10" is requested in conjunction with maintaining a 6'10" high solid vinyl fence in the site's 30' front yard setback along Hermosa Drive.

**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 southwest corner of Hermosa Drive and Buckner Boulevard. The site has a front yard setback along Buckner Boulevard given that this frontage is the shorter of the two street frontages. The site has two front yard setbacks due to the requirement of continuity of an established setback that must be maintained.

- The applicant noted on the application that the purpose for the fence is for safety considerations regarding a pool on the request site. The pool is located approximately 60' from the Hermosa Drive property line.
- The applicant submitted a site plan and elevation which showed the location of the existing fence and the general appearance of the fence. The height of the fence was indicated to be 6' on the elevation.
- The existing fence was obstructing two visibility triangles according to the site plan and observed on the Board Senior Planner's site visit.
- The applicant submitted a revised site plan that shows the existing fence in the Hermosa Drive 30' front yard setback has the following additional characteristics:
  - Approximately 140' in length parallel to Hermosa Drive located approximately 3 feet from the property line;
  - Approximately 7' at the driveway intersection, and 20' perpendicular to Hermosa Drive and adjacent to the driveway;
  - Approximately 8' at the alley intersection, and 23' on the "side" perpendicular to Hermosa Drive and adjacent to the alley located approximately 8' from the property line and 3'6" from the alley line; and
  - Four 5' gate posts within the 30' front yard setback on each side of the circular driveway.
  - A proposed 4' iron fence on the remaining Hermosa Drive frontage and on the entire length of the Buckner Blvd frontage.
  - The revised site plan shows the fence is out of the visibility triangles.
- The proposed fence is not obstructing visibility triangles according to the site plan.
- The elevations show that the fence is:
  - Solid white vinyl,
  - Fence panels of 5'10"; and
  - Fence posts of 6'10".
- The four 5' gateposts shown on the site plan are not shown to be connected to a fence. Building Inspection is considering the gatepost to be part of the fence special exception request. An elevation of the gateposts was not provided with the application or revised elevations. If the applicant wishes to install a gate or additional fencing connecting to the gateposts, the height of gates and additional fencing would be limited to 4' in height.
- The site plan also shows a proposed 4' iron fence to be in the northeast portion of the Hermosa Drive, approximately 150 feet in length, and along the entire frontage adjacent to Buckner Boulevard, approximately 250 feet in length. The request site has an existing fence constructed of vinyl, which from the site visit appears to be the same height as the portion seeking a special exception, located in the rear yard setback. The proposed and existing fences appear to meet the height regulations for fences in front, side, and rear yard setbacks.
- There are two single family homes that would have direct/indirect frontage to the proposed fence located in the Hermosa Drive front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area along Hermosa Drive and noted one other fence above four (4) feet high which appeared to be located in the front yard setback. There is no history of fence special exceptions in this area.

## **BACKGROUND INFORMATION:**

### **Zoning:**

|               |   |
|---------------|---|
| <u>Site:</u>  | R-10(A) (Single family district 10,000 square feet) |
| <u>North:</u> | R-10(A) (Single family district 10,000 square feet) |
| <u>South:</u> | R-10(A) (Single family district 10,000 square feet) |
| <u>East:</u>  | R-10(A) (Single family district 10,000 square feet) |
| <u>West:</u>  | R-10(A) (Single family district 10,000 square feet) |

### **Land Use:**

The subject site is developed with a single family home. The area to the north 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:**

- January 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 C.
- Feb. 13, 2007: The Board Administrator mailed the applicant a letter containing 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.

March 2, 2007      The Code Compliance district manager for the code district in which the request site is located submitted a comment sheet stating “Has no objections.”

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 Assistant Director of the Development Services Current Planning Division, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Interim Chief Arborist, and the Assistant City Attorney to the Board.

March 19, 2007:      The applicant submitted a revised site plan and elevation.

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 Interim Chief Arborist, and the Assistant City Attorney to the Board.

**STAFF ANALYSIS:**

- The applicant submitted a revised site plan that shows the existing fence in the Hermosa Drive 30’ front yard setback.
- A fence elevation has been submitted that indicates the maximum height of the fence (6’10”). The elevation denotes the materials of the fence being vinyl.
- There are two single family homes that would have direct/indirect frontage to the existing fence located in the Hermosa Drive front yard setback.
- One other fence above four (4) feet high which appeared to be located in the front yard setback was noted in the immediate area. There is no history of fence special exceptions in this area.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 2’10” (whereby the existing fence in the front yard setback that would exceed 4’ in height) will not adversely affect neighboring property.
- Granting this special exception to the fence height regulations of 2’10” with conditions imposed that the applicant complies with the revised site plan and revised elevation would provide assurance that the fence and gates located in the site’s Hermosa Drive front yard setback would be constructed and maintained in the location and of the heights and materials as shown on these documents.

- Granting this special exception would not permit any portion of the fence to be located in a visibility triangle, nor would it allow the construction or installation of gates or fencing that exceeds 4' in height located within the 30' Hermosa Drive or 30' Buckner Boulevard front yard setback that is not shown on the site plan.

**FILE NUMBER:** BDA 067-062

**BUILDING OFFICIAL'S REPORT:**

Application of Randall Underwood for a special exception to the single family use regulations at 9635 Meadowbrook Drive. This property is more fully described as Lot 1 in City Block 1/5589 and is zoned R-1ac(A), which limits the number of dwelling units to one. The applicant proposes to construct an additional dwelling unit which would require a special exception to the single family regulations.

**LOCATION:** 9635 Meadowbrook Drive

**APPLICANT:** Randall Underwood

**REQUEST:**

- A special exception to the single family regulations is requested in conjunction with constructing and maintaining a second dwelling unit on a site developed with a single family use.

**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-1ac (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.”  
The applicant has submitted a site plan that denotes a structure labeled “New Security Bldg with Quarters Above” that is located in the southwest corner of the site. According to calculations taken from the plan by the Board Administrator, the footprint of this structure is approximately 25’ x 26’ or 650 square feet in area.  
The applicant has submitted elevations of the proposed security/quarters building that indicate a 2-story structure that is approximately 23’ high.  
The applicant has submitted floor plans of the proposed security/quarters building that are labeled as and indicate the following:
  - Security Bldg Basement: unlabeled room
  - Security Bldg First Floor: mechanical room, landscapers room, flower room, and wine room
  - Quarters Second Floor: quarters living area, quarters bedroom, quarters kitchen, bath, two closets
- The application states that the site is 1.21 acres in area.
- The subject site is developed with, according to DCAD records, the following:
  - a single family home built in 1990 with 9,795 square feet of living area;
  - a 200 square foot attached carport;
  - a 550 square foot attached garage;
  - a pool;
  - a 886 square foot cabana; and
  - a 1,222 square foot outbuilding.
- The site plan indicates that the additional “dwelling unit” structure is located near the southwest corner of the site, approximately 16’ at its closest point to the property to the west, and approximately 22’ at its closest point to the property to the south.

**BACKGROUND INFORMATION:**

**Zoning:**

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

**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 residential uses.

**Zoning/BDA History:**

1. BDA 056-198, 9707  
Meadowbrook Drive (the lot  
immediately north of the subject  
site)

On August 16, 2006, the Board of Adjustment Panel B granted a special exception to the single family regulations for an additional dwelling unit. The board imposed the following conditions in conjunction with this request: 1) compliance with the submitted site plan and elevation is required; and 2) The property must be deed restricted to prohibit the additional dwelling unit on the site from being used as rental accommodations. The case report states that the request was made to construct/maintain a 1-story structure that included three large unlabeled rooms, three closets, two bathrooms, two bedrooms, two dressing rooms, and two playrooms on a site developed with a single family home with 16,535 square feet of living area.

**Timeline:**

- Feb. 22, 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.
- March 22, 2007:    The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- March 22, 2007:    The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the March 30th deadline to submit additional evidence for staff to factor into their analysis;
  - the April 6th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the 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 April public hearing after considering the information/evidence and

testimony presented to them by the applicant and all other interested parties.

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.

The District Manager of Code Compliance submitted a review comment sheet marked "Recommends that this be denied" commenting "SF use need not be blemished."

### **STAFF ANALYSIS:**

- The site is zoned R-1ac(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 add a 2<sup>nd</sup> dwelling unit/quarters structure on the site.
- 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) and 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 and elevations, the "dwelling unit" structure would be restricted to the specific location, size, and height shown on the plan and elevations, which in this case is a 2-story, approximately 23' high "dwelling unit" structure with a 650 square foot building footprint situated on a 1.2 acre site approximately 16' at its closest point to the property to the west, and approximately 22' at its closest point to the property to the south.
- 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 067-052(J)

**BUILDING OFFICIAL'S REPORT:**

Application of DeShazo, Tang & Associates, Inc. represented by John J. DeShazo, Jr. for a special exception to the parking regulations at 8070 Park Lane. This property is more fully described as Lot 1B in City Block A/5456 and is zoned MU-3(SAH) which requires parking to be provided. The applicant proposes to construct multiple commercial buildings with mixed residential and nonresidential uses and provide 6,223 parking spaces, which would require a special exception of 374 spaces (5.67% reduction) to the parking regulations.

**LOCATION:** 8070 Park Lane

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

**REQUEST:**

- A special exception to the off-street parking regulations of 374 spaces (or 5.67% of the required off-street parking) is requested in conjunction with developing a 33-acre site with mixed-uses.

**REVISED STAFF RECOMMENDATION:**

Hold under advisement until May 14, 2007

Rationale:

- The applicant is considering applying the special exception to only one use within the mixed use project and has asked for a delay until the May hearing to allow time to be sure the special exception for one use will accommodate their development plans and to prepare a parking study related to the demand for the one use. Staff is supportive of this request for a delay because the size, scale, and dynamics of the proposed mixed-use development are complex.

**STAFF RECOMMENDATION (March 19, 2007):**

Approval

Rationale:

- The Development Services Senior Engineer has no objection to this request if certain conditions are met.

**BOARD OF ADJUSTMENT ACTION: MARCH 19, 2007**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Moore**

I move that the Board of Adjustment in Appeal No. **BDA 067-052**, hold this matter under advisement until **April 16, 2007**.

SECONDED: **Boyd**

AYES: 5—Madrigal, Boyd, Moore, Scott, Gomez

NAYS: 0—

MOTION PASSED: 5 – 0 (unanimously)



**FILE NUMBER:** BDA 067-049(J)

**BUILDING OFFICIAL'S REPORT:**

Application of Angel Reyes III represented by Masterplan for a variance to the front yard setback regulations and for a special exception to the parking regulations at 2331 W. Northwest Hwy. This property is more fully described as Lot A in City Block 6481 and is zoned MU-3 which requires a front yard setback of 15 feet and requires parking to be provided. The applicant proposes to construct a nonresidential building and provide a 6 foot front yard setback, which would require a variance of 9 feet and to construct a nonresidential building and maintain an existing nonresidential building for office and office-showroom/warehouse uses and provide 101 parking spaces, which would require a special exception of 6 spaces (6% reduction) to the parking regulations.

**LOCATION:** 2331 W. Northwest Hwy

**APPLICANT:** Angel Reyes III  
Represented by Masterplan

**REQUEST:**

- A variance to the front yard regulations of 9 feet and a special exception to the off-street parking regulations of 6 spaces (or 6% of the required off-street parking) is requested in conjunction with constructing a 4,200 square foot financial institution with drive-through service use on a site developed with a 28,200 square feet building for office and warehouse uses. The applicant proposes to construct a new building with a 6 foot front yard setback, convert the warehouse use to office use, and provide 101 (or 94%) of the total required 107 off-street parking spaces.

**STAFF RECOMMENDATION (variance):**

Denial

Rationale:

- The request site, while somewhat constrained by floodplain and being a triangular shape, could be developed with an additional building or expansion of the existing building on the east side of the lot.

**STAFF RECOMMENDATION (parking special exception):**

Denial

Rationale:

- The Development Services Senior Engineer recommends denial with the comment that the parking study was not dated.

#### **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 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 (variance):**

- The request site is zoned a MU-3 Mixed Use District, which requires a 15' front yard setback. The request site is located at the corner of Northwest Highway and Willowbrook Drive and has two front yard setbacks, which is typical of any lot that has two street frontages and is not zoned single family, duplex, or agricultural.
- The request site is triangular in shape, appears to be flat except for the eastern-most portion of the site, and approximately 1.8 acres (or approximately 78,400 square feet).
- The applicant is requesting a 6' front yard setback to construct a new building at the same setback provided by the existing building.
- The applicant received preliminary plat approval in December 2006 to subdivide the request site into two lots; the applicant has indicated the plat will be "finalized" and recorded with Dallas County after the Board of Adjustment decision. The future lot lines are indicated on the site plan.
- Additional right-of-way was dedicated with the preliminary plat for Willowbrook Road. Willowbrook Road is not in the Thoroughfare Plan.
- A portion of the proposed building at its northeast corner appears to be located in the 20'x20' street/driveway visibility triangle. An application for a special exception to the visibility obstruction regulations has not been made.
- The parking area in the applicant's exhibit that is colored yellow is within the 100 year floodplain (Attachment A). This parking exists in this location currently and would likely be considered non-conforming. A note on the site plan indicates that the building will be elevated above the 100 year floodplain.

### **GENERAL FACTS (parking special exception):**

- The submitted site plan indicates the site is developed with an existing 2-story office building and an existing parking lot. The submitted site plan also indicates the proposed new building located west of the existing building and an additional parking lot located east of the existing building.
- The preliminary plat lines shown on the site plan bisect the parking lot that transverses the lot from northwest to the center of the request site. According to the applicant's Attachment A, the west portion of the site will provide 21 off-street parking spaces; the east portion of the site will provide 79 off-street parking spaces. The site plan shows 99 spaces.
- Two parking spaces are shown in the 20'x20' street/driveway visibility triangle at the northwest ingress/egress point.
- The applicant is proposing the following on the request site:
  - Maintain the existing 28,200 square foot building which currently contains 25,006 square feet of office use and 3,194 square feet of warehouse use;
  - Convert the existing 28,200 square foot building to only office uses;
  - Construct a new building, which will provide a 6 foot front yard setback on the Willowbrook Road front yard, containing approximately 4,200 square feet proposed for use as a financial institution with drive-through service; and,
  - Provide 101 (or 94%) of the total required 107 off-street parking spaces.
- The Dallas Development Code requires the following parking requirements for the existing/proposed use on the subject site:
  - 1 space is required for every 200 square feet of office use;
  - 1 space is required for every 1,000 square feet of warehouse use; and
  - 1 space is required for every 333 square feet of financial institution use.
- The total floor area of office uses proposed is 28,200 square feet, which requires 85 off-street parking spaces; the total floor area for the financial institution use is 4,200 square feet, which requires 13 off-street parking spaces. The total number of required spaces for the proposed uses on the request site is 98 off-street spaces; the site plan shows 99 spaces.
- The applicant has indicated in a document submitted with the application materials that the proposed building would be constructed for retail uses. Attachment A indicates the proposed building would be constructed for financial institution with drive-through service. The site plan does not indicate an area for drive-through service, though it is not required for the parking special exception application. A financial institution use has the same parking requirements with drive-through service as without drive-through service.
- Attachment A indicates the applicant's desire to have the special exception to apply to office uses on the eastern portion of the request site. Since the final plat is not recorded with Dallas County yet, the applicant's requests are considered for the entire lot.
- The applicant was not required by the City to subdivide the property. The applicant's representative indicated the platting was necessary to sell/ground lease the western portion.
- The applicant's representative was also advised that the owner could enter into a special parking agreement to share the parking.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: MU-3 (Mixed Use)  
North: IR (Industrial Research)  
South: MU-3 (Mixed Use)  
East: MU-3 (Mixed Use)  
West: MU-3 (Mixed Use)

### **Land Use:**

The subject site is developed with office and warehouse uses. The areas to the north are developed with industrial and distribution uses, institutional use to the east (post office), lodging uses to the south, and retail uses to the west.

### **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:**

January 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 C.

Feb. 13, 2007: The Board Administrator mailed the applicant a letter containing 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.

March 2, 2007      The Code Compliance district manager for the code district in which the request site is located submitted a comment sheet stating “Has no objections”.

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 Assistant Director of the Development Services Current Planning Division, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Interim Chief Arborist, and the Assistant City Attorney to the Board.

March 30, 2007:      The applicant’s representative submitted two revised site plans, “Exhibit 1” and “Exhibit 2” and a narrative (Attachment A).

April 2, 2007:      The applicant’s representative submitted a parking study (Attachment B).

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 Interim Chief Arborist, and the Assistant City Attorney to the Board.

March 7, 2007      The Development Services Senior Engineer submitted a review comment sheet marked “Recommends Denial.”

**STAFF ANALYSIS (variance):**

- The applicant is requesting a 6’ front yard setback to construct a new building at the same setback provided by the existing building, which requires a variance of 9’.
- The request site is triangular in shape, appears to be flat except for the eastern-most portion of the site, and approximately 1.8 acres (or approximately 78,400 square feet).
- The area of the proposed building that would be located in the front yard setback is approximately 9’ x 85’ or 765 square feet, out of a proposed 4,200 square foot building.

- There is no observed constraint that requires the proposed building to be located 6' from the property line. There is approximately 14' between the proposed building and the parking lot on the south side of the proposed building. The proposed building footprint is an irregular shape, which could be redesigned.
- A portion of the proposed building at its northeast corner appears to be located in the 20'x20' street/driveway visibility triangle. An application for a special exception to the visibility obstruction regulations has not been made.
- The area to the east of the existing building is shown on the site plan as proposed parking and approximately 19,740 square feet. The applicant has not substantiated why the proposed building could not be located in this portion of the request site.
- Approximately 6,390 square feet (a triangular shape of 142' x 90' x 175') of the request site is located in a floodway easement according to the site plan. The remaining approximately 72,000 square feet appear to be flat from observations on the site visit. The site plan shows elevation contours; in the area from where the existing building sits to the east property line has an elevation change of approximately 1 foot. The elevation change from the west side of the existing building to the eastern edge of the floodplain easement is approximately 4 feet.
- The applicant has the burden of proof in establishing the following with regard to the front yard variance request:
  - That granting the variance to the front yard setback regulations of 9' requested to construct and maintain a proposed non-residential building that would total approximately 4,200 square feet in area will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance is necessary to permit development of the subject site (a site developed with an approximately 28,200 square foot office/warehouse structure, and a site that is triangular in shape, approximately 1.8 acres in area, and with 2 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 MU-3 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 MU-3 zoning classification.
- If the Board were to grant the front yard variance request of 9', imposing a condition whereby the applicant must comply with the revised site plan, the applicant could construct and maintain on the request site limited to what is shown on this plan – a new building to be located 6' from the Willowbrook Road.
- Granting the variance does not permit the development of a structure or parking space located in a visibility triangle.

**STAFF ANALYSIS (parking special exception):**

- The Development Services Senior Engineer submitted a review comment sheet marked "Recommends Denial" with the following comments:

- The parking study provided no date of study.
- If this request is for Lot 8 only, the required number of parking spaces is 79 and 79 is provided as shown on site plan.
- If this request is for Lot 7, the shortage is 3 (24 required, 21 provided); however, the application is for 11 parking spaces special exception.
- The application was originally submitted requesting a reduction of 11 spaces. The reduction of 11 spaces considered the proposed building to be used as retail. The submitted site plan showed the proposed building would be 4,790 square feet.
- A retail use would require 1 space for every 200 square feet of floor area, which for 4,790 square feet would require 24 spaces.
- The applicant submitted revised site plans and documentation changing the request from an 11 space parking reduction to a 6 space parking reduction for a proposed building square footage of 4,200 instead of 4,790 square feet.
- The applicant has indicated 101 off-street parking spaces exist on site. According to this, 96 percent of the required off-street parking spaces are proposed to be provided in conjunction with constructing a 4,200 square foot new building on a site developed with an approximately 28,200 square foot office building.
- The site plan indicates only 99 off-street parking spaces will be provided on the request site.
- Granting this request, subject to the condition that the special exception of 6 spaces automatically and immediately terminates if and when the office and financial institution uses on the site are changed or discontinued, would allow the construction of a new 4,200 square foot building, conversion of 3194 square feet of warehouse use to office, and maintain a total of 28,200 square feet of office use on the site.
- The applicant has the burden of proof in establishing the following:
  - that the parking demand generated by the proposed office and financial institution uses do not warrant the number of off-street parking spaces required, and
  - the special exception of 6 spaces (or 6% of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.



**FILE NUMBER:** BDA 067-060

**BUILDING OFFICIAL'S REPORT:**

Application of Roger A. Said for a variance to the off-street parking regulations at 6625 Avalon Avenue. This property is more fully described as Lot 18 in City Block K/2796 and is zoned CD-2 which requires that a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley. The applicant proposes to construct a residential accessory structure and provide enclosed parking spaces with a setback of 3 feet which would require a variance of 17 feet.

**LOCATION:** 6625 Avalon Avenue

**APPLICANT:** Roger A. Said

**REQUEST:**

- A variance to the off-street parking regulations of up to 17' is requested in conjunction with constructing and maintaining a detached accessory structure whereby enclosed parking spaces in the structure would be located less than the required 20' from the alley right-of-way line. The subject site is currently developed with a single family home with a detached garage/quarters structure that the applicant intends to replace with a new detached accessory/garage structure.

**STAFF RECOMMENDATION:**

Denial

Rationale:

- Although the site is slightly irregular in shape and slightly smaller in area than the typically-sized lot in the CD No. 2 zoning district (approximately 8,500 square feet verses 10,000 square feet), these physical site characteristics do not constrain the site from being developed with a house and detached garage in a manner commensurate with the development upon other parcels of land in districts with the same CD No. 2 zoning district while simultaneously complying with development code standards including off-street parking regulations. According to calculations taken from the submitted site plan, there is an approximate range of 26' – 30' of width left on the north side of the lot if the proposed enclosed parking spaces were to comply with the 20' distance/setback requirement on the west side of the lot since the lot's width at it narrowest/northernmost point is 45.55'.
- In addition to lack of property hardship, granting this variance is contrary to the public interest: the Development Services Senior Engineer recommends that this

request be denied, specifically stating that the proposed garage can be sited on the site to meet code requirements; and granting the variance would allow enclosed parking spaces as close as 3' from the alley right of way line (or as much as 17' into the 20' distance requirement), a distance that is approximately 5' closer than the location of the existing 1930's garage/quarters structure that is proposed to be demolished. This proposed 3'- 6' distance between the enclosed parking spaces and the alley right of way is not of a length to accommodate any vehicle (even a subcompact car) parked in front of the garage and/or any vehicle entering/exiting the garage.

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

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

### **GENERAL FACTS:**

- The Dallas Development Code requires that a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley.  
The applicant has submitted a site plan that shows a detached garage with enclosed parking spaces located at a range of 3' – 6' from the alley right-of-way line (or as much as 17' into the 20' distance requirement between the enclosed parking space and the alley right of way line). (According to observations by the Board Administrator on his field visit, it appears that the existing “garage” structure that is proposed to be demolished is in compliance with the 20' distance requirement because it no longer has garage doors/enclosed parking spaces). The applicant has stated that the existing original 1930's garage/quarters structure does not provide the required 20' setback, and its approximate setback is 8 feet.
- The applicant states that the existing garage/quarters structure that he intends to demolish is 28' x 18' in area, and that the new garage structure that would replace it is 23' x 21'.
- The applicant could build the detached garage structure without a garage door (or enclosed parking spaces) if the board were to deny the variance request since the structure appears to comply with the side and rear yard setbacks required for lots

zoned CD. No. 2 The need for the parking variance is merely to allow the parking spaces in the proposed accessory structure to be enclosed with a garage door.

- According to calculations taken from the submitted site plan by the Board Administrator, there would be an approximate range of 26' – 30' of width left on the northernmost/narrowest side of the lot if the proposed enclosed parking spaces were to comply with the 20' distance/setback requirement on the west side of the lot since the lot's width at it narrowest point on the north is 45.55'. (No side yard setback would be required for an accessory structure in the rear 30% of the lot under 15' in height).
- The site is flat, irregular in shape (45.55' on the north; 70.85' on the south; 147.18' on the east; and 150.62' on the west), and, approximately 8,500 square feet in area. The site is zoned CD No. 2 where prior to its creation in 1988 was zoned R-10 where lots were typically 10,000 square feet in area.
- According to DCAD records, the property is developed with the following:
  - a single family home in "very good" condition built in 1935 with 1,978 square feet of living area; and
  - a 432 square foot detached garage.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
  - a document that provided additional details about the request;
  - a site plan that denoting additional details and dimensions of/on the site; and
  - a petition of 13 neighbors/owners who support the request (and related map of where the petitioners are located in relation to the site).

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: CD No. 2 (Conservation District)  
North: CD No. 2 (Conservation District)  
South: CD No. 2 (Conservation District)  
East: CD No. 2 (Conservation District)  
West: CD No. 2 (Conservation District)

### **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:**

- Feb. 21, 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.
- March 22, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- March 22, 2007: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the March 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
  - the April 6th deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the 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 April public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- March 29, 2007 The applicant submitted information beyond what was submitted with the original application (see Attachment A).
- 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.
- The District Manager of Code Compliance submitted a review comment sheet marked "Has no objections."
- April 4, 2007 The Development Services Senior Engineer forwarded a review comment sheet and related document (see Attachment B). The review comment sheet was marked "Recommends that this be denied," and the following comments were made:
1. The proposed garage can be sited to meet code requirements.

2. If the alley is reconstructed, the 40-foot radius of right-of-way (reference: City of Dallas Standard Constr. Details, File 251D-1) may encroach onto the proposed garage location.”

### **STAFF ANALYSIS:**

- The site is flat, irregular in shape (45.55’ on the north; 70.85’ on the south; 147.18’ on the east; and 150.62’ on the west), and, approximately 8,500 square feet in area. The site is zoned CD No. 2 where prior to its creation in 1988 was zoned R-10 where lots were typically 10,000 square feet in area.
- The submitted site plan indicates that enclosed parking spaces in the new detached garage will be located as close as 3’ from the alley right-of-way line. (The proposed garage would replace an existing garage/quarters structure that, according to the applicant, provides approximate 8’ distance between it and the alley right of way line).
- According to calculations taken from the submitted site plan by the Board Administrator, there would be an approximate range of 26’ – 30’ of width left on the north side of the lot if the proposed enclosed parking space were to comply with the 20’ distance/setback requirement on the west side of the lot since the lot’s width at its narrowest point on the north is 45.55’. (No side yard setback would be required for an accessory structure in the rear 30% of the lot under 15’ in height).
- The applicant has stated that interior square footage of the home on the site with the proposed addition would be 3,607 square feet - a size is that is well within the average range of house sizes for Lakewood Conservation District 2 where houses in the 6600 block of Avalon ranging from 1,987 square feet (the subject site) to 4,781 square feet at 6668 Avalon.
- The applicant could build the detached accessory structure without a garage door (or enclosed parking spaces) if the board were to deny the variance request. Granting the request will allow the applicant to enclose parking spaces on the proposed accessory structure with a garage door which otherwise could be constructed as an open garage (or carport) with unenclosed parking spaces.
- The Development Services Senior Engineer has submitted a review comment sheet marked “Recommends that this be denied.” The engineer has commented that the proposed garage can be sited to meet code requirements, and If the alley is reconstructed, the 40-foot radius of right-of-way (reference: City of Dallas Standard Constr. Details, File 251D-1) may encroach onto the proposed garage location.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the parking regulations of up to 17’ to enclose parking spaces in a new detached accessory structure will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance to the parking regulations of up to 17’ requested to enclose parking spaces in a new detached accessory structure is necessary to permit development of the subject site (that is flat, irregular in shape, and, approximately 8,500 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 CD No. 2 zoning classification.

- The variance to the parking regulations of up to 17' requested to enclose parking spaces in a new detached accessory structure would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same CD No. 2 zoning classification.
- Typically, when the Board has found that this type of variance request is warranted, they have imposed the following conditions:
  1. Compliance with the submitted site plan is required.
  2. Automatic garage doors must be installed and maintained in working order at all times.
  3. At no time may the area in front of the garages be utilized for parking of vehicles.
  4. All applicable permits must be obtained.These conditions are imposed to help assure that the variance will not be contrary to public interest.
- If the Board were to grant the variance request of 17', imposing a condition whereby the applicant must comply with the submitted site plan, the proposed accessory structure can be built and maintained as shown on the site plan with a garage door or enclosed parking spaces that are as close as 3' away from the alley right of way line (or as much as 17' into the 20' setback).
- If the Board were to grant the variance request, staff would discourage the board from imposing the submitted elevation as a condition to this request since the site is located in CD No. 2 and will require staff to review the elevations to ensure that the proposed structure is in compliance with applicable conservation district criteria.