

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
MONDAY, FEBRUARY 11, 2008**

MEMBERS PRESENT AT BRIEFING: Sharon Boyd, Panel Vice-Chair, Joel Maten, regular member, Elizabeth Wahlquist, regular member, Marc Bateman, alternate member and Matt Murrah, alternate member

MEMBERS ABSENT FROM BRIEFING: Robert Moore, regular member

MEMBERS PRESENT AT HEARING: Sharon Boyd, Panel Vice-Chair, Joel Maten, regular member, Elizabeth Wahlquist, regular member, Marc Bateman, alternate member and Matt Murrah, alternate member

MEMBERS ABSENT FROM HEARING: Robert Moore, regular member

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Casey Burgess, Asst. City Attorney, Donnie Moore, Chief Planner, Kyra Blackston, Senior Planner, Todd Duerksen, Development Code Specialist, Chau Nguyen, Traffic Engineer, Phil Erwin, Chief Arborist and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Casey Burgess, Asst. City Attorney, Donnie Moore, Chief Planner, Kyra Blackston, Senior Planner, Todd Duerksen, Development Code Specialist, Chau Nguyen, Traffic Engineer, Phil Erwin, Chief Arborist and Trena Law, Board Secretary

10:00 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **February 11, 2008** docket.

1:00 P.M.

The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel C December 10, 2007 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 11, 2008

MOTION: Maten

I move **approval** of the Monday, **December 11, 2007** public hearing minutes.

SECONDED: Bateman

AYES: 5–Boyd, Maten, Wahlquist, Bateman, Murrah

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 067-170

BUILDING OFFICIAL’S REPORT:

Application of Brian S. Riepen for a special exception to the landscape regulations at 4607 W. Lovers Lane. This property is more fully described as Lot 17 in City Block J/5125 and is zoned PD-326 (Area B) which requires mandatory landscaping. The applicant proposes to construct and maintain a structure and provide an alternate landscape plan which will require a special exception to the landscape regulations.

LOCATION: 4607 W. Lovers Lane

APPLICANT: Brian S. Riepen

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with constructing and maintaining an approximately 500 square foot detached garage on a site developed with an approximately 1,200 square foot converted residence/attorney’s office.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape/"plot plan" is required.

Rationale:

- The applicant has substantiated:
 - how strict compliance with the requirements of the Landscape Regulations of the Dallas Development Code (providing 2 of the required 2 street trees) will unreasonably burden the use of the property; and
 - that the special exception (whereby the area around the proposed structure on the north side of the site triggering the request will fully comply with the landscape regulations) will not adversely affect neighboring property .
- The City's Chief Arborist recommends approval of the request, subject to staff's suggested condition being imposed since the applicant will meet all required landscape provisions of PD No. 326 and Article X with the exception of providing the 2 required street trees, and is fully meeting the landscape requirements in the area around the proposed structure that is triggering the request.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

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

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

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

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

GENERAL FACTS:

- The Dallas Development Code requires full compliance with the Landscape Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet.
The applicant has submitted an alternate landscape plan/"plot plan" that the City's Chief Arborist states is meeting the street tree requirements.
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Chief Board of Adjustment Planner (see Attachment A). The memo stated the following:

- The applicant is requesting relief from landscape requirements of Article X of the Dallas Development Code (The Landscape and Tree Preservation Regulations), more specifically, relief from Section 51A-10.125(b)(4) pertaining to street tree requirements.
- Trigger:
 - Construction of a new structure on the property.
- Deficiencies:
 - PD No. 326 requires Article X landscaping with additional provisions. The applicant's proposed plan would bring the property into compliance with the PD No. 326 landscape requirements with the exception of the Article X street tree requirement. A minimum of two large street trees (minimum 3" caliper) must be planted within 30' of the projected curb. (No street trees are indicated on the proposed plan).
- Factors for consideration:
 - The new structure is proposed in the rear of the property. Residences exist to the north of the property.
 - The property currently has existing pavement in most of the front yard with the exception of a strip of planted landscape area on the east side and a landscape area along the foundation.
 - PD No. 326 states "landscaping must be provided on all property in accordance with Article X" when an application is made for a building permit that "increases the number of structures on the lot."
 - The property must also comply with the PD No. 326 additional landscape provision for an 8' tall fence where residential adjacency exists (along the alley). The PD No. 326 additional provision for street trees is not applied since no off-street parking is proposed in the "required front yard." An additional provision for irrigation to the street trees will only be applicable to the property if the Board denies the request.
 - An existing mulberry tree is on the east side of the existing structure that provides the equivalent of four site trees. An additional large canopy tree is proposed for the rear yard.
 - The applicant proposes an exposed aggregate pavement for rear yard vehicular access that will comply with the enhanced vehicular pavement design standard. A 20' wide enhanced adjacency buffer to the north of the additional structure will account for the enhanced perimeter buffer design standard requirement.
- Recommendation: Approval
 - The sole property addition is to the rear of the property. The proposed design standards and other landscape additions serve to buffer the residential adjacency near this addition and the related vehicular use at the alley.
 - The property is not changing the current use.
 - One parking space is proposed for the front of the existing structure. This parking space is near the structure and not in the required front yard of the property.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 326 (Planned Development District)
North: R-7.5 (A) (Single family residential 7,500 square feet)
South: PD No. 326 (Planned Development District)
East: PD No. 326 (Planned Development District)
West: PD No. 326 (Planned Development District)

Land Use:

The subject site is developed as an office. The area to the north is developed with single family uses; the area to the east is developed with retail uses, the area to the south is developed with multifamily uses; and the area to the west is developed with office 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:

- Dec. 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.
- Jan. 17, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- Jan. 17, 2008: 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 January 28th deadline to submit additional evidence for staff to factor into their analysis;
 - the February 1st deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the February public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

January 29, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the 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.

February 1, 2008 The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment A).

STAFF ANALYSIS:

- This request to be “excepted” from the street tree requirement on the Lovers Lane/south side of the site is triggered by the applicant’s intentions of adding a detached garage closer to the alley/north side of the site.
- The request is triggered by the applicant’s intent on merely constructing a detached garage to serve a 1,000 square foot converted residence/attorney’s office that (according to DCAD) was constructed in 1946.
- The applicant is proposing to comply with all landscape requirements with the exception of providing 2 required street trees.
- The City’s Chief Arborist supports the request based on the nature of the request, what is shown to be provided on the submitted alternate landscape/”plot plan”, and the characteristics of the surrounding area.
- The applicant has the burden of proof in establishing the following:
 - Strict compliance with the requirements of the Landscape Regulations of the Dallas Development Code (i.e. planting 2 of the required 2 street trees) will unreasonably burden the use of the property (in this case, a site that is developed with a converted residence/office built in 1946).
 - The special exception (allowing “exception” of 2 of the required 2 street trees) will not adversely affect neighboring property.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 11, 2008

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Wahlquist

I move that the Board of Adjustment grant application **BDA 067-170** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general

purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted alternate landscape plan/plot plan is required.

SECONDED: **Maten**

AYES: 5–Boyd, Maten, Wahlquist, Bateman, Murrah

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 078-028(K)

BUILDING OFFICIAL’S REPORT:

Application of James P. Christon represented by Kimley Horn & Associates for a special exception to the landscaping regulations at 9807 Walnut Hill Lane. This property is more fully described as a 1.52 acre lot in City Block 8081 and is zoned CR, which requires mandatory landscaping. The applicant proposes to construct a nonresidential structure and provide an alternate landscape plan which will require a special exception.

LOCATION: 9807 Walnut Hill Lane

APPLICANT: James P. Christon
Represented by Kimley Horn & Associates

REQUEST:

- The applicant proposes to construct a nonresidential structure and provide an alternate landscape plan, which will require a special exception to the landscape regulation.

STAFF RECOMMENDATION:

Approval

Rationale:

- The City’s Chief Arborist recommends approval (see attachment A) of this request for the following reasons:
 - Strict compliance with the ordinance will unreasonably burden the use of the property;
 - The special exception will not adversely affect neighboring properties: and
 - The requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS:

Section 51A-10.100 specifies that the board of adjustment may grant a special exception to the requirements of the landscape article upon making a special finding of evidence presented that:

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

In determining whether to grant a special exception under Subsection (a), the board shall consider the following factors:

- (1) The extent to which there is residential adjacency.
- (2) The topography of the site.
- (3) The extent to which landscaping exists for which no credit is given under this article.
- (4) The extent to which other existing or proposed amenities will compensate for the reduction of landscaping. (Ord. Nos. 22053, 25155)

GENERAL FACTS:

- The site is currently developed with two abandoned structures.
- The site has an irregular shape and has a shared access with the adjoining multi-family property to the north.
- The applicant is requesting a special exception to the landscape requirements of Article X. More specifically, the request is for relief from buffer requirements specified under Section 51A-10.125 (b)(1), "Perimeter landscape buffer strip and street tree requirements."

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail)
North: MF (Multifamily)
South: CR (Community Retail)
East: CR (Community Retail)
West: CR (Community Retail)

Land Use:

The subject site is developed with two vacant structures. The areas to the south, west and east are developed with commercial and retail, the area to the north is developed with a multifamily use.

Zoning/BDA History:

There is no history on this site or sites in the immediate vicinity.

Timeline:

- January 4, 2008: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- January 17, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- January 17, 2008: The Board's Senior Planner contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria and standard that the board will use in their decision to approve or deny the request;
 - the January 25th deadline to submit additional evidence for staff to factor into their analysis and discuss at the staff review team meeting;
 - the February 1st deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the February public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- January 29, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the 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.
- February 1, 2008 The applicant submitted a revised landscape plan (see attachment B).
- February 4, 2008 The Chief arborist submitted an analysis of the landscape plan and recommended approval (see attachment A).

STAFF ANALYSIS:

- A site plan has been submitted and reviewed by the Board’s Senior Planner and the City of Dallas Chief Arborist. A review of the site plan by the Board’s Senior Planner shows the plans to include:
 - Removal of 134 inches total caliper of existing trees
 - 6 Live Oak (116 inches total caliper)
 - 1 Crape Myrtle (unknown caliper)
 - 1 Elm (10 inches total caliper)
 - 1 Hackberry (8 inches total caliper)
 - Tree Mitigation plan for a total of 101 inches replaced
 - 7 Live oak (28 inches of caliper)
 - 7 Lacebark Elm (28 inches of caliper)
 - 7 Yaupon Holly (21 inches of caliper)
 - 8 Desert Willow (24 inches of caliper)
 - “Additional 33 inches of required mitigation to be met offsite per section 51A-10.135 of the Dallas Development Code.”
- The site plan indicates “perimeter buffer is not provided due to location of existing mutual access easement and desire to maintain existing traffic flow between adjacent lots.”
- A review of the site plan by chief arborist was completed and included the following information:
 - Trigger—Proposed new construction
 - Deficiencies—the proposed plan complies with Article X landscape requirements with the exception of
 - 1) the perimeter landscape buffer for residential adjacency to the north of the property
 - 2) non-compliance with the requirement of 9 large street trees.
 - Factors:
 - The proposed construction site has a pre-existing 25-foot wide ‘reciprocal easement agreement’ shared with multi-family development to the north.
 - The property is restricted on the northeast corner of the property from planting by an existing sanitary sewer easement.
 - The restricted shape and size of the lot creates further structure, traffic flow and required parking conflicts with planting areas.
 - Recommendation—Approval, subject to the approved landscape plan.
- The applicant has the burden of proof in establishing the following:
 - strict compliance with the requirements of this article will unreasonably burden the use of this property:
 - the special exception will not adversely affect neighboring property; and
 - the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.
- If the Board chooses to approve the request the staff recommends imposing the submitted site plans as a condition.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 11, 2008

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Wahlquist**

I move that the Board of Adjustment grant application **BDA 078-028** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted site plans is required.

SECONDED: **Maten**

AYES: 5–Boyd, Maten, Wahlquist, Bateman, Murrah

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 067-154

BUILDING OFFICIAL’S REPORT:

Application of Sandlin-Mountain Hollow, represented by Melodie Geisler, for a special exception to the tree preservation regulations at 5500 Eagle Ford Drive. This property is more fully described as Lots 1-51 in City Block N/8682 and Lots 1-60 in City Block P/8682 and is zoned PD 521(Subdistrict 6), which requires mandatory landscaping. The applicant proposes to construct a single family residential development and provide an alternate tree mitigation plan which will require a special exception.

LOCATION: 5500 Eagle Ford Drive

APPLICANT: Sandlin-Mountain Hollow
Represented by Melodie Geisler

February 11, 2008 Public Hearing Notes:

- The applicant’s representative and neighboring property owners in opposition to the request submitted additional printed documentation to the board at the public hearing including aerial photographs of the subject site.

REQUEST:

- A special exception to the tree preservation regulations is requested in conjunction with removing protected trees on a site that is currently being developed with a 111 lot single family development (Mountain Hollow).

NOVEMBER 2007 STAFF RECOMMENDATION:

Approval, subject to the following conditions:

1. Full compliance with Article X: Tree Preservation Regulations is required with one exception: the applicant must fully mitigate all protected trees removed on the site by December 31, 2012.
2. All conditions stated under Section 51A-10.134 (C) (i) must be met. (For single family developments, at least 50 percent of the total caliper of replacement trees must be planted before 65 percent of the development has received a final building inspection).
3. All trees planted for mitigation must be maintained in a healthy growing condition as required under Article X.
4. All replacement trees must be planted prior to the completion of the development.
5. All vacant lots not under construction must introduce storm water management practices to reduce soil erosion on the properties within 90 days of the November 12, 2007 board of adjustment public hearing. Procedures used must be according to best management practices recommended by the Public Works and Transportation Storm Water Management office and in compliance with state law. A letter describing city-approved measures taken to prevent site erosion must be provided to the building official.

Rationale:

- The applicant has substantiated:
 - how strict compliance with the requirements of the Landscape and Tree Preservation Regulations of the Dallas Development Code (whereby replacement trees would be required to be put on the site prior to the construction/completion of 111 homes on the undeveloped site) will unreasonably burden the use of the property; and
 - that the special exception will not adversely affect neighboring property (given that full compliance with the Tree Preservation Regulations will be achieved on the site just not within 30 days - 18 months from when a tree removal permit was issued for the site in June of 2006).
- The City's Chief Arborist recommends approval of the request, subject to the conditions listed above.

REVISED FEBRUARY 2008 STAFF RECOMMENDATION:

Approval, subject to the following conditions:

1. Full compliance with Article X: Tree Preservation Regulations is required with one exception: the applicant must fully mitigate all protected trees removed on the site by December 31, 2012.
2. All conditions stated under Section 51A-10.134 (C) (i) must be met. (For single family developments, at least 50 percent of the total caliper of replacement trees

must be planted before 65 percent of the development has received a final building inspection).

3. The owner must plant a minimum of two – 3” caliper trees and one – 2” caliper tree per lot. All replacement trees must be selected from the Approved Replacement Tree List as required under Article X. Tree that are planted that are not on the approved list will not be counted toward tree mitigation requirements.
4. All trees planted for mitigation must be maintained in a healthy growing condition as required under Article X.
5. All replacement trees must be planted prior to the completion of the development.

Rationale:

- The applicant has substantiated:
 - how strict compliance with the requirements of the Landscape and Tree Preservation Regulations of the Dallas Development Code (whereby replacement trees would be required to be put on the site prior to the construction/completion of 111 homes on the undeveloped site) will unreasonably burden the use of the property; and
 - that the special exception will not adversely affect neighboring property (given that full compliance with the Tree Preservation Regulations will be achieved on the site just not within 30 days - 18 months from when a tree removal permit was issued for the site in June of 2006).
- The City’s Chief Arborist recommends approval of the request, subject to the conditions listed above.

STANDARD FOR A SPECIAL EXCEPTION TO THE TREE PRESERVATION REGULATIONS:

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

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

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

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

GENERAL FACTS:

- The Board of Adjustment held a public hearing on this application on November 12, 2007 where the applicant’s representative and opposing property owners submitted

additional written documentation to the board at the public hearing. The board delayed action on the request until February 11, 2008 to give the applicant an opportunity to address concerns mentioned at the public hearing by opposing neighboring property owners.

- The Dallas Development Code requires full compliance with the Tree Preservation Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet.

The applicant's representative has submitted a proposed alternate mitigation plan "to permit the owner 6.5 years from the date of the removal for all trees to be replaced" (see Attachment A). The applicant has stated that no deviation from the quantity, species, size, or location of replacement trees is requested.

- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Chief Board of Adjustment Planner prior to the November hearing (see Attachment B). The memo stated the following:

- The applicant is requesting relief from tree mitigation regulations of Article X of the Dallas Development Code (The Landscape and Tree Preservation Regulations), more specifically, relief from Section 51A-10.134(5) pertaining to timing of protected tree mitigation.

- Trigger:

- The developer was issued a tree removal permit on June 6, 2006 for the legal removal of protected trees to begin development of the property.

- Deficiencies:

- The owner of the property is required to fully mitigate within 30 days or request an extension of 6 months with written affidavit, or request an extension to 18 months with a letter of credit or performance bond. The site is currently not in compliance with any of the allowed measures.

- Factors for consideration:

- The Mountain Hollow development obtained a grading permit and a tree removal permit on June 6, 2006. The tree removal permit identifies the mitigation to be 831 caliper inches. The applicant identifies 778 caliper inches for mitigation.

- The owners have identified on their "General Tree Survey" a mitigation plan to plant 856 caliper inches (two 3" trees and one 2" tree per lot)

- The development site infrastructure appears complete. All lots are vacant and exposed to rain and wind erosion. Permits have not yet been issued for the construction of homes.

- The applicant proposes to mitigate within 6.5 years from the date of the tree removal permit. The owner would provide a letter of credit or performance bond in the amount required by ordinance.

- Section 51A-10.134 (C) states the requirement for determining the amount for a letter of credit or performance bond is "the total cost of purchasing and planting replacement tree." This number would be provided by the applicant based upon conditions set by their tree supplier and other contractors.

- Recommendation

- Approval, subject to the following conditions:

- 1. The conditions stated under Section 51A-10.134 (C) (i) must be met. (For single family developments, at least 50 percent of the total caliper of

replacement trees must be planted before 65 percent of the development has received a final building inspection.

2. All trees planted for mitigation must be maintained in a healthy growing condition as required under Article X.
 3. All replacement trees must be planted prior to the completion of the development.
 4. All vacant lots not under construction must introduce storm water management practices to reduce soil erosion on the properties within 90 days of the hearing. Procedures used must be according to best management practices recommended by the Public Works and Transportation Storm Water Management office and in compliance with state law. A letter describing city-approved measures taken to prevent site erosion must be provided to the building official.
- The applicant's representative submitted additional information on January 14, 2008 that included an update as to what has been done on the site with regard to erosion concerns and pictures of the subject site (see Attachment C).
 - Documentation was submitted on January 28, 2008 from citizens in four neighborhoods adjacent to the site who oppose the application (see Attachment D). This documentation included information submitted at the November 12th hearing as well as updated information including a document detailing why the request should be denied, a map of where those opposed are located in relation to the site, and photos of the site and surrounding area.
 - The City of Dallas Chief Arborist submitted an updated memo to the Board Administrator and the Chief Board of Adjustment Planner (see Attachment E). The memo stated the following:
 - The applicant is requesting relief from tree mitigation regulations of Article X of the Dallas Development Code (The Landscape and Tree Preservation Regulations), more specifically, relief from Section 51A-10.134(5) pertaining to timing of protected tree mitigation.
 - Trigger:

The developer was issued a tree removal permit on June 6, 2006 for the legal removal of protected trees to begin development of the property.
 - Deficiencies:

The owner of the property is required to fully mitigate within 30 days or request an extension of 6 months with written affidavit, or request an extension to 18 months with a letter of credit or performance bond. The site is currently not in compliance with any of the allowed measures.
 - Factors for consideration:
 - The Mountain Hollow development obtained a grading permit and a tree removal permit on June 6, 2006. The tree removal permit identifies the mitigation to be 831 caliper inches. The applicant identifies 778 caliper inches for mitigation. The discrepancy will be clarified at the November 12th public hearing.
 - The owners have identified on their "General Tree Survey" a mitigation plan to plant 856 caliper inches (two 3" trees and one 2" tree per lot).
 - The development site infrastructure is complete. Site control improvements have been made since the initial hearing date that is monitored by the Public

- Works Stormwater Management Division. Permits have not yet been issued for the construction of homes as of the date of this letter.
- The owner proposes to provide a letter of credit or performance bond in the amount required by ordinance for the extended time period.
 - Section 51A-10.134 (C) states the requirement for determining the amount for a letter of credit or performance bond is “the total cost of purchasing and planting replacement tree.” This number would be provided by the applicant based upon conditions set by their tree supplier and other contractors.
 - Recommendation
 - Approval of the timing extension, subject to the following conditions:
 1. The conditions stated under Section 51A-10.134 (C) (i) must be met. (For single family developments, at least 50 percent of the total caliper of replacement trees must be planted before 65 percent of the development has received a final building inspection).
 2. The owner must plant a minimum of two – 3” caliper trees and one – 2” caliper tree per lot. All replacement trees must be selected from the Approved Replacement Tree List as required under Article X. Trees that are planted that are not on the approved list will not be counted toward tree mitigation.
 3. All trees planted for mitigation must be maintained in a healthy growing condition as required under Article X.
 4. All replacement trees must be planted prior to the completion of the development.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 521 (Planned Development)
North: PD No. 521 (Planned Development)
South: PD No. 521 (Planned Development)
East: PD No. 521 (Planned Development)
West: PD No. 521 (Planned Development)

Land Use:

The subject site is currently under development. The area to the north is undeveloped; the areas to the east, south, and west are partially undeveloped and partially developed with single family uses.

Zoning/BDA History:

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

Timeline:

- Sept. 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.
- October 18, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- October 18, 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 October 26th deadline to submit additional evidence for staff to factor into their analysis;
 - the November 2nd 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 November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- October 25, 2007 The applicant's representative submitted additional information to the Board Administrator (see Attachment A).
- October 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Development Services Current Planning Assistant Director, 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.
- November 5, 2007 The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment B).
- November 12, 2007 The Board of Adjustment conducted a public hearing and delayed action on the application until February 11, 2008.

- January 14, 2008 The applicant's representative submitted additional information to the Board Administrator (see Attachment C).
- January 29, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the 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.
- January 31, 2008 Neighbors from four adjacent neighborhoods submitted additional information to the Board Administrator (see Attachment D).
- February 1, 2008 The City of Dallas Chief Arborist submitted an updated memo regarding this request (see Attachment E).

STAFF ANALYSIS:

- The applicant has submitted an alternate tree mitigation plan that proposes to fully mitigate all protected trees removed on the site within 6.5 years from the date of the tree removal permit issued in June of 2006 rather than the 30 days – 18 months required by Article X of the Dallas Development Code.
- The applicant has the burden of proof in establishing the following:
 - Strict compliance with the requirements of the Tree Preservation Regulations of the Dallas Development Code (i.e. mitigating all protected trees removed on the site within 30 days – 18 months from removal) will unreasonably burden the use of the property (in this case, a site that is currently under development as a single family subdivision).
 - The special exception (allowing for an extension of the time period in which to fully mitigate protected trees removed on the site) will not adversely affect neighboring property.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 12, 2007

APPEARING IN FAVOR: Chuck McKinney, 17090 Dallas Parkway, Dallas, TX
Melodie Geisler, 17090 Dallas Parkway, Dallas, TX

APPEARING IN OPPOSITION: Warren Hansen, 5659 High Creek Dr, Dallas, TX

MOTION: Boyd

I move that the Board of Adjustment, in Appeal No. **BDA 067-154**, hold this matter under advisement until **February 11, 2008**.

SECONDED: **Moore**

AYES: 4– Madrigal, Boyd, Moore, Jefferson

NAYS: 1– Maten

MOTION PASSED: 4 – 1

BOARD OF ADJUSTMENT ACTION: FEBRUARY 11, 2008

APPEARING IN FAVOR: Melodie Geisler, 17090 Dallas Parkway, Dallas, TX
Chuck McKinney, 17090 Dallas Parkway, Dallas, TX

APPEARING IN OPPOSITION: Jillce Stevens, 2510 Alden Ave., Dallas, TX
Warren Hansen, 5659 High Creek Dr, Dallas, TX
Terry Rangers, 5655 High Creek Dr., Dallas, TX
Lamar Rengers, 5655 High Creek Dr., Dallas, TX

MOTION: **Bateman**

I move that the Board of Adjustment, in Appeal No. **BDA 067-154**, on application of Sandlin-Mountain Hollow, represented by Melodie Geisler, **grant** the request of this applicant to provide an alternate tree mitigation plan as a special exception to the tree preservation requirements in the Dallas Development Code because our evaluation of the property and the testimony shows that strict compliance with the requirements will unreasonably burden the use of the property; the special exception will not adversely affect neighboring property; and the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Full compliance with the Article X Tree Preservation Regulations is required with one exception: the applicant must fully mitigate all protected trees removed on the site by July 1, 2009.
- All conditions stated under Section 51A-10.134(5)(C)(i) must be met for single family developments; at least 50 percent of the total caliper of replacement trees must be planted before 65 percent of the development has received a final building inspection).
- Two 3” caliper trees and one 2” caliper tree must be planted per lot. All replacement trees must be selected from the Article X approved replacement tree list. If a tree is planted that is not on the approved list, it will not be counted towards the tree mitigation requirements.
- All trees planted for mitigation must be maintained in a healthy growing condition as required under Article X.
- All replacement trees must be planted prior to the completion of the development.
- The property owner must provide the building official with a performance bond or letter of credit in the amount of the total cost of purchasing and planting the replacement trees.

SECONDED: Wahlquist

AYES: 5–Boyd, Maten, Wahlquist, Bateman, Murrah

NAYS: 0–

MOTION PASSED: 5 – 0(unanimously)

FILE NUMBER: BDA 078-023

BUILDING OFFICIAL’S REPORT:

Application of Johnnie C. Reynolds, represented by Masterplan, for a special exception to operate a nonconforming use that has been discontinued for six months or more at 4635 S. Lancaster Road. This property is more fully described as Lots 33 and 34 in City Block 31/4329 and is zoned CR, which limits the legal uses in a zoning district. The applicant proposes to restore a nonconforming vehicle display, sales, and service use which will require a special exception to the nonconforming use regulations.

LOCATION: 4635 S. Lancaster Road

APPLICANT: Johnnie C. Reynolds
Represented by Masterplan

February 11, 2008 Public Hearing Notes:

- The applicant’s representative submitted additional written/printed documentation to the board at the public hearing.

REQUEST:

- A special exception to reinstate nonconforming use rights is requested in conjunction with obtaining a Certificate of Occupancy (CO) for a “vehicle display, sales, and service” use on the subject site even though this nonconforming use was discontinued for a period of six months or more.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to operate a nonconforming use if that use is discontinued for six months or more since the basis for this type of appeal is based on whether the board determines that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

STANDARD FOR A SPECIAL EXCEPTION TO OPERATE A NONCONFORMING USE IF THAT USE IS DISCONTINUED FOR SIX MONTHS OR MORE: The Dallas Development Code specifies that the Board may grant a special exception to operate a nonconforming use that has been discontinued for six months or more if the owner can

show that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

GENERAL FACTS:

- The subject site is zoned CR (Community Retail) – a zoning district that does not permit a “vehicle display, sales, and service” use.
The “vehicle display, sales, and service” use on the site is a nonconforming use given that Building Inspection has determined that this use was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time.
The Dallas Development Code defines “nonconforming use” as “a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time.”
The nonconforming use regulations of the Dallas Development Code state it is the declared purpose of the nonconforming use section of the code that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.
The nonconforming use regulations continue to state that the right to operate a nonconforming use ceases if the nonconforming use is discontinued for six months or more, and that the board of adjustment may grant a special exception to operate a nonconforming use that has been discontinued for six months or more if the owner can show that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.
- According to information from Dallas Central Appraisal District (DCAD), the property at 4931 S. Lancaster Road is developed with a “sales office” with 840 square feet that was constructed in 1966.
- The “vehicle display, sales, and service” use that existed on the site was a legal nonconforming use. Zoning maps dated July 31, 1986 indicated that the site had been zoned LC (Light Commercial). The LC zoning district allowed “auto or motorcycle display, sales and service” use as a permitted use but was one of several cumulative zoning districts that were eliminated during the city-wide zoning transition program in the late 80’s. Most likely, the “vehicle display, sales, and service” use on the subject site became a legal *nonconforming* use upon the passing of the city-wide ordinance that created Chapter 51A in the late 80’s.
- Given provisions set forth in the Dallas Development Code, a “vehicle display, sales, and service” use can obtain “conforming use” status upon attaining a different zoning district from the City Council.
- The nonconforming “vehicle display, sales, and service” use on the site would be subject to the possibility of an application that may be brought to the Board of Adjustment requesting that the board establish a compliance date as is the case with any other nonconforming use in the city.
- The Board Administrator has informed the applicant of the provisions set forth in the Dallas Development Code pertaining to nonconforming uses.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail)
North: CR (Community Retail)
South: CR (Community Retail)
East: MF-2 (A)(SUP 181) (Multifamily residential, armory)
West: R-7.5 (A) (Single family residential 7,500 square feet)

Land Use:

The subject site is developed as a vacant car lot. The areas to the north and south are developed with commercial uses; the area to the east appears to be developed with an institutional/office use; and the area to the west is developed with single family uses.

Zoning/BDA History:

1. BDA 067-162, 4635 S. Lancaster Road, the subject site On November 12, 2007, the Board of Adjustment Panel C denied a special exception to restore a nonconforming vehicle display, sales, and service use on the subject site without prejudice.

Timeline:

- Dec. 12, 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.
- Jan. 17, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."
- Jan. 17, 2008: 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 January 28th deadline to submit additional evidence for staff to factor into their analysis;
 - the February 1st deadline to submit additional evidence to be incorporated into the Board's docket materials;

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

January 29, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the 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 special exception request is made to restore nonconforming use rights (and obtain a Certificate of Occupancy) for a “vehicle display, sales, and service” use that has been discontinued for six months or more.
- The “vehicle display, sales, and service” use on the subject site is a nonconforming use that appears to have become a nonconforming use in 1989 during the city-wide zoning transition program.
- The application merely states that the owner had a difficult time finding a suitable tenant to occupy the lot. No additional information has been submitted that documents when the use became discontinued or that addresses the code standard which in this case is how there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.
- The applicant has the burden of proof in establishing the following related to the special exception request:
 - There was a clear intent not to abandon the nonconforming “vehicle display, sales, and service” use on the subject site even though the use was discontinued for six months or more.
- Granting this request would reinstate/restore the nonconforming use rights that were lost when the “vehicle display, sales, and service” use was vacant for a period of six (6) months or more. Granting this request would restore the “vehicle display, sales, and service” use as legal nonconforming use but not as a legal *conforming* use. The applicant would have to make application for a change in zoning and obtain approval from City Council in order to make the use on the site a legal conforming use.
- If restored/reinstated, the nonconforming use would be subject to compliance to use regulations of the Dallas Development Code by the Board of Adjustment as any other nonconforming use in the city. (The applicant has been advised by staff of

Section 51A-4.704 which is the provision in the Dallas Development Code pertaining to “Nonconforming Uses and Structures”).

BOARD OF ADJUSTMENT ACTION: FEBRUARY 11, 2008

APPEARING IN FAVOR: Ed Simons, 900 Jackson St., #640, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Maten

I move that the Board of Adjustment, in Appeal No. **BDA 078-023**, on application of Johnnie C. Reynolds, represented by Masterplan, **grant** the request of this applicant for a special exception to the provision found in Section 51A-4.704(a)(2) of the Dallas Development Code providing that the right to operate a nonconforming use ceases if the nonconforming use is discontinued for six months or more, because the owner of the property has shown that there was a clear intent not to abandon the use even though it was discontinued for six months or more.

SECONDED: Wahlquist

AYES: 3–Maten, Wahlquist, Bateman

NAYS: 2– Boyd, Murrah

MOTION FAILED: 3 – 2

***Since the motion to grant did not get four concurring votes, the motion failed and is therefore deemed denied with prejudice.**

MOTION #2: Maten

I move that the Board of Adjustment, in Appeal No. **BDA 078-023**, on application of Johnnie C. Reynolds, represented by Masterplan, **deny** the special exception requested by this applicant **without** prejudice, because the nonconforming use was discontinued for six months or more and the owner has failed to show that there was a clear intent not to abandon the use even though it was discontinued for six months or more.

SECONDED: Bateman

AYES: 5– Boyd, Maten, Wahlquist, Bateman, Murrah

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 078-029(K)

BUILDING OFFICIAL’S REPORT:

Application of La Cubanita, L.L.C. represented by Roger Albright for a special exception to the visibility obstruction regulations at 4444 McKinney Avenue. This property is more fully described as Lot 13 in City Block G/1533 and is zoned PD-193 (LC), which requires a 45 foot visibility triangle at street intersections. The applicant proposes to construct

and maintain a nonresidential structure in a required visibility obstruction triangle which will require a special exception.

LOCATION: 4444 McKinney Avenue

APPLICANT: La Cubanita, L.L.C.
Represented by Roger Albright

REQUEST:

- A special exception to the visibility obstruction regulations are requested in conjunction constructing and maintaining a nonresidential structure.

STAFF RECOMMENDATION:

Approval

Rationale:

- The Development Services Senior Engineer submitted a comment sheet stating that he does not object if certain conditions are met.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISIBILITY OBSTRUCTION REGULATIONS:

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

GENERAL FACTS:

- The site is zoned PD 193 which requires a visibility triangle of 45’.
- According to submitted site plans, the applicant is proposing to provide a visibility triangle of 31’ 9”.
- The proposed site is an existing structure (restaurant with patio seating).
- The properties in the vicinity include commercial and retail uses with several properties providing patio seating.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (LC)
North: PD No. 193 (LC)
South: PD No. 193 (PDS 43)
East: PD No. 193 (GR)
West: PD No. 193 (LC)

Land Use:

The subject site is developed with a nonresidential structure. The areas to the north, south, east and west are developed with nonresidential 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:

- January 4, 2008: The applicant's representative submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- January 17, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- January 18, 2008: The Board Senior Planner mailed the applicant's representative a letter that contained the following information:
- the public hearing date and panel that will consider the application;
 - the criteria and 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 January 25th deadline to submit additional evidence for staff to factor into their analysis and recommendation;
 - the February 1st deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the February public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- January 25, 2008: The applicant's representative submitted a conceptual representation of the patio addition.
- January 29, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the

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.

The Development Services Senior Engineer submitted a review comment sheet showing he has no objection to the special exception to the visibility obstruction regulations (see attachment A).

STAFF ANALYSIS:

- The applicant proposes to maintain a nonresidential structure (restaurant with patio seating).
- The existing patio meets the requirements of the visibility obstruction in that the railing does not encroach into the visibility triangle of 45'. The proposed changes include maintaining the existing foundation and extending the metal railing of the patio.
- A review of the site plan by the Senior Planner show the patio foundation will be raised to a height of 26" and the new railing will be 3' high from the foundation. The total height of the foundation and railing will be approximately 5'2" in height.
- The submitted plans do not demonstrate the materials to be used to construct the railing.
- The City's Senior engineer reviewed the plans and submitted a comment sheet showing "Has no objections if certain conditions are met (see attachment A)"
- The applicant has submitted a conceptual representation of the extended railing and supporting evidence (see attachments B and C).
- The applicant has the burden of proof in establishing that granting the special exception to the visibility obstruction regulations does not constitute a traffic hazard
- If the Board were to grant the special exception to the visibility obstruction regulations, it may impose compliance with submitted site plan and elevation.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 11, 2008

APPEARING IN FAVOR: Roger Albright, 3301 Elm St., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Wahlquist

I move that the Board of Adjustment, in Appeal No. **BDA 078-029**, on application of La Cubanita, LLC, represented by Roger Albright, **grant** the request of this applicant to construct portions of a nonresidential structure in a visibility triangle as a special exception to the visibility obstruction regulations contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: Bateman

AYES: 5– Boyd, Maten, Wahlquist, Bateman, Murrah

NAYS: 0–

MOTION PASSED: 5 – 0(unanimously)

FILE NUMBER: BDA 078-002

BUILDING OFFICIAL’S REPORT:

Application of Masterplan for an extension of the nonconforming use compliance date at 2600 Main Street. This property is more fully described as tract 1 & 2 in City Block 183 and is zoned PD-269 (Tract A) which states that the right to operate a nonconforming dance hall use, and bar, lounge, or tavern use shall automatically terminate on December 14, 2007 or one year after the use became nonconforming, whichever is later. The applicant proposes to maintain a dance hall use, and a bar, lounge, or tavern use which will require an extension of the nonconforming use compliance date regulations.

LOCATION: 2600 Main Street

APPLICANT: Masterplan

February 11, 2008 Public Hearing Notes:

- The board authorized an amendment to the application at the public hearing that being amending the case applicant from Masterplan to Nick Hidi.
- City of Dallas Assistant City Attorneys requested that the board delay action on this application until March 17th in order from them and the board to review additional submitted written documentation that the applicant had submitted earlier on February 11th - beyond the January 28, 2008 deadline requested in the subpoena duces tecum and interrogatories sent on December 21st and 28th, 2007.

REQUEST:

- A request is made for the Board of Adjustment to consider extending a City Council ordinance-imposed compliance date of December 14, 2007 for nonconforming dance hall and nonconforming bar, lounge or tavern uses (Club Uropa) on the subject site.

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

- (a) Compliance regulations for nonconforming uses. It is the declared purpose of this subsection that nonconforming uses be eliminated and be required to comply with

the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.

(1) Amortization of nonconforming uses.

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

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

GENERAL FACTS:

- City records indicate that a Certificate of Occupancy (CO # 0311191036) for an alcoholic beverage establishment (with dance floor/dance hall use) was issued on March 10, 2004, and that the dance hall and bar/lounge tavern uses on the subject site became nonconforming on June 14, 2006 (Ordinance No. 26369).
- The Dallas Development Code states that "nonconforming use" means "a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time."
- The subject site is zoned PD No. 269 where the ordinance includes a provision specifically related to nonconforming uses and structures (Section 51P-269.105(k)). This ordinance provides an automatic termination of nonconforming rights for certain uses including the nonconforming uses located on the subject site. The ordinance states that the city council finds that certain nonconforming uses have an adverse effect on nearby properties; and that the purpose of this subsection is to eliminate these nonconforming uses and to make them comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area. The ordinance states that the right to operate a nonconforming bar, lounge or tavern use; a private club use; a tattoo studio use; a body piercing studio use, or dance hall use shall automatically and immediately terminate on December 14, 2007 or one year after the use became nonconforming, whichever is later. The ordinance continues to state that the owner of one of these types of uses may request an extension of the compliance deadline by filing an application with the Director of Development Services; and upon the filing of a complete application for extension, the board of adjustment shall determine whether it is necessary to extend the compliance deadline for the nonconforming use considering factors listed in Section 51A-4.704(a)(1)(D) in determining whether to grant the request for extension.

Lastly, the ordinance states that if, based on evidence presented at the public hearing, that the board finds that additional time is needed to recoup the owner's actual investment in the use before the use became nonconforming, the board shall grant the request for extension and establish a new compliance deadline consistent with its determination of a reasonable amortization period; otherwise, the board shall deny the request. If the board denies the request, the right to operate the nonconforming use shall automatically terminate on December 14, 2007, or 30 days after the date of the board of adjustment's decision to deny, whichever is later.

- The owner of the nonconforming uses on the site attempted to eliminate the nonconforming use status of the existing dance hall and bar/lounge/tavern uses by requesting an SUP (Specific Use Permit) from City Council. However, the City Council denied this application (Z067-305) on December 12, 2007.
- The owner of the site could transition the uses to any use that is permitted by right in the site's PD 269 zoning classification.
- On December 21, 2007, a subpoena duces tecum and interrogatories were sent to the owner of the site on which the nonconforming uses are located.
- On December 28, 2007, a subpoena duces tecum and interrogatories were sent to the applicant/case representative.
- On January 22, 2008, a representative for the owners of the real property at 2600 Main Street on which the nonconforming uses are located submitted a response to the subpoena duces tecum and interrogatories given (see Attachment A).

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 269 (Planned Development)
North: PD No. 269 (Planned Development)
South: PD No. 269 (Planned Development)
East: PD No. 269 (Planned Development)
West: CA-(A) (Central Area)

Land Use:

The site is currently developed with nonconforming dance hall and bar/lounge/tavern uses (Club Uropa). The areas to the north, east, and south are developed with a mix of residential and nonresidential uses; and the area to the west is developed as surface parking.

Zoning/BDA History:

1. Z067-305, 2600 Main Street (the subject site)

On December 12, 2007, the City Council denied an application for an SUP for the dance hall and bar/lounge/tavern uses on the subject site.

Timeline:

- Nov. 14, 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.
- Dec. 12, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- Dec. 21 & 28, 2007: A subpoena duces tecum and interrogatories were sent to the owner of the site on which the nonconforming uses are located and to the case applicant/representative.
- January 14, 2008 The applicant withdrew the part of the application involving a request for a special exception to the parking regulations.
- January 22, 2008 A representative for the owners of the real property at 2600 Main Street on which the nonconforming uses are located submitted a response to the subpoena duces tecum and interrogatories given (see Attachment A).
- January 29, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the 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 dance hall and bar, lounge, and tavern uses on the subject site are nonconforming uses. According to city records, a Certificate of Occupancy (CO # 0311191036) for an alcoholic beverage establishment (with dance floor/dance hall use) was issued on March 10, 2004, and that the dance hall and bar/lounge tavern uses on the subject site became nonconforming on June 14, 2006 (Ordinance No. 26369).
- The Dallas Development Code states that it is the declared purpose of this subsection (Sec. 51A-4.704. Nonconforming Uses and Structures) that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.
- The subject site is zoned PD No. 269 where the ordinance includes a provision specifically related to nonconforming uses and structures (Section 51P-269.105(k)). This ordinance provides an automatic termination of nonconforming rights for certain

uses including the nonconforming uses on the subject site: dance halls and bar, lounge, and tavern uses.

- The PD No. 269 ordinance states that the city council finds that certain nonconforming uses including those on the subject site (dance halls and bar, lounge and taverns) have an adverse effect on nearby properties; and that the purpose of the subsection in the ordinance is to eliminate these nonconforming uses and to make them comply with the regulations of the Dallas Development Code.
- The PD No. 269 ordinance states that the right to operate a nonconforming bar, lounge or tavern use; a private club use; a tattoo studio use; a body piercing studio use, or dance hall use shall automatically and immediately terminate on December 14, 2007 or one year after the use became nonconforming (which in this case was June 14, 2006), whichever is later.
- The application for an SUP made by the owner of nonconforming dance hall and bar, lounge, and tavern uses on the site was denied by the City Council on December 12, 2007. As a result, the owner of these uses made application to the board of adjustment to extend ordinance-imposed December 14, 2007 compliance date.
- The PD No. 269 ordinance states that if, based on evidence presented at the public hearing, that the board finds that additional time is needed to recoup the owner's actual investment in the use before the use became nonconforming, the board shall grant the request for extension and establish a new compliance deadline consistent with its determination of a reasonable amortization period; otherwise, the board shall deny the request.
- The Dallas Development Code states the following factors must be considered by the board in determining a reasonable amortization period:
 - The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.
 - Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
 - Any return on investment since inception of the use, including net income and depreciation.
 - The anticipated annual recovery of investment, including net income and depreciation.
- The purpose of the public hearing is to determine if additional time is needed to recoup the owner's actual investment in the uses before the uses became nonconforming beyond the ordinance-imposed compliance date of December 14, 2007.
- If the board denies the compliance date extension request, the right to operate the nonconforming uses shall automatically terminate 30 days after the date of the board of adjustment's decision to deny.
- The Dallas Development Code additionally states that if the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.

- As is the case with any nonconforming use, the owner of the use/uses could transition the uses of the site from dance hall and bar, lounge, tavern uses to any use that is permitted by right in the site's PD No. 269 zoning classification.
- On January 22, 2008, a representative for the owners of the real property at 2600 Main Street on which the nonconforming uses are located submitted a response to the subpoena duces tecum and interrogatories given (see Attachment A).

BOARD OF ADJUSTMENT ACTION: FEBRUARY 11, 2008

APPEARING IN FAVOR: Nick Hidi, 4609 Yorkshire Tr., Plano, TX
Dallas Cothrum, 900 Jackson St, #640, Dallas, TX,

APPEARING IN OPPOSITION: John Tatum, 6617 Northaven, Dallas, TX
Susan Reese, 8626 Douglas Ave., Dallas, TX

APPEARING FOR THE CITY: Shereen El Domeiri, 1500 Marilla, 7DN, Dallas, TX
Lemuel Thomas, 1500 Marilla, 7DN, Dallas, TX

2:35 P.M.: Executive Session Begins

2:45 P.M.: Executive Session Ends

MOTION #1: Maten

I move that the Board of Adjustment **amend** the application whereby the new applicant and representative will be Nick Hidi at 4609 Yorkshire Trail, Plano, TX 75093.

SECONDED: Bateman

AYES: 5– Boyd, Maten, Wahlquist, Bateman, Murrah

NAYS: 0 –

MOTION PASSED: 5 – 0

MOTION #2: Murrah

I move that the Board of Adjustment, in Appeal No. **BDA 078-002**, on application of Nick Hidi, **deny** the extension to the compliance date requested by this applicant **with prejudice**, because our evaluation of the property and testimony shows that the owner's actual investment in the uses before the time the uses became nonconforming has been fully amortized.

SECONDED: Wahlquist

AYES: 3– Boyd, Wahlquist, Murrah

NAYS: 2 – Maten, Bateman

MOTION PASSED: 3 – 2

MOTION: Maten

I move to adjourn this meeting.

SECONDED: Bateman

AYES: 5 –Boyd, Maten, Wahlquist, Bateman, Murrah

NAYS: 0 - None

MOTION PASSED: 5 – 0 (Unanimously)

3:04 P. M. - Board Meeting adjourned for **February 11, 2008.**

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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