

**BOARD OF ADJUSTMENT, PANEL C  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, 5ES  
MONDAY, MAY 14, 2007**

MEMBERS PRESENT AT BRIEFING: Frank Madrigal, Vice-Chair Sharon Boyd, Panel Vice-Chair, Joel Maten, regular member, and Carol Scott, alternate member

MEMBERS ABSENT FROM BRIEFING: Robert Moore, regular member,

MEMBERS PRESENT AT HEARING: Frank Madrigal, Vice-Chair Sharon Boyd, Panel Vice-Chair, Joel Maten, regular member, Carol Scott, alternate member, and Maria Gomez, 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, Jennifer Hiromoto, Senior Planner, Todd Duerksen, Development Code Specialist, Chau Nguyen, Traffic Engineer, and Trena Law, Board Secretary

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

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**10:35 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **May 14, 2007** docket.

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**1:18 P.M.**

The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand

upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel C April 16, 2007 public hearing minutes.

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

**MOTION: Scott**

I move **approval** of the Monday, April 16, 2007 public hearing minutes.

**SECONDED: Maten**

**AYES: 5– Madrigal, Boyd, Maten, Scott, Gomez**

**NAYS: 0–**

**MOTION PASSED: 5 – 0 (unanimously)**

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**FILE NUMBER: BDA 067-019**

**BUILDING OFFICIAL’S REPORT:**

Application of Richard Gussoni, represented by Ed Simons for a variance to the height regulations at 8727 Douglas Avenue. This property is more fully described as a 6.562 acre tract of land in City Block 9/5599 and is zoned R-1ac(A) which limits the height of a building to 36 feet. The applicant proposes to construct a building with a height of 43 feet which would require a variance of 7 feet.

**LOCATION: 8727 Douglas Avenue**

**APPLICANT: Richard Gussoni  
Represented by Ed Simons**

**May 14, 2007 Public Hearing Notes:**

- The applicant’s representative submitted an elevation of the proposed home at the public hearing that he represented as an elevation that indicated a home with a maximum height of 39 feet.

**REQUEST:**

- An application has been made for a variance to the height regulations of 7 feet\* requested in conjunction with constructing and maintaining a 2.5-level single family home that would reach 43’ in height on a site that is currently developed with a 2-level home that has not been “varied” in terms of height or setback.

- \* Although the applicant's representative has not amended his application nor has the Building Inspection Development Code Specialist amended his Building Official's Report, the applicant's representative submitted a letter on March 5<sup>th</sup> stating that "our current design proposes a structure that is 40.5 feet in height" which would require a variance of 4.5 feet; a letter on March 9<sup>th</sup> stating "The maximum height of the proposed new home being built on the property is 40.5 feet. This is a variance of 4.5 feet;" and provided testimony at the March 19<sup>th</sup> public hearing stating that the maximum height of the proposed home is 40.5 feet. But no elevation has been submitted that delineate a line showing where the 36' maximum height is relative to the proposed house.

### **STAFF RECOMMENDATION:**

Denial

Rationale:

- The subject site slopes in its middle to a creek bed, and is "L"-shaped (about 600' on the north, about 420' at the south, about 320' on the east, and about 550' on the west) and is 6.562 acres in size.
- The current features of the site (trees, creek, and flood plain) have allowed the development of a single family home that, according to DCAD has over 6,000 square feet of living space, and that appears to be two-stories in height and in compliance with the height regulations.
- Even though a portion of the site has floodplain on it, the amount of this feature/condition relative to the whole site does not create a hardship that precludes the site from being developed with a commensurately-sized house that complies with the height regulations and all other development standards including setback provisions.
- Even though portions of the site has many large trees, the location of these trees does not create a hardship that precludes the site from being developed with a commensurately-sized house that complies with the height regulations and all other development standards including setback provisions.
- The applicant has not substantiated how the site's restrictive area, shape and/or slope precludes the development of a new single family home that could meet the applicable development standards including the maximum 36' height provision commensurate with other developments found on other similarly-zoned R-1ac(A) lots.

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

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

land which differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same zoning classification. A variance may not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land in districts with the same zoning classification.

### **GENERAL FACTS:**

- The maximum height for a structure in the R-1ac (A) zoning district is 36 feet. The applicant has submitted elevations indicating a proposed single family structure that, according to the Building Official's report and application, would reach 43' in height. (The applicant's representative submitted letters on March 5<sup>th</sup> and 9<sup>th</sup>, and revised elevations on March 6<sup>th</sup> that, according to the applicant's representative, creates a variance need of 4.5' since the proposed home would reach 40.5' in height – see Attachments B, C, and E. But none of the submitted elevations delineate a line showing where the 36' maximum height is relative to the proposed house).
- "Height" is defined in the Dallas Development Code as "the vertical distance measured from grade to:
  - A) for a structure with a gable, hip, or gambrel roof, the midpoint of the vertical dimension between the lowest eaves and the highest ridge of the structure;
  - B) for a structure with a dome roof, the midpoint of the vertical dimension of the dome; and
  - C) for any other structure, the highest point of the structure.
- According to calculations taken from the submitted site plan by the Board Administrator, the proposed single family home has a building footprint of about 8,400 square feet (140' x 60').
- According to dimensions taken from the originally submitted elevations by the Board Administrator, portions of roof of the home exceed the maximum 36' height limit. But none of the submitted elevations clearly delineate a line showing where 36' maximum height is relative to the proposed house.
- A site plan has been submitted with contour lines. This plan indicates that the site is about 625' in width at its widest point from Chatham Hill Road on the south to the site's property line on the north. The application states that a creek runs through the site which is substantiated by contour lines on the site plan. The site elevation begins on the south at 583' and declines over a length of about 210' to the middle of the site where a creek bed that divides the site at an elevation of 548'. The site then inclines from the creek bed over about a length of about 210' back to northern edge of the site at an elevation of 563'.
- The site is "L"-shaped (about 600' on the north, about 420' at the south, about 320' on the east, and about 550' on the west). Part of the site is located in a floodplain. (As a result, construction of the home on the site would require a fill permit according to the City's Program Manager of Storm Water Management). There are also portions of the site with mature trees. The site is 6.562 acres in area. The site is zoned R-1ac (A) where lots are typically 1 acre in area.
- DCAD records indicate that the site is developed with the following:

- a single family home in fair condition built in 1939 with 6,342 square feet of living space;
- a 510 square foot cabana;
- a 996 square foot attached garage;
- a pool;
- a 560 square foot detached servants quarters;
- a 400 square foot basement; and
- a 337 square foot storage building.
- On March 5, 2007, the applicant's representative submitted information beyond what was submitted with the original application and discussed at the March 5<sup>th</sup> staff review team meeting (see Attachment B). This information included a letter to the board that provided additional details about the request.
- On March 6, the applicant's representative submitted a revised elevation and site plan (see Attachment C), and a copy of the Slaughter Branch Floodplain Information Study dated February 2007 that the applicant's representative requested be placed in the case file and not forwarded to the board members. (Copies of this study will be available for review upon request at the briefing/public hearing).
- On March 9, 2007, the applicant's representative submitted information beyond what was submitted with the original application and discussed at the March 5<sup>th</sup> staff review team meeting (see Attachment E). This information included the following:
  - a letter to the board that provided additional details about the request;
  - a zoning map of the site and surrounding area;
  - aerials of the site and surrounding area;
  - photos of the site and surrounding area; and
  - a site plan that denotes required setbacks.
- On March 19, 2007, the Board of Adjustment conducted a public hearing on this matter where the applicant's architect submitted a section/elevation of the proposed home at the public hearing that he represented as a section/elevation that indicated a home with a maximum height of 40.5 feet (see Attachment F).

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-1ac (A) (Single family district 1 acre)  
North: R-1ac (A) (Single family district 1 acre)  
South: R-1ac (A) (Single family district 1 acre)  
East: R-1ac (A) (Single family district 1 acre)  
West: R-1ac (A) (Single family district 1 acre)

**Land Use:**

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

**Zoning/BDA History:**

1. BDA 056-201, 8727 Douglas Avenue (the subject site)

On October 16, 2006, the Board of Adjustment Panel C denied a request for a variance to the height regulations of 7 feet without prejudice. The case report stated that the request was made to construct and maintain a 3-level single family home that would reach 43' in height

**Timeline:**

Nov. 30, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

Jan. 19, 2007: 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. 19, 2007: The Board Administrator contacted the applicant's representative and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the January 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis/recommendation;
- the February 2<sup>nd</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 February public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Jan. 22, 2007: The Board Administrator emailed the Program Manager in the City's Stormwater/Flood Plain Management Division specifically enquiring as to whether or not any portion of the subject site fell within a flood plain. The manager responded and the Board

Administrator procured a map that indicated that part of the site is in floodplain (See Attachment A).

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

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

Jan. 31, 2007: The applicant's representative requested that this request be postponed from Panel C's February 12<sup>th</sup> hearing to their March 19<sup>th</sup> hearing.

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

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

March 5, 2007: The applicant's representative submitted additional information immediately following the staff review team meeting (see Attachment B).

March 6, 2007: The applicant's representative submitted additional information the day following the staff review team meeting (see Attachment C).

March 6, 2007: The Board Administrator emailed the applicant's representative questions/concerns about the request and the submitted information (see Attachment D).

March 9, 2007: The applicant's representative submitted additional information that was not factored into the staff recommendation since it was submitted past the staff review team meeting (see Attachment E).

March 19, 2007: The Board of Adjustment conducted a public hearing on this matter, and delayed action until May 14, 2007.

March 21, 2007: The Board Administrator wrote the applicant's representative a letter that conveyed the following information:

- the date in which the board delayed action on the request;
- the April 27<sup>th</sup> deadline to submit additional information to staff to be circulated/discussed at the April 30<sup>th</sup> staff review team meeting; and
- the May 4<sup>th</sup> deadline to submit additional information to staff to be incorporated into the board's docket.

April 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Development Services Department Assistant Director for Current Planning, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Acting Chief Arborist, and the Assistant City Attorney to the Board.

### **STAFF ANALYSIS:**

- A site plan has been submitted with contour lines. This plan indicates that the site is about 625' in width at its widest point from Chatham Hill Road on the south to the site's property line on the north. The application states that a creek runs through the site which is substantiated by contour lines on the site plan. The site elevation begins on the south at 583' and declines over a length of about 210' to the middle of the site where a creek bed that divides the site at an elevation of 548'. The site then inclines from the creek bed over about a length of about 210' back to northern edge of the site at an elevation of 563'.
- The site is "L"-shaped (about 600' on the north, about 420' at the south, about 320' on the east, and about 550' on the west). According to the application, the site is 6.562 acres in area. The site is zoned R-1ac (A) where lots are typically 1 acre in area. The Program Manager of City's Storm Water/Flood Plain Management has indicated that a portion of the subject site has flood plain on it that will require a fill permit. A map from the Flood Plain Management and Storm Drainage Study of Browning Branch and Slaughter Branch denotes the amount of the subject site that has flood plain on it. The program manager has commented that the owner of the subject site will be required to obtain a fill permit in order to construct the house on the site in its proposed location with related costs to bring the site in compliance with flood plain regulations at around \$30,000.00 - \$40,000.00 – a cost that would most likely not be a significant financial burden in developing a house of the magnitude as proposed on the subject site. A site plan has been submitted that denotes the location of a number of trees on portions of the subject site.
- A series of elevation have been submitted with the application but none of them delineate where the 36' maximum height allowed is relative to the proposed house.
- Although the applicant's representative has submitted letters and a revised elevation indicating a variance need of 4.5 feet to erect a 40.5 foot high home, neither the application nor the Building Official's Report on this case has been amended from a variance of 7 feet to erect a 43 foot high home.
- The applicant has the burden of proof in establishing the following related to the front yard variance request:



- That granting the variance to the height regulations of either 7' or 4.5' requested to construct and maintain a 2.5-level single family home will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
- The variance to the height regulations is necessary to permit development of the subject site (a site with areas of floodplain on it; a site with areas of mature trees on it; and a site that is irregular in shape but over 6 acres in area in a zoning district where lots are typically one acre 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 R-1ac (A) zoning classification.
- The variance to the height regulations 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 not permitted by this chapter to other parcels of land in districts with the same R-1ac (A) zoning classification.
- If the Board were to grant the variance to the height regulations of either 7' or 4.5', imposing a condition whereby the applicant must comply with the submitted revised site plan and revised elevation, the footprint of the proposed structure would be limited to that what is shown on the submitted revised site plan, and the amount of the structure that would be allowed to exceed 36' in height would be limited to that what is shown on the submitted revised elevation (an elevation that does not delineate where the 36' maximum height allowed is relative to the proposed house).

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

APPEARING IN FAVOR: William Cothrum. 900 Jackson St., #640, Dallas, TX  
Thomas Kraitlenboill, 7231 Alexander, Dallas, TX

APPEARING IN OPPOSITION: Richard Barrett, 5745 Chatham Hill Rd., Dallas, TX  
Pam Frazee, 5225 Village Creek Dr, #400, Dallas, TX

**MOTION #1: Scott**

I move that the Board of Adjustment, in Appeal No. **BDA 067-019**, on application of Richard Gussoni, represented by Ed Simons, **grant** the 4 foot, 6 inch variance to the height regulations, because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan and revised elevation submitted today indicating a 40.5' high structure is required.

**SECONDED: Gomez**  
**AYES:3–Madriral, Scott, Gomez**

NAYS: 2– Boyd, Moore,  
MOTION FAILED: 3 – 2

MOTION #2: **Moore**

I move that the Board of Adjustment, in Appeal No. **BDA 067- 019**, on application of Richard Gussoni, represented by Ed Simons, **deny** the variance requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: No one  
MOTION FAILED FOR LACK OF A SECOND

MOTION #3: **Boyd**

I move that the Board of Adjustment, in Appeal No. **BDA 067- 019** hold this matter under advisement until **May, 14, 2007**.

SECONDED: No one  
MOTION FAILED FOR LACK OF A SECOND

MOTION #4: **Moore**

I move that the Board of Adjustment, in Appeal No. **BDA 067- 019**, on application of Richard Gussoni, represented by Ed Simons, **deny** the variance requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: **Boyd**  
AYES: 2–Boyd, Moore  
NAYS: 3– Madrigal, Scott, Gomez  
MOTION FAILED: 2 – 3

MOTION #5: **Scott**

I move that the Board of Adjustment, in Appeal No. **BDA 067- 019** hold this matter under advisement until **May, 14, 2007**.

SECONDED: **Boyd**  
AYES: 4–Madrigal, Boyd, Scott, Gomez  
NAYS: 1– Moore

MOTION PASSED: 4 – 1

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

APPEARING IN FAVOR: Ed Simons, 900 Jackson St., #640, Dallas, TX  
Thomas Kraitlenboill, 7231 Alexander, Dallas, TX

APPEARING IN OPPOSITION: Richard Barrett, 5745 Chatham Hill Rd., Dallas, TX

MOTION: **Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 067-019**, on application of Richard Gussoni, represented by Ed Simons, **grant** the 3 foot variance to the height regulations, because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan and revised elevation dated May 14, 2007 is required.

SECONDED: **Scott**

AYES: 4– Madrigal, Maten, Scott, Gomez

NAYS: 1– Boyd

MOTION PASSED: 4-1

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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 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.

**PUBLIC HEARING NOTE:**

On April 16, 2007, Panel C of the Board of Adjustment approved a special exception of 6 spaces (6% reduction) to the parking regulations. The Board held the variance portion of the applicant's request under advisement until May 14, 2007. The applicant submitted written material at the public hearing (Attachment C).

**STAFF RECOMMENDATION:**

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.

**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 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.
- The applicant submitted a revised site plan on May 4, 2007 showing proposed landscaping on the west side of the request site and highlighting the 100 year flood plain according to the Joe's Creek Drainage Study (Attachment D).

## **BACKGROUND INFORMATION:**

### **Zoning:**

<u>Site:</u>	MU-3 (Mixed Use)
<u>North:</u>	IR (Industrial Research)
<u>South:</u>	MU-3 (Mixed Use)
<u>East:</u>	MU-3 (Mixed Use)
<u>West:</u>	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 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.

May 4, 2007            The applicant submitted a revised site plan for the variance request indicating the proposed landscaping (Attachment D).

**STAFF ANALYSIS:**

- 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 submitted a revised site plan on May 4, 2007 showing proposed landscaping on the west side of the request site and highlighting the 100 year flood plain according to the Joe's Creek Drainage Study (Attachment D). The revised site plan does not indicate how the landscaping relates to the hardships in the size, shape, or slope of the request site.
- 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.

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

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

APPEARING IN OPPOSITION: No one

MOTION: **Boyd**

I move that the Board of Adjustment, in Appeal No. **BDA 067-049**, on application of Angel Reyes III, represented by Masterplan, **grant** the 9 foot variance to the front yard setback regulations, because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan is required which includes planting 11 large canopy trees.

SECONDED: **Gomez**

AYES: 5– Madrigal, Boyd, Maten, Scott, Gomez

NAYS: 0–

MOTION PASSED: 5-0 (unanimously)

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FILE NUMBER: BDA 067-051(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 8333 Douglas Avenue (aka 8383 Douglas Avenue). This property is more fully described as Lot 5A and part of Lot 6 in City Block 2/5625 and a portion of an abandoned alley and is zoned PD-314, Tract II, which requires parking to be provided. The applicant proposes to construct an addition to an existing nonresidential building for office and financial institution use and provide 1,114 parking spaces, which would require a special exception of 181 spaces (14% reduction) to the parking regulations.

**LOCATION:** 8333 Douglas Avenue (aka 8383 Douglas Avenue)

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

**REQUEST:**

- A special exception to the off-street parking regulations of 181 spaces (or 14% of the required off-street parking) is requested in conjunction with constructing an office tower with 144,400 square feet of office uses and 4,600 square foot bank use. The applicant proposes to provide 1,114 (or 86%) of the total required 1,295 off-street parking spaces on a site currently developed with an approximately 278,000 square foot office tower.

**PUBLIC HEARING NOTE:**

On March 19, 2007, Panel C of the Board of Adjustment held this case under advisement until May 14, 2007. The Board requested that the applicant meet with the surrounding property owners to address issues discussed in the public hearing.

**STAFF RECOMMENDATION:**

Approval

Rationale:

- The Development Services Senior Engineer has no objection to this request.

The applicant submitted a written request on April 30, 2007 to the Board for a delay until the June 11<sup>th</sup> Panel C meeting. Staff does not object to this request.

**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:**

- On February 13, 2006, the Board of Adjustment Panel C approved a parking special exception of 288 spaces (or 22% of the required off-street parking) in conjunction with constructing a new 126,000 square foot office tower and 8,500 square foot restaurant on a site developed with an existing office with 277,500 square feet. The parking special exception was subject to automatically and immediately terminate if and when the office and restaurant use on the site is changed or discontinued. The applicant is proposing to develop the site with only office and bank uses and therefore the special exception will not be valid.
- The applicant is proposing the following on the request site:
  - Maintain the existing 277,500 square feet building containing office uses
  - Construct a new 149,000 square foot building containing (144,400 square feet) office uses and 4,600 square foot bank use.
- The Dallas Development Code requires the following parking requirements for the existing/proposed uses on the subject site:
  - 1 space is required for every 333 square feet of office use.
  - 1 space is required for every 333 square feet of financial institution with or without drive-in window use.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD No. 314 (Planned Development District)  
North: PD No. 314 (Planned Development District)  
South: PD No. 314 (Planned Development District)  
East: PD No. 314 (Planned Development District)  
West: PD No. 314 (Planned Development District)

**Land Use:**

The subject site is developed with an office tower. The areas to the north, east, south, and west are developed with office, restaurant, and retail uses.

**Zoning/BDA History:**

1. BDA 056-053 (subject site) On February 13, 2006, the Board of Adjustment Panel C approved a parking special exception of 288 spaces (or 22% of the required off-street parking) in conjunction with constructing a new 126,000 square foot office tower and 8,500 square foot restaurant on a site developed with an existing office with 277,500 square feet.

**Timeline:**

- January 24, 2007: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- Feb. 15, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel 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 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 7, 2007 The Development Services Senior Engineer submitted a review comment sheet marked “Has no objections” with the following comments:
- “Based on the (revised) study dated January 26, 2007.”
- April 30, 2007 The applicant submitted a written request to the Board for a delay until the June 11<sup>th</sup> Panel C meeting.

**STAFF ANALYSIS:**

- 86 percent of the required off-street parking spaces are proposed to be provided in conjunction with constructing a new 144,400 square feet of office uses and 4,600 square foot bank use on a site developed with an approximately 278,000 square foot office tower.
- Granting this request, subject to the condition that the special exception of 181 spaces automatically and immediately terminates if and when the office and bank uses on the site are changed or discontinued, would allow development of the office and bank on the site.
- The applicant has the burden of proof in establishing the following:
  - that the parking demand generated by the proposed office and bank uses do not warrant the number of off-street parking spaces required, and
  - the special exception of 181 spaces (or 14% of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- The Development Services Senior Engineer submitted a review comment sheet marked "Has no objections" with the following comments:
  - "Based on the (revised) study dated January 26, 2007." The study is revised from the study submitted with the February Board of Adjustment case, BDA 056-053.

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

APPEARING IN FAVOR: John DeShazo, 330 Union Station, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Gomez**

I move that the Board of Adjustment in Appeal No. **BDA 067-051**, hold this matter under advisement until **August 13, 2007**.

SECONDED: **Maten**

AYES:5–Madrigal, Boyd, Maten, Scott, Gomez

NAYS: 0–

MOTION PASSED: 5-0 (unanimously)

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**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 (May 14, 2007):**

Approval

Rationale:

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

**STAFF RECOMMENDATION (April 16, 2007):**

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.

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

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

(B) the regulations governing that specific district expressly authorize the board to grant the special exception.

**GENERAL FACTS:**

- The Dallas Development Code contains the following parking requirements for the existing and proposed uses on the subject site:
  - 1 space per 333 square feet of floor area for office uses;
  - 1 space per each 500 square feet of floor area for multifamily uses, with not less than 1 space nor more than 2 ½ spaces for each dwelling unit in a multifamily structure *less* than 36 feet in height;
  - 1 space per each 500 square feet of floor area for multifamily uses, with not less than 1 space nor more than 2 spaces for each dwelling unit in a multifamily structure *more* than 36 feet in height;
  - 1 space per 200 square feet of floor area for a general merchandise or food store (including 3,500 square feet or less, greater than 3,500 square feet, and greater than 100,000 square feet) uses;
  - 1 space per 200 square feet of floor area for personal service uses;
  - 1 space per 100 square feet of floor area for restaurant uses;
  - 1 space per 100 square feet of floor area for commercial amusement (inside) uses (excluding bingo parlor, bowling alley, children’s amusement center, dance hall, motor track, and skating rink uses);
  - 6 spaces is required per lane for commercial amusement (inside) uses for a bowling alley;
  - 1 space per unit for units 1-250; ¾ space for each unit for units 251 to 500; ½ space for all units over 500; plus one space per 200 square feet of floor area of meeting rooms for hotel uses; and
  - 1 space per 25 square feet of classroom floor area for business school uses.
- The Dallas Development Code allows for an additional reduction for large scale mixed use development projects.
  - Ten percent of the required parking for the office use when that use totals in excess of 250,000 square feet in floor area and is developed on the same lot with a use qualifying for an exception under Subsections (c)(6)(B) or (C) of this section.
  - Ten percent of the required parking for the hotel and motel use when that use totals in excess of 250 guest rooms and is developed on the same lot with a use qualifying for an exception under Subsections (c)(6)(A) or (C) of this section.
  - Ten percent of the required parking for the retail and personal service uses, when those uses total in excess of 40,000 square feet in floor area and are developed on the same lot with a use qualifying for an exception under Subsections (c)(6)(A) or (B) of this section.
  - Fifty percent of the required parking for the following uses when developed on the same lot with an office use with more than 250,000 square feet of floor area or a hotel or motel use with more than 250 guest rooms:
    - Bar, lounge, or tavern.
    - Carnival or circus (temporary)
    - Catering service.
    - Commercial amusement (inside).



- Commercial amusement (outside).
- Country club with private membership.
- Drive-in theater.
- Private recreation center, club, or area.
- Public park, playground, or golf course.
- Restaurant without drive-in service.
- Restaurant with drive-in or drive- through service.
- Theater.
- Table 1 of the submitted parking study indicates the applicant proposes to develop the request site with the following uses and amounts:
 

- Office	250,000 square feet
- Multifamily residential	710 units
- General Merchandise retail	549,894 square feet
- Personal Service	85,553 square feet
- Restaurant	63,304 square feet
- Commercial Amusement (inside)	30 bowling alley lanes
- Commercial Amusement (inside)	7,000 square feet
- Hotel	208 rooms
- Hotel	5,670 square feet
- Business School	23,960 square feet of classroom
- Information regarding the height of the multifamily buildings or the number of meeting rooms was not provided in Table 1.
- Table 1 also indicates that the additional provisions for non-residential parking for large, mixed-use developments allows a reduction of 11.3% of the total parking required based on the amount of uses proposed, which equates to 6,597 parking spaces required.
- The applicant is proposing to provide 6,223 off-street parking spaces or 94.3% when 6,597 spaces are required based on the floor area of the proposed uses combined.
- Table 1 in the parking study indicates that there is 153,560 square feet of existing office uses that will remain on the subject site.
- The applicant's representative has verbally indicated that the platform for the existing Park Lane DART rail station, which is presently located on the north side of Park Lane west of Greenville Avenue, is proposed to be expanded to provide platform access to the subject property.
- The submitted site plan shows the proposed layout of the large mixed-use development and the four existing office buildings.
- The applicant submitted additional information which included a shared parking analysis for the proposed mixed use development. The technical memorandum indicated an agreement to relate the special exception request to the office use on the property and that at least 125,000 square feet of office use is maintained on the property to justify a reduction of 374 off-street parking spaces.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: MU-3(SAH) (Mixed Use -3 Standard Affordable Housing)

North: RR (Regional Retail)  
South: GO(A) (General Office)  
East: PD 526 (Transit Passenger Station and Mixed Use -3) and MU-3 (Mixed Use -3)  
West: RR (Regional Retail)

### **Land Use:**

The subject site is partially developed with four office buildings and the remainder of the site is undeveloped. The surrounding area is developed with office and retail uses.

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

Z067-162 (request site) An application to terminate two sets of deed restrictions and volunteer one set of deed restrictions on property zoned an MU-3(SAH) Mixed Use District located on the southeast corner of Park Lane and Central Expressway is scheduled for City Plan Commission on March 22, 2007.

### **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 5, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Interim Chief Arborist, and the Assistant City Attorney to the Board.
- March 7, 2007 The Development Services Senior Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments:
- All of the uses proposed on this Lot 1B should conform to Table 1 in the DT&A study dated January 26, 2007 titled: "Shared Parking Demand Analysis for the Proposed Park Lane Mixed Use..."
  - For residential use/multifamily (Table 1), the maximum size is 648 DU or 867,118 square feet.
- May 2, 2007 The applicant's representative submitted additional information including a parking analysis. (Attachment A)

### **STAFF ANALYSIS:**

- 75.6% percent of the required off-street parking spaces is proposed to be provided in conjunction with constructing a mixed use development of approximately 1,734,139 square feet, plus a bowling alley with 30 lanes, a hotel with 208 hotel rooms for which the square footage was not provided, on a site already developed with 153,560 square feet of office use.
- The Board Senior Transportation Engineer submitted a review comment sheet marked "no objection if certain conditions are met." The conditions proposed would require all of the uses on the property to be provided in the combination of amounts as shown in Table 1 and limits the number of residential units/ floor area.
- The Board Senior Transportation Engineer submitted a review comment sheet marked "no objection if certain conditions are met" after reviewing the additional information (Attachment A). On May 4, 2007, the Transportation Engineer provided the following comments on his review comment sheet: 1) Supplemental Parking Analysis (dated) May 2, 2007; 2) Minimum office use is 125,000 square feet.
- Granting this request, subject to the condition that the special exception of 374 spaces automatically and immediately terminates if and when the office uses on the site are changed or discontinued, would allow the site to be developed mixed uses.
- The applicant has the burden of proof in establishing the following:
  - The parking demand generated by the proposed uses do not warrant the number of off-street parking spaces required, and

- The special exception of 374 spaces (or 5.67% of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

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

APPEARING IN FAVOR: Barry Knight, 5400 Renaissance Tower, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Scott**

I move that the Board of Adjustment, in Appeal No. **BDA 067-052**, on application of DeShazo, Tang and Associates, Inc., represented by John J. DeShazo, Jr., **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development Code by 374 parking spaces, because our evaluation of the property and the testimony shows that the parking demand generated by the proposed uses on the site does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard nor increase traffic congestion on adjacent and nearby streets. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception shall automatically and immediately terminate if and when the office uses on the site are changed or discontinued to have less than 125,000 square feet of office use.
- The applicant or property owner must submit a parking analysis of the site to the Department of Development Services engineer no later than December 31, 2011. Should the parking analysis show any parking deficiency, the applicant or property owner must immediately mitigate that deficiency as may be agreed between the applicant or property owner and the Department of Development Services.

SECONDED: **Boyd**

AYES:5–Madrigal, Boyd, Maten, Scott, Gomez

NAYS: 0 –

MOTION PASSED: 5-0 (unanimously)

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FILE NUMBER: BDA 067-071

**BUILDING OFFICIAL’S REPORT:**

Application of R. Craig Baker for a special exception to the fence height regulations at 4643 Shadywood Lane. This property is more fully described as Lot 11 in City Block 2/5575 and is zoned R-1ac(A) which limits the height of a fence in the front yard to 4

feet. The applicant proposes to construct an 8 foot 3 inch fence in the required front yard setback which would require a special exception of 4 feet 3 inches.

**LOCATION:** 4643 Shadywood Lane

**APPLICANT:** R. Craig Baker

**May 14, 2007 Public Hearing Notes:**

- The applicant's representative submitted a revised site plan and elevation of the proposal at the public hearing that indicated a maximum fence/column/gate height of 7' 10".

**REQUEST:**

- A special exception to the fence height regulations of 4' 3" is requested in conjunction with constructing and maintaining the following in the site's 40' front yard setback:
  - two 8' 3" high brick columns with decorative lights (more specifically, 6' 6" high brick columns with 1' 7" high decorative lights atop); and
  - a 4' – 5' 6" high wood picket gate.The subject site is developed with a single family home.

**STAFF RECOMMENDATION:**

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

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

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

**GENERAL FACTS:**

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.  
The applicant has submitted a scaled partial fence elevation that denotes entry columns and a gate as described above.  
The applicant has submitted two site plans, one of which is a representation of the entire site, the other being a representation of the area on the site in which a fence/column/gate is proposed to be located in the required front yard setback and exceed 4' in height.

- The following additional information was gleaned from the submitted detailed site plan:
  - A “4’-0” high wood picket fence to follow creek line” spanning across most of the subject site (which is permitted by right);
  - A “6’-6” brick column” and “wood picket gate” to span across approximately 24’ of the site’s total 280’ of Shadywood Lane frontage, about 20’ from the property line (or about 32’ from the projected pavement line).
- There is one single family home that would have direct frontage to the proposed entry gate/columns. This house immediately west of the site appears to have an approximately 5.5’ high open metal picket fence with 5.5’ high open metal gate/stone entry gate columns (with decorative lights atop totaling approximately 7’ in height).
- In addition, the Board Administrator noted two other fences/walls in the immediate area above four (4) feet high which appeared to be located in the front yard setback. There is approximately 7’ high open chain link fence located immediately northwest of the site, and a 9’ open wrought iron fence located immediately north of the site that is a result of a previous board case at this location (BDA045-215).
- The applicant’s representative submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
  - a cover letter that provides an explanation of the submitted exhibits;
  - photographs of the existing fences and gate posts that in close proximity to the site;
  - photographs to aid in visualizing the fence and gate posts at the site;
  - photographs of similar gate posts and fence posts; and
  - 6 letters of support from neighbors in close proximity to the proposal.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-1ac (A) (Single family district 1 acre)  
North: R-1ac (A) (Single family district 1 acre)  
South: R-1ac (A) (Single family district 1 acre)  
East: R-1ac (A) (Single family district 1 acre)  
West: R-1ac (A) (Single family district 1 acre)

**Land Use:**

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

**Zoning/BDA History:**

- |                                                        |                                                                                                                  |
|--------------------------------------------------------|------------------------------------------------------------------------------------------------------------------|
| 1. BDA 045-217, 4643 Shadywood Lane (the subject site) | On May 13, 2005, the applicant withdrew a request for a special exception to the fence height regulations of 7’. |
| 2. BDA 045-215, 9039 Briarwood                         | On December 12, 2005, the Board of                                                                               |

Lane (the lot immediately north of the subject site)

Adjustment Panel C granted a request for a special exception to fence height regulations of 5' 6", and imposed the following conditions: compliance with the submitted revised site plan, revised landscape plan, and revised fence elevation is required. The case report stated that the request was made in conjunction with replacing a 7' high open iron fence with a 9' high open wrought iron fence, a 9' high stone wall, and two, 9' high solid wood gates with 10.5' high columns.

3. BDA 95-036, 9039 Briarwood Lane (the lot immediately north of the subject site)

On March 28, 1995, the Board of Adjustment granted a request for a special exception to fence height regulations of 3' 9", subject to the following conditions: 1) Compliance with the submitted site plan, landscape plan, and elevation is required; 2) compliance with the provision that no protected trees (8 inch caliper or greater) can be removed without a permit. The case report states that the request was made in conjunction with constructing approximately 825 linear feet of a 7' 3" open metal fence with metal posts located approximately 7' on center along Briarwood Lane and Shadywood Lane; and an approximately 50 linear foot 7' 6" solid stone fence along Shadywood Lane.

4. BDA 034-162, 4618 Shadywood Lane (two lots northwest of the subject site)

On May 18, 2004, the Board of Adjustment Panel A granted a request for a special exception to the fence height regulations of 6', subject to the submitted site plan and elevation. The case report states that the request was made to construct a 7.5'-high solid wood fence with 8'-high wood columns and a 8'-high wood gate with 10'-high entry columns in the Northwest Highway front yard setback.

**Timeline:**

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

April 19, 2007: 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."

- April 20, 2007: The Board Administrator contacted with the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the April 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and discuss at the staff review team meeting;
  - the May 4<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 May public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

April 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Development Services Department Assistant Director for Current Planning, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Acting Chief Arborist, and the Assistant City Attorney to the Board.

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

May 4, 2007 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).

### **STAFF ANALYSIS:**

- Scaled site plans and an elevation have been submitted that document the location and materials of the proposal that exceeds 4' in height and is located in the front yard setback which in this case is an approximately 24' long wood picket gate with



two, 6' 6" high brick columns with 1' 7" high decorative lights atop. The proposal is to be located about 20' from the property line or about 32' from the pavement line. (No fence is noted on the submitted plans that would exceed the maximum 4' height that is permitted by right).

- There is one single family home that would have direct frontage to the proposed entry gate/columns. This house immediately west of the site appears to have an approximately 5.5' high open metal picket fence with 5.5' high open metal gate/stone entry gate columns (with decorative lights atop totaling approximately 7' in height).
- In addition, the Board Administrator noted two other fences/walls in the immediate area above four (4) feet high which appeared to be located in the front yard setback. There is approximately 7' high open chain link fence located immediately northwest of the site and a 9' open wrought iron fence located immediately north of the site that is a result of a previous board case at this location (BDA045-215).
- As of May 7th, 6 letters had been submitted in support and 1 letter had been submitted in opposition to the special exception.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' 3" (whereby the proposal that would exceed 4' in height) will not adversely affect neighboring property.
- Granting this special exception of 4' 3" with conditions imposed that the applicant complies with the submitted site plans and elevation would assure that the proposed gate and entry columns would be limited to/constructed/maintained of the materials and locations shown on these documents.

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

APPEARING IN FAVOR: Craig Baker, 1601 Elm St., #3000, Dallas, TX

APPEARING IN OPPOSITION: LaRue Henry, 4803 Shadywood, Dallas, TX  
Nancy Kenty, 8723 Canyon Dr., Dallas, TX

MOTION: **Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 067-071**, on application of R. Craig Baker, **grant** the request of this applicant to construct and maintain a seven foot 10 inch fence on the property as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plans and revised elevation dated May 14, 2007 is required.

SECONDED: **Scott**

AYES: 5—Madrigan, Boyd, Maten, Scott, Gomez

NAYS: 0—

MOTION PASSED: 5-0 (unanimously)

\*\*\*\*\*

**FILE NUMBER:** BDA 067-066

**BUILDING OFFICIAL’S REPORT:**

Application of Michael Davis and Dwaine Carraway to require compliance of a nonconforming use at 4343 S. Lancaster Road. This property is more fully described as Lot 39A in City Block 4326 and is zoned CR which limits the legal uses in a zoning district. The applicant proposes to request that the Board establish a compliance date for a nonconforming hotel or motel use.

**LOCATION:** 4343 S. Lancaster Road

**APPLICANT:** Michael Davis and Dwaine Carraway

**May 14, 2007 Public Hearing Notes:**

- The applicant established that he had submitted the May 3<sup>rd</sup> information that had been referenced in the case report as “Attachment A.”
- The applicant and the owner of the nonconforming motel use submitted additional written documentation at the public hearing.

**REQUEST:**

- A request is made for the Board of Adjustment to establish a compliance date for a nonconforming motel use (The Sunset Inn) 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 the motel use on the subject site became nonconforming on September 30, 1987 (Ordinance No. 19700).
- 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 CR (Community Retail) that permits a "hotel or motel" use by SUP (Specific Use Permit) only.
- The Dallas Development Code establishes the following provisions for "hotel or motel" use in Section 51A-4.205 (1):
  - "Hotel or motel."
    - (A) Definition: A facility containing six or more guest rooms that are rented to occupants on a daily basis.
    - (B) Districts permitted:
      - (i) Except as otherwise provided in Subparagraphs (B)(iii) or (B)(iv), by right in MO(A), GO(A), RR, CS, LI, IR, IM, central area, MU-1, MU-1(SAH), MU-2, Mu-2(SAH), MU-3, MU-3(SAH) and multiple commercial districts.
      - (ii) By SUP only in the CR district.
      - (iii) By SUP only for a hotel or motel use that has 60 or fewer guest rooms.
      - (iv) If an SUP is not required, RAR required in MO(A), GO(A), RR, CS, LI, IR, IM, MU-1, MU-1(SAH), MU-2, MU-2(SAH), MU-3, MU-3(SAH), and multiple commercial districts.
- The owner of the site could eliminate the nonconforming use status of the existing motel use by obtaining an SUP (Specific Use Permit) from City Council.
- The owner of the site could transition the use of the site from motel use to any use that is permitted by right in the site's existing CR (Community Retail) zoning classification. Uses permitted by right in this zoning district include a number of commercial and business service uses; institutional and community service uses; office uses; recreation uses; retail and personal service uses; transportation uses; and utility and public service uses.
- On May 3, 2007, information was submitted on this matter from an unidentified source (see Attachment A). This information included the following:
  - a table entitled "Pt 1 Offenses – 4343 S Lancaster – Sunset Motel" that shows the number and type of offenses in 2004, 2005, 2006, and a portion of 2007;
  - a table entitled "DPD Calls – 4343 S Lancaster – Sunset Motel" that shows "SQLSIG1's" in 2005, 2006, and a portion of 2007.
- On May 4, 2007, the attorney for the owner of the nonconforming motel use on the subject site submitted information to the Board Administrator (see Attachment B). This information included the following:
  - a "motion for continuance" and related information; and

- 10 photos of the site and neighboring area across from/and adjacent to the site on Lancaster Road.

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: CR (Community Retail)
- North: CR (Community Retail)
- South: CR (Community Retail)
- East: R-7.5(A) (SUP 173) (Single family district, Specific Use Permit for Temporary Water Pump)
- West: R-7.5(A) (Single family district 7,500 square feet)

**Land Use:**

The site is currently developed with a motel use (The Sunset Inn). The areas to the north is developed with a community service center use (The Urban League); the area to the east is developed with a hospital use (The Veterans Hospital); the area to the south is developed with a motel use (The Southern Comfort Motel), and the area to the west is developed with a cemetery and single family uses.

**Zoning/BDA History:**

- |                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1. BDA 92T-015, 4343 S. Lancaster Road (the subject site)</p> | <p>On April 28, 1992, the Board of Adjustment provided a termination date of October 31, 1992 for the nonconforming motel being operated on the site. Records show that this decision was appealed to District Court. The City Attorney’s Office informed the Board Administrator in March of 2005 that the board’s order on this case (and a series of others for nonconforming motel uses made in the early 90’s) “should be treated an unenforceable.”</p> |
|------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**Timeline:**

- March 15, 2007: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- April 19, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- April 19, 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 May 4th 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 May public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

April 19, 2007:

The Board Administrator wrote/sent the owner of the site (Ankita Patel) a certified letter that informed them that a Board of Adjustment case had been filed against her property. The letter included following enclosures:

- a copy of the Board of Adjustment application and related materials that had been submitted in conjunction with the application;
- a copy of the section of the Dallas Development Code that described the Board of Adjustment (Section 51A-3.102);
- a copy of the section of the Dallas Development Code that provides the definition of "nonconforming use" (Section 51A-2.102(90));
- a copy of the section of the Dallas Development Code that provides the definition and provisions set forth for "hotel or motel" use (Section 51A-4.205(1));
- a copy of the section of the Dallas Development Code that provides provisions for "nonconforming uses and structures" (Section 51A-4.704);
- a copy of the section of the Dallas Development Code that provides provisions regarding the Board of Adjustment hearing procedures (51A-4.703);
- a copy of the City of Dallas Board of Adjustment Working Rules of Procedure; and
- A copy of the hearing procedures for board of adjustment amortization of a nonconforming use.

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

April 30, 2007:

The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Development Services Department Assistant Director for Current Planning, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the

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

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

May 3, 2007 Additional information was submitted in conjunction with the appeal from an unknown source (see Attachment A).

May 4, 2007 The attorney for the owner of the nonconforming motel use on the subject site submitted additional information to the Board Administrator (see Attachment B).

### **STAFF ANALYSIS:**

- The motel use on the subject site is a nonconforming use. According to city records, the motel use became a nonconforming use on September 30, 1987 when the City Council passed Ordinance No. 19700.
- The Dallas Development Code states that it is the declared purpose of this subsection (Sec. 51A-4.704. Nonconforming Uses and Structures) that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.
- The owner of the site could eliminate the nonconforming use status of the existing motel use by obtaining an SUP from City Council.
- The owner of the site could transition the use of the site from motel use to any use that is permitted by right in the site's existing CR (Community Retail) zoning classification. Uses permitted by right in this zoning district include a number of commercial and business service uses; institutional and community service uses; office uses; recreation uses; retail and personal service uses; transportation uses; and utility and public service uses.
- The applicant has the burden of proof in establishing the following:
  - Continued operation of the nonconforming motel use will have an adverse effect on nearby properties.
- The purpose of the Board of Adjustment's May 14<sup>th</sup> public hearing shall be to determine whether continued operation of the nonconforming motel use will have an adverse effect on nearby properties. The Dallas Development Code states that if, based on the evidence presented at the public hearing, the board determines that continued operation of this use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for the nonconforming use (at a subsequent public hearing); otherwise, it shall not.

### **BOARD OF ADJUSTMENT ACTION: MAY 14, 2007**

#### **APPEARING IN FAVOR:**

Wayne Caraway, 1934 Argyle, Dallas, TX  
Michael Davis, Box 720-181, Dallas, TX  
Bishop Larry McGriff, 2249 E Illinois Ave., Dallas, TX

Willie Ards, 4119 Kushla Ave., Dallas, TX  
Melba Williams, 1406 Carson St., Dallas, TX  
Velma Millender, 1407 Laura Lane., Dallas, TX  
Bobbie McGee, 2254 Stovall Dr., Dallas, TX

APPEARING IN OPPOSITION: Randall Reed, 6440 N. Central Expwy., #700, Dallas, TX  
Ankita Patel, 4343 S. Lancaster Rd., Dallas, TX

MOTION #1: **Boyd**

I move that the Board of Adjustment in Appeal No. **BDA 067-066**, suspend the rules and accept the evidence that is being presented to us today.

SECONDED: **Scott**  
AYES: 5—Madrigal, Boyd, Maten, Scott, Gomez  
NAYS: 0—  
MOTION PASSED: 5-0 (unanimously)

MOTION#2: **Boyd**

I move that the Board of Adjustment in Appeal No. **BDA 067-066**, based on the evidence presented at the public hearing, find that continued operation of this nonconforming use will have an adverse effect on nearby properties, and set a hearing date of **August 13, 2007** for the purpose of establishing a compliance date for this nonconforming use.

SECONDED: **Scott**  
AYES: 5—Madrigal, Boyd, Maten, Scott, Gomez  
NAYS: 0—  
MOTION PASSED: 5-0 (unanimously)

\*\*\*\*\*

MOTION: **Boyd**

I move to adjourn this meeting.

SECONDED: **Scott**  
AYES: 5 – Madrigal, Boyd, Maten, Scott, Gomez  
NAYS: 0 - None  
MOTION PASSED: 5 – 0 (Unanimously)

**4:08 P. M.** - Board Meeting adjourned for **May 14, 2007.**

\_\_\_\_\_  
CHAIRPERSON

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



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