

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
CITY HALL, COUNCIL CHAMBERS
MONDAY, MAY 16, 2005**

MEMBERS PRESENT AT BRIEFING: Frank Madrigal, Vice-Chair, Suzanne Smith, regular member, David Chortek, regular member, Dave Neumann, alternate member and Linda Wise, alternate member

MEMBERS ABSENT FROM BRIEFING: None

MEMBERS PRESENT AT HEARING: Frank Madrigal, Vice-Chair, Suzanne Smith, regular member, David Chortek, regular member, Dave Neumann, alternate member and Linda Wise, alternate member

MEMBERS ABSENT FROM HEARING: None

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, TJ Okwubanego, Asst. City Attorney, Danny Sipes, Development Code Specialist, Chau Nguyen, Traffic Engineer, Donnie Moore, Chief Planner, Jennifer Pitner, Senior Planner, Michael Sultan, Chief Arborist, and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, TJ Okwubanego, Asst. City Attorney, Danny Sipes, Development Code Specialist, Chau Nguyen, Traffic Engineer, Donnie Moore, Chief Planner, Jennifer Pitner, Senior Planner, Michael Sultan, Chief Arborist, and Trena Law, Board Secretary

9:12 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **May 16, 2005** docket.

1:06 P.M.

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

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel C April 18, 2005 public hearing minutes.

MOTION: Chortek

I move approval of the Monday, April 18, 2005, Board of Adjustment Public Hearing minutes.

SECONDED: Smith

AYES: 5 – Madrigal, Smith, Chortek, Neumann, Wise

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

**BOARD OF ADJUSTMENT
CITY OF DALLAS, TEXAS**

MONDAY, MAY 16, 2005

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: N/A

REQUEST: Of the Board of Adjustment to consider amendments to Section 10 of the Board of Adjustment Working Rules of Procedure

GENERAL FACTS:

- On April 1, 2005, Panels A, B, and C of the Board of Adjustment held a special meeting where the Assistant City Attorney to the Board presented several legal points and parameters to the board members as points of information and for discussion purposes.
- The board members discussed the possibility of amending their “Working Rules of Procedure” whereby a provision would be added to Section 10. Public Hearings (see Attachment A). Members expressed what appeared to be consensual interest in considering the addition of a provision to this section that would provide specific measures and guidelines pertaining to documents that would be submitted to them at the briefing and/or public hearing (after monthly dockets had been mailed).
- The Board of Adjustment Chair directed staff to prepare language to be placed on the upcoming Panel A, B, and C’s April Miscellaneous Dockets whereby each panel

could consider devising and adopting amendments to this section of the Working Rules of Procedure.

- The Board of Adjustment's Assistant City Attorney prepared a draft amendment to the rules in response to the board's request that would amend/add the "Public Hearing" section to the board's rules, an amendment specifically pertaining to "documentary evidence" (see Attachment B).
- At each of the three Board of Adjustment public hearings held in April, the panels were separately briefed that in terms of procedure, any amendment to the draft document prepared by the Assistant City Attorney would be so noted by staff at each panel meeting held in April, with an incorporation of all comments/amendments/recommendations made by each panel consolidated and presented for each panel's final consideration in May of 2005.
- Each of the three Board of Adjustment panels was presented the draft amendment in April of 2005 where comments/amendments to the draft were noted by staff.
- The Board of Adjustment's Assistant City Attorney prepared a final draft that would amend the "Public Hearing" section to the board's rules (see Attachment C). The City Attorney prepared the final draft incorporating the comments made by each panel at the April public hearings.
- The proposed amendment will be incorporated into the "Working Rules of Procedure" once (if) all three panels separately approve this final draft in May of 2005.

BOARD OF ADJUSTMENT ACTION: May 16, 2005

MOTION: Smith

I move that the Board of Adjustment Panel C approve the amendments to Section 10 of the Board of Adjustment Working Rules of Procedure.

SECONDED: Neumann

AYES: 5 – Madrigal, Smith, Chortek, Neumann, Wise

NAYS: 0–

MOTION PASSED: 5 – 0

MISCELLANEOUS ITEM NO. 3

FILE NUMBER: BDA 045-125

REQUEST: To waive the two year limitation on a height variance that was approved subject to a submitted site plan

LOCATION: 2910 Bookout Street

APPLICANT: Jonathan Vinson of Jackson Walker

STANDARD FOR WAIVING THE TWO YEAR TIME LIMITATION:

The Dallas Development Code states that the board may waive the two year time limitation on a final decision reached by the board if there are changed circumstances regarding the property sufficient to warrant a new hearing.

GENERAL FACTS:

- The Dallas Development Code states the following with regard to board action:
 - Except as provided below, after a final decision is reached by the board, no further request on the same or related issues may be considered for that property for two years from the date of the final decision.
 - If the board renders a final decision of denial without prejudice, the two year limitation is waived.
 - The applicant may apply for a waiver of the two year limitation in the following manner:
 - The applicant shall submit his request in writing to the director. The director shall inform the applicant of the date on which the board will consider the request and shall advise the applicant of his right to appear before the board.
 - The board may waive the two year time limitation if there are changed circumstances regarding the property sufficient to warrant a new hearing. A simple majority vote by the board is required to grant the waiver. If a rehearing is granted, the applicant shall follow the process outline in the code.
- The applicant submitted a letter to staff requesting that the two year limitation on BDA 045-125 be placed on the miscellaneous agenda for consideration by Board of Adjustment Panel C (see Attachment A).
- The applicant seeks a waiver of the two year time limitation on a variance to the height regulations that was approved by Board of Adjustment Panel C on December 14, 2004. The height variance was requested in conjunction with constructing a 280'-high condominium/hotel structure.
- A waiver of this two-year time period must occur before the Board considers the variance request to the height regulations submitted in conjunction with BDA045-211 on May 16th for property at 2927 Maple/2910 Bookout Street - a site that is roughly twice the area/size of the subject site of BDA045-125.

BOARD OF ADJUSTMENT ACTION: May 16, 2005

APPEARING IN FAVOR: Jonathan Vinson, 901 Main Street, Dallas, TX

APPEARING IN OPPOSITION: No One

MOTION: **Neumann**

I move that the Board of Adjustment in Appeal No. **BDA 045-125**, grant the request of this applicant to waive the two year time limitation on the height variance that was approved, subject to a submitted site plan.

SECONDED: **Wise**

AYES: 5 – Madrigal, Smith, Chortek, Neumann, Wise

NAYS: 0–

MOTION PASSED: 5 – 0

MISCELLANEOUS ITEM NO. 4

FILE NUMBER: BDA 045-125

REQUEST: To extend the time period in which to apply for a building permit or certificate of occupancy an additional 12 months from the Board of Adjustment's favorable action on a variance to the front yard (urban form) setback regulations of 15' and a variance to the height regulations of 40' that were granted on December 14, 2004.

LOCATION: 2910 Bookout Street

APPLICANT: Jonathan Vinson of Jackson Walker

STANDARD FOR EXTENDING THE TIME PERIOD IN WHICH TO APPLY FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY:

The Board of Adjustment Working Rules of Procedure states that a panel may not extend the time period for making application for a building permit or certificate of occupancy beyond 180 days from the date of its favorable action unless it makes a specific finding based on evidence presented at a public hearing that there are no substantially changed conditions or circumstances regarding the property to the satisfaction of the panel. In no, event, however, may the board extend the time period beyond 18 months from the date of its favorable action.

GENERAL FACTS:

- On December 14, 2004, the Board of Adjustment granted a variance to the front yard (urban form) setback regulations of 15 feet, subject to the submitted site plan, and a height variance of 40', subject to the submitted site plan. The variances were requested in conjunction with constructing a 280'-high condominium/hotel structure.
- The Dallas Development Code states the following with regard to board action:
 - The applicant shall file an application for a building permit or certificate of occupancy within 180 days for the date of the favorable action of the board, unless the applicant files for and is granted an extended time period prior to the expiration of the 180 days. The filing of a request for an extended time period does not toll the 180 day time period. If the applicant fails to file an application within the time period, the request is automatically denied without prejudice, and the applicant must begin the process to have his request heard again.
- The applicant submitted a letter to staff requesting that time period in which to apply for a building permit or certificate of occupancy be extended an additional 12 months beyond the 180 day time period the applicant had in which to do so pertaining to

variances that were approved in conjunction with BDA 045-125 on December 14, 2005 (see Attachment A).

BOARD OF ADJUSTMENT ACTION: May 16, 2005

APPEARING IN FAVOR: Jonathan Vinson, 901 Main Street, Dallas, TX
Jud Pankey, 6060 N. Central Expwy, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Neumann

I move that the Board of Adjustment in Appeal No. **BDA 045-125**, grant the request to extend the time period in which to apply for a building permit or certificate of occupancy an additional 12 months from the Board of Adjustment's favorable action on a variance to the front yard (urban form) setback regulations of 15' and a variance to the height regulations of 40' that were granted on December 14, 2004.

SECONDED: Smith

AYES: 5 – Madrigal, Smith, Chortek, Neumann, Wise

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 045-186

BUILDING OFFICIAL'S REPORT:

Application of Robert Jenkins for a variance to the off-street parking regulations at 1212 Glen Park Drive. This property is more fully described as Lot 3 in City Block 6/6899 and is zoned R 7.5 (A) which requires a 20 foot setback for an enclosed parking space. The applicant proposes to construct an addition to a single family dwelling and provide a 14 foot 9 inch setback which would require a variance of 5 feet 3 inches. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

LOCATION: 1212 Glen Park Drive

APPLICANT: Robert Jenkins

REQUEST:

- A variance to the off-street parking regulations of 5' 3" is requested to enclose parking spaces on site developed with a single family home.

STANDARD FOR A VARIANCE:

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

GENERAL FACTS:

- The Dallas Development Code states the following:
 - “A parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley. This provision controls over any building line platted to a lesser setback and any other provision of this article.”
- The submitted site plan indicates that enclosed parking spaces (in an attached garage structure) are to be located 14’ 9” from the alley right of way line on the south (or about 17’ 9” from the alley pavement line).
- The Development Services Transportation Engineer states, however, that the distance from the enclosed parking spaces to the alley pavement line to be 17’ 3” (which is the sum of the distance between the enclosed parking space and the alley right of way line (14’ 9”) and the normal distance from an alley pavement line to an alley right of way line (2’ 6”).
- The applicant could complete the existing structure that attaches to the existing single family home by leaving the parking spaces unenclosed if the variance were to be denied. The need for this parking variance is merely to allow the parking spaces to be enclosed with a garage door.
- The site is flat, rectangular in shape (103.5’ x 72.5’), and approximately 7,500 square feet in area.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - A letter that provides further details about the request;
 - A petition signed by 16 neighbors who support the request;
 - A copy of an “offense incident report” from the Dallas Police Department documenting a burglary at the site in July of 2004.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is developed with a single family home without either an attached or detached garage. The areas to the north, east, and west are developed with single family uses; and the area to the south is developed with retail uses.

Zoning/BDA History:

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

Timeline:

- March 9, 2005: 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 21, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- April 21, 2005: 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 April 29th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - that additional evidence submitted past this date should be brought to the public hearing, 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 29, 2005 The applicant submitted information beyond what was submitted with the original application (see Attachment A).

May 2, 2005: 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 Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

A review comment sheet was submitted by the Development Services Transportation Engineer in conjunction with this application. The engineer made the following comments on this appeal:

- Facts for consideration:
 1. 10 foot alley pavement within a 15 foot alley right-of-way.
 2. The existing garage front is shown/located 14' 9" from the property line or 17' 3" from the edge of alley pavement.
 3. A standard-sized vehicle is 17' 10" long, so that a portion of the vehicle may encroach onto alley pavement.
 4. Adjacent properties appear to be able to have garages meeting code requirements.

STAFF ANALYSIS:

- The site is flat, rectangular in shape (103.5' x 72.5'), and approximately 7,500 square feet in area.
- The submitted site plan indicates if the existing parking spaces were to be enclosed, there would be about a distance ranging between about 17' 3" to 18' from the garage door to the alley pavement line – a distance that would accommodate the length of some vehicles as they would enter/exit the enclosed parking spaces/garage from the alley.
- Typically, when the Board has found that this type of variance request is warranted, they have imposed the following conditions:
 - Compliance with the submitted site plan is required.
 - An automatic garage door must be installed and maintained in working order at all times.
 - At no time may the area in front of the garage be utilized for parking of vehicles.
 - All applicable permits must be obtained.These conditions are imposed to assure that the variance will not be contrary to public interest.
- Granting the request will allow the applicant to enclose a structure with a garage door which otherwise could be retained as built as an open garage (or carport) with unenclosed parking spaces.
- The existing structure with covered but unenclosed parking spaces is in compliance with all development code setback regulations.

- The Development Services Transportation Engineer, in conjunction with this application, made the following comments on this appeal:
 - Facts for consideration:
 1. 10 foot alley pavement within a 15 foot alley right-of-way.
 2. The existing garage front is shown/located 14' 9" from the property line or 17' 3" from the edge of alley pavement.
 3. A standard-sized vehicle is 17' 10" long, so that a portion of the vehicle may encroach onto alley pavement.
 4. Adjacent properties appear to be able to have garages meeting code requirements.

BOARD OF ADJUSTMENT ACTION: May 16, 2005

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Wise**

I move that the Board of Adjustment **grant** application **BDA 045-186** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted site plan is required;
- An automatic garage door must be installed and maintained in working order at all times;
- No vehicles may be parked in the area in front of the garage at any time; and
- Applicant must obtain all applicable permits.

SECONDED: **Smith**

AYES: 5 – Madrigal, Smith, Chortek, Neumann, Wise

NAYS: 0–

MOTION PASSED: 5 – 0(unanimously)

FILE NUMBER: BDA 045-203

BUILDING OFFICIAL'S REPORT:

Application of Emmanuel C. McSween for a variance to the front yard setback regulations at 709 W. Daniieldale Road. This property is more fully described as Lot 4 in City Block &/8589 and is zoned R 7.5 (A) which requires a 25 foot front yard setback. The applicant proposes to construct a single family dwelling and provide a 20 foot front yard setback which would require a variance of 5 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

LOCATION: 709 W. Danieldale Road

APPLICANT: Emmanuel C. McSween

REQUEST:

- A variance to the front yard setback regulations of 5' is requested in conjunction with constructing a single family home on a site that is undeveloped.

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:

- A 25'-front yard setback is required in the R-7.5(A) zoning district.
- The site has two, 25'-front yard setbacks: one on Danieldale Road, the other on Beckleycrest Avenue.
- The submitted site plan indicates that single family home is to be located 20' from the site's front property line on Beckleycrest Avenue. (The proposed location of the single family home is in compliance with the 25' front yard setback on Danieldale Road).
- The Dallas Development Code states the following with regard to front yard provisions for residential district:
 - If a corner lot in a single family, duplex, or agricultural district has two street frontages of equal distance, one frontage is governed by the front yard regulations of this section, and the other frontage is governed by the side yard regulations. If the corner lot has two street frontages of unequal distance, the shorter frontage is governed by this section, and the longer frontage is governed by side yard regulations. Notwithstanding this provision, the continuity of the established setback along street frontage must be maintained.

- The site's longer frontage is along Beckleycrest Avenue, however, this longer frontage is deemed a front yard setback in order to maintain the established setback of lots/homes along this street to the north that "front" Beckleycrest Avenue.
- According to the submitted site plan, the proposed single family home is 30'-wide and 50'-70' long. The area of the proposed home in the Beckleycrest Avenue front yard setback is 50' x 5' or 250 square feet in area.
- The site is flat, rectangular in shape (180' x 55'), and approximately 9,900 square feet in area.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included a letter that provides further details about the request and why it should be granted.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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

Timeline:

- April 1, 2005: 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 21, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- April 21, 2005: 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 April 29th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- that additional evidence submitted past this date should be brought to the public hearing, 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.

May 2, 2005: 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 Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

A review comment sheet was submitted from the area Code Compliance Inspector marked "Recommends that this be denied" commenting "Zoning setback should be consistent due to widening of West Daniieldale." (Note that the variance request is to encroach only into the Beckleycrest Avenue front yard setback).

May 3, 2005 The applicant submitted information beyond what was submitted with the original application (see Attachment A).

STAFF ANALYSIS:

- The site is flat, rectangular in shape (180' x 55'), and approximately 9,900 square feet in area. The site has two, 25' front yard setbacks.
- A 25'-wide area for development remains on the 55'-wide site once a 25' front yard setback is accounted for on the east side of the site, and a 5' side yard setback is accounted for on the west side of the site.
- If the Board were to grant the front yard variance request, subject to the submitted site plan, the site could be developed with a 1-story single family structure that (according to the site plan) will have about 1,500 – 2,100 square feet of area. The area shown on this plan that encroaches into the Beckleycrest Avenue front yard setback is approximately 250 square feet (or 50' x 5') resulting in a 20' front yard setback.

BOARD OF ADJUSTMENT ACTION: May 16, 2005

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Wise**

I move that the Board of Adjustment **grant** application **BDA 045-203** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted site plan is required.

SECONDED: **Smith**

AYES: 5 – Madrigal, Smith, Chortek, Neumann, Wise

NAYS: 0–

MOTION PASSED: 5 – 0(unanimously)

FILE NUMBER: BDA 045-183

BUILDING OFFICIAL’S REPORT:

Application of Jeremy Scharf for a variance to the front and side yard setback regulations at 6545 Layfayette Way. This property is more fully described as Lot 24 in City Block 10/7445 and is zoned R-16 (A) which requires a 35 foot front yard setback and a 10 foot side yard setback. The applicant proposes to construct a single family dwelling and provide a 28 foot front yard setback and a 0 foot side yard setback which would require a variance of 7 feet to the front yard regulations and a variance of 10 feet to the side yard regulations. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

LOCATION: 6545 Layfayette Way

APPLICANT: Jeremy Scharf

REQUESTS:

- A variance to the front yard setback regulations of 7’ and a variance of 10’ to the side yard setback regulations are requested in conjunction with constructing a single family home on a site that is undeveloped.

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:

- A 35'-front yard setback is required in the R-16(A) zoning district.
- The submitted site plan indicates that entry steps of the proposed single family home are to be located 28' from the site's front property line.
- According to the submitted site plan, the area of the proposed single family structure (entry stairs) located in the 35' front yard setback is approximately 119 square feet (or 17' x 7') in area.
- A 10'-side yard setback is required in the R-16(A) zoning district.
- The submitted site plan indicates that a deck and stairs (from the deck to the back yard) are proposed to be located on the site's side property line on the western edge of the site.
- According to the submitted site plan, the area of the proposed single family structure located in the 10' side yard setback (deck and stairs) is approximately 230 square feet (or 23' x 10') in area.
- According to calculations taken from the submitted site plan, the building footprint of the single family home is approximately 80' x 40' or 3,200 square feet in area. (According to information submitted by the applicant, the proposed home would have 3,735 square feet of living area).
- An elevation has been submitted in conjunction with the application that indicates a 2-story house.
- The site is sloped at the rear of the site, irregular in shape (100' x 129' x 40' x 69' x 155'), and approximately 13,000 square feet in area.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - 18 letters of support from immediate neighbors;
 - Information retrieved from the Dallas Central Appraisal District on random new homes in the immediate neighborhood; and
 - A map of the immediate area with the subject site and adjacent streets noted above from support letters and from DCAD highlighted for reference.
- On April 18th, a public hearing was conducted on these requests. The following information was submitted at the public hearing:
 - Photos of the neighborhood from an opposing property owner. (These photos will be available for review upon request at the May 16th briefing and public hearing).

- The board delayed action on this matter until May 16th to allow the applicant and neighbors an opportunity to reach a resolution on the matters at hand.
- On April 29th, an opposing property owner submitted information regarding the application (see Attachment B). This information included the following:
 - A memorandum opposing granting the variances;
 - An attachment of DCAD information showing 6 new homes which are smaller than the applicant's proposed house;
 - An attachment of DCAD information for 21 of 44 new homes that do not have pools;
 - An attachment photo of a "large cement patio" on the site bordering the creek; and
 - Eight letters from neighbors who oppose the request.
- On May 2nd the applicant submitted a copy of a letter that he sent to opposing property owners (see Attachment C).
- On May 9th an opposing property owner submitted a copy of a letter that he sent to the applicant (see Attachment D).

BACKGROUND INFORMATION:

Zoning:

Site: R-16 (A) (Single family district 16,000 square feet)
North: R-16 (A) (Single family district 16,000 square feet)
South: R-16 (A) (Single family district 16,000 square feet)
East: R-16 (A) (Single family district 16,000 square feet)
West: R-16 (A) (Single family district 16,000 square feet)

Land Use:

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

Zoning/BDA History:

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

Timeline:

- March 4, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- March 17, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- March 17, 2005: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;

- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the March 28th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the April public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

March 25, 2005 The applicant submitted information beyond what was submitted with the original application (see Attachment A).

March 28, 2005: 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 Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the Development Services Department Transportation Engineer; and the Assistant City Attorney to the Board.
No review comment sheets with comments were submitted in conjunction with this application.

April 18, 2005: The Board of Adjustment held a public hearing on the appeal and delayed action until May 16, 2005.

April 29, 2005 An opposing property owner submitted information regarding the application (see Attachment B). This information included the following:

- A memorandum opposing granting the variances;
- An attachment of DCAD information showing 6 new homes which are smaller than the applicant's proposed house;
- An attachment of DCAD information for 21 of 44 new homes that do not have pools;
- An attachment photo of a "large cement patio" on the site bordering the creek; and
- Eight letters from neighbors who oppose the request.

May 2, 2005 The applicant forwarded a copy of a letter to staff that he sent to opposing property owners (see Attachment C).

May 2, 2005: 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 Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

May 9, 2005

The opposing property owner forwarded a copy of a letter to staff that he sent in response to the applicant's April 29th letter to him (see Attachment D).

STAFF ANALYSIS:

- The site is sloped at the rear of the site, irregularly-shaped, and approximately 13,000 square feet in area. This total lot size is less than the typically-sized lot in the R-16(A) zoning district at 16,000 square feet.
- If the Board were to grant the front yard variance request, subject to the submitted site plan, the site could be developed with a 2-story single family structure that (according to the applicant) will have about 3,800 square feet of living area where the only encroachment into the front yard setback would be an approximately 119 square foot (17' x 7') area for entry steps resulting in a 28' front yard setback.
- If the Board were to grant the side yard variance request, subject to the submitted site plan, the site could be developed with a 2-story single family structure that (according to the applicant) will have about 3,800 square feet of living area where the only encroachment into the side yard setback would be an approximately 230 square foot (23' x 10') area for a deck and steps resulting in a 0' side yard setback.
- The applicant has submitted information from DCAD that shows 8 other homes in the area (and zoning district) that have living areas that range from 5,182 square feet to 10,002 square feet. These "living areas" contrast with the 3,735 square feet of living area that the proposed home on the subject site will have.
- An opposing property owner has submitted information from DCAD that shows 6 new homes that are smaller than the applicant's proposed house, and 21 of 44 new homes in the area that do not have swimming pools.

BOARD OF ADJUSTMENT ACTION: April 18, 2005

APPEARING IN FAVOR: Jeremy Scharf, 12660 Hillcrest Road #7201, Dallas, TX
Jonathan Vinson, 901 Main Street, Dallas, TX

APPEARING IN OPPOSITION: John Hoagland, 6553 Lafayette Way, Dallas, TX
Sam King, 6561 Lafayette Way, Dallas, TX
Betty Moore, 6507 Churchill, Dallas, TX
Peter D'Apice, 13632 Ashridge Dr., Dallas, TX
Maridel Hoagland, 6553 Lafayette Way, Dallas, TX

MOTION#1: **Chortek**

I move that the Board of Adjustment in Appeal No. **BDA 045-183**, on application of Jeremy Scharf, **deny** the variance to the front yard requested by this applicant **with 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: Smith

AYES: 4 – Madrigal, Smith, Chortek, Wise

NAYS: 1– Neumann

MOTION PASSED: 4 – 1

MOTION#2: Chortek

I move that the Board of Adjustment in Appeal No. **BDA 045-183**, on application of Jeremy Scharf, **deny** the variance to the side yard requested by this applicant **with 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.

There was no second to this motion

MOTION#3: Neumann

I move that the Board of Adjustment in Appeal No. **BDA 045-183**, on application of Jeremy Scharf, **grant** the variance to the side yard regulations of **5** feet, 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 result in unnecessary hardship to this applicant. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with an amended site plan that shows a 5 foot side yard setback.

SECONDED: Wise

AYES: 2 – Neumann, Wise

NAYS: 3– Madrigal, Smith, Chortek

MOTION FAILED: 3 – 2 (Therefore deemed denied with prejudice).

MOTION #4: Smith

I move to re-open Appeal No. **BDA 045-183**.

SECONDED: Wise

AYES: 5 – Madrigal, Smith, Chortek, Neumann, Wise

NAYS: 0–

MOTION PASSED: 5-0 (unanimously)

MOTION #5: Chortek

I move that the Board of Adjustment in Appeal No. **BDA 045-183**, on application of Jeremy Scharf, **deny** the variance to the front yard regulations 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: Smith
AYES: 4 – Madrigal, Smith, Chortek, Wise
NAYS: 1– Neumann
MOTION PASSED: 4-1

MOTION #6: Chortek

I move that the Board of Adjustment in Appeal No. **BDA 045-183**, on application of Jeremy Scharf, **deny** the variance to the side yard regulations 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: Smith
AYES: 4 – Madrigal, Smith, Chortek, Wise
NAYS: 1– Neumann
MOTION PASSED: 4-1

Break: 4:21 P.M.
Resumed: 4:28 P.M.

FILE NUMBER: BDA 045-185

BUILDING OFFICIAL’S REPORT:

Application of Murphy & Moran Architects, represented by Ed Simons, for a variance to the front yard setback regulations at 1909 W. Jefferson Blvd. This property is more fully described as Lot 8 in City Block 4/3320 and is zoned CR-D which requires a 25 foot front yard setback (due to adjacent duplex zoning). The applicant proposes to construct an addition and provide a 15 foot front yard setback which would require a variance of 10 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

LOCATION: 1909 W. Jefferson Boulevard

APPLICANT: Murphy & Moran Architects
Represented by Ed Simons

REQUEST:

- A variance to the front yard setback regulations of 10' is requested in conjunction with constructing an ATM machine in the Brighton Drive front yard setback on a site that is developed with a convenience store.

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:

- A 25'-front yard setback is required on the site's frontage along Brighton Drive. Even though the site is zoned CR-D which requires a 15'-front yard setback in most cases, a 25'-front yard setback is required along Brighton Drive since the Dallas Development Code states that if street frontage is divided by two or more zoning districts (as in this case with CR and D zoning districts), the front yard for the entire block must comply with the requirements of the district with the greatest front yard requirement (which along Brighton Drive is the 25'-front yard setback required for lots zoned D Duplex).
- The site has a 15'-front yard setback along Jefferson Boulevard, and a 25'-front yard setback along Brighton Drive given the configuration of adjacent lots and zoning districts.
- The submitted site plan indicates that ATM machine is to be located 15' from the site's front property line on Brighton Drive. The existing vehicle canopy structure located in the 25'-front yard setback on Jefferson Boulevard was previously "varied" by the Board of Adjustment in 1996 (see the "Zoning/BDA History" section of this case report for further details).
- According to the submitted site plan, the entire proposed 80 square foot (or 20' x 4') ATM structure is located in the 15'-Brighton Drive front yard setback.
- The site is flat, irregular in shape (150' on the north, 102' on the east, 156' on the south, and 50' on the west), and approximately 12,000 square feet in area.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included a letter that further explained the merits and scope of the request.

BACKGROUND INFORMATION:

Zoning:

Site: CR-D (Community Retail- Dry)
North: D (A) (Duplex)
South: CR (Community Retail)
East: R-7.5 (A) (Single family district 7,500 square feet)
West: CR-D (Community Retail- Dry)

Land Use:

The subject site is developed with a convenience store. The areas to the north and east are developed with single family uses; and the areas to the south and west are developed with commercial/retail uses.

Zoning/BDA History:

1. BDA956-126, 1909 W. Jefferson Boulevard (the subject site) On January 23, 1996, the Board of Adjustment Panel C granted a request for a variance of 5 feet requested in conjunction with constructing and maintaining a 720 square foot vehicle canopy.

Timeline:

- March 7, 2005: 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 21, 2005: 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 21, 2005: The Board Administrator left a message 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 29th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- that additional evidence submitted past this date should be brought to the public hearing, 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 29, 2005 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).

May 2, 2005: 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 Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The site is flat, irregular in shape (150' on the north, 102' on the east, 156' on the south, and 50' on the west), and approximately 12,000 square feet in area.
- If the Board were to grant the front yard variance request, subject to the submitted site plan, the site could additionally be developed with an 80 square foot (or 20' x 4') ATM structure all of which would be located in the Brighton Drive front yard setback resulting in a 15' front yard setback.

BOARD OF ADJUSTMENT ACTION: May 16, 2005

APPEARING IN FAVOR: Ed Simons, 900 Jackson, Dallas, TX
Adena Nichols, 6314 Chelsea Way, Dallas, TX

APPEARING IN OPPOSITION: Don Allen, 204 N. Brighton, Ave., Dallas, Tx
Anna Procaccini, 212 N Brighton, Ave., Dallas, TX

MOTION: Neumann

I move that the Board of Adjustment in Appeal No. **BDA 045-185**, on application of Murphy & Moran Architects, **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: Wise

AYES: 5 – Madrigal, Smith, Chortek, Neumann, Wise

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 045-195

BUILDING OFFICIAL’S REPORT:

Application of Ellis Wamsley IV for a variance to the side yard setback regulations at 4119 Metropolitan Avenue. This property is more fully described as Lots 26 and 27 in City Block F/1817 and is zoned P.D. 595 R-5 and NC which requires a 15 foot side yard setback. The applicant proposes to construct a building and provide a 5 foot side yard setback which would require a variance of 10 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

LOCATION: 4119 Metropolitan Avenue

APPLICANT: Ellis Wamsley IV

REQUEST:

- Variances to the side yard setback regulations of up to 10’ are requested in conjunction with constructing a commercial structure (Wash Mat) on a site that is undeveloped.

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:

- A 15’-side yard setback is required in the PD No. 595 NC zoning district.

- The site is currently zoned PD No. 595 (R-5 and NC Subdistricts). The applicant is currently in the process of having the portion of his site zoned R-5 residential re-zoned to NC Neighborhood Commercial in order to develop the proposed commercial structure on the site (see the “Zoning/BDA History” section of this case report for further details).
- The site has two front yard setbacks: one on Metropolitan Avenue, the other on Lagow Street; and two side yard setbacks: one on the northwest side of the site (where there is commercial use adjacency), the other on the southwest side of the site (where there is single family use adjacency).
- The submitted site plan indicates that the proposed structure is located 5’ from the site’s northwestern side property line, and 7’ from the site’s southwestern side property line.
- A site plan has been submitted with this application that has no scale but has some dimensions noted. According to the submitted site plan, the proposed structure appears to be about 4,400 square feet in area. The site plan indicates that an area approximately 400 square feet (or 40’ x 10’) in size would be located in the 15’-side yard setback area on the northwest side of the site, and that an area that is approximately 880 square feet (or 110’ x 8’) in size would be located in the 15’-side yard setback area on the southwest side of the site.
- The site is flat, slightly irregular in shape (102’ on the northwest, 115’ on the northeast, 86’ on the southeast, and 125’ on the southwest), and approximately 12,000 square feet in area.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	PD No. 595 (R-5 and NC Subdistricts) (Planned Development Single family and Neigh.Comm)
<u>North:</u>	PD No. 595 (NC Subdistrict) (Planned Development Neighborhood Commercial)
<u>South:</u>	PD No. 595 (R-5 Subdistrict) (Planned Development Single family)
<u>East:</u>	PD No. 595 (NC Subdistricts) (Planned Development Neighborhood Commercial)
<u>West:</u>	PD No. 595 (R-5 Subdistrict) (Planned Development Single family)

Land Use:

The subject site is undeveloped. The areas to the north and east are developed with commercial/retail uses; and the areas to the south and west are developed with residential uses.

Zoning/BDA History:

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. Z034-205, 4119 Metropolitan (a portion of the subject site) | <p>On April 28, 2005, the City Plan Commission recommended approval of an application for an NC Neighborhood Commercial Subdistrict on property zoned an R-5(A) Subdistrict. Final consideration of the zoning request will be made by the City</p> |
|--|---|

Council. (The City Council hearing date will be scheduled depending on the outcome of the Board of Adjustment's action on the side yard variance requests.

Timeline:

- March 4, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- March 17, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- March 17, 2005: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the March 28th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the April public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- March 28, 2005: 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 Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the Development Services Department Transportation Engineer; and the Assistant City Attorney to the Board.
No review comment sheets with comments were submitted in conjunction with this application.

STAFF ANALYSIS:

- The site is flat, slightly irregular in shape (102' on the northwest, 115' on the northeast, 86' on the southeast, and 125' on the southwest), and approximately 12,000 square feet in area.
- If the Board were to grant the side yard variance requests, subject to the submitted site plan, the site could be developed with a proposed structure that appears to be about 4,400 square feet in area where approximately 1,300 square feet would be located in the 15'-side yard setback areas of the site.
- In addition to obtaining variances to the side yard setback regulations from the Board of Adjustment, the applicant will be required to obtain a change in zoning from the City Council on the portion of the site currently zoned PD No. 595 (R-5) before the proposed nonresidential structure can be located on the site.

BOARD OF ADJUSTMENT ACTION: May 16, 2005

APPEARING IN FAVOR: Ellis Wamsley, P.O. Box 541016, Grand Prairie, TX

APPEARING IN OPPOSITION: No one

MOTION: Smith

I move that the Board of Adjustment in Appeal No. **BDA 045-195**, on application of Ellis Wamsley, IV, **grant** the variance to the side yard regulations, 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 result in unnecessary hardship to this applicant. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance the submitted site plan is required.

SECONDED: Neumann

AYES: 5 – Madrigal, Smith, Chortek, Neumann, Wise

NAYS: 0–

MOTION PASSED: 5 – 0

FILE NUMBER: BDA 045-200

BUILDING OFFICIAL'S REPORT:

Application of Dan Savage, represented by David White- Jacobs Facilities, for a special exception to the commercial parking garage and surface parking lot regulations (which contain landscape regulations) and a special exception to the tree preservation regulations at 606 Elm Street. This property is more fully described as Lot 1R in City Block 4/31 and is zoned CA-1 (A) H-2 which requires landscaping to be installed with new construction of parking garages and mitigation for every protected tree removed. The applicant proposes to construct a parking garage and provide an alternate landscape plan and an alternate tree mitigation plan which would require special

exceptions. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 606 Elm Street

APPLICANT: Dan Savage
Represented by David White- Jacobs Facilities

REQUESTS:

- Special exceptions to the commercial parking lot and garage (which contains landscape regulations) and to the tree preservation regulations are requested in conjunction with constructing an underground parking garage with a new plaza atop on a site that had been previously developed as a public plaza (Founders Plaza).

STANDARD FOR A SPECIAL EXCEPTION TO THE REQUIRMENTS FOR COMMERCIAL PARKING GARAGES AND SURFACE PARKING LOTS:

The board of adjustment may grant a special exception to any requirement contained in Paragraph 9 of Section 51A-4.124 (commercial parking lots and garages) if the board finds, after a public hearing, the special exception will not adversely affect the other properties within the subdistrict and strict compliance with the requirement would result in unnecessary hardship. If the board grants a special exception, it must specify the length of time the special exception is effective.

STANDARD FOR A SPECIAL EXCEPTION TO THE TREE PRESERVATION REGULATIONS:

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

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

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

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

GENERAL FACTS (related to the parking garage special exception):

- The site is located in a CA-1 (Central Area) zoning district that includes a provision specifically pertaining to “Commercial parking garages and surface parking lots.” The Code states that the intent of this specific provision is the following:
 - “The intent of this paragraph is to create a distinct boundary between public space and private parking facilities, raise the aesthetic standards for parking facilities, and improve the quality of right-of-ways.”
- The “Commercial parking garages and surface parking lots” provision in the CA-1 zoning section of the Code (Section 51A-4.124 (9)) includes provisions that require certain landscape requirements.
- The applicant is seeking a special exception to one of these “Commercial parking garages and surface parking lots” landscape requirements, specifically, the provision that requires one tree or shrub to be provided in an adjoining parkway for each 30 feet along the frontage abutting the right-of-way.
- The “Commercial parking garages and surface parking lots” provision in the CA-1 zoning section of the code includes a specific special exception provision the Board of Adjustment may use to “except” any requirement in this specific “Commercial parking garages and surface parking lots” paragraph of the Code.
- In this particular case, the Board must apply the specific special exception standard to the “Commercial parking garages and surface parking lots” provision in the CA-1 zoning section since the applicant is seeking exception from landscape requirements in Section 51A-4.124 (9) (K), and not seeking an exception from landscape requirements in Section 51A-10: The Landscape Regulations and Tree Preservation Regulations.
- The “Commercial parking garages and surface parking lots” provision in the CA-1 zoning section of the Code (Section 51A-4.124 (9)) includes a provision that includes defines certain “subdistricts” to which the regulations apply. One subdistrict is the “Central Subdistrict” which is described as being bound by Ross Avenue, Pearl Street, Bryan Street, Central Expressway, Live Oak Street, Olive Street, Harwood Street, Wood Street, and Griffin Street. The other subdistrict is the “Secondary Subdistrict” which is described as being the area with CA-1 zoning inside the Central Business District but excluding the Central Subdistrict.
- The subject site is located in the “Secondary Subdistrict.”
- The City of Dallas Chief Arborist submitted a memo to the Board of Adjustment staff (see Attachment B). The arborist identified the following way in which the alternate landscape plan does not comply with the landscape regulations for a commercial parking garage:
 - The applicant is required to provide either one shrub or one tree in the adjoining right-of-way along frontage that abuts a right-of-way.
The applicant is *proposing* to plant zero trees in the adjoining right-of-way.
- The City of Dallas Chief Arborist identified the following “factors for consideration” related to this appeal:
 - Because the commercial parking garage is underground, the amount of landscaping provided on site far exceeds the minimum landscape requirements that include planting trees or shrubs within the public right-of-way (76 proposed verses 39 required).

- The applicant’s representative submitted information beyond what was submitted with the original application (see Attachment A). This information included a letter that provides further details about the requests and why they should be granted.

GENERAL FACTS (related to the tree preservation special exception):

- The Tree Preservation Regulations of the Dallas Development Code includes a division pertaining to replacement of removed or seriously injured trees (Chapter 51A-10.134).
- The applicant seeks a special exception to this section of Section 51A-10: The Landscape Regulations and Tree Preservation Regulations, specifically, the provision in this chapter of the Code that states the following:
 - “A replacement tree must be of one of the following trees, and no one species of tree may constitute more than 30 percent of the replacement trees planted on a lot or tract.”
- The applicant is proposing that mitigation credit be applied for all trees planted in the plaza (75 Chinese Pistachio trees and one Live Oak tree), and that they not be restricted by the limitation relative to “30 percent of one species.”
- The City of Dallas Chief Arborist submitted a memo to the Board of Adjustment staff (see Attachment B). The arborist identified the following way in which the alternate tree mitigation plan does not comply with the tree preservation regulations:
 - The applicant is required to diversify species composition of replacement trees, so that no one species accounts for more than 30%.
The applicant is *proposing* to provide 100% of replacement trees with the same species.
- The City of Dallas Chief Arborist identified the following “factors for consideration” related to this appeal:
 - Most urban forestry professionals would agree that planting mini monocultures of trees encourages insect and pest infestation, including birds, and the risk of loss due to disease is increased.
- The applicant’s representative submitted information beyond what was submitted with the original application (see Attachment A). This information included a letter that provides further details about the requests and why they should be granted.

BACKGROUND INFORMATION:

Zoning:

Site: CA-1 H/2 (Central Area, Historic)
North: CA-1 H/2 (Central Area, Historic)
South: CA-1 H/2 (Central Area, Historic)
East: CA-1 H/2 (Central Area, Historic)
West: CA-1 H/2 (Central Area, Historic)

Land Use:

The subject site is being developed with an underground parking garage with a plaza atop. The areas to the north, east, and west are developed with office uses, and the area to the south is developed with a park/plaza.

Zoning/BDA History:

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

Timeline:

March 31, 2005: 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 21, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

April 21, 2005: 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 April 29th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- that additional evidence submitted past this date should be brought to the public hearing, 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.

May 2, 2005: 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 Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

A review comment sheet was submitted from a District Manager from Code Compliance that indicated "Has no objections," and a

memo was submitted by the City of Dallas Chief Arborist (see Attachment B).

In addition, the following comments were emailed to the Board Administrator by the Historic Preservation Senior Planner:

- The Landmark Commission considered a Certificate of Appropriateness on September 2, 2004 and approved the new parking garage below grade with certain specific conditions. The applicant will be required to return to the Landmark Commission since they have not seen the details of the plaza submitted to the Board of Adjustment. Staff does not have a problem with the special exception request for trees since the plaza will be very tree covered.

May 5, 2005 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).

STAFF ANALYSIS (related to the parking garage landscape special exception):

- The submitted application is deficient from fully complying with the landscape regulations within the "Commercial parking garages and surface parking lots" provision in the CA-1 zoning section in one way: provision that requires one tree or shrub to be provided in an adjoining parkway for each 30 feet along the frontage abutting the right-of-way.
- Granting this request, subject to compliance with the submitted alternate site/landscape plan, would allow the applicant to construct the underground parking garage and plaza with this one deviation to the landscape requirements set forth for parking lots and garages.
- Note the Dallas Development Code states that if the board finds, after a public hearing, the special exception will not adversely affect the other properties within the subdistrict and strict compliance with the requirement would result in unnecessary hardship, the board must specify the length of time the special exception is effective. (The applicant has requested that the special exception be granted for a period of time to coincide with the existence of the landscaped plaza, or for a period of 99 years, whichever should prove to be the lesser time.)
- The City of Dallas Chief Arborist identified the following "factor for consideration" related to this appeal:
 - Because the commercial parking garage is underground, the amount of landscaping provided on site far exceeds the minimum landscape requirements that include planting trees or shrubs within the public right-of-way (76 proposed verses 39 required).

STAFF ANALYSIS (related to the tree preservation special exception):

- Granting this request (subject to a condition that the applicant must fully comply with Article X: The Tree Preservation Regulations with the one exception: The applicant may provide 100% of replacement trees from the same species) would allow the applicant to construct the underground parking garage/plaza, and deviate from being required to fully mitigate from no one species accounting for more than 30%.

- The City of Dallas Chief Arborist identified the following “factors for consideration” related to this appeal:
 - Most urban forestry professionals would agree that planting mini monocultures of trees encourages insect and pest infestation, including birds, and the risk of loss due to disease is increased.

BOARD OF ADJUSTMENT ACTION: May 16, 2005

APPEARING IN FAVOR: Brent Byers, 6688 N Central Expwy, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION#1: Wise

I move that the Board of Adjustment in Appeal No. **BDA 045-200**, on application of Dan Savage, **grant** the special exception to the commercial parking lots and garages requirements in the Dallas Development Code because our evaluation of the property and the testimony shows that the special exception will not adversely affect the other properties within the subdistrict and strict compliance with the requirement will result in unnecessary hardship. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception is hereby granted for a period of time to coincide with the existence of the landscaped plaza, or for a period of 99 years whichever proves to be the lesser time.
- Compliance with the submitted alternate site/landscape plan is required.

SECONDED: Chortek

AYES: 5 – Madrigal, Smith, Chortek, Neumann, Wise

NAYS: 0–

MOTION PASSED: 5 – 0

MOTION#2: Wise

I move that the Board of Adjustment in Appeal No. **BDA 045-200**, on application of Dan Savage, **grant** the request of this applicant to provide an alternate mitigation plan as a special exception to the tree preservation requirements in the Dallas Development Code because our evaluation of the property and the testimony shows that strict compliance with the requirements will unreasonably burden the use of the property and the special exception will not adversely affect neighboring property. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with Article X is required; except that the applicant may provide 100% of the replacement trees from the same species of trees.

SECONDED: Chortek

AYES: 5 – Madrigal, Smith, Chortek, Neumann, Wise

NAYS: 0–

MOTION PASSED: 5 – 0

FILE NUMBER: BDA 045-211

BUILDING OFFICIAL'S REPORT:

Application of Prescott Realty Group, Inc., represented by Susan Mead/Jonathan Vinson, Jackson Walker L.L.P., for a variance to the height regulations and a special exception to the landscape regulations at 2927 Maple Avenue/2910 Bookout. This property is more fully described as a portion of Lot 4, Lots 5-7 in City Block B/943 and Lots 1-7 in City Block F/941 and is zoned P.D. 193 LC which limits the height of a structure to 240 feet and requires landscaping to be provided with new construction. The applicant proposes to construct a 308 foot building which would require a variance of 68 feet, and to provide an alternate landscape plan which will require a special exception to the landscape regulations. Referred to the Board of Adjustment in accordance with Section 51-3.102 (d) (3) and (10) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions and variances.

LOCATION: 2927 Maple Avenue/2910 Bookout

APPLICANT: Prescott Realty Group, Inc.
Represented by Susan Mead/Jonathan Vinson, Jackson Walker
L.L.P

May 16, 2005 Public Hearing Notes:

- The applicant's representative submitted a "conceptual" landscape plan at the public hearing.

REQUESTS:

- The following requests have been made to the Board of Adjustment application:
 1. A variance to the height regulations of 68' is requested to construct a 308'-high condominium tower.
 2. A special exception to the landscape regulations is requested from the "otherwise-applicable requirement for additional screening on the Maple Avenue side of the historic Stoneleigh Hotel." (The applicant proposes to maintain the existing landscape and trees on that side of the hotel which without the special exception, the applicant would be required to plant shrubs in front of the mature Live Oak trees).

The subject site is partially undeveloped and partially developed with a hotel use (The Stoneleigh Hotel).

STANDARD FOR A VARIANCE:

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

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

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

GENERAL FACTS (related to the variance request):

- The maximum permitted height in the PD No. 193 (HC Subdistrict) is 240 feet.
- The submitted site plan indicates that the site will be developed with a 129'-long condominium tower (280': living area, + 28': mechanicals) and a 185'-long garage (36' above average grade).
- The site is sloped, "L"-shaped and, according to the submitted application, 1.976 acres in area.
- A portion of the site was previously granted a variance to the height regulations and to the front yard (urban form regulations) in December of 2004: BDA045-125 (see the "Zoning/BDA History" section of this case report for further details).
- The proposed tower that is the matter at hand in this application is on a site that is roughly twice the size of the site in December of 2004. The site in this application includes the entire site of BDA045-125 *and* the lot on which the Stoneleigh Hotel is located on.
- The proposed tower in this application is wider and higher than the tower "varied" in December of 2004. However, the proposed tower in this application does not require a variance to the front yard "urban form" setback regulations since the proposed tower in this application has not been increased in width or height beyond the amount of the tower "varied" to the front yard setback regulations in December of 2004.

- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - A letter that provides additional information to the requests and why they should be granted;
 - An appendix that the applicant states details variances or Planned Development regulations which have been granted in building height;
 - A revised site plan (that provides street names and height details not provided on the originally submitted site plan);
 - A revised section plan (that provides a street name not provided on the originally submitted section drawing);
 - A perspective that gives height details and other features of the proposed tower labeled “FOR ILLUSTRATIVE PURPOSES ONLY – NOT PART OF VARIANCE APPLICATION;”
 - A map that shows the locations of where variances and PD’s have been granted in building height;
 - Unlabeled perspective drawings;
 - A support letter from the Mayor Way Homeowners’ Association; and
 - A support letter from the Oak Lawn Committee.

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

- The Dallas Development Code requires full compliance with the Landscape Regulations with new construction.
- On April 29th, the applicant added a request for a special exception to the landscape regulations to the original application that was a variance to the height regulations.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - A letter that provides additional information to the requests and why they should be granted;
 - An appendix that the applicant states details variances or Planned Development regulations which have been granted in building height;
 - A revised site plan (that provides street names and height details not provided on the originally submitted site plan);
 - A revised section plan (that provides a street name not provided on the originally submitted section drawing);
 - A perspective that gives height details and other features of the proposed tower labeled “FOR ILLUSTRATIVE PURPOSES ONLY – NOT PART OF VARIANCE APPLICATION;”
 - A map that shows the locations of where variances and PD’s have been granted in building height;
 - Unlabeled perspective drawings;
 - A support letter from the Mayor Way Homeowners’ Association; and
 - A support letter from the Oak Lawn Committee.
- As of May 9th, an alternate landscape plan has not been submitted to staff. As a result, staff cannot provide the board with an account from a plan of where the applicant is proposing to comply with the landscape regulations and where the applicant is requesting seeking the exception from. What has been submitted is an

April 29th letter from the applicant's representative stating that "We will also be requesting a landscape special exception from the otherwise-applicable requirement, as conveyed to us by Building Inspection staff, for additional screening on the Maple Avenue side of the historic Stoneleigh Hotel. We simply wish to maintain the existing landscape and trees, including the four large, mature Live Oak trees, on that side of the hotel. Without the requested special exception, we would be required to plant shrubs in front of the mature Live Oak trees, screening off not only these outstanding trees by the façade of the historic Hotel itself."

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 LC (Planned Development District, Light Commercial)
North: PD No. 193 LC (Planned Development District, Light Commercial)
South: PD No. 193 O-2 (Planned Development District, Office)
East: PD No. 193 LC & O-2 (Planned Development District, Light Commercial and Office)
West: PD No. 193 O-2 (Planned Development District, Office)

Land Use:

The subject site is partially undeveloped and partially developed with a hotel use (The Stoneleigh). The areas to the north and east are developed with office uses; the area to the south is developed with townhome uses, and the area to the west is under development.

Zoning/BDA History:

1. BDA 045-125, 2910 Bookout Street (the lot that includes approximately half of the subject site) On December 14, 2004, the Board of Adjustment Panel C granted a request for a variance to height regulations of 40' (subject to compliance with the submitted site plan), and a variance of 15' to the front yard (urban form) setback regulations (subject to the site plan). The case report stated that these requests were made in conjunction with constructing a 280' high hotel/multifamily tower.
2. Miscellaneous Item #3, BDA 045-125 (the lot that includes approximately half of the subject site) On May 16, 2005, the Board of Adjustment Panel C will consider waiving the 2-year time period that is in place after a final decision is reached by the board.
3. Miscellaneous Item #4, BDA 045-125 (the lot that includes approximately half of the subject site) On May 16, 2005, the Board of Adjustment Panel C will consider extending the time period in which to make application for a building permit or certificate of occupancy an additional 12 months from the 180 days the

applicant had to do so from December 14, 2004.

Timeline:

- April 1, 2005: 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 21, 2005: 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 21, 2005: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the March 28th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the April public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- April 29, 2005 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).
- May 2, 2005: 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 Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

A review comment sheet was submitted from a District Manager from Code Compliance that indicated “Has no objections.”

May 2, 2005

The applicant’s representative amended his original application by addition a special exception to the landscape regulations (see Attachment B).

STAFF ANALYSIS (related to the height variance):

- The site is sloped, “L”-shaped and, according to the submitted application, 1.976 acres in area.
- If the Board were to grant the height variance request of 68 feet (or 28% higher than what is permitted in PD No. 193 LC Subdistrict), subject to the submitted site plan, the site could be developed with a 308’-high tower limited to a building footprint with a length of 129’ along Bookout Street, and with a length of about 100’ along Wolf Street.
- Note that the elevation submitted in conjunction with the appeal is labeled “FOR ILLUSTRATIVE PURPOSES ONLY – NOT PART OF VARIANCE APPLICATION.”

STAFF ANALYSIS (related to the landscape special exception):

- As of May 9, 2005, staff has not received an alternate landscape plan from the applicant’s representative. As a result, staff cannot provide an account of how/where the proposal is deficit from complying with (or how/where the proposal may exceed) the landscape requirements of PD No. 193.
- Granting this request, without further clarification from the applicant in the form of a plan or in the form of a written account that details the applicant’s intent with regard to landscaping the site, would allow development of the site with unlimited flexibility as to what/where landscape materials are retained and/or planted on the site.

BOARD OF ADJUSTMENT ACTION: May 16, 2005

APPEARING IN FAVOR: Jonathan Vinson, 901 Main Street,
Jud Pankey, 6060 N Central Expw, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION#1: Smith

I move that the Board of Adjustment in Appeal No. **BDA 045-211**, on application of Prescott Realty Group, **grant** the variance to the height regulations, 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 result in unnecessary hardship to this applicant. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the site plan submitted today labeled “Conceptual Design” is required.

SECONDED: Wise

AYES: 5 – Madrigal, Smith, Chortek, Neumann, Wise

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

MOTION#2: Smith

I move that the Board of Adjustment in Appeal No. **BDA 045-211**, on application of Prescott Realty Group, **grant** the request of this applicant to provide an alternate landscape plan as a special exception to the landscape requirements in the Dallas Development Code because our evaluation of the property and the testimony shows that strict compliance with the requirements will unreasonably burden the use of the property and is consistent with the spirit and intent of PD 193. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the site plan submitted today labeled “Conceptual Design” is required:

SECONDED: Wise

AYES: 5 – Madrigal, Smith, Chortek, Neumann, Wise

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 045-214

BUILDING OFFICIAL’S REPORT:

Application of Barry T. Milton, represented by James R. Schnurr, Winstead Seachrest & Minick P.C., for a special exception to allow an additional dwelling unit at 5642 Bent Tree Drive. This property is more fully described as Lot 17 in City Block 4/8209 and is zoned R-1/2 Ac (A) which limits the property to one dwelling unit per lot. The applicant proposes to construct an additional dwelling unit which would require a special exception. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 5642 Bent Tree Drive

APPLICANT: Barry T. Milton
Represented by James R. Schnurr, Winstead Seachrest & Minick P.C.

REQUEST:

- A special exception to the single family use regulations is requested in conjunction with constructing an additional “dwelling unit” on a site developed with a single family

home. The proposed additional “dwelling unit” in this appeal is a 2-story garage/”bonus room” structure.

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

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

GENERAL FACTS:

- “Single family” use is defined in the Dallas Development Code as “one dwelling unit located on a lot,” however, the code allows the Board of Adjustment to grant a special exception to this provision to allow an additional dwelling unit when, in their opinion, the additional dwelling unit will not:
 - 1) be used as rental accommodations; or
 - 2) adversely affect neighboring properties.
- The subject site is 27,195 square feet in area and developed with, according to DCAD records, a single family home that is in good condition, built in 1976 with 4,091 square feet of living area.
- The survey indicates that the 2-story garage is approximately 34’ x 24’ or is about 815 square feet in area. This is the location of the additional “dwelling unit” structure, however the exact size and footprint was not indicated on a site plan.
- The survey indicates that the 2-story garage is located 25’ from the nearest property line which in this case is the side property line on the west.
- Floor plans indicate the following spaces within the proposed detached 2-story additional “dwelling unit” structure on the site:
 - a “bonus room,” laundry room, bath, and hallway on the 2nd floor.
- The Dallas Development Code defines “dwelling unit” as “one or more rooms designed to accommodate one family and containing only one kitchen plus living, sanitary, and sleeping conditions.”
- The Dallas Development Code defines “family” as “individuals living together as a single housekeeping unit in which not more than four individuals are unrelated to the head of the household by blood, marriage, or adoption.”
- The Dallas Development Code defines “single family” use as “one dwelling unit located on a lot.”
- The Board of Adjustment has seen an increased number in special exceptions for additional dwelling units since November of 2004. This increase is most likely somewhat attributable to a memo that the Building Official wrote to city plan reviewers in September in 2004 (see Attachment A). This memo requested that plan reviewers carefully review applications for an addition or accessory structure on a lot

zoned single family with regard for compliance with code-provisions related to the definitions of “dwelling unit,” “ family,” and “single family.”

- Currently the City of Dallas is in the process of considering an amendment to the Development Code with regard to provisions related to single family accessory structures which are at times being interpreted as additional dwelling unit structures by Building Inspection due to a recent change in policy. Any official amendment to the Dallas Development Code would be made by the City Council.
- If this request is granted, a completed deed restriction stating that the additional dwelling unit on the site will not be used for rental accommodations must be submitted to the Board Administrator, approved by the City Attorney’s Office as to form, and filed in the deed records of the applicable county (in this case, Dallas County) before the applicable permits for this additional dwelling unit can be issued by the City.

BACKGROUND INFORMATION:

Zoning:

Site: R-½ ac (A) (Single family district ½ acre)
North: R-½ ac (A) (Single family district ½ acre)
South: PD No. 559 (Planned Development District 559)
East: R-½ ac (A) (Single family district ½ acre)
West: R-½ ac (A) (Single family district ½ acre)

Land Use:

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

Zoning/BDA History:

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

Timeline:

- April 1, 2005: 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 21, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- April 21, 2005: 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 April 29th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- that additional evidence submitted past this date should be brought to the public hearing, 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.

May 2, 2005: 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 Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the Development Services Department Transportation Engineer, Senior Planner Pitner and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- Typically, the Board receives documents such as a site plan, elevations, and floor plans that were submitted with the application as evidence to evaluate the request of an additional dwelling unit special exception. These documents usually show details relating to location and size to assist the Board in determining if the proposed dwelling unit meets the criteria for granting a special exception.
- The document received with this case is a survey showing existing structures. Staff cannot review the proposed dwelling unit structure for compliance with the Development Code regulations without a scaled site showing the proposed location. Therefore, if the Board were to approve the request for an additional dwelling unit, this approval does not preclude any structure from meeting all Development Code regulations and any deficiency of a structure in meeting the regulations would require the appropriate action from the Board for relief of the regulations.
- The exact location and footprint of the proposed "dwelling unit" structure were not indicated on the survey submitted. It was verbally indicated by the owner that the footprint would be expanded and the location is that of the existing 2-story garage. From his description, the expanded area would include the laundry room, bath, and

internal stairwell. This information was not provided on the site plan and the size of the structure is unclear.

- In the event that a site plan is presented at the Board hearing, staff cannot confirm compliance with the Development Code regulations without adequate and appropriate time for review.
- If the Board were to approve the request, subject to imposing a condition that the applicant comply with the submitted survey as the site plan, the “dwelling unit” structure would be restricted to the specific location, and size shown on the survey, which in this case is a 2-story garage/”bonus room” structure.
- If the Board were to approve the request, subject to imposing a condition that the applicant comply with a revised site plan that shows the exact location and footprint of the proposed “dwelling unit” structure, it would be restricted to the specific location, size, and height shown on the plans, which in this case is a 2-story garage/”bonus room” structure.
- As of May 6, 2005, no letters in opposition or support to this request had been submitted to staff.
- The Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

BOARD OF ADJUSTMENT ACTION: May 16, 2005

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Wise**

I move that the Board of Adjustment in Appeal No. **BDA 045-214** on application of Barry T. Milton, **deny** the request of this applicant to maintain an additional dwelling unit on the property **without prejudice**, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that the additional dwelling unit on the site will adversely affect neighboring properties or will be used as rental accommodations.

SECONDED: **Neumann**

AYES: 5 – Madrigal, Smith, Chortek, Neumann, Wise

NAYS: 0–

MOTION PASSED: 5 – 0

FILE NUMBER: BDA 045-220

BUILDING OFFICIAL’S REPORT:

Application of William Downer for a special exception to allow an additional dwelling unit at 4418 Vandelia Street. This property is more fully described as part of Lots 15 and 16

in City Block J/2048 and is zoned P.D. 193 R-7.5(A) which limits the property to one dwelling unit per lot. The applicant proposes to construct an additional dwelling unit which would require a special exception. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 4418 Vandelia Street

APPLICANT: William Downer

REQUEST:

- A special exception to the single family use regulations is requested in conjunction with constructing an additional “dwelling unit” on a site developed with a single family home. The proposed additional “dwelling unit” in this appeal is a 2-story garage/home office structure.

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

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

GENERAL FACTS:

- “Single family” use is defined in the Dallas Development Code as “one dwelling unit located on a lot,” however, the code allows the Board of Adjustment to grant a special exception to this provision to allow an additional dwelling unit when, in their opinion, the additional dwelling unit will not:
 - 1) be used as rental accommodations; or
 - 2) adversely affect neighboring properties.
- The subject site is 9,957 square feet in area and developed with, according to DCAD records, a single family home that is in average condition, built in 1929 with 1,343 square feet of living area.
- The site plan indicates that the additional “dwelling unit” structure has a building footprint of approximately 31’ x 38’ or is about 1,180 square feet in area.
- The site plan indicates that the additional “dwelling unit” structure will be located 5’ from the nearest property line which in this case is the side property line on the east.
- The submitted elevation indicates that the 2-story additional “dwelling unit” structure will be approximately 20’ in height.
- Floor plans indicate the following spaces within the proposed detached 2-story additional “dwelling unit” structure on the site:

- a 2-car garage and workshop on 1st floor; and
- a home office, storage room, bath, kitchen and closet on the 2nd floor.
- The Dallas Development Code defines “dwelling unit” as “one or more rooms designed to accommodate one family and containing only one kitchen plus living, sanitary, and sleeping conditions.”
- The Dallas Development Code defines “family” as “individuals living together as a single housekeeping unit in which not more than four individuals are unrelated to the head of the household by blood, marriage, or adoption.”
- The Dallas Development Code defines “single family” use as “one dwelling unit located on a lot.”
- The Board of Adjustment has seen an increased number in special exceptions for additional dwelling units since November of 2004. This increase is most likely somewhat attributable to a memo that the Building Official wrote to city plan reviewers in September in 2004 (see Attachment A). This memo requested that plan reviewers carefully review applications for an addition or accessory structure on a lot zoned single family with regard for compliance with code-provisions related to the definitions of “dwelling unit,” “ family,” and “single family.”
- Currently the City of Dallas is in the process of considering an amendment to the Development Code with regard to provisions related to single family accessory structures which are at times being interpreted as additional dwelling unit structures by Building Inspection due to a recent change in policy. Any official amendment to the Dallas Development Code would be made by the City Council.
- If this request is granted, a completed deed restriction stating that the additional dwelling unit on the site will not be used for rental accommodations must be submitted to the Board Administrator, approved by the City Attorney’s Office as to form, and filed in the deed records of the applicable county (in this case, Dallas County) before the applicable permits for this additional dwelling unit can be issued by the City.
- The applicant submitted eight (8) letters of support for the request (see Attachment B).

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5(A) & PD No. 193 (Single family district 7,500 square feet & Planned Development 193)
North: R-7.5(A) & PD No. 193 (Single family district 7,500 square feet & Planned Development 193)
South: R-7.5(A) & PD No. 193 (Single family district 7,500 square feet & Planned Development 193)
East: R-7.5(A) & PD No. 193 (Single family district 7,500 square feet & Planned Development 193)
West: R-7.5(A) & PD No. 193 (Single family district 7,500 square feet & Planned Development 193)

Land Use:

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

Zoning/BDA History:

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

Timeline:

April 4, 2005: 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 21, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

April 21, 2005: 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 April 29th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- that additional evidence submitted past this date should be brought to the public hearing, 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 29, 2005 The applicant submitted information beyond what was submitted with the original application (see Attachment B).

May 2, 2005: 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 Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, Senior Planner Pitner, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The proposed 2-story “dwelling unit” structure meets all setback, lot coverage, and height regulations.
- As of May 6, 2005, no letters in opposition to this request had been submitted to staff, and eight (8) letters of support for the request.
- If the Board were to approve the request, subject to imposing a condition that the applicant comply with the submitted elevation and site plan, the proposed “dwelling unit” structure would be restricted to the specific location, size, and height shown on the plans, which in this case is a 2-story garage/home office structure.
- The Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

BOARD OF ADJUSTMENT ACTION: May 16, 2005

APPEARING IN FAVOR: William Downer, 4418 Vandelia St., Dallas, TX

APPEARING IN OPPOSITION: Kay Kolb, 4402 Rowlings, Dallas, TX

MOTION: Wise

I move that the Board of Adjustment in Appeal No. **BDA 045-220** on application of William Downer, **grant** the request of this applicant to maintain an additional dwelling unit on the property, because our evaluation of the property and testimony shows that the additional dwelling unit will not be used as rental accommodations nor adversely affect neighboring properties. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan and elevation is required;
- The property must be deed-restricted to prohibit the additional dwelling unit on the site from being used as rental accommodations; and
- A copy of the deed restrictions recorded in Dallas County must be submitted to the City Attorney’s office.

SECONDED: Neumann

AYES: 5 – Madrigal, Smith, Chortek, Neumann, Wise

NAYS: 0–

MOTION PASSED: 5 – 0

MOTION: Neumann

I move to adjourn this meeting.

SECONDED: Smith

AYES: 5 –Madrigal, Smith, Chortek, Neumann, Wise

NAYS: 0 - None

MOTION PASSED: 5 – 0 (Unanimously)

6:08 P. M. - Board Meeting adjourned for **May 16, 2005.**

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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