

NOTICE FOR POSTING
BOARD OF ADJUSTMENT, PANEL A
TUESDAY, JANUARY 17, 2006

Briefing: 10:00 A.M.
Public Hearing: 1:00 P.M.

5/E/S
COUNCIL CHAMBERS

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

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

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

tl
1-17-2006

BOARD OF ADJUSTMENT, PANEL A
TUESDAY, JANUARY 17, 2006
AGENDA

BRIEFING	5/E/S	10:00 A.M.
LUNCH		
PUBLIC HEARING	COUNCIL CHAMBERS	1:00 P.M.

Donnie Moore, Chief Planner
Steve Long, Board Administrator
Jennifer Hironoto, Senior Planner

MISCELLANEOUS ITEMS

Approval of the Tuesday, December 13, 2005 Board of Adjustment Public Hearing Minutes	M1
---	----

UNCONTESTED CASES

BDA 056-061	10801 Spangler Road REQUEST: Application of Wier Bros. Inc., represented by Karl A Crawley, for a variance to the off-street parking regulations	1
BDA 056-062	616 W. Neely Street REQUEST: Application of Guillermo Villareal for a variance to the side yard setback regulations	2
BDA 056-067	5231/5233 Mission Avenue REQUEST: Application of William M. Kent for a variance to the height regulations	3
BDA 056-068	3525 Arrowhead Drive REQUEST: Application of Ed Simons for a variance to the front yard setback regulations and a variance to the off-street parking regulations	4
BDA 056-072	4848 Hatcher Street REQUEST: Application of Briar Hannah for a special exception to the parking regulations	5

BDA 056-073	4838 Hatcher Street (aka 4800 Hatcher Street) REQUEST: Application of Briar Hannah for a special exception to the parking regulations	6
-------------	---	---

HOLDOVER CASE

BDA 056-040	5327 Richard Avenue REQUEST: Application of Karen Tellez for a special exception for the handicapped to maintain a carport in the required side yard	7
-------------	--	---

EXECUTIVE SESSION NOTICE

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

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

(Rev. 6-24-02)

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel A December 13, 2005 public hearing minutes.

FILE NUMBER: BDA 056-061

BUILDING OFFICIAL'S REPORT:

Application of Wier Bros. Inc., represented by Karl A Crawley, for a variance to the off-street parking regulations at 10801 Spangler Road. This property is more fully described as a tract of land in City Block 6507 and is zoned IR which requires paved parking and maneuvering areas. The applicant proposes to provide an alternate surface for parking and maneuvering areas. 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: 10801 Spangler Road

APPLICANT: Wier Bros. Inc.
Represented by Karl A Crawley

REQUEST:

- A variance to the off-street parking regulations is requested to allow 106 of the required 111 parking spaces required on a site developed as, according to the Building Inspection Development Code Specialist, an "outside storage use with visual screening" use to be comprised of an alternate parking surface: gravel. (Only 5 of the required 111 parking spaces are proposed to be asphalt or concrete). According to the code specialist, the use does not have a CO (Certificate of Occupancy) since the required visual screening is not being provided on the site. The applicant's representative has stated in an email that the "present use of the site is nothing. The proposed use will be outside storage; if the zoning change that we requested is approved the use will be concrete crushing but the use for the BDA is outside storage."

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 site is zoned IR, is flat, somewhat irregular in shape, and, according to the application, 11.90 acres in area.
- The Dallas Development Code requires that the following parking requirement for *existing* use on the site: outside storage use
 - 1 space is required for every 2,000 square feet of site area exclusive of parking area.
- The Dallas Development Code requires that the following parking requirement for requested use on the site: industrial (outside)
 - 1 space is required for every 600 square feet of floor area, plus one space per 600 square feet of outside manufacturing area.
- A site plan has been submitted that denotes the following:
 - an area depicting the entire site with notations stating “Existing 215K square feet of stored raw material, proposed screen and landscape, and proposed paving parking and loading see enlarged drawing”
 - an area entitled Phase One with designated “gravel parking area” with 111 parking spaces on 26,565 square feet, and an area entitled Phase Two: Hatched Area is proposal for BDA Consideration” that indicates an office, a ramp, landscape, and what appears to be 4 parking spaces.
- According to an email sent to the Board Administrator by the applicant’s representative, the parking requirement based on the site for “the use intended for the BDA” is 111 spaces, all of which will be provided with 5 spaces being asphalt or concrete and the remaining spaces to be gravel (see Attachment A). The email provided additional points of information pertaining to the request.
- The Dallas Development Code provides the following provisions related to the “construction and maintenance” of off-street parking:
 - (d) Construction and maintenance provisions for off-street parking.
 - (4) For a use other than a single family, duplex, or vehicle storage lot use, the surface of an enclosed or unenclosed parking space, maneuvering area for parking, or a driveway which connects to a street or alley must be on a compacted sub-grade, and must consist of:
 - (A) concrete paving;
 - (B) hot mix asphalt paving which consists of a binder and surface course; or
 - (C) a material which has equivalent characteristics of Subsections (d)(4)(A) or (d)(4)(B) and has the approval of the building official.

BACKGROUND INFORMATION:

Zoning:

Site: IR (Industrial Research)
North: IM (Industrial Manufacturing)
South: IR (Industrial Research)

East: IM (Industrial Manufacturing)
West: IR (Industrial Research)

Land Use:

The subject site is developed as, according to the Building Inspection Development Code Specialist, an “outside storage use with visual screening” use (without a CO). According to the applicant’s representative, the areas to the north and west are developed with a concrete batching plant; the area to the east is vacant, and the area to the south is developed with an industrial use.

Zoning/BDA History:

1. Z056-130, 10801 Spangler (the subject site)
On January 5, 2006, the City Plan Commission recommended approval of a change in zoning to IM (Industrial Manufacturing) and an SUP (Specific Use Permit) for a “potentially incompatible industrial use with outside storage” for a one-year time period with eligibility for automatic renewal for one additional one-year time period on property currently zoned IR. This zoning request is tentatively scheduled for City Council on February 8, 2006.
2. Z045-139, 10801 Spangler (the subject site)
On May 12, 2005, the City Plan Commission (CPC) recommended denial of the applicant’s request for an SUP (Specific Use Permit) for Industrial Outside. On September 8, 2005, the CPC recommended denial of the applicant’s request for a waiver of the two-year waiting period. The applicant appealed the CPC decision to the City Council, whereby on October 24, 2005, the City Council overturned the CPC’s recommendation. On November 14, 2005, the applicant submitted an application for a zoning change and SUP (Z056-130).

Timeline:

- Nov. 11, 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.
- Dec. 13, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

Dec. 15, 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 December 23rd deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the January 6th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the January public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Dec. 20, 2005 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).

Dec. 28, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the 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 zoned IR, is flat, somewhat irregular in shape, and, according to the application, 11.90 acres in area.
- According to the applicant's representative, all 111 parking spaces required for the "outside storage" use on the site will be provided; however the variance to the parking regulations is requested so that only 5 of the 111 spaces shall be paved with concrete or asphalt.
- The applicant has the burden of proof in establishing the following:

- That granting the variance to the parking regulations for an alternate surface for 106 of 111 spaces 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 parking variance requested in conjunction with providing an alternate surface for 106 of 111 spaces is necessary to permit development of the subject site (currently developed as an “outside storage use with visual screening” (without a CO) and is flat, somewhat irregular in shape, and, according to the application, 11.90 acres in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same IR zoning classification.
- The parking variance requested in conjunction with providing an alternate surface for 106 of 111 spaces would not to be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same IR zoning classification.
- Granting this request, subject to the submitted site plan would require 5 of the 111 spaces required for the outside storage use to be comprised of asphalt or concrete with the remaining 106 spaces to be comprised of an alternate parking surface: gravel.
- Granting this request does not vary any other provision in the Dallas Development Code with achieving a Certificate of Occupancy for either the existing use or any future use on the subject site.

FILE NUMBER: BDA 056-062(J)

BUILDING OFFICIAL'S REPORT:

Application of Guillermo Villareal for a variance to the side yard setback regulations at 616 W. Neely Street. This property is more fully described as part of Lots 4 and 5 in City Block C/3438 and is zoned MF-2(A), which requires a 5 foot side yard setback for a duplex structure. The applicant proposes to maintain an addition and provide a 0 foot side 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: 616 W. Neely Street

APPLICANT: Guillermo Villareal

REQUEST:

- A variance to the side yard setback regulations of 5' is requested in conjunction with maintaining an addition.

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 5'-side yard setback is required in the MF-2(A) zoning district for duplex structures.
- The site is flat, rectangular in shape (50' x 134'), and approximately 6,700 square feet in area.

- A typical lot size in the MF-2(A) zoning district is 3,000 square feet per unit for duplex structures, or 6,000 square feet.
- A site plan has been submitted that indicates the area of the addition is approximately 174 square feet and the area of the addition to be located in the 5'-side yard setback is approximately 113 square feet (21'8" x 5').
- The submitted floor plan shows the addition in the side yard setback consists of two bedrooms.
- The elevations submitted indicate the duplex structure has a height of approximately 14'6" and shows the addition has a height of approximately 8'4".
- DCAD records indicate that the site is developed with a duplex in fair condition that was built in 1943 and has 1,328 square feet of living area and a free standing building that is 360 square feet in area.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	MF-2(A)	(Multifamily Residential)
<u>North:</u>	D(A)	(Duplex and Single Family Residential)
<u>South:</u>	CS	(Commercial Service)
<u>East:</u>	MF-2(A)	(Multifamily Residential)
<u>West:</u>	MF-2(A)	(Multifamily Residential)

Land Use:

The subject site is developed with a duplex use. The area to the north is developed with single family uses; the area to the east and west are developed with duplex uses; and the area to the south is developed with a gas station.

Zoning/BDA History:

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. BDA 978-150
619 W. Davis Street
(immediately south of the request site) | <p>On April 20, 1998, the Board of Adjustment granted a request for variance to the front yard setback regulations of 15 feet along Fouraker Street and a special exception to the landscape regulations in conjunction with constructing a gas station.</p> |
|--|--|

Timeline:

- | | |
|-----------------------|---|
| <p>Nov. 14, 2005:</p> | <p>The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.</p> |
| <p>Dec. 13, 2005:</p> | <p>The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.</p> |

- Dec. 19, 2005: The Board Administrator mailed the applicant a letter that contained the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the January 6th 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 January public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Dec. 28, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January 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 Development Services Transportation Engineer, Senior Planner Hiromoto, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The applicant submitted 22 letters of support or no objection with the application materials.
- The applicant submitted a letter from the Tarrant County Community Supervision and Corrections Department providing a statement on the addition being viewed as an appropriate layout for the occupant's need to avoid contact with minors.
- The plat map indicates the request site is approximately 6,700 square feet.
- If the Board were to grant the request, imposing a condition whereby the applicant must comply with the submitted site plan and elevation, the amount of additional encroachment into the side yard setback would be limited in this case to an area of approximately 113 square feet.
- The applicant has the burden of proof in establishing the following:

- That granting the variance of 5' to the side yard setback will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
- The side yard setback variance of 5' is necessary to permit development of the subject site (that is flat, rectangular in shape (50' x 134'), and approximately 6,700 square feet in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same MF-2(A) zoning classification.
- The side yard setback variance of 5' would not to be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same MF-2(A) zoning classification.
- Granting this variance would allow an approximately 113 square foot addition to encroach 5' into the 5' side yard setback.

FILE NUMBER: BDA 056-067

BUILDING OFFICIAL'S REPORT:

Application of William M. Kent for a variance to the height regulations at 5231 Mission Avenue. This property is more fully described as Lot 16 in City Block B/1997 and is zoned MF-2(A) which limits the height of a structure to 26 feet due to the residential proximity slope. The applicant proposes to construct a duplex structure with a height of 28 feet which would require a variance of 2 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: 5231 Mission Avenue

APPLICANT: William M. Kent

REQUEST:

- A variance to the height regulations (specifically to the residential proximity slope or RPS) of 2' is requested in conjunction with constructing and maintaining a two-story duplex that will reach 28 feet in height on a site that is currently developed with a one-story duplex.

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 establishes a residential proximity slope that limits height to 1 foot in height for every 3 feet away from private property in a residential zoning district (or a portion of a PD district which is restricted to residential uses).
- The site is zoned MF-2(A) where the maximum height is 36 feet (unless further restrictions are specified). In this case, the Dallas Development Code states that in MF-2 (A) zoning, if any portion of a structure is over 26 feet in height, that portion may not be located above a residential proximity slope originating in an R, R(A), D, D(A), TH, or TH(A) zoning district (with exceptions for chimneys).
- The applicant has submitted a site plan (that according to the applicant's representative indicates an approximately 5,200 square foot building footprint) and a building elevation that denotes a two-story structure that reaches 28' in height. Neither the originally submitted site plan nor the originally submitted elevation denoted how the RPS line affected the proposed structure, however, the applicant submitted a revised elevation that indicated the amount of structure that would exceed the RPS (see Attachment A). This elevation indicates that the portion above the RPS would be a part of the roof of the duplex structure and an area void of any window openings.
- The site is zoned MF-2(A), is flat, irregular in shape (approximately 74' on the northwest, 137' on the northeast, 134' on the southwest, and 45' on the southeast), and, according to the application, 8,024 square feet in area.
- The proposed structure will encroach above the vertical plane extending from the boundary lines of private property in an R-5(A) residential zoning district southwest of (and across an alley from) the subject site. (The proposed 28' high structure will be 8' under the 36' maximum permitted height allowed in the MF-2(A) zoning district for a structure on a lot without residential adjacency and encumbered by the RPS).
- DCAD states that the site is developed with the following:
 - a structure in "fair" condition built in 1940 that has 1,686 square feet of living area;
 - a 400 square foot detached garage with a "living area over garage" that is 400 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 revised attachment that provided details about the proposal and the request;
 - an elevation that indicates the amount of the proposed structure that encroaches above the RPS line southwest of the subject site;
 - an aerial photo that indicated the point of origin of the RPS line relative to the subject site;
 - photographs towards the subject site from the point of origin of the RPS line;
 - elevations that indicated how the proposed structure is in compliance with the RPS line in other directions of the subject site;
 - a petition signed by 12 neighbors/owners who support the request (with a map indicating where these neighbors/owners are located relative to the subject site); and
 - photographs of the "Mission Street neighborhood."

BACKGROUND INFORMATION:

Zoning:

Site: MF-2(A) (Multifamily)
North: PD No. 462 (Planned Development District)
South: MF-2(A) (Multifamily)
East: MF-2(A) (Multifamily)
West: MF-2(A) & LO-1 (Multifamily and limited office)

Land Use:

The subject site is developed with one-story duplex. The area to the north is developed with office use; the area to the east is developed as an elementary school (James B. Bonham Elementary School); and the areas to the south and west appear to be developed with single family homes.

Zoning/BDA History:

1. BDA 023-114, 2704 & 2710 Henderson Avenue (one lot northeast of the subject site) On September 23, 2003, Board of Adjustment Panel A granted a request for a variance to the height regulations (specifically the residential proximity slope regulations) of 12', subject to the applicant complying with the submitted site plan and building elevation. The case report states the request was made to construct and maintain a two-story, 38' high, 4,300 square foot "pet clinic" on a site that was undeveloped.

Timeline:

- Nov. 21, 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. (An aerial and color photos of the site and surrounding area will be available for review at the briefing and public hearing).
- Dec. 13, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Dec. 19, 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 December 23rd deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the January 6th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the January public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Dec. 28, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the 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.

Jan. 5, 2006 The applicant submitted information beyond what was submitted with the original application (see Attachment A).

STAFF ANALYSIS:

- The site is zoned MF-2(A), is flat, irregular in shape (approximately 74' on the northwest, 137' on the northeast, 134' on the southwest, and 45' on the southeast), and, according to the application, 8,024 square feet in area.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the height regulations (specifically to the residential proximity slope) of 2' to construct and maintain a 28' high, 2-story duplex structure will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance to the height regulations (specifically to the residential proximity slope) of 2' to construct and maintain a 28' high, 2-story duplex structure is necessary to permit development of the subject site (that is developed with a 1-story, approximately 1,700 duplex, and is flat, irregular in shape, and, according to the application, 8,024 square feet in area) that differs from other parcels of

land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same MF-2(A) zoning classification.

- The variance to the height regulations (specifically to the residential proximity slope) of 2' to construct and maintain a 28' high, 2-story duplex structure would not to be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same MF-2(A) zoning classification.
- If the Board were to grant the height variance request, imposing a condition whereby the applicant must comply with the submitted site plan and elevation, a 28' high, 2-story structure could be developed on the subject site that would encroach 2' above the imaginary RPS line from a point of origin southwest of the subject site yet a structure that would be 8' below the 36' maximum height permitted in the MF-2(A) zoning district.

FILE NUMBER: BDA 056-068

BUILDING OFFICIAL'S REPORT:

Application of Ed Simons for a variance to the front yard setback regulations and a variance to the parking regulations at 3525 Arrowhead Drive. This property is more fully described as Lot 1 and part of Lot 2 in City Block 1/2023 and is zoned PD 193 R- 7.5, which requires a front yard setback of 25 feet and an enclosed parking space to be 20 feet from a right-of-way line. The applicant proposes to construct an addition and provide a 6 foot front yard setback which would require a variance of 19 feet, and to provide an enclosed parking space 8 feet from the right-of-way which would require a variance of 12 feet to the parking 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: 3525 Arrowhead Drive

APPLICANT: Ed Simons

REQUESTS:

- The following appeals have been made in this application, both of which involve rebuilding an existing attached garage on a site currently developed with a single family home:
 1. A variance to the front yard setback regulations of 19' is requested in conjunction with rebuilding an existing garage in the site's 25' front yard.
 2. A variance to the off-street parking regulations of 12' is requested in conjunction with rebuilding an existing garage whereby enclosed parking spaces would be less than 20' from the Arrowhead Drive right-of-way line.

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 front yard setback in PD No. 193 (R-7.5 Subdistrict) zoning district is 25 feet.
- The applicant has submitted a site plan that denotes a portion of an attached garage and main structure located in the site's 25' front yard setback, as close as 6' from the site's front property line. The site plan does not provide any description as to what is existing structure, what is proposed structure, or what is replacement structure. It appears from this site (and floor) plan that a portion of the structure's garage and kitchen are/will be located in the 25' front yard setback.
- The applicant has forwarded an email to the Board Administrator on December 22, 2005 (see Attachment A). This email provided the following information in response to questions posed to him by the Board Administrator:
 - The replacement garage will occupy the exact same footprint as the existing garage with essentially the same layout inside.
 - The door openings will be slightly wider and taller giving more headroom inside the second level than the existing garage.
 - The garage is being replaced for aesthetic reasons, to give more headroom upstairs, to eliminate the steep downhill drive into the garage. (The current slope makes ingress/egress difficult and creates a drainage problem).
 - The house was built in the 20's which predates Dallas' zoning ordinance.
 - A small corner of the existing kitchen is in the 25' front yard setback with the enclosing walls of this kitchen remaining in place.
- The submitted site plan denotes a small part of existing house (which the applicant has described as a "small corner of the existing kitchen") in the site's 25' front yard setback in addition to the replacement garage. However, the application only mentions a variance request to "rebuild an existing garage within the front yard setback." Given this information on the application and what has been relayed from the applicant via an email, it appears that the variance in this case is limited to the garage replacement and not to remedy any other part of the existing structure that may be nonconforming to the current setback regulations. (The house was built decades ago and appears to have "nonconforming structure" status which allows the owner to replace the house back in the same footprint in the front yard setback if a natural cause would destroy or damage the house. In this case, however, the applicant intends to intentionally destroy the nonconforming attached garage).
- The Dallas Development Code requires that a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley. (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 the rebuilt garage will be located as close as 8' from the Arrowhead Drive right-of-way line and as far as 20' from the right-of-way line (or at a range of 19' – 32' from the Arrowhead Drive pavement line).

- The applicant could rebuild the garage structure without garage doors (or enclosed parking spaces) if the board were to grant the variance to the front yard setback regulations and to deny the variance to the parking regulations. The need for the parking variance is merely to allow the parking spaces in the structure to be enclosed with a garage door.
- Areas of the subject site are sloped, and the site is irregular in shape, and according to the submitted application, 47,271 square feet in area. The site is zoned PD No. 193 (R-7.5 Subdistrict) where lots are typically 7,500 square feet in area.
- DCAD records indicate that the site is developed with a single family home in “good” condition built in 1925 with 5,030 square feet of living space, and a 635 square foot attached garage.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	PD No. 193, R-7.5 Subdistrict (Planned Development District, single family)
<u>North:</u>	PD No. 193, R-7.5 Subdistrict (Planned Development District, single family)
<u>South:</u>	PD No. 193, R-7.5 Subdistrict (Planned Development District, single family)
<u>East:</u>	PD No. 193, R-7.5 Subdistrict (Planned Development District, single family)
<u>West:</u>	PD No. 193, R-7.5 Subdistrict (Planned Development District, single family)

Land Use:

The subject site is developed as single family home. The areas to the north, east, south are developed with single family uses; and the area to the west is developed with high-rise residential 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:

- Nov. 21, 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.
- Dec. 13, 2005: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- Dec. 15, 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 December 23rd deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the January 6th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the January public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Dec. 22, 2005 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).

Dec. 28, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the 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.

Dec. 29, 2005 The Building Inspection Development Code Specialist submitted a revised Building Official's report that added a variance request to the parking regulations.

January 5, 2006 The Development Services Senior Engineer submitted a review comment sheets with the following comments:

- "Site plan does not show the shortest distance from the garage front to the property line. The applicant needs to indicate if it meets the 20 feet required by code."

(Note that upon receipt of this comment sheet, the Board Administrator informed the Senior Engineer that a request for a variance to the parking regulations had been added whereby the enclosed parking spaces would be located as close as 8' from the Arrowhead Drive right-of-way line. The engineer stated that he was unable to comment since he did not have a full-scale site plan. The

administrator relayed to the applicant that he may want to forward a full-scale plan to the engineer).

STAFF ANALYSIS:

- Areas of the subject site are sloped, and the site is irregular in shape, and according to the submitted application, 47,271 square feet in area. The site is zoned PD No. 193 (R-7.5 Subdistrict) where lots are typically 7,500 square feet in area.
- The applicant has the burden of proof in establishing the following related to the *front yard* variance request:
 - That granting the variance to the front yard setback regulations of 19' to rebuild the garage structure will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance to the front yard setback regulations of 19' requested to rebuild the garage is necessary to permit development of the subject site (that is developed with nonconforming single family home/attached garage structure in the 25' front yard setback, and is sloped, irregular in shape, and according to the submitted application, 47,271 square feet in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 193 (R-7.5 Subdistrict) zoning classification.
 - The variance to the front yard setback regulations of 19' requested to rebuild the garage would not to be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD No. 193 (R-7.5 Subdistrict) zoning classification.
- If the Board were to grant the front yard variance request of 19', imposing a condition whereby the applicant must comply with the submitted site plan, the result would be a 6' front yard setback where the existing garage could be intentionally destroyed and replaced in the exact same building footprint and location as the existing garage, 19' into the 25' front yard setback.
- The applicant has the burden of proof in establishing the following related to the *parking* variance request:
 - That granting the variance to the parking regulations of 12' to enclose parking spaces in a rebuilt garage structure will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance to the parking regulations of 12' to enclose parking spaces in a rebuilt garage is necessary to permit development of the subject site (that is developed with nonconforming single family home/attached garage structure in the 25' front yard setback, and is sloped, irregular in shape, and according to the submitted application, 47,271 square feet in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site

cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 193 (R-7.5 Subdistrict) zoning classification.

- The variance to the front yard setback regulations of 12' to enclose parking spaces in a rebuilt garage would not to be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD No. 193 (R-7.5 Subdistrict) zoning classification.
- 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 parking spaces with a garage door which otherwise could be constructed as an open garage (or carport) with an unenclosed parking space assuming the Board grants the request for a variance to the front yard setback regulations for the structure that is located in the 25' front yard setback.
- The Development Services Senior Engineer has not made any specific observations on the parking variance since he stated that he needed a full scale site plan to do so.
- A regular-size vehicle (defined as having a length of 17' 10") parked or stopped in front of the garage door should not significantly impact traffic flow on the cul-de-sac Arrowhead Drive since the site plan denotes that the enclosed parking spaces appear to range 19' – 32' from the Arrowhead Drive pavement line.
- If the existing garage were to come down on its own accord by age, wind, or fire or combination, no variance to the front yard setback or parking regulations would be required given the nonconforming structure status of the garage that was constructed in the 20's.

FILE NUMBER: BDA 056-072

BUILDING OFFICIAL'S REPORT:

Application of Briar Hannah for a special exception to the parking regulations 4848 Hatcher Street. This property is more fully described as a tract of land in City Blocks 4485, 4486, 4487, 4488, 4489 and is zoned PD-595 MF-1, which requires parking to be provided for new construction. The applicant proposes to construct a multi-family dwelling and provide 194 of the 258 required parking spaces which would require a special exception of 64 spaces or 25%. Referred to the Board of Adjustment in accordance with Section 51A-4.311 (a) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 4848 Hatcher Street

APPLICANT: Briar Hannah

REQUEST:

- A special exception to the off-street parking regulations of 64 spaces (or 25% of the required off-street parking) is requested in conjunction with constructing and maintaining a 116-unit, 128,985 square foot residential development (Mill City) on a site currently under development.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
 - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.

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

GENERAL FACTS:

- The Dallas Development Code requires the following parking requirements for the proposed use on the subject site:
 - 1 space is required for every 500 square feet of building area.The applicant proposes to provide 194 (or 75%) of the total required 258 off-street parking spaces on the site.
- On December 21, 2005, the applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included a revised site plan that amended the number of spaces to be provided on the site from 258 spaces to 194 spaces.
- On December 22, 2005, January 3 and January 6, 2006, the applicant's representative submitted information beyond what was submitted with the original application (see Attachment B). This information included a revised site plan that the applicant stated reflected the 75% parking provided, and letters and documentation to support why the request should be granted.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 595 MF-1 (Planned Development District, multifamily)
North: PD No. 595 MF-1 (Planned Development District, multifamily)
South: PD No. 595 MF-1 (Planned Development District, multifamily)
East: PD No. 595 MF-1 (Planned Development District, multifamily)
West: PD No. 595 NC (Planned Development District, neighborhood commercial)

Land Use:

The subject site is under development. The areas to the north, east, south, and west appear to be either undeveloped or under development.

Zoning/BDA History:

1. BDA 056-073, 4838 Hatcher Street (the lot immediately south of the subject site)
On January 17, 2006, Board of Adjustment Panel A will consider a request for a special exception to the parking regulations of 66 spaces. The appeal is requested in conjunction with constructing a 118-unit residential development and providing 201 of the required 267 spaces.
2. BDA 045-158, 4800 Hatcher Street (the lot immediately southwest of the subject site)
On April 19, 2003, Board of Adjustment Panel A granted a request for a variance to the front yard setback regulations of 14 feet and imposed the following condition: compliance with the submitted site plan showing that Monte Street will not have access to Lyon Street. The board also granted a request for a special exception to the off-street parking regulations of 42 spaces and imposed the following conditions: the special exception shall automatically and immediately terminate if and when the multifamily use on the site is changed or discontinued; and compliance with the submitted site plan showing that Monte Street will not have access to Lyon Street. The case report states that the requests were made in conjunction with constructing 76 townhouse units on the site.

Timeline:

Dec. 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.

Dec. 13, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

Dec. 15, 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 December 23rd deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the January 6th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the January public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Dec. 21 & 22, 2005
January 3 & 6, 2006

The applicant submitted information beyond what was submitted with the original application (see Attachment A and B).

Dec. 28, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the 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.

Jan. 5, 2006 The Development Services Senior Engineer submitted an unmarked review comment sheet with the following comments:

- “The parking spaces for each unit proposed by the applicant for a) 072 (Mill City Frazier) is 1.67 (194 spaces, 116 units), and b) 073 (Wahoo Frazier) is 1.70 (201 spaces, 118 units) appear unreasonable because 70% of units in Mill City has 2 or 3 bedrooms and 74% of units in Wahoo has 2 or 3 bedrooms.”

STAFF ANALYSIS:

- 75 percent of the required off-street parking spaces are proposed to be provided in conjunction with constructing a 116-unit, 128,985 square foot residential development (Mill City) on a site currently under development.
- Granting this request, subject to the condition that the special exception of 64 spaces automatically and immediately terminates if and when the multifamily use on the site is changed or discontinued, would allow development of the multifamily complex on the site.
- The applicant has the burden of proof in establishing the following:
 - that the parking demand generated by the proposed multifamily use does not warrant the number of off-street parking spaces required, and
 - the special exception of 64 spaces (or 25% of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- The Development Services Senior Engineer made the following comments on this request:
 - “The parking spaces for each unit proposed by the applicant for a) 072 (Mill City Frazier) is 1.67 (194 spaces, 116 units), and b) 073 (Wahoo Frazier) is 1.70 (201 spaces, 118 units) appear unreasonable because 70% of units in Mill City has 2 or 3 bedrooms and 74% of units in Wahoo has 2 or 3 bedrooms.”

FILE NUMBER: BDA 056-073

BUILDING OFFICIAL'S REPORT:

Application of Briar Hannah for a special exception to the parking regulations at 4838 Hatcher Street (aka 4800 Hatcher Street). This property is more fully described as a tract of land in City Blocks B/2395, A/2395, B/2388, 2/2390, B/4483, A/4484, 4482, 4485, 4486, 4487, and is zoned PD-595 MF-1 which requires parking to be provided for new construction. The applicant proposes to construct a multi-family complex and provide 201 of the required 267 parking spaces which would require a special exception of 66 spaces or 25%. Referred to the Board of Adjustment in accordance with Section 51A-4.311(a) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 4838 Hatcher Street (aka 4800 Hatcher Street)

APPLICANT: Briar Hannah

REQUEST:

- A special exception to the off-street parking regulations of 66 spaces (or 25% of the required off-street parking) is requested in conjunction with constructing and maintaining a 118-unit, 133,246 square foot residential development (Wahoo Frazier) on a site currently under development.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
 - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.

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

GENERAL FACTS:

- The Dallas Development Code requires the following parking requirements for the proposed use on the subject site:
 - 1 space is required for every 500 square feet of building area.The applicant proposes to provide 201 (or 75%) of the total required 267 off-street parking spaces on the site.
- On December 21, 2005, the applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included a revised site plan that amended the number of spaces to be provided on the site from 258 spaces to 201 spaces.
- On December 22, 2005, January 3 and January 6, 2006, the applicant's representative submitted information beyond what was submitted with the original application (see Attachment B). This information included a revised site plan that the applicant stated reflected the 75% parking provided, and letters and documentation to support why the request should be granted.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	PD No. 595 MF-1 (Planned Development District, multifamily)
<u>North:</u>	PD No. 595 MF-1 (Planned Development District, multifamily)
<u>South:</u>	PD No. 595 MF-1 (Planned Development District, multifamily)
<u>East:</u>	PD No. 595 R-5 (Planned Development District, single family)
<u>West:</u>	PD No. 595 MF-1 (Planned Development District, multifamily)

Land Use:

The subject site is under development. The areas to the north, east, south, and west appear to be either undeveloped or under development.

Zoning/BDA History:

1. BDA 056-072, 4838 Hatcher Street (the lot immediately north of the subject site)

On January 17, 2006, Board of Adjustment Panel A will consider a request for a special exception to the parking regulations of 64 spaces. The appeal is requested in conjunction with constructing a 116-unit residential development and providing 194 of the required 258 spaces.
2. BDA 045-158, 4800 Hatcher Street (the lot immediately southwest of the subject site)

On April 19, 2003, Board of Adjustment Panel A granted a request for a variance to the front yard setback regulations of 14 feet and imposed the following condition: compliance with the submitted site plan showing that Monte Street will not have access to Lyon Street. The board also granted a request for a special exception to the off-street parking regulations of 42 spaces and imposed the following conditions: the special exception shall automatically and immediately terminate if and when the multifamily use on the site is changed or discontinued; and compliance with the submitted site plan showing that Monte Street will not have access to Lyon Street. The case report states that the requests were made in conjunction with constructing 76 townhouse units on the site.

Timeline:

- Dec. 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.
- Dec. 13, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Dec. 15, 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 December 23rd deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - the January 6th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the January public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Dec. 21 & 22, 2005
January 3 & 6, 2006
- The applicant submitted information beyond what was submitted with the original application (see Attachment A and B).
- Dec. 28, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the 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.
- Jan. 5, 2006
- The Development Services Senior Engineer submitted an unmarked review comment sheet with the following comments:

- “The parking spaces for each unit proposed by the applicant for a) 072 (Mill City Frazier) is 1.67 (194 spaces, 116 units), and b) 073 (Wahoo Frazier) is 1.70 (201 spaces, 118 units) appear unreasonable because 70% of units in Mill City has 2 or 3 bedrooms and 74% of units in Wahoo has 2 or 3 bedrooms.”

STAFF ANALYSIS:

- 75 percent of the required off-street parking spaces are proposed to be provided in conjunction with constructing a 118-unit, 133,246 square foot residential development (Wahoo Frazier) on a site currently under development.
- Granting this request, subject to the condition that the special exception of 66 spaces automatically and immediately terminates if and when the multifamily use on the site is changed or discontinued, would allow development of the multifamily complex on the site.
- The applicant has the burden of proof in establishing the following:
 - that the parking demand generated by the proposed multifamily use does not warrant the number of off-street parking spaces required, and
 - the special exception of 66 spaces (or 25% of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- The Development Services Senior Engineer made the following comments on this request:
 - “The parking spaces for each unit proposed by the applicant for a) 072 (Mill City Frazier) is 1.67 (194 spaces, 116 units), and b) 073 (Wahoo Frazier) is 1.70 (201 spaces, 118 units) appear unreasonable because 70% of units in Mill City has 2 or 3 bedrooms and 74% of units in Wahoo has 2 or 3 bedrooms.”

FILE NUMBER: BDA 056-040

BUILDING OFFICIAL'S REPORT:

Application of Karen Tellez for a special exception for the handicapped at 5327 Richard Avenue. This property is more fully described as Lot 22 in City Block 21/1941 and is zoned R-7.5(A) which requires a side yard setback of 5 feet. The applicant proposes to maintain a carport for a handicapped person in the required side yard and provide a 1 foot side yard setback which would require a special exception of 4 feet. Referred to the Board of Adjustment in accordance with Section 51A-1.107 (b) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 5327 Richard Avenue

APPLICANT: Karen Tellez

REQUEST:

- A special exception for the handicapped is requested in conjunction with relocating and maintaining a carport that would become located 1' into the site's eastern 5'-side yard setback on a site developed with a single family home.

STANDARD FOR A SPECIAL EXCEPTION TO AFFORD A HANDICAPPED PERSON EQUAL OPPORTUNITY TO USE AND ENJOY A DWELLING: Section 51A-1.107.(b)(1) states that the Board of Adjustment shall grant a special exception to any regulation in this chapter, if, after a public hearing, the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit. The term "handicapped person," means a person with a "handicap," as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended.

GENERAL FACTS:

- A 5'-side yard setback is required in the R-7.5(A) zoning district.
- The applicant testified at the December 13th public hearing on this matter that the carport on the site was 4" from the eastern side property line (or 4' 8" into the required 5' side yard setback). The applicant informed the board that the owner intended to request that the board consider the request as originally made (a 4' special exception) which would require relocation of the existing carport an additional 8" from its current location 4" from the side property line (rather than for the board to consider an amended application of 4' 8" to accommodate the current location of the carport).
- As a result, the current special exception of 4' is technically made to *relocate* the existing carport an 8 additional inches from the side property line.

- According to the originally submitted site plan, the existing carport was about 14'-long and about 11'-wide (or 154 square feet) in area.
- According to the revised site plan submitted at the December 13th public hearing, the existing carport was about 14'-long and about 10' 6"-wide (or 147 square feet) in area.
- No elevation had been submitted that documented the materials of the carport or its height prior to the December 13th hearing. However, the applicant's representative submitted a revised site plan and elevations (and support petition) at the December 13th hearing (see Attachment B). The elevations do not specify the building materials but do establish the carport to be 14' long, 10' 6" wide, and slightly under 8' 6" high.
- The subject site is 156' x 50' (or 7,800 square feet) in area.
- According to DCAD, the site is developed with the following:
 - a single family home in "average" condition built in 1930 with 1,756 square feet of living area;
 - a 160 square foot attached carport.
- Building Inspection states that no permit was issued by the City for the existing carport on this site.
- Section 51A-1.10 (b)(1) states that the Board of Adjustment shall grant a special exception to any regulation in this chapter, if, after a public hearing, the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit. The term "handicapped person," means a person with a "handicap," as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended.

A copy of the "handicap" definition from this act was provided to the Board Administrator by the City Attorney's Office. Section 3602 of this act states the following:

"(h) "Handicap" means, with respect to a person -

1. a physical or mental impairment which substantially limits one or more of such person's major life activities,
 2. a record of having such an impairment, or
 3. being regarded as having such an impairment,
- but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 802 of Title 21)."
- The Building Inspection Development Code Specialist forwarded additional information beyond what was submitted with the original applicant to the Board Administrator (see Attachment A). This information included the following:
 - a revised site plan that located the supporting poles of the carport outside the 25' front yard setback;
 - a copy of a motor vehicle transfer;
 - a copy of an approved application for a disabled person identification and or license plate;
 - copies of "Careflite" receipts;
 - copies of appointments with "Ortho A – Sports Injury Department" of Parkland Health and Hospital System;
 - copies of radiology and laboratory results from Parkland Health and Hospital System;

- a letter signed by a doctor documenting the medical condition of Josephina Perez (the owner of the subject site); and
- a letter signed by a clinical coordinator documenting the medical history of Lydia Torres (whose relationship to the owner of the subject site and/or applicant is unknown).
- The representative for the property owner nearest the carport encroachment (who is opposed to the request) submitted information to staff (see Attachment C). This information included the following:
 - letters in opposition to the request;
 - photos of the subject property;
 - a survey plan showing the applicant's carport on the opposition's property;
 - Federal Housing Act and Texas case law stating that applicant does not have a "substantially limiting disability;"
 - messages from the applicant to the opposing property owner; and
 - a copy of a power point presentation to the issue at hand.
- The Board of Adjustment conducted a public hearing on this appeal on December 13, 2005. The applicant and an immediately adjacent neighbor submitted documents related to this request in addition to verbal testimony. (Some of these documents included original photographs that will be available at the briefing/public hearing).

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

- | | |
|---|--|
| 1. Unassigned, 5327 Richard Avenue (the subject site) | On August 16, 2005, the Board of Adjustment Panel A denied a request to waive the filing fee to be submitted in conjunction with a potential board appeal. |
|---|--|

Timeline:

October 5, 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.

- Nov. 17, 2005: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If any preliminary action is required on a case including but not limited to a fee waiver or waiver of the two year waiting period, the case must be returned to the panel taking preliminary action."
- Nov. 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 either a request for a special exception to the side yard setback regulations for a carport or a special exception for the handicapped;
 - 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 November 23rd deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - the December 2nd deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the December public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Nov. 22, 2005: Building Inspection forwarded a revised Building Official's Report on this request amending what had been a request for a special exception to the side yard setback regulations for a carport to a special exception for the handicapped per the applicant's representative's request.
- Nov. 28, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December 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 Development Services Senior Engineer, the Building Inspection Development Code Specialist, 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.

Nov. 28 & Dec. 6, 2005

The Building Inspection Development Code Specialist forwarded additional information (prepared by the applicant) beyond what was submitted with the original application to the Board Administrator (see Attachment A).

Dec. 13, 2005

The Board of Adjustment conducted a public hearing on this application and delayed action until January 17, 2006. The Board Administrator informed the applicant and the applicant's representative of the following deadlines at the December public hearing:

- the December 23rd deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket; and
- the January 6th deadline to submit additional evidence to be incorporated into the Board's docket materials.

(These deadlines for information submittal were also specified in the December 20th letter that the administrator sent to the applicant's representative).

Dec. 28, 2005:

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

Dec. 13, 2005 & Jan. 6, 2006

The representative for the owner of nearest the carport encroachment (who opposes the request) submitted information pertaining to the request (see Attachments B and C).

STAFF ANALYSIS:

- Granting this special exception for the handicapped would allow the carport to be relocated from in its current location 4' away from the side property line to 1' away from the site's eastern side property line (or 4' into the required 5' side yard setback).
- As of January 6th, the applicant has submitted a petition that is signed by 12 neighbors/owners who have "no objection to the placement of her carport and do not feel that it will detract from the appearance of the neighborhood," and 11 letters have been submitted that do not support the request.

- The applicant (who is an individual other than the owner of the subject site in this case) has the burden of proof in establishing the following:
 - The special exception (which in this case is requested to retain a carport in a side yard setback) is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit; and
 - there is a person with a “handicap” (as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended) who resides and/or will reside on the site.
- Historically, staff has suggested that the Board impose conditions with this type of appeal. The following conditions would restrict the location and size of the carport’s location in the side yard setback; would require the applicant to mitigate any water drainage related issues that the carport may cause on the lot immediately adjacent; and would allow the special exception for as long as a handicapped person resides on the site:
 1. Compliance with the submitted revised site plan and elevations is required.
 2. The carport structure must remain open at all times.
 3. There is no lot-to-lot drainage in conjunction with this proposal.
 4. All applicable building permits are obtained.
 5. The special exception expires when a handicapped person no longer resides on the property.

(Note that the building materials of the existing carport are not noted/specified on either the submitted site plan or elevations).

BOARD OF ADJUSTMENT ACTION: December 13, 2005

APPEARING IN FAVOR: Karen Tellez, 5055 Pear Ridge Rd., Dallas, TX

APPEARING IN OPPOSITION: Ray Martinez, 1601 Elm St., TX 75077
Mike Ward, 5331 Richard Ave., Dallas, TX 75206

MOTION#1: Hill

I move to suspend the rules and accept the evidence that is being presented to us today.

SECONDED: Johnson

AYES: 5 – White, Hill, Gabriel, Johnson, Richmond

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION#2: Hill

I move that the Board of Adjustment in Appeal No. **BDA 056-040**, hold this matter under advisement until **January 17, 2006**.

SECONDED: Johnson

AYES: 4 – Hill, Gabriel, Johnson, Richmond

NAYS: 1 - White

MOTION PASSED: 4- 1