

NOTICE FOR POSTING
BOARD OF ADJUSTMENT, PANEL A
TUESDAY, MARCH 15, 2005

Briefing: 10:00 A.M. L1FN CONFERENCE CENTER AUDITORIUM
Public Hearing: 1:00 P.M. L1FN CONFERENCE CENTER AUDITORIUM

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**

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3-15-2005

BOARD OF ADJUSTMENT, PANEL A
TUESDAY, MARCH 15, 2005
AGENDA

BRIEFING	L1FN CONFERENCE CENTER AUDITORIUM	10:00 A.M.
LUNCH		
PUBLIC HEARING	L1FN CONFERENCE CENTER AUDITORIUM	1:00 P.M.

Steve Long, Board Administrator
Donnie Moore, Chief Planner

MISCELLANEOUS ITEMS

Approval of the Tuesday, February 15, 2005 Board of Adjustment Public Hearing Minutes	M1
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UNCONTESTED CASES

BDA 045-145	6326 Lake June Road (aka 6326 C.F. Hawn Freeway) REQUEST: Application of Richard Brown for a request for a change of occupancy from one nonconforming use to another nonconforming use	1
BDA 045-156	9640 Oakwood Drive REQUEST: Application of Leonard E. Smith for a special exception to the side yard setback regulations	2
BDA 045-161	5218 McCommas Avenue REQUEST: Application of Skyler Dale Davis for a variance to the side yard setback regulations	3
BDA 045-163	2635 Colby Street REQUEST: Application of TGC-Colby/Boll Partners, represented by Jackson Walker LLP, for a variance to the front yard and rear yard setback regulations	4
BDA 045-164	2201 Boll Street REQUEST: Application of TGC-Colby/Boll Partners, represented by Jackson Walker LLP, for variances to the front yard and rear yard setback regulations	5

EXECUTIVE SESSION NOTICE

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

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

(Rev. 6-24-02)

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel A February 15, 2005 public hearing minutes.

FILE NUMBER: BDA 045-145

BUILDING OFFICIAL'S REPORT:

Application of Richard Brown for a request for a change of occupancy from one nonconforming use to another nonconforming use at 6326 Lake June Road aka 6326 C.F. Hawn Freeway. This property is more fully described as a tract of land in City Block 6241 and is zoned P.D. 533 which currently has a nonconforming vehicle, engine repair, or maintenance use. The applicant is requesting that the Board of Adjustment allow him to change the use to a nonconforming vehicle display, sales, and service use. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(5) of the Dallas Development Code, as amended, which states the power of the Board to hear and decide requests for change of occupancy of a non-conforming use to another non-conforming use.

LOCATION: 6326 Lake June Road aka 6326 C.F. Hawn Freeway

APPLICANT: Richard Brown

REQUEST:

- An application has been made for the Board of Adjustment to hear and decide a request for a change of occupancy of a nonconforming “vehicle or engine repair or maintenance” use to another nonconforming “vehicle display, sales, and service” use. The subject site appears to be developed as a vacant vehicle sales lot.

STANDARD FOR CHANGING NONCONFORMING USES:

The Dallas Development Code specifies that the board may allow a change from one nonconforming use to another nonconforming use when:

- (A) the change does not prolong the life of the nonconforming use;
- (B) the change is to a use that would have been permitted in the zoning district where the current nonconforming use was first permitted by right;
- (C) the change is to a use that is similar in nature to the current use; and
- (D) the change is to a use that will not have a greater adverse effect on the surrounding area than the current use.

GENERAL FACTS:

- The site is zoned PD No. 533. This Planned Development (PD) zoning district was created by the City Council in February of 1999.
- The current CO (Certificate of Occupancy) on the site is for a “vehicle or engine repair or maintenance” use.

- According to information from Dallas Central Appraisal District (DCAD), the property at 6326 C.F. Hawn Freeway is developed with a “shopping center” with 900 square feet built in 1954.
- This application was originally submitted as an appeal for a special exception to the nonconforming use regulations to reinstate nonconforming use rights for what was believed to have been a nonconforming “vehicle display, sales and service” use on the site.
- On February 1, 2005, the application was amended whereby the applicant requested that the board consider an appeal to change one nonconforming “vehicle or engine repair or maintenance” use to another nonconforming “vehicle display, sales, and service” use.
- The Dallas Development Code defines “nonconforming use” as “a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time.”
- The Dallas Development Code defines a “vehicle or engine repair or maintenance” use as “a facility for the repair, maintenance, or restoration of motor vehicles, motor vehicle engines, electrical motors, or other similar items.”
- The Dallas Development Code defines a “vehicle display, sales, and service” use as “a facility for the display, service, and retail sale of new or used automobiles, boats, trucks, motorcycles, motor scooters, recreational vehicles, or trailers.”
- The “vehicle or engine repair or maintenance” use and “vehicle display, sales, and service” use that are at issue in this application are legal *nonconforming* uses. Prior to the creation of the PD No. 533 zoning district in 1999, these two uses were permitted as legal conforming uses in the IM (Industrial Manufacturing) zoning district. Given provisions set forth in PD No. 533, these uses can obtain “conforming use” status upon attaining an SUP (Specific Use Permit) from the City Council.
- Either nonconforming use on the site would be subject to termination by the Board of Adjustment as any other nonconforming use in the city.
- The Board Administrator has informed the applicant of the provisions set forth in the Dallas Development Code pertaining to nonconforming uses.
- On February 15, 2005, the Board of Adjustment delayed action on this appeal until March 15, 2005. The Board Administrator updated the board on the following facts that had materialized from when the dockets were mailed on February 9th:
 - On February 11th, the Building Inspection Development Code Specialist met with the applicant and determined that the site was for only a portion of the tract of land in City Block 6241, and determined that the applicant had been using the wrong address for the site: 6312 Lake June Road instead of the correct address at 6326 Lake June Road.
 - On February 11th, the Board Administrator contacted the applicant and confirmed that the site was indeed located at 6326 Lake June Road (or AKA 6326 C.F. Hawn Freeway), that the applicant understood that his mistaken property address would result in a delay of the case until March, and that the applicant would be amenable to paying the cost to re-notice the hearing with the correct address to the surrounding property owners and in the newspaper.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 533 (Planned Development District No. 533)
North: R-7.5 (A)-D-1 (Single family residential 7,500 square feet -dry)
South: PD No. 533 (Planned Development District No. 533)
East: PD No. 533 (Planned Development District No. 533)
West: PD No. 533 (Planned Development District No. 533)

Land Use:

The approximately 14,000 square foot subject site appears to be developed with a vacant vehicle sales lot. The area to the north is undeveloped; the areas to the east and south are developed with commercial uses; and the area to the west is a freeway (C.F. Hawn Freeway).

Zoning/BDA History:

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

Timeline:

- Dec. 15, 2004: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- January 21, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- January 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 January 28th deadline to submit additional evidence for staff to factor into their analysis;
 - 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 February public hearing after considering the information/evidence and

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

January 31, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Development Services Department Assistant Director of Predevelopment, the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the Development Services Transportation Planner; and the Assistant City Attorney to the Board.

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

February 1, 2005: The Building Inspection Development Code Specialist forwarded an amended appeal to the Board Administrator. The appeal was amended from a special exception to reinstate nonconforming use rights to a request for a change of occupancy of a nonconforming "vehicle or engine repair or maintenance" use to another nonconforming "vehicle display, sales, and service" use.

February 11, 2005: The Board Administrator confirmed the following matters with the applicant:

- The applicant had inadvertently thought the subject site was located at 6312 Lake June Road until the owner of this address called the City to inquire what type of appeal was being requested on her property.
- The applicant had determined that the correct address for the site was 6326 Lake June Road (AKA 6326 C.F. Hawn Freeway)
- The applicant understood that his erroneous site address would delay action on the matter until March, and that he would incur the cost to re-notice the matter to property owners and in the newspaper.

February 15, 2005: The Board of Adjustment held a public hearing on this matter and delayed action on this appeal until March 15th since the case had been insufficiently noticed with an incorrect property address that had been submitted by the applicant.

February 28, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the City of Dallas Chief Arborist; and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- There was no documentation from the applicant at the time of the January 31st staff review team meeting to address the standard that the board considers for changing one nonconforming use to another since this applicant revised his original appeal as a result of issues discussed at the staff review team meeting.
- There has been no documentation or evidence submitted by the applicant to address the applicable standard from February 15, 2005.
- Granting this request would allow the change of one nonconforming use (vehicle or engine repair or maintenance) to another nonconforming use (vehicle display, sales, and service).
- Granting the request would not establish either use as a legal *conforming* use. The applicant would have to make application for and obtain an SUP from City Council in order to make either of these uses on the site legal conforming uses.
- Staff has established one of the four components of the standard for changing nonconforming uses: the requested change is to a use (“vehicle display, sales, and service” use) that would have been permitted in the zoning district where the current nonconforming use was first permitted by right.
- Granting the request would allow the applicant to obtain a CO (Certificate of Occupancy) for a nonconforming use (“vehicle display, sales and service” use).

BOARD OF ADJUSTMENT ACTION: February 15, 2005

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Beikman**

I move that the Board of Adjustment in **Appeal No. BDA 045-145** hold this matter under advisement until **March 15, 2005**.

SECONDED: **Wise**

AYES: 5 – White, Hill, Beikman, Neumann, Wise

NAYS: 0–

MOTIONPASSED: 5–0 (unanimously)

FILE NUMBER: BDA 045-156

BUILDING OFFICIAL'S REPORT:

Application of Leonard E. Smith for a special exception to the side yard setback regulations at 9640 Oakwood Drive. This property is more fully described as Lot 10 in City Block C/8485 and is zoned R-10(A) which requires a 6 foot side yard setback. The applicant proposes to maintain a carport and provide a 3 foot setback which would require a special exception of 3 feet. 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: 9640 Oakwood Drive

APPLICANT: Leonard E. Smith

REQUEST:

- A special exception to the side yard setback regulations of 3' is requested in conjunction with maintaining a carport on a site developed with a single family home.

STANDARD FOR A SPECIAL EXCEPTION TO ALLOW A CARPORT IN THE SIDE YARD:

The Board of Adjustment may grant a special exception to the minimum side yard requirements to allow a carport for a single family or duplex use when, in the opinion of the Board, the carport will not have a detrimental impact on surrounding properties. In determining whether to grant a special exception, the Board shall consider the following:

- (1) Whether the requested special exception is compatible with the character of the neighborhood.
- (2) Whether the value of surrounding properties will be adversely affected.
- (3) The suitability of the size and location of the carport.
- (4) The materials to be used in construction of the carport.

(Storage of items other than motor vehicles is prohibited in a carport for which a special exception is granted in this section of the Code).

GENERAL FACTS:

- A 6' side yard setback is required in the R-10(A) zoning district.
- The existing carport is located 3' from the site's western side property line.
- The existing carport has the following characteristics:
 - 60' x 13' (or 780 square feet) in area
 - one-vehicle-wide, three-vehicle-long

- constructed of metal materials with steel siding
- ranging in height from 9' 11" to 10' 9"
- The subject site is 188' x 77' (or about 15,000 square feet) in area.
- According to DCAD, the site is developed with a single family home in fair condition built in 1959 with 1,344 square feet of living area, and a 400 square foot detached garage.
- The applicant informed the Board Administrator that:
 - He built the carport unknowing that the new construction would require a building permit; and
 - He chooses to pursue an appeal for a special exception to the side yard regulations for a carport although he has been fully informed of the board's ability to consider allowing the carport to remain in the side yard setback as a special exception for the handicapped.
- The applicant submitted information to staff beyond what was submitted with the original application. This information was a petition signed by 7 property owners who support the appeal (see Attachment A).

BACKGROUND INFORMATION:

Zoning:

Site: R-10 (A) (Single family residential 10,000 square feet)
North: R-10 (A) (Single family residential 10,000 square feet)
South: R-10 (A) (Single family residential 10,000 square feet)
East: R-10 (A) (Single family residential 10,000 square feet)
West: R-10 (A) (Single family residential 10,000 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 case number, 9640 Oakwood Drive (the subject site) On December 15, 2004, the Board of Adjustment Panel A granted a request to waive the filing fee to be submitted in conjunction with a possible appeal at this location.

Timeline:

January 10, 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.

February 17, 2005: The Board of Adjustment Secretary assigned this appeal 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 the preliminary action."

February 18, 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 February 25th deadline to submit additional evidence for staff to factor into their analysis;
- 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 March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

February 25, 2005 The applicant submitted additional information to staff regarding the request beyond what was submitted with the original application(see Attachment A).

February 28, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the City of Dallas Chief Arborist; and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The Dallas Development Code provides for the Board of Adjustment to consider special exceptions for *carports* in the side yard with a specific basis for this type of

appeal. (Note that the Dallas Development Code does not provide a definition of “carport” however, Building Inspection interprets a “carport” to be a structure that would cover a vehicle and be open on at least one side. Building Inspection has recently been interpreting what would appear to a layperson to be a garage without a garage door as a “carport”).

- The Dallas Development Code provides for the Board of Adjustment to consider *variances for structures* in the side yard setback with a different basis for appeal than that of *special exceptions for carports* in the side yard setback.
- The Dallas Development Code specifies that no side yard setback is required in residential districts for “a structure accessory to a residential use if the structure does not exceed 15 feet in height; and is located in the rear 30 percent of the lot.” In this case, the special exception is required since:
 1. The “carport” structure can not be deemed “a structure accessory to a residential use” since it is attached to the main structure.
 2. Even if the “carport” structure was detached from the main structure and could be deemed “a structure accessory to a residential use,” it is not located in the rear 30 percent of the 188’-long lot.
- Two other carports were identified on the block in the field visit conducted by the Board Administrator. These 2 carports are located immediately east of the site.
- Granting this special exception would allow the carport to remain in its current location which is 3’ into the required 6’ side yard setback.
- 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 carport in the side yard setback to be retained in its current design, materials, and configuration; and would require the applicant to mitigate any water drainage related issues that the carport may cause on the lot immediately adjacent:
 1. Compliance with the submitted site plan and elevation 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.

FILE NUMBER: BDA 045-161

BUILDING OFFICIAL'S REPORT:

Application of Skyler Dale Davis for a variance to the side yard setback regulations at 5218 McCommas Avenue. This property is more fully described as Lot 5 in City Block 17/2928 and is zoned Conservation District 9 which requires a 10 foot side yard setback. The applicant proposes to remove a portion of an illegal structure (portion on city property) and maintain a single-family dwelling and provide a 0 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: 5218 McCommas Avenue

APPLICANT: Skyler Dale Davis

REQUEST:

- A variance to the side yard setback regulations of 10' is requested in conjunction with maintaining a one-story 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:

- A 10'-side yard setback is required on the east side of lots in the CD No. 9 zoning district.

- A 5'-side yard setback is required on the west side of lots in the CD No. 9 zoning district.
- According to the submitted site plan, an approximately 3'-wide portion of the single family structure is located in Laneri Street public right-of-way. A note on the submitted plan states: "Proposal: cut back house to property line."
Note that the board does not have jurisdiction to grant a variance for a structure in public right-of-way. The portion of the existing house located in the public right-of-way would be a matter for the applicant to pursue with the City of Dallas Development Services Real Estate Division.
- The site is flat, rectangular in shape (130' x 62'), and 8,060 square feet in area.
- The site and surrounding area was zoned R-7.5(A) (Single family residential 7,500 square feet) prior to its rezoning in 2002 to CD (Conservation District) No. 9.
- The typical lot size in CD No. 9 is 7,500 square feet.
- The existing home would not have complied with the 5'-side yard setback required for both sides of the site in its previous R-7.5(A) zoning district since the house is located on (and beyond) its eastern side property line.
- Building Inspection states that the portion of the house on the site located in the public right-of-way and in the eastern side yard setback is not a result of permits that were erroneously issued by the City.
- It appears from what has been submitted by the applicant that the discovery of the home located in the setback and right-of-way was triggered by a permit application that had been made to replace a roof on the house.
- According to materials submitted with the application, the applicant recently purchased the house and was told at closing that the house was grandfathered because the structure was there before the ordinance was adopted.
- The submitted site plan indicates that the building footprint of the existing single family structure is approximately 2,210 square feet (or 65' x 34) in area.
- The area of the existing single family structure located in the 10'-side yard setback is approximately 360 square feet (or 36' x 10') in area.
- The submitted floor plan indicates that the area in the 10'-side yard setback and in the public right-of-way includes areas of the structure's living room, study, and laundry room.
- DCAD records indicate that the site is developed with the following:
 - a single family home in poor condition that was built in 1950 and has 1,472 square feet of living area
 - a 100 square foot "stg"
 - a 504 square foot detached garage
 - a 400 square foot attached garage

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	CD No. 9 (Conservation District No. 9)
<u>North:</u>	CD No. 9 (Conservation District No. 9)
<u>South:</u>	CD No. 9 (Conservation District No. 9)
<u>East:</u>	CD No. 9 (Conservation District No. 9))

West: CD No. 9 (Conservation District No. 9)

Land Use:

The subject site is developed as a single family use. 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, however the site and the larger area surrounding the site was zoned from R-7.5 (A) zoning to CD (Conservation District) No. 9 in November of 2002.

Timeline:

January 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.

February 17, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

February 18, 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 February 25th deadline to submit additional evidence for staff to factor into their analysis;
- 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 appeal at the March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

February 28, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the

Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the City of Dallas Chief Arborist; and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The site is not sloped and not irregularly-shaped. The attached plat map indicates that the site is 8,060 square feet. This total lot size is more than the typically-sized lot in the CD No. 9 zoning district at 7,500 square feet.
- If the Board were to grant the request, imposing a condition whereby the applicant must comply with the submitted site plan, the amount of encroachment into the side yard setback would be limited in this case to an area of about 360 square feet.
- Granting this variance would allow the retention of an approximately 2,200 square foot single family home on the site's side property line (or 10' into the 10' side yard setback).
- Regardless of the outcome of the variance to address the portion of the home in the side yard setback, the applicant must either remove the portion of the existing home located in the public right-of-way, or obtain a license or street abandonment from the City.

FILE NUMBER: BDA 045-163

BUILDING OFFICIAL'S REPORT:

Application of TGC-Colby/Boll Partners, represented by Jackson Walker LLP, for a variance to the front yard and rear yard setback regulations at 2635 Colby Street. This property is more fully described as Lot 5A in City Block F/564 and is zoned PD 225 H-26 which requires an 8 foot front yard setback and a 5 foot rear yard setback. The applicant proposes to construct a single family dwelling and provide a 4 foot front yard setback and a 0 foot rear yard setback which would require a variance of 4 feet to the front yard and 5 feet to the rear yard setback 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: 2635 Colby Street

APPLICANT: Jackson Walker LLP

REQUESTS:

- Variances to the front and rear yard setback regulations of 4' 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:

- An 8'-front yard setback is required in the PD No. 225 zoning district, and the proposed single family home is located 4' from the site's Colby Street front property line.
- A 5'-rear yard setback is required in the PD No. 225 zoning district and the submitted site plan indicates that the proposed single family home is located 1' away from the site's rear property line on the northern edge of the site.
- There is a discrepancy between the amount of variance to the rear yard setback regulations that the applicant had originally requested and the amount of variance to the rear yard setback regulations that was amended by the applicant and shown on the submitted site plan. The applicant had originally requested a variance of 5' to the rear yard setback regulations in order to allow the structure to be located on the rear property line, however, the applicant amended this request in his February 24th correspondence which reflected the building footprint's location on submitted site plan that is 1' off of the rear property line.
- Although the applicant has submitted an elevation of the proposed single family home to be constructed on the site, the applicant's representative has informed the Board Administrator that he does not want the board to impose this submitted elevation as a condition to the variances since the site is in a City historic district and an elevation of any structure in this district must be approved by the Landmark Commission.
- The site is flat, rectangular in shape (70' x 30'), and approximately 2,100 square feet in area. A final plat of the subject site has not been achieved. The subject site is half of an existing platted lot. The other half of the existing platted lot is the 70' x 30' subject site of BDA 045-164 that is located immediately east of the subject site..
- The submitted site plan indicates that the building footprint of the proposed single family structure is approximately 1,240 square feet (or 59' x 21') in area. If the single family home were to be 3-stories high as indicated on the submitted site plan, the total area of the home would be about 3,700 square feet.
- According to the submitted site plan, the area of the proposed single family structure located in the 8' front yard setback is for a portion of its porch. The "entry porch" in the 8'-front yard setback is dimensioned at approximately 60 square feet (or 15' x 4') in area. The applicant's representative states that the State-Thomas Historic Overlay District requires the front entry porch as an architectural feature under the preservation criteria, and that the intrusion of this structure into the setback has been deemed necessary for Landmark Commission approval where a parallel Certificate of Appropriateness application was denied by the Landmark Commission in February of 2005, and a subsequent C.A. application will be considered on April 4, 2005 (see the [Zoning/BDA History](#) of this case report for further details) for the lot immediately east of the subject site located at 2201 Boll Street.
- According to the submitted site plan, the area of the proposed single family structure located in the 5' rear yard setback is approximately 236 square feet (or 59' x 4') in area.
- The applicant has not submitted an elevation that they are willing to have the board impose as a condition with approval of the variances. However, there is documentation on the submitted site plan that indicates that the 1,239 square foot building footprint is multiplied by 3, suggesting that the structure is proposed to be 3 stories high and 3,717 square feet in area. Since a variance to the maximum height

regulations has not been requested, the applicant must adhere to the maximum height allowed in the Historic District Transition Zone of 48 feet.

- The applicant submitted information beyond what was submitted with the original application. This information was a letter that further explained the scope and merits of the requests (see Attachment A).

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 225, H-26 (Planned Development District 225, Historic District 26)
North: No. 225, H-26 (Planned Development District 225, Historic District 26)
South: No. 225 (Planned Development District 225)
East: No. 225 (Planned Development District 225)
West: No. 225, H-26 (Planned Development District 225, Historic District 26)

Land Use:

The subject site is undeveloped. The areas to the north and west are developed with what appears to be single family attached uses; the area to the east is undeveloped; and the area to the south is developed with multifamily uses.

Zoning/BDA History:

1. BDA 045-164, 2201 Boll Street (the lot immediately east of the subject site) On March 15, 2005, the Board of Adjustment Panel A will consider variances to the front yard and rear yard setback regulations of 4'. The appeals are requested in conjunction with constructing a single family home.
2. CA045-296, 2201 Boll Street (the lot immediately east of the subject site) On February 7, 2005, the City of Dallas Landmark Commission denied a Certificate of Appropriateness for the construction of single family home without prejudice. The commission included as part of their motion a statement that said "Be it resolved that this Commission recommends to the Board of Adjustment that a variance be considered only for architectural elements of bay windows and porch. The site is not unlike other sites within the State-Thomas Historic District or the Transition Zones for that district. The intent and purpose of historic districts is to preserve and protect the street scape of that neighborhood. Any further variance from the very minimal required setback would in fact be detrimental to the District and the intent of the Historic District."
On June 19, 2001, the Board of Adjustment
3. BDA 001-223, 2613, 2617, and

2619 Colby Street (the lot immediately west of the subject site)

Panel B granted requests for variances to the front and rear yard setback regulations and a special exception to the landscape regulations, subject to the submittal of revised plans related to the variances, and subject to the submitted landscape plan related to the landscape special exception. The case report indicates that the appeals were requested in conjunction with constructing eight, 3-story single family attached homes on the site.

Timeline:

February 8, 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.

February 17, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

February 18, 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 requests;
- 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 February 25th deadline to submit additional evidence for staff to factor into their analysis;
- 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 March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

February 24, 2005 The applicant information beyond what was submitted with the original application. This information was a letter that further explained the scope and merits of the requests including photos of the site and surrounding area (see Attachment A).

February 28, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March

public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the City of Dallas Chief Arborist; and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The site is not sloped and not irregularly-shaped.
- The site is 70' x 30' (or 2,100 square feet) in area, and a review of the submitted plat map indicates other lots in the area that are larger and smaller than the subject site. Technically, the subject site can not be deemed as a separate lot in its current configuration since a final plat has not been achieved.
- If the Board were to grant the front yard variance request, subject to the submitted site plan, the site could be developed with a structure with an overall building footprint of 59' x 21' and with a maximum height of 48' where the only encroachment into the front yard setback would be a 60 square foot porch that is located 4' into the 8' front yard setback.
- If the Board were to grant the rear yard variance request, subject to the submitted site plan, the site could be developed with a structure with an overall building footprint of 59' x 21' and with a maximum height of 48' where the encroachment into the rear yard setback is a 236 square foot area that is located 4' into the 5' rear yard setback.
- In addition to obtaining variances to the front and rear yard setback regulations from the Board of Adjustment, the applicant will be required to obtain a Certificate of Appropriateness from the City of Dallas Landmark Commission, and a final plat from the City of Dallas City Plan Commission before the proposed single family home can be constructed on the site.

FILE NUMBER: BDA 045-164

BUILDING OFFICIAL'S REPORT:

Application of TGC-Colby/Boll Partners, represented by Jackson Walker LLP, for variances to the front yard and rear yard setback regulations at 2201 Boll Street. This property is more fully described as Lot 5B in City Block F/564 and is zoned PD 225 H-26 which requires an 8 foot front yard setback and a 5 foot rear yard setback. The applicant proposes to construct a single family dwelling and provide a 4 foot front yard setback and a 0 foot rear yard setback which would require a variance of 4 feet to the front yard and 5 feet to the rear yard setback 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: 2201 Boll Street

APPLICANT: Jackson Walker LLP

REQUESTS:

- Variances to the front and rear yard setback regulations of 4' 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:

- An 8'-front yard setback is required in the PD No. 225 zoning district, and the proposed single family home is located 4' from the site's Colby Street front property line along the southern edge of the site.
- Although the City and the applicant's representative had originally deemed that there was an additional front yard variance need for the portion of the proposed structure that is to be located 5' 6" from the site's eastern property line along Boll Street, on March 8, 2005, Building Inspection staff informed the Board Administrator that they had reinvestigated provisions set forth in PD No. 225 and deemed that the eastern edge of the site along Boll Street would be considered a "corner side yard." The setback provisions for the proposed home on this eastern edge of the site would be held to a corner side yard setback "that is within five percent of the average setback of all main buildings on the same blockface."
- On March 8 2005, the Board Administrator relayed Building Inspection staff's revised interpretation to the applicant's representative, and encouraged him to be able to establish at the March 15th public hearing that the proposed building footprint was in compliance with the corner side yard setback provisions.
- A 5'-rear yard setback is required in the PD No. 225 zoning district and the submitted site plan indicates that the proposed single family home is located 1' away from the site's rear property line on the northern edge of the site.
- There is a discrepancy between the amount of variance to the rear yard setback regulations that the applicant had originally requested and the amount of variance to the rear yard setback regulations that was amended by the applicant and shown on the submitted site plan. The applicant had originally requested a variance of 5' to the rear yard setback regulations in order to allow the structure to be located on the rear property line, however, the applicant amended this request in his February 24th correspondence which reflected the building footprint's location on submitted site plan that is 1' off of the rear property line.
- Although the applicant has submitted an elevation of the proposed single family home to be constructed on the site, the applicant's representative has informed the Board Administrator that he does not want the board to impose this submitted elevation as a condition to the variances since the site is in a City historic district and an elevation of any structure in this district must be approved by the Landmark Commission.
- The site is flat, rectangular in shape (70' x 30'), and approximately 2,100 square feet in area. A final plat of the subject site has not been achieved. The subject site is half of an existing platted lot. The other half of the existing platted lot is the 70' x 30' subject site of BDA 045-163 that is located immediately west of the subject site.
- The submitted site plan indicates that the building footprint of the proposed single family structure is approximately 1,260 square feet (or 60' x 21') in area. If the single family home were to be 3-stories high as indicated on the submitted site plan, the total area of the home would be about 3,800 square feet.
- According to the submitted site plan, the area of the proposed single family structure located in the 8' front yard setback along Colby Street is for a portion of its porch. The "entry porch" in the 8'-front yard setback is dimensioned at approximately 60 square feet (or 15' x 4') in area. The applicant's representative states that the State-Thomas Historic Overlay District requires the front entry porch as an architectural feature under the preservation criteria, and that the intrusion of this structure into the

setback has been deemed necessary for Landmark Commission approval where a parallel Certificate of Appropriateness application was denied by the Landmark Commission in February of 2005, and a subsequent C.A. application will be considered on April 4, 2005 (see the Zoning/BDA History of this case report for further details) .

- According to the submitted site plan, the area of the proposed single family structure located in the 5' rear yard setback is approximately 240 square feet (or 60' x 4') in area.
- The applicant has not submitted an elevation that they are willing to have the board impose as a condition with approval of the variances. However, there is documentation on the submitted site plan that indicates that the 1,260 square foot building footprint is multiplied by 3, suggesting that the structure is proposed to be 3 stories high and 3,780 square feet in area. Since a variance to the maximum height regulations has not been requested, the applicant must adhere to the maximum height allowed in the Historic District Transition Zone of 48 feet.
- On March 8, 2005, Building Inspection staff informed the Board Administrator that the address of the subject site had been erroneously identified on the application and in the Building Official's Report as property located at 2210 Boll Street when it was determined that the site should have been correctly addressed at 2201 Boll Street. The Board Administrator reviewed the notice that was made in the newspaper and sent to property owners and established the following:
 - The "property owner notice" was correctly sent to those property owners within a 200' radius from the actual lot that is the "subject site" located at 2201 Boll Street;
 - The "news notice" and "property owner notice" had conveyed the correct legal description of the subject site "being property more fully described as Lot 5B in City Block F/564."
- The applicant submitted information beyond what was submitted with the original application. This information was a letter that further explained the scope and merits of the requests (see Attachment A).

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	PD No. 225, H-26 (Planned Development District 225, Historic District 26)
<u>North:</u>	No. 225, H-26 (Planned Development District 225, Historic District 26)
<u>South:</u>	No. 225 (Planned Development District 225)
<u>East:</u>	No. 225 (Planned Development District 225)
<u>West:</u>	No. 225, H-26 (Planned Development District 225, Historic District 26)

Land Use:

The subject site is undeveloped. The area to the north is developed with what appears to be single family attached uses; the area to the east and west are undeveloped; and the area to the south is developed with multifamily uses.

Zoning/BDA History:

1. BDA 045-163, 2635 Colby Street (the lot immediately west of the subject site) On March 15, 2005, the Board of Adjustment Panel A will consider variances to the front and rear yard setback regulations of 4'. The appeals are requested in conjunction with constructing a single family home.
2. CA045-296, 2201 Boll Street (the subject site) On February 7, 2005, the City of Dallas Landmark Commission denied a Certificate of Appropriateness for the construction of single family home without prejudice. The commission included as part of their motion a statement that said "Be it resolved that this Commission recommends to the Board of Adjustment that a variance be considered only for architectural elements of bay windows and porch. The site is not unlike other sites within the State-Thomas Historic District or the Transition Zones for that district. The intent and purpose of historic districts is to preserve and protect the street scape of that neighborhood. Any further variance from the very minimal required setback would in fact be detrimental to the District and the intent of the Historic District."
3. BDA 001-223, 2613, 2617, and 2619 Colby Street (the site two lots immediately west of the subject site) On June 19, 2001, the Board of Adjustment Panel B granted requests for variances to the front and rear yard setback regulations and a special exception to the landscape regulations, subject to the submittal of revised plans related to the variances, and subject to the submitted landscape plan related to the landscape special exception. The case report indicates that the appeals were requested in conjunction with constructing eight, 3-story single family attached homes on the site.

Timeline:

- February 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.
- February 17, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- February 18, 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 requests;
- 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 February 25th deadline to submit additional evidence for staff to factor into their analysis;
- 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 March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

February 24, 2005 The applicant information beyond what was submitted with the original application. This information was a letter that further explained the scope and merits of the requests including photos of the site and surrounding area (see Attachment A).

February 28, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the City of Dallas Chief Arborist; and the Assistant City Attorney to the Board.

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

March 8, 2005 The Board Administrator was informed of the following information by Building Inspection staff:

- The address of the site on the original application and in the Building Official's Report at "2210 Boll Street" was incorrect. The correct address of the site is 2201 Boll Street.
- The interpretation of the yard requirements originally made with the application whereby the site had a rear yard setback on the north, front yard setbacks on the east and south, and a side yard setback on the west was incorrect. The correct interpretation of the site's yard requirements is that the site has a rear yard setback on the north, a "corner side yard" setback on the east, a front yard setback on the south, and a side yard setback on the west.

March 8, 2005 The Board Administrator contacted the applicant's representative and informed him of the information relayed to him by Building Inspection staff.

STAFF ANALYSIS:

- The site is not sloped and not irregularly-shaped.
- The site is 70' x 30' (or 2,100 square feet) in area, and a review of the submitted plat map indicates other lots in the area that are larger and smaller than the subject site. Technically, the subject site can not be deemed as a separate lot in its current configuration since a final plat has not been achieved.
- Given the recent yard interpretation of the site made by Building Inspection staff, the applicant should establish at the March 15th public hearing that the building footprint shown on the submitted site plan complies with the corner side yard setback provision set forth in PD No. 225 whereby the structure is within five percent of the average setback of all main buildings on the same blockface." If the proposed structure does not comply, then the applicant should amend plans accordingly, or request that the board delay action on the application until a side yard variance is applied for, paid for, and noticed appropriately.
- If the Board were to grant the front yard variance request, subject to the submitted site plan, the site could be developed with a structure with an overall building footprint of 60' x 21' and with a maximum height of 48' where the only encroachment into the front yard setback would be a 60 square foot porch that is located 4' into the 8' front yard setback.
- If the Board were to grant the rear yard variance request, subject to the submitted site plan, the site could be developed with a structure with an overall building footprint of 60' x 21' and with a maximum height of 48' where the encroachment into the rear yard setback is a 240 square foot area that is located 4' into the 5' rear yard setback.
- In addition to obtaining variances to the front and rear yard setback regulations from the Board of Adjustment, the applicant will be required to obtain a Certificate of Appropriateness from the City of Dallas Landmark Commission, and a final plat from the City of Dallas City Plan Commission before the proposed single family home can be constructed on the site.