

**BOARD OF ADJUSTMENT, PANEL B  
PUBLIC HEARING MINUTES  
CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM  
WEDNESDAY, JANUARY 18, 2006**

MEMBERS PRESENT AT BRIEFING: Alice Cox, Vice-Chair, Taylor Brannon, Panel Vice-Chair, Samuel Gillespie, regular member, Marla Beikman, regular member and Christian Chernock, regular member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Alice Cox, Vice-Chair, Taylor Brannon, Panel Vice-Chair, Samuel Gillespie, regular member, Marla Beikman, regular member and Christian Chernock, regular member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Claire Swann, Asst. City Attorney, Steve Long, Board Administrator, Danny Sipes, Development Code Specialist, Jennifer Hiromoto, Senior Planner, Mike Sultan, Chief Arborist, Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Claire Swann, Asst. City Attorney, Donnie Moore, Chief Planner, Steve Long, Board Administrator, Danny Sipes, Development Code Specialist, Jennifer Hiromoto, Senior Planner, Mike Sultan, Chief Arborist, Trena Law, Board Secretary

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**10:10 AM. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's January 18, 2006 docket.**

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**1: 10P.M.**

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

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel B December 14, 2005 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: JANUARY 18, 2006**

**MOTION:** Chernock

I move **approval** of the **Wednesday, December 14, 2005** Board of Adjustment Public Hearing minutes.

**SECONDED:** Brannon

**AYES:** 5–Cox, Brannon, Gillespie, Beikman, Chernock

**NAYS:** 0 – None

**MOTION PASSED** 5 – 0 (Unanimously)

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**MISCELLANEOUS ITEM NO. 2**

**FILE NUMBER:** BDA 056-063

**REQUEST:** To reimburse the \$600.00 filing fee submitted in conjunction with this Board of Adjustment application for a variance to the front yard setback regulations

**LOCATION:** 4831 Dolphin Road

**APPLICANT:** Veda Shaw, represented by Etoria Anderson

**STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:**

The Dallas Development Code states that the board may waive the filing fee for a board of adjustment application if the board finds that payment of the fee would result in substantial financial hardship to the applicant.

**GENERAL FACTS:**

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waiver/s reimbursements:
  - The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.
  - The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board’s miscellaneous docket for predetermination.
  - If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.

- In making this determination, the board may require the production of financial documents.
- The applicant/applicant's representative has submitted information/evidence to the Board on this matter (see Attachment A).

**Timeline:**

- Nov. 17, 2005            The applicant submitted an application to the Board of Adjustment for a variance to the front yard setback regulations.
- Dec. 13, 2005:            The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Dec. 15, 2005            The Board Administrator met with the applicant's representative informing her of the following:
- this request would be placed on the January 18<sup>th</sup> Miscellaneous Docket Agenda,
  - the board would reimburse the filing fee if the applicant were able to convince the board that payment of the filing fee results in substantial financial hardship to the applicant;
  - in making this determination, the board may require the production of financial documents;
  - the January 6th deadline to submit any additional information on this matter for the board's docket report; and
  - the board's rules limit documentary evidence that can be submitted to them on the hearing day to five pages.
- Dec. 21, 2005:            The applicant/applicant's representative submitted information to this matter (see Attachment A).

**BOARD OF ADJUSTMENT ACTION: JANUARY 18, 2006**

**APPEARING IN FAVOR:**            Veda Shaw, 2709 Suzanne Dr., Rowlett, TX 75088

**APPEARING IN OPPOSITION:**    No one

**MOTION: Chernock**

I move to **approve** the request to reimburse the filing fee submitted in conjunction with a request for a variance to the front yard setback regulations.

**SECONDED: Beikman**

**AYES: 5—Cox, Brannon, Gillespie, Beikman, Chernock**

**NAYS: 0 – None**

**MOTION PASSED 5 – 0 (Unanimously)**

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**FILE NUMBER:    BDA 056-063(J)**

**BUILDING OFFICIAL'S REPORT:**

Application of Veda Shaw for a variance to the front yard setback regulations at 4831 Dolphin Road. This property is more fully described as Lot 14 in City Block 1/2631 and is zoned R-5(A), which requires a front yard setback of 20 feet. The applicant proposes to construct a single family dwelling and provide a 10 foot front yard setback which would require a variance of 10 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

**LOCATION:** 4831 Dolphin Road

**APPLICANT:** Veda Shaw

**REQUEST:**

- A variance to the front yard setback regulations of 10' is requested in conjunction with constructing a single family dwelling.

**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 20'-front yard setback is required in the R-5(A) zoning district.
- The site is flat, rectangular in shape (45' x 87'), and approximately 3,915 square feet in area.
- A typical lot size in the R-5(A) zoning district is 5,000 square feet for single family structures.
- A site plan has been submitted that indicates the area of the addition to be located in the 20'-front yard setback is approximately 243 square feet (10' x 41'3").

- The submitted site plan shows the proposed footprint of the structure to be approximately 1,512 square feet and the floor area to be 1,239 square feet.
- The submitted floor plan shows the area proposed in the front yard will be for two bedrooms, dining room, and living room.
- The floor plan was revised to reduce the depth of the garage to ensure the enclosed parking structure provides a 20' setback.
- DCAD records indicate that the site is undeveloped.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-5(A) (Single Family Residential 5,000 square feet)  
North: R-5(A) (Single Family Residential 5,000 square feet)  
South: R-5(A) (Single Family Residential 5,000 square feet)  
East: D(A) (Duplex and Single Family Residential)  
West: R-5(A) (Single Family Residential 5,000 square feet)

**Land Use:**

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

**Zoning/BDA History:**

1. M056-063 On January 18, 2006, the Board of Adjustment Panel B is scheduled to hear a fee waiver/ reimbursement request associated with the variance application at 4831 Dolphin Road, BDA 056-063.

**Timeline:**

- Nov. 17, 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 B.
- 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 January 6<sup>th</sup> 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.

January 6, 2006: The applicant submitted revised floor plans and elevations.

**STAFF ANALYSIS:**

- The applicant submitted revised elevations and floor plan to reduce the depth of the garage. The previous elevations and floor plans showed the garage at a depth of 21'5" which would not provide the enclosed parking space setback of 20'.
- The plat map indicates the request site is approximately 3,915 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 front yard setback would be limited in this case to an area of approximately 243 square feet.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance of 10' to the front 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 front yard setback variance of 10' is necessary to permit development of the subject site (that is flat, rectangular in shape (45' x 87'), and approximately 3,915

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 R-5(A) zoning classification.

- The front yard setback variance of 10' 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 R-5(A) zoning classification.
- Granting this variance would allow approximately 243 square feet of a single family dwelling unit to encroach 10' into the 20' front yard setback.

**BOARD OF ADJUSTMENT ACTION: JANUARY 18, 2006**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

**MOTION: Gillespie**

I move that the Board of Adjustment **grant** the following application listed on the uncontested docket because it appears, from our evaluation of the properties and all relevant evidence that the application satisfies all the requirements of the Dallas Development Code and are consistent with the general purpose and intent of the Code. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan and elevation is required.
- The applicant must meet all off-street parking regulations.

**SECONDED: Brannon**

AYES: 5–Cox, Brannon, Gillespie, Beikman, Chernock

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

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**FILE NUMBER:** BDA 056-070(J)

**BUILDING OFFICIAL'S REPORT:**

Application of Ed Simons for a variance to the front yard setback regulations 4315 Crowley Drive. This property is more fully described as Lot 22 in City Block 2/5537 and is zoned R-16(A), which requires a front yard setback of 35 feet. The applicant proposes to construct an addition and provide a 25 foot front yard setback which would require a variance of 10 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

**LOCATION:** 4315 Crowley Drive

**APPLICANT:** Ed Simons

**REQUEST:**

- A variance to the front yard setback regulations of 10' is requested in conjunction with constructing 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 35'-front yard setback is required in the R-16(A) zoning district. The request site also has a 40' platted building line.
- The site is flat, irregular in shape (114' x 130'), and approximately 10,207 square feet (0.23 acres) in area.
- A typical lot size in the R-16(A) zoning district is 16,000 square feet for single family structures.
- A site plan has been submitted that indicates the area of the addition to be located in the 35'-front yard setback is approximately 225 square feet (9' x 25'); the area of the addition to be located outside of the 40' platted building line is approximately 350 square feet (14' x 25'); and the total area of the proposed garage addition is approximately 525 square feet.
- The site plan indicates that the existing single family residential structure provides an approximately 48' front yard setback.
- DCAD records indicate that the site is developed with a single family residence in fair condition that was built in 1952 and has 2,638 square feet of living area.

**BACKGROUND INFORMATION:**

**Zoning:**



Site: R-16(A) (Single Family District 16,000 Square Feet)  
North: R-16(A) (Single Family District 16,000 Square Feet)  
South: R-16(A) (Single Family District 16,000 Square Feet)  
East: R-16(A) (Single Family District 16,000 Square Feet)  
West: R-16(A) (Single Family District 16,000 Square Feet)

**Land Use:**

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

**Zoning/BDA History:**

There have been no recent Board of Adjustment requests in the immediate area.

**Timeline:**

- Nov. 22, 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 B.
- 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 6<sup>th</sup> 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.

Dec. 29, 2005 The applicant provided additional information via email (see Attachment A)

### **STAFF ANALYSIS:**

- The plat map indicates the request site is approximately 10,207 square feet.
- The site plan shows the 40' platted building line. Since the platted building line is more restrictive than the front yard setback of the zoning district, the applicant must apply to replat the lot to reduce the building line if the variance is granted.
- An addition on the front side of the structure would need to be replatted to encroach past the 40' platted building line of the request site. An addition that encroaches into the 35' front yard setback per the R-16(A) zoning district would need both to replat and receive Board approval for a variance.
- The applicant provided information in an email on December 29, 2005 (Attachment A) stating that he would seek the replatting of the lot if the variance request is granted.
- 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 front yard setback would be limited in this case to an area of approximately 225 square feet.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance of 10' to the front 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 front yard setback variance of 10' is necessary to permit development of the subject site (that is flat, rectangular in shape (114' x 130'), and approximately 10,207 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 R-16(A) zoning classification.
  - The front yard setback variance of 10' 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 R-16(A) zoning classification.

- Granting this variance would allow an approximately 525 square foot garage addition to encroach 10' into the 35' front yard setback.

**BOARD OF ADJUSTMENT ACTION: JANUARY 18, 2006**

**APPEARING IN FAVOR:** No one

**APPEARING IN OPPOSITION:** No one

**MOTION: Gillespie**

I move that the Board of Adjustment **grant** the following application listed on the uncontested docket because it appears, from our evaluation of the properties and all relevant evidence that the application satisfies all the requirements of the Dallas Development Code and are consistent with the general purpose and intent of the Code. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan/elevation is required.

**SECONDED: Brannon**

**AYES:** 5–Cox, Brannon, Gillespie, Beikman, Chernock

**NAYS:** 0 – None

**MOTION PASSED** 5 – 0 (Unanimously)

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**FILE NUMBER:** BDA 056-071(J)

**BUILDING OFFICIAL'S REPORT:**

Application of Chris Barrow for a variance to the side yard setback regulations at 3437 Pinebrook Drive. This property is more fully described as Lot 29 in City Block 2/6882 and is zoned R-5(A), which requires a side yard setback of 5 feet. The applicant proposes to maintain a single-family dwelling and provide a 4.2 foot side yard setback which would require a variance of .8 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:** 3437 Pinebrook Drive

**APPLICANT:** Chris Barrow

**REQUEST:**

- A variance to the side yard setback regulations of 10" is requested in conjunction with maintaining a single family dwelling unit.

**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 R-5(A) zoning district.
- The site is flat, rectangular in shape (50' x 110'), and approximately 5,500 square feet in area.
- A typical lot size in the R-5(A) zoning district is 5,000 square feet for single family structures.
- The existing single family residence is encroaching into the east side yard setback at an angle as shown on the site plan. The widest area of encroachment is on the side of the structure nearest the street, at a width of 10".
- DCAD records indicate that the site is developed with a single family residence that was built in 2005 and has 1,676 square feet of living area.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-5(A) (Single Family District 5,000 Square Feet)  
North: MF-2(A) (Multiple Family District)  
South: R-5(A) (Single Family District 5,000 Square Feet)  
East: R-5(A) (Single Family District 5,000 Square Feet)  
West: R-5(A) (Single Family District 5,000 Square Feet)

**Land Use:**

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

**Zoning/BDA History:**

There have been no recent Board of Adjustment requests in the immediate area.

**Timeline:**

Nov. 29, 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 B.

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 6<sup>th</sup> 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.

January 6, 2005 The applicant provided additional information (see Attachment A).

**STAFF ANALYSIS:**

- The plat map indicates the request site is approximately 5,500 square feet.
- The applicant submitted a letter on January 6, 2005 explaining the circumstances for this request. (see Attachment A)
- If the Board were to grant the request, imposing a condition whereby the applicant must comply with the submitted site plan, the amount of additional encroachment into the side yard setback would be limited to the area shown on the site plan.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance of 10” 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 10” is necessary to permit development of the subject site (that is flat, rectangular in shape (50’ x 110’), and approximately 5,500 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 R-5(A) zoning classification.
  - The side yard setback variance of 10” 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 R-5(A) zoning classification.
- Granting this variance would allow single family dwelling unit structure to encroach 10” into the 5’ side yard setback.

**BOARD OF ADJUSTMENT ACTION: JANUARY 18, 2006**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

**MOTION: Gillespie**

I move that the Board of Adjustment **grant** the following application listed on the uncontested docket because it appears, from our evaluation of the properties and all relevant evidence that the application satisfies all the requirements of the Dallas Development Code and are consistent with the general purpose and intent of the Code. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

**SECONDED: Brannon**

**AYES:** 5–Cox, Brannon, Gillespie, Beikman, Chernock

NAYS: 0 – None  
MOTION PASSED 5 – 0 (Unanimously)

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**FILE NUMBER:** BDA 056-048

**BUILDING OFFICIAL'S REPORT:**

Application of Kelly J. Warren, represented by Roger Albright, for a special exception to the fence height regulations at 4820 Northaven Road. This property is more fully described as Lot 7 in City Block 1/ 6391 and is zoned R-1/2ac(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 9 foot 6 inch fence in the required front yard setback which would require a special exception of 5 feet 6 inches. Referred to the Board of Adjustment in accordance with Section 51A-4.602 (a) (6) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

**LOCATION:** 4820 Northaven Road

**APPLICANT:** Kelly J. Warren  
Represented by Roger Albright

**January 18, 2006 Public Hearing Notes:**

- The applicant's representative requested that the board delay action on this matter for 60 days in order for his client to contemplate his fence proposal given that the house on the subject site had been recently destroyed by fire.

**REQUEST:**

- A special exception to the fence height regulations of 5' 6" is requested in conjunction with constructing and maintaining the following in the 40' Northaven Road front yard setback on a site developed with a single family home:
  - a 7' high fence (4' masonry base, 3' wrought iron atop) with 8' high columns and two, 9' 6" high wrought iron gates parallel to Northaven Road; and
  - a 6' high wrought iron fence perpendicular to Northaven Road.

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

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

**GENERAL FACTS:**

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
- The following additional information was gleaned from the submitted site plan/fence elevation:
  - The fence/wall is to be approximately 210' in length on the property line and approximately 3' from the Northaven Road pavement line.
  - The gates are to be recessed from Northaven Road approximately 17' from the Northaven Road property line and about 20' from the Northaven Road projected pavement line.
- No landscape materials have been identified on any plan in conjunction with this appeal.
- Three single family homes would have direct/indirect frontage to the proposed fence/wall. One of these three homes has an open wrought iron fence in the front yard setback located behind a high hedge that is about 6' high (a fence that appears to be the result of a previous board of adjustment appeal: BDA 001-123).
- The Board Administrator conducted a field visit of the site and surrounding area and noted one other fence that appeared to be above 4' in height and located in a 40' front yard setback in this block of Northaven Road:
  - an open wrought iron fence that is approximately 6' high with 7' high columns and 8' high entry gates immediately north of the site (that appears to be the result of board action made in conjunction with BDA 001-123).
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included a letter that provided additional details pertaining to the request and copies of police reports regarding incidents on the property.

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: R-1/2 ac (A) (Single family district 1/2 acre)
- North: R-1/2 ac (A) (Single family district 1/2 acre)
- South: R-1/2ac (A) (Single family district 1/2 acre)
- East: R-1/2 ac (A) (Single family district 1/2 acre)
- West: R-1/2 ac (A) (Single family district 1/2 acre)

**Land Use:**

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

**Zoning/BDA History:**

- |   |   |
|---|---|
| <ol style="list-style-type: none"> <li>1. BDA 001-123, 4821 Northaven Road (the lot immediately north of the subject site)</li> </ol> | <p>On December 12, 2000, the Board of Adjustment Panel A granted a request to the fence height special regulations of 4'. The</p> |
|---|---|



board imposed the following conditions with the request: compliance with the elevation and a revised site plan that shows the location of the fence behind the shrub is required; and the retention of the approximately 8 foot high Japanese Ligustrum shrubs now existing on the property, (or its replacement with similar species) between the street curb and the proposed fence. The case report states the request was made to construct and maintain a 6' high open wrought iron fence, a 6' chain link fence, 7' high stone columns, and two 8' high wrought iron entry gates.

2. BDA 85-145, 4719 Northaven Road (two lots northwest of the subject site)

On May 14, 1985, the Board of Adjustment denied a request for a "front yard variance" of 2' 6" without prejudice. The case report states the request was made to construct a masonry fence with wrought iron gates 6' 6" in height.

**Timeline:**

- Undated                      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 B.
- 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 23<sup>rd</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
  - the January 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure

pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and

- that the board will take action on the matter at the January public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Dec. 15, 2006      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:**

- A scaled site plan/fence elevation has been submitted that documents the locations of the proposed fence/wall (parallel to Northaven Road) and fence (perpendicular to Northaven Road), columns, and gates relative to the property line and pavement line (whereby the fence is located on the property line or about 3’ from the pavement line). The site plan/fence elevation also clearly shows the length of the proposed fence/wall relative to the entire lot (about 210’ long).
- A scaled site plan/fence elevation has been submitted that documents the height of the proposal parallel to Northaven Road: fence that is 7’ in height, columns that are 8’ in height, and entry gates that are 9.5’ in height. The site plan/elevation also documents the building materials of the proposal parallel to Northaven Road: fence/wall (masonry and wrought iron) and gates (wrought iron); and building materials of the proposal perpendicular to Northaven Road: fence (wrought iron).
- No elevation has been submitted that documents the “6’ high wrought iron fence” noted on the site plan that is located in the 40’ front yard setback perpendicular to Northaven Road.
- Three single family homes would have direct/indirect frontage to the proposed fence/wall. One of these three homes has an open wrought iron fence in the front yard setback located behind a high hedge that is about 6’ high (and what appears to be the result of a previous Board of Adjustment appeal: BDA 001-123).
- As of January 6th, no letters had been submitted to staff either in support or in opposition to the proposal.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the fence/wall, columns, fence, and gates that are proposed to exceed 4’ in height) will not adversely affect neighboring property.

- Granting this special exception of 5' 6" with conditions imposed that the applicant complies with the submitted site plan/fence elevation would assure that the proposed fence/wall, fence, columns, and gates are constructed and maintained as shown on that document.

**BOARD OF ADJUSTMENT ACTION: JANUARY 18, 2006**

**APPEARING IN FAVOR:** Roget Albright, 3301 Elm Street, Dallas, TX

**APPEARING IN OPPOSITION:** No one

**MOTION:** Brannon

I move that the Board of Adjustment in Appeal No. **BDA 056-048**, hold this matter under advisement until **March 15, 2006**.

**SECONDED:** Beikman

**AYES:** 5–Cox, Brannon, Gillespie, Beikman, Chernock

**NAYS:** 0 – None

**MOTION PASSED** 5 – 0 (Unanimously)

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**FILE NUMBER:** BDA 056-065

**BUILDING OFFICIAL'S REPORT:**

Application of Ed Melugin for a special exception to the landscape regulations at 2939 Anode Lane. This property is more fully described as Lot 9A in City Block D/6455 and is zoned LI which requires mandatory landscaping with additions. The applicant proposes to construct an addition and provide an alternate landscape plan which would require a special exception. Referred to the Board of Adjustment in accordance with Section 51A-10.110 of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.4

**LOCATION:** 2939 Anode Lane

**APPLICANT:** Ed Melugin

**January 18, 2006 Public Hearing Notes:**

- The applicant submitted a revised landscape plan at the public hearing. The applicant stated that this plan was revised incorporating landscape materials that had been suggested by the City of Dallas Chief Arborist.

**REQUEST:**

- A special exception to the landscape regulations is requested in conjunction with constructing and maintaining an approximately 9,000 square foot addition on an existing approximately 23,000 square foot office/warehouse structure.

**STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:**

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

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

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

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

**GENERAL FACTS:**

- The Dallas Development Code requires full compliance with the Landscape Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet.
- The requirements that the applicant is seeking the special exception from are not imposed by a site-specific landscape plan approved by the city plan commission or city council.
- An alternate landscape plan has been submitted that notes the following landscape materials on the site:
  - 28 “Burford Holly 7 Gal., 3’ HT. MIN. (Foundation Planting)”
  - 7 “Crape Myrtle Trees 7’ 8’ HT. (Site Trees)”
  - “Note: Provide Automatic Irrigation System at Lawn and Bed Areas”
- On December 27, 2005, the City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner (see Attachment A). The memo stated the following:
  - The applicant is requesting relief from the landscape requirements of Article X (The Landscape Regulations), more specifically, relief from the required number of site trees, street trees, parking lot trees, and design standards.
  - The special exception request is triggered by new construction.
  - Deficiencies:
    1. The applicant is required to provide one 2” diameter site tree for each 4,000 square feet of lot area (12 site trees would be required for this site).  
The applicant is proposing to provide 7 site trees.

2. The applicant is required to provide one 3" diameter street tree for each 50' of street frontage located within 30' of the projected street curb (5 street trees would be required for this site).

The applicant is proposing no street trees.

3. The applicant is required to provide 2 design standards.

The applicant is proposing to provide 1 design standard (foundation planting strip).

4. The applicant is required to provide parking spaces not more than 120' from a large canopy tree.

The applicant is proposing to provide no parking spaces within 120' of a large canopy tree.

Factors for consideration:

- While the submitted alternate landscape plan does not provide any street trees, it does include 7 crepe myrtle trees. The applicant could substitute some large canopy trees for some of the crepe myrtles which would help the applicant to partially meet the street tree requirement as well as meet the parking lot tree requirement.
- The applicant submitted information beyond what was submitted with the original application (see Attachment B). This information included a letter that provided the additional details pertaining to the request, and photographs of the site and surrounding area.

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: LI (Light Industrial)
- North: LI (Light Industrial)
- South: CS (Commercial Service)
- East: LI (Light Industrial)
- West: LI (Light Industrial)

**Land Use:**

The subject site is developed with an office/warehouse use. The areas surrounding the site to the north, south, east, and west are developed with office/warehouse 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. 17, 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 B.
- 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 23<sup>rd</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
  - the January 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the January public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Dec. 27, 2005 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the special exception to the landscape regulations (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.
- Jan. 4, 2006 The applicant submitted information beyond what was submitted with the original application (see Attachment B).

**STAFF ANALYSIS:**

- An alternate landscape plan has been submitted with this request that, according to the City of Dallas Chief Arborist, is deficient in meeting the site tree, street tree, parking lot tree, and design standard requirements of the landscape regulations.
- The applicant has the burden of proof in establishing the following:
  - Strict compliance with the requirements of the landscape regulations (i.e. providing the required 12 site trees, 5 street trees, 2 design standards, and parking spaces within 120' of a large canopy tree) will unreasonably burden the use of the property (in this case, if approved, an approximately 23,000 square foot office/warehouse with a 9,000 square foot addition).;
  - The special exception (whereby 7 of the 12 site trees, none of the required 5 street trees, 1 of the required 2 design standards, and no parking space within 120' of a large canopy tree are proposed to be provided) will not adversely affect neighboring property.
- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted alternate landscape plan, the site could be developed with the addition, and would be "excepted" from the full provision of site tree, street tree, parking lot tree, and design standard requirements of the landscape regulations.

**BOARD OF ADJUSTMENT ACTION: JANUARY 18, 2006**

APPEARING IN FAVOR: Ed Melugin, 1306 Duck Creek Dr #6107, Garland, TX

APPEARING IN OPPOSITION: No one

MOTION: **Beikman**

I move that the Board of Adjustment in Appeal No. **BDA 056-065**, on application of Ed Melugin, **grant** the request of this applicant to provide an alternate landscape plan as a special exception to the landscape requirements in the Dallas Development Code, because our evaluation of the property and the testimony shows that strict compliance with the requirements will unreasonably burden the use of the property; the special exception will not adversely affect neighboring property; and the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council . I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the latest submitted landscape plan is required.

SECONDED: **Brannon**

AYES: 5–Cox, Brannon, Gillespie, Beikman, Chernock

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

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FILE NUMBER: BDA 056-C02

BUILDING OFFICIAL'S REPORT:

Application of True Lee Missionary Baptist Church and the Bertrand Neighborhood Association requesting a compliance date and discontinuance of a nonconforming motel use located at 4538 Scyene Road. This property is more fully described as Lots 7-9 in City Block A/4475 and is zoned PD-595 (CC Subdistrict) which requires a motel to have a specific use permit. Referred to the Board of Adjustment in accordance with Section 51A-4.704 of the Dallas Development Code, as amended, which states the power of the Board to bring about the discontinuance of a nonconforming use.

**LOCATION:** 4538 Scyene Road

**APPLICANT:** True Lee Missionary Baptist Church and the Bertrand Neighborhood Association

**REQUEST:**

- A request is made for the Board of Adjustment to establish a compliance date for a nonconforming motel use (The American Inn) on the subject site.

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

(a) Compliance regulations for nonconforming uses. It is the declared purpose of this subsection that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.

(1) Amortization of nonconforming uses.

(A) Request to establish compliance date. The city council may request that the board of adjustment consider establishing a compliance date for a nonconforming use. In addition, any person who resides or owns real property in the city may request that the board consider establishing a compliance date for a nonconforming use. Upon receiving such a request, the board shall hold a public hearing to determine whether continued operation of the nonconforming use will have an adverse effect on nearby properties. If, based on the evidence presented at the public hearing, the board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for the nonconforming use; otherwise, it shall not.

(B) Factors to be considered. The board shall consider the following factors when determining whether continued operation of the nonconforming use will have an adverse effect on nearby properties:

(i) The character of the surrounding neighborhood.

(ii) The degree of incompatibility of the use with the zoning district in which it is located.

(iii) The manner in which the use is being conducted.

(iv) The hours of operation of the use.



- (v) The extent to which continued operation of the use may threaten public health or safety.
  - (vi) The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust, and odor.
  - (vii) The extent to which public disturbances may be created or perpetuated by continued operation of the use.
  - (viii) The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use.
  - (ix) Any other factors relevant to the issue of whether continued operation of the use will adversely affect nearby properties.
- (C) Finality of decision. A decision by the board to grant a request to establish a compliance date is not a final decision and cannot be immediately appealed. A decision by the board to deny a request to establish a compliance date is final unless appealed to state court within 10 days in accordance with Chapter 211 of the Local Government Code.
- (D) Determination of amortization period.
- (i) If the board determines that continued operation of the nonconforming use will have an adverse effect on nearby properties, it shall, in accordance with the law, provide a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.
  - (ii) The following factors must be considered by the board in determining a reasonable amortization period:
    - (aa) The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.
    - (bb) Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
    - (cc) Any return on investment since inception of the use, including net income and depreciation.
    - (dd) The anticipated annual recovery of investment, including net income and depreciation.
- (E) Compliance requirement. If the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.
- (F) For purposes of this paragraph, "owner" means the owner of the nonconforming use at the time of the board's determination of a compliance date for the nonconforming use.

**GENERAL FACTS:**

- City records indicate that the motel use on the subject site became nonconforming on September 25, 2001 (Ordinance No. 24726).
- The Dallas Development Code states that "nonconforming use" means "a use that does not conform to the use regulations of this chapter, but was lawfully established

under the regulations in force at the beginning of operation and has been in regular use since that time.”

- The subject site is zoned PD No. 595 (CC Community Commercial Subdistrict) that permits a “hotel or motel” use with an SUP (Specific Use Permit).
- The Dallas Development Code establishes the following provisions for “hotel or motel” use in Section 51A-4.205 (1):
  - “Hotel or motel.”
    - (A) Definition: A facility containing six or more guest rooms that are rented to occupants on a daily basis.
    - (B) Districts permitted:
      - (i) Except as otherwise provided in Subparagraphs (B)(iii) or (B)(iv), by right in MO(A), GO(A), RR, CS, LI, IR, IM, central area, MU-1, MU-1(SAH), MU-2, Mu-2(SAH), MU-3, MU-3(SAH) and multiple commercial districts.
      - (ii) By SUP only in the CR district.
      - (iii) By SUP only for a hotel or motel use that has 60 or fewer guest rooms.
      - (iv) If an SUP is not required, RAR required in MO(A), GO(A), RR, CS, LI, IR, IM, MU-1, MU-1(SAH), MU-2, MU-2(SAH), MU-3, MU-3(SAH), and multiple commercial districts.
- The owner of the site could eliminate the nonconforming use status of the existing motel use by obtaining an SUP (Specific Use Permit) from City Council.
- The owner of the site could transition the use of the site from motel use to any use that is permitted by right in the site’s existing PD No. 595 (CC Community Commercial Subdistrict) zoning classification. Uses permitted by right in this zoning district include a number of commercial and business service uses, institutional and community service uses, office uses, recreation uses, retail and personal service uses, transportation uses, and utility and public service uses.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following exhibits and documents to support the applicant’s appeal:
  - A cover letter highlighting the attached information;
  - A 2001 ruling against the motel in which the owners (according to the applicant) agreed not to allow, permit, or maintain criminal activity on the property;
  - Police crime reports for years 2002-2005;
  - A complaint letter regarding the motel that is signed by the President of the Bertrand Neighborhood Association;
  - Petitions to request closing the motel that is signed by residents of the surrounding neighborhood.

## **BACKGROUND INFORMATION:**

### **Zoning:**

<u>Site:</u>	PD No. 595 (CC Subdistrict) (Planned Development District, Community Commercial)
<u>North:</u>	PD No. 595 (R-5 Subdistrict) (Planned Development District, Single family)
<u>South:</u>	PD No. 595 (CC & R-5 Sub.) (Planned Development Dist, Community comm. and Single Family)
<u>East:</u>	PD No. 595 (CC Subdistrict) (Planned Development District, Community Commercial)

West: PD No. 595 (CC Subdistrict) (Planned Development District, Community Commercial)

**Land Use:**

The site is currently developed with a motel use. The areas to the north and south are developed with single family uses; and the areas to the east and west appear to be undeveloped tracts of land.

**Zoning/BDA History:**

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|--|--|
| 1. BDA 92T-021, 4538 Scyene Road<br>(the subject site) | On April 28, 1992, the Board of Adjustment provided a termination date of December 31, 1998 for the nonconforming motel being operated on the site. Records show that this decision was appealed to District Court. The City Attorney's Office informed the Board Administrator in March of 2005 that the board's order on this case (and a series of others for nonconforming motel uses made in the early 90's "should be treated an unenforceable." |
|--|--|

**Timeline:**

- |                |   |
|----------------|---|
| Nov. 30, 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 B.   |
| Dec. 15, 2005: | The Board Administrator contacted the applicant's representative and shared the following information: <ul style="list-style-type: none"><li>• the public hearing date and panel that will consider the application;</li><li>• the criteria/standard that the board will use in their decision to approve or deny the request;</li><li>• 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;</li><li>• the December 23<sup>rd</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;</li><li>• the January 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;</li><li>• 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</li></ul> |

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. 19, 2005: The Board Administrator wrote/sent the owner of the site (Yasoda Enterprises LLC) a certified letter that informed him that a Board of Adjustment case had been filed against his property. The letter included following enclosures:

- a copy of the Board of Adjustment application and related materials that had been submitted in conjunction with the application;
- a copy of the section of the Dallas Development Code that described the Board of Adjustment (Section 51A-3.102);
- a copy of the section of the Dallas Development Code that provides the definition of “nonconforming use” (Section 51A-2.102(90));
- a copy of the section of the Dallas Development Code that provides the definition and provisions set forth for “hotel or motel” use (Section 51A-4.205(1));
- a copy of the section of the Dallas Development Code that provides provisions for “nonconforming uses and structures” (Section 51A-4.704).

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

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. 4, 2006: The letter and packet of information mailed to the owner of the site was forwarded back to the Board Administrator with a notation on the envelope marked “ANK.” This information was re-sent back to the owner of the site in Terrell, Texas, adding c/o Days Inn to the same address the packet was mailed on December 19<sup>th</sup>. In addition, the packet of information was sent to the owner at address of the motel: 4538 Scyene Road.

Jan. 9, 2006 The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). (Staff had determined that since the 10<sup>th</sup> day prior to the scheduled

hearing fell on Sunday, the 8<sup>th</sup>, that the applicant was allowed to turn in information for the board's docket on Monday, the 9<sup>th</sup>).

**STAFF ANALYSIS:**

- The motel use on the subject site is a nonconforming use.
- City records indicate that the motel use on the subject site became nonconforming on September 25, 2001 (Ordinance No. 24726).
- The Dallas Development Code states that it is the declared purpose of this subsection (Sec. 51A-4.704. Nonconforming Uses and Structures) that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.
- The owner of the site could eliminate the nonconforming use status of the existing motel use by obtaining an SUP from City Council.
- The owner of the site could transition the use of the site from motel use to any use that is permitted by right in the site's existing PD No. 595 (CC Community Commercial Subdistrict) zoning classification. Uses permitted by right in this zoning district include a number of commercial and business service uses, institutional and community service uses, office uses, recreation uses, retail and personal service uses, transportation uses, and utility and public service uses.
- The applicant has the burden of proof in establishing the following:
  - Continued operation of the nonconforming motel use will have an adverse effect on nearby properties.

The purpose of the Board of Adjustment's January 18th public hearing shall be to determine whether continued operation of the nonconforming motel use will have an adverse effect on nearby properties. The Dallas Development Code states that if, based on the evidence presented at the public hearing, the board determines that continued operation of this use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for the nonconforming use (at a subsequent public hearing); otherwise, it shall not.

**BOARD OF ADJUSTMENT ACTION: JANUARY 18, 2006**

**APPERING IN FAVOR:**

Dwaine Caraway, 1934 Argyle, Dallas, TX  
Michael Davis, 4347 McKinney, Dallas, TX  
Donald Parish, 302 Glen Oaks Blvd., Dallas, TX  
Willie Mae Coleman, 3802 York St., Dallas, TX  
Marilynn Mayse, 4306 York St., Dallas, TX  
Devin Felder, 8404 Capriola, Dallas, TX

**APPEARING IN OPPOSITION:**

No one

**MOTION: Brannon**

I move that the Board of Adjustment in Appeal No. **BDA 056-C02**, based on the evidence presented at the public hearing, find that continued operation of this nonconforming use **will** have an adverse effect on nearby properties, and set a hearing

date of **March 15, 2006** for the purpose of establishing a compliance date for this nonconforming use.

**SECONDED: Beikman**

**AYES:** 5–Cox, Brannon, Gillespie, Beikman, Chernock

**NAYS:** 0 – None

**MOTION PASSED** 5 – 0 (Unanimously)

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**MOTION: Brannon**

I move to adjourn this meeting.

**SECONDED: Gillespie**

**AYES:** 5– Cox, Brannon, Gillespie, Beikman, Chernock

**NAYS:** 0 -

**MOTION PASSED** 5 – 0 (unanimously)

**2:20 P.M.** - Board Meeting adjourned for January 18, 2006.

\_\_\_\_\_  
CHAIRPERSON

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

\_\_\_\_\_  
BOARD SECRETARY

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