

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM
WEDNESDAY, JANUARY 19, 2005**

MEMBERS PRESENT AT BRIEFING: Alice Cox, Vice-Chair, Taylor Brannon, regular member, Kathleen Cope, regular member, Samuel Gillespie, regular member and Dovie Jaffe, alternate member

MEMBERS ABSENT FROM BRIEFING: None

MEMBERS PRESENT AT HEARING: Alice Cox, Vice-Chair, Taylor Brannon, regular member, Kathleen Cope, regular member, Samuel Gillespie, regular member and Dovie Jaffe, alternate member

MEMBERS ABSENT FROM HEARING: None

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

STAFF PRESENT AT HEARING: Casey Burgess, Asst. City Attorney, Donnie Moore, Chief Planner, Steve Long, Board Administrator, Danny Sipes, Development Code Specialist, Hamid Fard, Senior Engineer, Michael Sultan, Chief Arborist and Trena Law, Board Secretary

10:05 AM. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's January 19, 2005 docket.

1:10 P.M.
The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand

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

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel B November 17, 2004 hearing minutes.

MOTION: Jaffe

I move **approval** of the **Wednesday, November 17, 2004** Board of Adjustment Public Hearing minutes.

SECONDED: Brannon

AYES: 5—Cox, Brannon, Cope, Gillespie, Jaffe

NAYS: 0 - None

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 045-138

BUILDING OFFICIAL'S REPORT:

Application of Curtis Redmon for a variance to the front yard setback regulations at 155 W. Kiest Blvd. This property is more fully described as lot 22 in City Block 32/5978 and is zoned R-7.5 (A) which requires a 25-foot front yard setback. The applicant proposes to construct a single family dwelling and provide a 22 foot front yard setback which would require a variance of 3 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: 155 W. Kiest Blvd.

APPLICANT: Curtis Redmon

SUMMARY:

- A variance to the front yard setback regulations of 3' is requested in conjunction with constructing a 2-story, approximately 2,100 square foot single-family home.

STAFF RECOMMENDATION: Approval, subject to compliance with the site plan

This recommendation is based on the following:

- Property hardship due to the site's irregular shape.

ADDITIONAL FACTS:

- A 25'-front yard setback is required in an R-7.5(A) zoning district, and the structure is proposed to be located 22' from the Kiest Boulevard front property line.
- The site is flat, irregular in shape (111' on the north, 102' on the east, 93' on the south, and 63' on the west), and approximately 8,300 square feet in area.
- DCAD records indicate "no main improvements" on the site.
- The site plan indicates that there is about a 24'-long area of the proposed 2,100 square foot home that will be located 3' into the 25' front yard setback.
- The applicant submitted a letter to staff that provided additional information related to the request (see Attachment A).

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5 (A) (Single family residential 7,500 square feet)
North: R-7.5 (A) (Single family residential 7,500 square feet)
South: RR (Regional retail)
East: R-7.5 (A) (Single family residential 7,500 square feet)
West: R-7.5 (A) (Single family residential 7,500 square feet)

Land Use:

The subject site is undeveloped. The areas to the north, east, and west are developed with single family uses; and the area to the south is developed with an elementary school (The Joseph J. McMillan Elementary School).

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. 3, 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.
- Dec. 15, 2004: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Dec. 16, 2004: 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 27th deadline to submit additional evidence for staff to factor into their recommendation on the dwelling unit special exception; and
- that the board will take action on the matter at the January public hearing after considering the staff recommendation that will be made at the staff review team meeting, and all other information/evidence and testimony presented to them by the applicant and all other interested parties.

Dec. 27, 2004 The applicant submitted additional information to staff regarding the request (see Attachment A).

Dec. 27, 2004: 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 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; the Assistant City Attorney to the Board, and an Assistant City Attorney that will be substituting for him in the month of January.

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

BASIS FOR A REQUEST 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.

STAFF EVALUATION:

Staff concluded from their analysis of the site and from the information submitted by the applicant that the variance is necessary to permit development of this site/parcel of land in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5 (A) zoning classification. The irregular shape of the lot necessitates the variance for a relatively small encroachment (3') into the 25' front yard setback along Kiest Boulevard in order to construct a house that is of a size (approximately 2,100 square feet) that is commensurate with other homes in this zoning district.

BOARD OF ADJUSTMENT ACTION: January 19, 2005

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Cope

I move that the Board of Adjustment in Appeal No. **BDA 045-138**, on application of Curtis Redmon, **grant** the variance to the front yard setback regulations, because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

- Compliance with the submitted site plan is required.

SECONDED:

AYES: 5—Cox, Brannon, Cope, Gillespie, Jaffe

NAYS: 0 – None

MOTION PASSED - 5 – 0 (unanimously)

FILE NUMBER: BDA 045-139

BUILDING OFFICIAL'S REPORT:

Application of Raleigh F. Davis, Jr., represented by John W. Phipps, for a variance to the front yard setback and a special exception to the Visibility Obstruction Regulations at 620 Fabrication Street. This property is more fully described as Lot 5 in City Block 4/7267 which is zoned IR which requires a 15-foot front yard setback and that no structure may be located in a required visibility corner clip. The applicant proposes to construct an addition and provide a 0-foot front yard setback and locate part of the addition in the visibility corner clip which would require a variance of 15 feet and a special exception to the visibility obstruction regulations. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) & (10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances and special exceptions.

LOCATION: 620 Fabrication Street

APPLICANT: Raleigh F. Davis, Jr.
Represented by John W. Phipps

SUMMARY:

- The following appeals have been made within this application:
 1. a variance to the front yard setback regulations of 5' is requested in conjunction with maintaining a part of an approximately 20,000 square foot commercial structure (Davis Metal Stamping, Inc.) that (according to the DCAD) was constructed in the 1984, and is located 10' from the Yuma Street front yard property line;
 2. a variance to the front yard setback regulations of 15' is requested in conjunction with maintaining the same structure that is located on the Topeka Street front property line;
 3. a variance to the front yard setback regulations of 15' is requested in conjunction with constructing/aligning an approximately 2,200 square foot addition with the existing structure located on the Topeka Street front property line; and
 4. a special exception to the visibility obstruction regulations is requested in conjunction with maintaining the proposed addition in the 45'-Topeka Street/Muncie Street intersection visibility triangle. (The proposed addition would function to house an existing large machine that is currently located outdoors on the site and in this visibility triangle).

STAFF RECOMMENDATION:

- 1) Approval of the front yard variances to maintain the existing structure in the Yuma Street and Topeka Street front yard setbacks, subject to compliance with the submitted revised site plan

This recommendation was based on the following:

- Property hardship due to the irregular shape and the narrow width (86') of the site.

- 2) Approval of the front yard variance to align/construct an addition in the Topeka Street front yard setback, subject to compliance with the submitted revised site plan

This recommendation was based on the following:

- Property hardship due to the irregular shape and the narrow width (86') of the site.

- 3) Approval of the special exception to the visibility obstructions regulations, subject to compliance with the submitted revised site plan

This recommendation was based on the following:

- The small portion of the proposed addition located in the visibility triangle would not constitute a traffic hazard.

ADDITIONAL FACTS:

- The site is flat, slightly irregular in shape (86’ on the north, 361’ on the east, 89’ on the south, and 381’ on the west), and approximately .75 acres in area. The site encompasses a whole city block, hence it has four, 15’ front yard setbacks. (The existing building and proposed addition are in compliance with the 15’ front yard setbacks along Fabrication and Muncie Streets).
- According to DCAD records, the approximately 32,000 square foot site is development with “light industrial” structure built in 1984 with 20,280 square feet of area.
- A review of historic zoning maps in the Development Services Department was conducted that revealed that prior to the city-wide zoning transition program of 1989, the site and surrounding area was zoned I-2 (Industrial-2) which required no front yard setback.
- The existing structure does not comply with the current IR (Industrial Research) 15’-front yard setback since a portion of the existing structure is located 10’ from the site’s northern front property line along Yuma Street and on the site’s southern property line along Topeka Street. (These variance requests are needed only to remedy an existing *nonconforming structure*).
- The Dallas Development Code states that the right to rebuild a nonconforming structure ceases if the structure is destroyed by the intentional act of the owner or the owner’s agent. However, except in the scenario where the structure is destroyed by the intentional act of the owner, a person may renovate, remodel, repair, rebuild, or enlarge a nonconforming structure if the work does not cause the structure to become more nonconforming as to the yard, lot, and space regulations.
- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - In a visibility triangle as defined in the Code (45-foot visibility triangles at intersections and 20-foot visibility triangles at drive approaches); and
 - Between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- The applicant submitted information beyond what was submitted with the original application including letters to further explain the requests, and a revised site plan (see Attachment A).

BACKGROUND INFORMATION:

Zoning:

- Site: IR (Industrial research)
- North: IR (Industrial research)
- South: IR (Industrial research)
- East: IR (Industrial research)
- West: IR (Industrial research)

Land Use:

The subject site is developed with a commercial/industrial use (Davis Metal Stamping, Inc.). The areas to the north, east, and west are developed with commercial and light industrial uses; and the area to the south is a rail line.

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. 3, 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.
- Dec. 15, 2004: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Dec. 17, 2004: 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 December 27th deadline to submit additional evidence for staff to factor into their recommendation; and
 - that the board will take action on the matters at the January public hearing after considering the staff recommendation that will be made at the staff review team meeting, and all other information/evidence and testimony presented to them by the applicant and all other interested parties.
- Dec. 24, 2004 & January 3, 2005 The applicant's representative submitted a revised site plan and additional information regarding the requests (see Attachment A).
- Dec. 27, 2004: 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 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; the Assistant City Attorney to the Board, and

an Assistant City Attorney that will be substituting for him in the month of January.

A review comment sheet was submitted by the Transportation Engineer in conjunction with this application which will be available for review upon request at the briefing and public hearing.

January 10, 2005 The applicant's representative submitted a revised scaled site plan which documented pavement lines, property lines, and existing structure and proposed addition building footprints (see Attachment A).

BASIS FOR A REQUEST 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.

BASIS FOR REQUESTS FOR A SPECIAL EXCEPTION TO THE VISIBILITY OBSTRUCTION REGULATIONS: The Board shall grant a special exception to the requirements of the visibility obstruction regulations when, in the opinion of the Board, the item will not constitute a traffic hazard.

STAFF EVALUATION (regarding the front yard variances to maintain the existing structure in the Yuma Street and Topeka Street front yard setback):

- Staff concluded from their analysis of the site and from the information submitted by the applicant that the irregular shape of the site and its narrowness at 86' precludes the site from being developed commensurately as other parcels of land in districts with the same IR zoning classification if the existing nonconforming structure were to be intentionally destroyed.
- Staff concluded that granting these variances would not be contrary to the public interests because:
 - Granting the requests would merely allow the retention (and rebuilding if the owner so chooses if intentionally destroyed) of a structure that has been located in the 15-foot front yard setbacks on Yuma and Topeka Streets since the 1980's.
 - Granting these variances will allow the maintenance of the structure and change its classification as a *nonconforming structure* to a *conforming structure*.

- There does not appear to be an existing consistent pattern of development along Topeka Street that maintains/adheres to the relatively newly-established 15' setback.
- Additionally, the applicant has stated that although the existing building is located on the Topeka Street property line, the existing building is, in effect, set back 15' from the actual paved street.

STAFF EVALUATION (regarding the front yard variance to construct an addition in the Topeka Street front yard setback):

- Staff concluded from their analysis of the site and from the information submitted by the applicant that the irregular shape of the site and its narrowness at 86' precluded the site from being developed commensurately as other parcels of land in districts with the same IR zoning classification.
- Staff concluded that granting this variance would not be contrary to the public interests because:
 - It would merely allow an addition to align with (and not encroach beyond) the existing nonconforming structure located in the Topeka Street front yard setback.
 - There does not appear to be an existing consistent pattern of development along Topeka Street that maintains/adheres to the relatively newly-established 15' setback.
 - Additionally, the applicant has stated that although the existing building is located on the Topeka Street property line, the existing building is, in effect, set back 15' from the actual paved street.

STAFF EVALUATION (regarding the visibility obstruction special exception to construct an addition in the Topeka Street/Muncie Street intersection visibility triangle):

- Staff concluded from their analysis of the site and from the information submitted by the applicant that the new addition to be located in the Topeka Street/Muncie Street intersection visibility triangle would not constitute a traffic hazard because:
 - A field investigation conducted by the Development Services Transportation Engineer indicates that the "proposed addition should not create a traffic hazard."
 - The encroachment is at the intersection of two, very short, non-through streets that are not heavily traversed.
 - The encroachment into the intersection triangle is a relatively small area: a triangular area of about 25 square feet.
 - The special exception, if conditioned to the site plan, would result in an existing piece of machinery on the site being relocated less inside of this visibility triangle than where it is currently situated.

BOARD OF ADJUSTMENT ACTION: January 19, 2005

APPEARING IN FAVOR: No one
APPEARING IN OPPOSITION: No one

MOTION #1: Cope

I move that the Board of Adjustment in Appeal No. **BDA 045-139**, on application of Raleigh F. Davis, Jr., **grant** the variances to the front yard setback regulations because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Codes, as amended, would result in unnecessary hardship to this applicant.

- Compliance with the submitted revised site plan is required.

SECONDED: Jaffe

AYES: 5–Cox, Brannon, Cope, Gillespie, Jaffe

NAYS: 0 – None

MOTION PASSED - 5 – 0 (unanimously)

MOTION #2: Cope

I move that the Board of Adjustment in Appeal No. **BDA 045-139**, on application of Raleigh F. Davis, Jr., **grant** the special exception to the visibility obstruction regulations contained in the Dallas Development Code, because our evaluation of the property and testimony shows that this special exception will not constitute a traffic hazard.

- Compliance with the submitted revised site plan is required.

SECONDED: Jaffe

AYES: 5–Cox, Brannon, Cope, Gillespie, Jaffe

NAYS: 0 – None

MOTION PASSED - 5 – 0 (unanimously)

FILE NUMBER: BDA 045-140

BUILDING OFFICIAL'S REPORT:

Application of PCTH, Ltd., represented by Karl A. Crawley of Masterplan, for a special exception to the landscape regulations at 6328 Oriole Drive. This property is more fully described as a tract of land in City Block 5697 which is zoned MF-2(A) which requires landscaping to be installed with new construction. The applicant proposes to construct a building and provide an alternate landscape plan which would require a special exception to the landscape regulations. 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: 6328 Oriole Drive

APPLICANT: PCTH, Ltd.
Represented by Karl A. Crawley of Masterplan

SUMMARY:

- A special exception to the landscape regulations is requested in conjunction with developing a shared access development with 36 single family homes on a 1.7-acre site that is currently under development.

STAFF RECOMMENDATION: Approval, subject to the compliance with the submitted landscape plan*

This recommendation was based on the following

- There is not adequate space on the site for a 36-lot shared access development (at a density permitted in the MF-2 (A) zoning district) while simultaneously providing the 108 site trees required by the Dallas Development Code.
- The plan that staff is suggesting that the board impose as a condition to the special exception would exceed the Dallas Development Code landscape regulations if the same lot were to be developed as a multifamily use.

* Granting this request, subject to the submitted landscape plan does not waive the applicant from meeting provisions set forth in the Dallas Development Code pertaining to off-street parking regulations related to driveway access to alleys and/or to visibility obstruction regulations.

ADDITIONAL FACTS:

- The requirements in this case are not imposed by a site-specific landscape plan approved by the City Plan Commission or City Council.
- The applicant is proposing an alternate landscape plan that does not fully comply with the landscape regulations, specifically a landscape plan where the applicant is specifically requesting relief from the street tree requirements for a shared access development.
- The Dallas Development Code defines a “shared access area” as follows:
 - “That portion of a shared access development that fronts on a public or private street and provides access to individual lots within the shared access development.”
- The Dallas Development Code describes the purpose of “shared access development” as follows:
 - “Traditional single family lots front onto a street and have a rectangular shape. New developments have been platted with a minimal frontage on a street, and have access to the street from a shared driveway. This section is designed to address the issues specific to these non-traditional lots.”
- The City of Dallas Chief Arborist has identified the following way in which the alternate plan does not comply with the landscape regulations:
 - The applicant is *required* to provide 3 site trees for each individual lot where 2 of the 3 trees must be planted in the front yard of the shared access development (including the parkway between the curb and the sidewalk), and the 3rd tree located anywhere within the shared access development. In this case, 72 site trees would

be required to be in the front yard with another 36 trees to be located elsewhere on the site.

The applicant is *proposing* to provide 45 trees for the entire shared access development.

- The site is located in MF-2 (Multifamily 2 district) zoning that allows single family uses by right.
- The proposal is deemed a “shared access development” since four or more single family homes are proposed to share a private driveway or private access easement, in this case, 36 homes to be accessed from 2 driveways/access easements on Oriole Avenue.
- The applicant only seeks the board’s approval to deviate from the following Dallas Development Code’s Landscape Regulation that specifically applies to “shared access developments:”
 - “In a shared access development, 3 trees with a caliper equal to or exceeding 2” are required for each individual lot in a shared access development. One of the 3 required trees per lot may be located on an individual lot, but at least 2 trees per individual lot must be located in the front yard of the shared access development, where all of the property in the shared access development is considered to be one lot (“shared trees”). If there is more than one front yard to the shared access development, where all of the property in the shared access development is considered to be one lot, the shared trees must be evenly distributed within those front yards.”
- The applicant’s representative submitted additional information beyond what was submitted with the original application to further explain the scope and merits of the request (see Attachment A). According to the applicant:
 - The site would be required 72 trees to be planted within the required front yards of the individual lots or according to the Shared Access standards, along the perimeter of the site.
 - The site has one street with a total frontage of about 440 feet which would require the trees to be planted at a spacing of one tree for 6.25’ of frontage without taking into account driveway access. Development Code landscape requirements specify trees to be spaced 50’ on center to be counted as street trees. The frontage of the site would require 9 trees and the proposed plan provides 9 trees within the confines of the proposed Shared Access Development.
 - If the site were developed under guidelines of a multifamily project within MF zoning, the site would require site trees at a ratio of one tree per 4,000 square feet of site area for a total of 18 trees. The proposed plan calls for a total of 44 trees (or 1 tree per 1,677 square feet of site area). (Note that the submitted landscape plan indicates “Total Trees Provided: 45.”)
 - The plan also delineates compliance with the required two design features as if the site was developed as multifamily as opposed to the Shared Access Development.
 - The site would comply with the Code if the site were not Shared Access.
 - The additional trees required would unreasonably burden the site and the proposed landscaping will not adversely affect neighboring property.

BACKGROUND INFORMATION:

Zoning:

Site: MF-2 (A) (Multifamily district 2)
North: R-7.5 (A) (Single family residential 7,500 square feet)
South: MF-2 (A) (Multifamily district 2)
East: R-7.5 (A) (Single family residential 7,500 square feet)
West: MF-2 (A) (Multifamily district 2)

Land Use:

The 1.7-acre subject site is under development. The area to the north is developed with single family uses, the area to the east is developed with single family use and day care use; and the areas to the south and west are developed with multifamily 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. 24, 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.
- Dec. 15, 2004: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Dec. 17, 2004: 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 27th deadline to submit additional evidence for staff to factor into their recommendation; and
 - that the board will take action on the matter at the January public hearing after considering the staff recommendation that will be made at the staff review team meeting, and all other information/evidence and testimony presented to them by the applicant and all other interested parties.
- Dec. 22, 2004 The applicant’s representative submitted a letter that provided additional information on the request (see Attachment A).

Dec. 27, 2004: 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 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; the Assistant City Attorney to the Board, and an Assistant City Attorney that will be substituting for him in the month of January.

A review comment sheet from the Transportation Engineer and a memo from the City of Dallas Chief Arborist were submitted in conjunction with this application. These documents will be available for review upon request at the briefing and public hearing. (Note that the Transportation Engineer mentioned specific concerns he had pertaining to whether or not the applicant's plan complied with off-street parking regulations related to driveway access to alleys, and to visibility obstruction regulations).

BASIS FOR REQUESTS 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.

STAFF EVALUATION:

- Staff concluded that providing the required 108 site trees on the site either by: 1) providing 1 tree on each of the 36 individual lots and the remaining 72 trees in the Oriole Drive front yard; or 2) providing all 108 trees in the front yard) would unreasonably burden the 36 single family uses proposed to be developed on the 1.7-acre site. There is not enough space on the site to provide the required 108 trees in either of the two scenarios.

In addition, granting the request, subject to the staff-suggested condition, would not adversely affect neighboring property since, according to the City of Dallas Chief Arborist, the alternate plan would exceed meet or exceed the landscape requirements for a single multifamily lot.

In making this recommendation, staff also considered 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.

BOARD OF ADJUSTMENT ACTION: January 19, 2005

APPEARING IN FAVOR: Karl Crawley, 500 So. Ervay, Suite 112B, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Jaffe

I move that the Board of Adjustment in Appeal No. **BDA 045-140**, on application of PCTH, Ltd., **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 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 condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted landscape plan is required.
- Applicant shall fully comply with visibility obstruction and off-street parking regulations.

SECONDED: Brannon

AYES: 5–Cox, Brannon, Cope, Gillespie, Jaffe

NAYS: 0 – None

MOTION PASSED - 5 – 0 (unanimously)

FILE NUMBER: BDA 045-142

BUILDING OFFICIAL'S REPORT:

Application of Bernard H. and Joan I. White for a special exception for tree preservation to the rear yard setback regulations at 6423 Turner Way. This property is more fully described as Lot 9 in City Block C/7453 and is zoned R- 16 (A) which requires a 10 foot rear yard setback. The applicant proposes to construct a single family dwelling and provide a 5 foot rear yard setback which would require a special exception of 5 feet to the rear yard setback. 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 special exceptions.

LOCATION: 6423 Turner Way

APPLICANT: Bernard H. and Joan I. White

SUMMARY:

- A special exception of 5' to the rear yard setback regulations for tree preservation is requested in conjunction with constructing a 2-story single family home with approximately 6,000 square feet of living area on a lot that is undeveloped.

STAFF RECOMMENDATION:

Approval, subject to compliance with the submitted site plan

This recommendation was based on the following:

- The applicant had substantiated that:
 - 1) the special exception is compatible with the character of the neighborhood;
 - 2) the value of surrounding properties will not be adversely affected; and
 - 3) there are trees on the site that are worthy of preservation.

ADDITIONAL FACTS:

- The Dallas Development Code specifies that the board may grant a special exception to the minimum rear yard requirements to preserve an existing tree upon considering following factors: 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; and 3) whether the tree is worthy of preservation.
- A 10' rear setback is required for structures in the R-16 (A) zoning district.
- The applicant proposes to locate the single family home 5' from the site's rear property line in order to preserve 3 mature trees located in the site's front yard.
- The site is approximately 17,400 square feet (or 200' x 88') in area.
- The site plan indicates the location of the proposed house and 3 Oak trees (ranging in caliper from 18" – 30") in the site's front yard. The applicant contends that it is because of his intent to preserve these three trees in the front yard why the house must be located 5' into the site's 10'-rear yard setback.
- The City of Dallas Chief Arborist emailed the applicant stating that the trees in the Turner Way front yard are worthy of preservation. Additionally, the city arborist has estimated that one would most likely want to stay about 25' away from these trees and not encroaching into the critical root zone. (The site plan indicates that the 2 of the 3 trees are located beyond this estimated distance, and that the closest tree (a 30" Oak) is about 18' away from the proposed home).
- The applicant provided documentation from a tree specialist who indicted the following:
 - “ The trees have been fenced off for several years and are in very good health. So long as the boundaries of this fence is respected, these trees should thrive through the construction process with our additional care.”
- According to DCAD records, the site has “No Main Improvement.”

- The applicant submitted additional documentation regarding this request (see Attachment A). This information included the following:
 - a CD of 10 photos (all of which will be shown at the January 19th briefing),
 - copies of a revised plot plan and rear elevation, and
 - copies of additional responses from neighbors who support the request.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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

Timeline:

- Dec. 8, 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.
- Dec. 15, 2004: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Dec. 22, 2004: 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 27th deadline to submit additional evidence for staff to factor into their recommendation; and

- that the board will take action on the matters at the January public hearing after considering the staff recommendation that will be made at the staff review team meeting, and all other information/evidence and testimony presented to them by the applicant and all other interested parties.

Dec. 22, 2004 &
January 5, 2005

The applicant submitted additional documentation regarding this request (see Attachment A). This information included the following:

- a CD of 10 photos (all of which will be shown at the January 19th briefing),
- copies of a revised plot plan and rear elevation
- copies of additional responses from neighbors who support the request.

Dec. 27, 2004:

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 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; the Assistant City Attorney to the Board, and an Assistant City Attorney that will be substituting for him in the month of January.

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

BASIS FOR A REQUEST FOR A SPECIAL EXCEPTION TO THE REAR YARD SETBACK REGULATIONS FOR TREE PRESERVATION:

The Dallas Development Code specifies that the board may grant a special exception to the minimum rear yard requirements to preserve an existing tree. In determining to grant this special exception, the board shall consider the following factors: 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; and 3) whether the tree is worthy of preservation.

STAFF EVALUATION:

- Staff concluded from their analysis of the site and from the information submitted by the applicant that this request is justified. Staff concluded that the applicant had addressed that:
 - 1) the requested special exception is compatible with the character of the neighborhood by submitting photos of the site and surrounding area, and a series of support letters;

- 2) the value of surrounding properties will not be adversely affected by submitting a site plan and elevation of the proposed house, submitting photos of the site and surrounding area, and a series of support letters; and
- 3) there are trees on the site that are worthy of preservation as documented by a tree specialist and the City of Dallas Chief Arborist.

BOARD OF ADJUSTMENT ACTION: January 19, 2005

APPEARING IN FAVOR: Bernard White, 6104 LBJ Freeway, #1900, Dallas, TX
Joan White, 6104 LBJ Freeway, #1900, Dallas, TX

APPEARING IN OPPOSITION: Maridel Hoagland, 6255 Lafayette Way, Dallas, TX
John Hoagland, 6255 Lafayette Way, Dallas, TX
Tom Keener, 6417 Turner Way, Dallas, TX

MOTION: Gillespie

I move that the Board of Adjustment in Appeal No. **BDA 045-142**, on application of Bernard H. and Joan I. White, **deny** the special exception requested by this applicant **without prejudice**, because our evaluation of the property and testimony shows that the special exception is not compatible with the character of the neighborhood; the value of surrounding properties will be adversely affected; and the tree in not worthy of preservation.

SECONDED: Brannon

AYES: 4– Cox, Brannon, Cope, Gillespie,

NAYS: 1 – Jaffe

MOTION PASSED - 4 – 1

FILE NUMBER: BDA 045-115

BUILDING OFFICIAL'S REPORT:

Application of James B. Reeder, represented by Masterplan, for a special exception for the handicapped, a variance to the height regulations, and a special exception to the off street parking regulations 3028 and 3032 Bryan Street. This property is more fully described as a tract of land in City Block 500 which is zoned P.D. 298 which limits the height of a structure to 50 feet and parking to be provided for additions and new construction. The applicant proposes to construct an addition for a multi-family use with a maximum height of 62 feet and provide 65 of the 76 required parking spaces. This would require a special exception for the handicapped of 12 feet for an elevator penthouse, a variance of 4 feet to the height regulations for a rail and roof, and a special exception of 11 spaces to the off street parking regulations. 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: 3028 and 3032 Bryan Street

APPLICANT: James B. Reeder
Represented by Masterplan

SUMMARY:

- This application involves 3 appeals that are requested in conjunction with developing a 4-story, 38-unit multifamily structure on a site developed with a 2-story vacant office structure. (Two floors will be added to the existing building in addition to expansions to the south and west of the existing building). More specifically, the following appeals have been made within this application:
 1. A special exception for the handicapped has been requested in conjunction with constructing a 62'-high elevator (which in turn, according to the applicant, allows handicapped persons equal opportunity to use and enjoy the proposed roof deck).
 2. A variance to the height regulations has been requested in conjunction with constructing a 54'-high rooftop railing and to accommodate a proposed pitched roof that will "give the building a more residential look as well as screening AC compressors on the roof."
 3. A special exception to the off-street parking regulations has been requested in conjunction with providing only 65 (or 86%) of the 76 off-street parking spaces required.

STAFF RECOMMENDATION:

1. Denial of the special exception for the handicapped of 12' without prejudice

This recommendation was based on the following:

- Applicant had not substantiated that the 62'-high elevator is necessary to afford a handicapped person(s) equal opportunity to use and enjoy a dwelling unit.

2. Denial of the height variance of 4' without prejudice

The recommendation was based on the following:

- Applicant had not substantiated property hardship.

3. Approval of the off-street parking special exception of 11 spaces, subject to the following conditions:

- The special exception of 11 spaces shall automatically and immediately terminate if and when the "multifamily" use on the site is changed or discontinued.
- Eleven parking spaces shall be provided on the site by the installation and maintenance of 11 vertical stacking devices.

The recommendation was based on the following:

- The parking demand generated by the multifamily use on the site does not warrant the number of off-street parking spaces required since the number of parking spaces the site is not providing through city-recognized methods would be provided

on the site nonetheless (if the staff suggested condition is imposed) through a vertical stacking method.

- The special exception of 11 spaces will not create a traffic hazard or increase traffic congestion on adjacent and nearby streets since the number of parking spaces the site is not providing through city-recognized methods would be provided on the site nonetheless (if the staff suggested condition is imposed) through a vertical stacking device method.

ADDITIONAL FACTS:

- The PD No. 298 zoning district imposes a 50' maximum height limit, and requires that 2 off-street parking spaces are provided per unit.
- The applicant has distinguished proposed encroachments beyond the maximum 50' height limit in two ways, each with its own basis for appeal.
- The first height encroachment involves a special exception for the handicapped whereby the applicant contends that a 62'-high elevator is needed in order to allow a handicapped person equal opportunity to use and enjoy a dwelling unit, in this case the ability to enjoy a roof deck on the proposed multifamily structure.

Section 51A-1.10 (b)(1) states that the Board of Adjustment shall grant a special exception to any regulation in this chapter, if, after a public hearing, the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit. The term "handicapped person," means a person with a "handicap," as that term is defined in the Federal Fair Housing Act Amendment of 1988, as amended.

A copy of the "handicap" definition from this act was provided to the Board Administrator by the City Attorney's Office. Section 3602 of this act states the following: "(h) "Handicap" means, with respect to a person -

1. a physical or mental impairment which substantially limits one or more of such person's major life activities,
 2. a record of having such an impairment, or
 3. being regarded as having such an impairment,
- but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 802 of Title 21)."
- The second height encroachment involves the more typically-seen request: a variance to the height regulations where in this case, the applicant must demonstrate some form of hardship related to the site's restrictive area, shape or slope that precludes it from being developed in a manner commensurate with developments in the same PD No. 298. The height variance is requested for the proposed structure's 54'-high roof railing and roof pitch.
 - The site is flat, rectangular in shape (250' x 195), and 47,076 square feet in area.
 - DCAD records indicate that the property located at 3028 Bryan Street has "no improvements;" and that the property located at 3032 Bryan Street is developed as an "office building" built in 1960 with 24,102 square feet of improvements.
 - The applicant's representative submitted a letter that provides additional information on the requests, a photograph of the vertical stacking unit that is proposed to be incorporated on the site, and an amended chart of the number of off-street parking spaces that are provided on the site (see Attachment A).

- Typically on cases where staff had suggested approval on requests for a special exception for the handicapped, staff had encouraged the board impose a condition stating that the special exception is valid only for as long as the structure (in this case, a structure reaching 62') is needed to afford a handicapped person(s) equal opportunity to use and enjoy a dwelling unit.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 298 (Planned Development District 298)
North: PD No. 298 (Planned Development District 298)
South: PD No. 298 (Planned Development District 298)
East: PD No. 298 (Planned Development District 298)
West: PD No. 298 (Planned Development District 298)

Land Use:

The subject site is developed with a vacant, 2-story office building. The areas to the north and east are developed with single family residential uses; the area to the south is developed with surface parking and warehouse uses; and the area to the west is a mix of undeveloped land and multifamily uses.

Zoning/BDA History:

- | | |
|-----------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1. BDA 023-144, 3015 Bryan Street (the lot immediately west of the subject site)</p> | <p>On November 17, 2003, the Board of Adjustment Panel B followed the staff recommendation and denied a request for a special exception to the off-street parking regulations of 36 spaces (or 25% of the total parking required) without prejudice. The special exception was requested in conjunction with constructing 72-unit, 90- bedroom condominium that required 144 off-street parking spaces.</p> |
|-----------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Timeline:

- | | |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Nov. 18, 2004:</p> | <p>The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.</p> |
| <p>Dec. 15, 2004:</p> | <p>The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.</p> |
| <p>Dec. 17, 2004:</p> | <p>The Board Administrator contacted the applicant's representative and shared the following information:</p> |

- 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 December 27th deadline to submit additional evidence for staff to factor into their recommendation; and
- that the board will take action on the matters at the January public hearing after considering the staff recommendation that will be made at the staff review team meeting, and all other information/evidence and testimony presented to them by the applicant and all other interested parties.

Dec. 23, 2004 The applicant's representative submitted a letter that provided additional information on the requests, a photograph of the vertical stacking unit that is proposed to be incorporated on the site, and an amended chart of the number of off-street parking spaces that are provided on the site (see Attachment A).

Dec. 27, 2004: 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 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; the Assistant City Attorney to the Board, and an Assistant City Attorney that will be substituting for him in the month of January.

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

Jan. 7, 2005 The applicant's representative submitted a letter requesting an amendment to his appeal for a special exception for the handicapped increasing this request from 8' to 12'.

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

BASIS FOR A REQUEST 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.

BASIS FOR A REQUEST FOR A SPECIAL EXCEPTION TO THE OFF-STREET PARKING REGULATIONS: The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.

- 1) In determining whether to grant a special exception, the board shall consider the following factors:
 - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
 - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
 - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
 - (E) The availability of public transit and the likelihood of its use.
 - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 2) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 3) In granting a special exception, the board may:
 - (A) establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
 - (B) impose restrictions on access to or from the subject property; or

- (C) impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 4) In granting a special exception, the board may:
 - (A) establish a termination date for the special exception or otherwise provide for the reassessment of conditions after a specified time period;
 - (B) impose restrictions on access to or from the subject property; or
 - (C) impose any other reasonable condition that would have the effect of improving traffic safety or lessening congestion on streets.
 - 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
 - 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
 - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
 - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

STAFF EVALUATION (regarding the special exception for the handicapped of 12' to allow a 62' high elevator):

- Staff concluded from their analysis of the site and from the information submitted by the applicant that this request to allow an elevator that is 12' higher than the 50' maximum height limit is not necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit since the applicant could provide an elevator to allow the handicapped person(s) equal opportunity to enjoy a deck on a structure with a lower height (and/or lesser number of floors), and simultaneously meet ADA requirements.

STAFF EVALUATION (regarding the height variance of 4' to allow for a roof railing and roof pitch):

- Although staff concluded that granting this variance request, subject to the submitted site plan and elevation, did not appear to be contrary to the public interest (given that it was requested in association with merely encroaching beyond the maximum height limit for a roof railing and roof pitch), staff concluded from their analysis of the site and from the information submitted by the applicant that the variance was not necessary to permit development of this specific parcel of land which did not differ from other parcels of land by being of such a restrictive area, shape, or slope, that it could not be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD 298 zoning.

STAFF EVALUATION (regarding the special exception to the parking regulations of 11 spaces):

- Staff concluded from their analysis of the site and from the information submitted by the applicant that this request is justified. If the Board imposes the condition whereby the

applicant must provide 11 parking spaces by installing and maintaining 11 vertical stacking devices, the parking demand generated by the use will not warrant the number of off-street parking spaces required, and the special exception will not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. With this condition imposed, the 11 spaces to be "special excepted" would be provided on the site in a way that the City does not technically recognize as a means of fulfilling the off-street parking requirement (vertical stacking devices).

BOARD OF ADJUSTMENT ACTION: January 19, 2005

APPEARING IN FAVOR: Willie Cothrum, 500 So. Ervay, Suite 112B, Dallas, TX
John Webber, 1311 Birkenhead Ct., Dallas, TX
J.B. Reeder, 1925 Cedar Spring #302, Dallas, TX
Ken Fuller, 3103 Bryan St., Dallas, TX

APPEARING IN OPPOSITION: Robert Clinesmith, 402 S. Cowan St., Decatur, TX

MOTION #1: Gillespie

I move that the Board of Adjustment in Appeal No. **BDA 045-115** on application of James B. Reeder, **grant** the request of this applicant to maintain a 62 foot-high elevator structure as a special exception to the requirements contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling. 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 a revised elevation indicating a maximum 62 foot high elevator tower to be submitted to the Board Administrator is required;
- The special exception is valid only for as long as the structure is needed to afford a handicapped person equal opportunity to use and enjoy a dwelling unit; and
- The elevator tower can never be used for advertising of any kind.

SECONDED: Brannon

AYES: 4—Cox, Brannon, Gillespie, Jaffe

NAYS: 1 – Cope

MOTION PASSED - 4 – 1

MOTION #2: Gillespie

I move that the Board of Adjustment in Appeal No. **BDA 045-115** on application of James B. Reeder, **grant** the variance to the height regulations of 4 feet because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Brannon

AYES: 4—Cox, Brannon, Gillespie, Jaffe

NAYS: 1 – Cope

MOTION PASSED - 4 – 1

MOTION #3: Gillespie

I move that the Board of Adjustment in Appeal No. **BDA 045-115** on application of James B. Reeder, **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development Code by 11 parking spaces, because our evaluation of the property and testimony shows that the parking demand generated by the multifamily use on the site does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard nor increase traffic congestion on adjacent and nearby streets. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception shall automatically and immediately terminate if and when the multifamily use on the site is changed or discontinued; and
- The 11 parking spaces are provided on the site through the provision of 11 vertical stacking devices.

SECONDED: Brannon

AYES: 3—Cox, Brannon, Gillespie

NAYS: 2 – Jaffe, Cope

MOTION FAILED - 3 – 2

*Since the motion to grant this request did not get four concurring votes, the motion failed, and the request is deemed denied with prejudice since no subsequent motion was made at the hearing.

FILE NUMBER: BDA 045-130

BUILDING OFFICIAL'S REPORT:

Application of Fairway Capital Partners L.P. represented, by Karl A. Crawley of Masterplan, for a special exception to the landscape regulations and to the off-street parking regulations at 5919 Forest Lane. This property is more fully described as a tract of land in City Block 6379 which is zoned CR which requires landscaping to be installed with new construction, and prohibits alley access for non-residential uses between the hours of 10:00 p.m. and 7:00 a.m. The applicant proposes to construct a building and provide an alternate landscape plan, and allow alley access for a non-residential use between the hours of 10:00 p.m. and 7:00 a.m., which would require a special exception to the landscape regulations and to the off street parking regulations. Referred to the Board of

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

LOCATION: 5919 Forest Lane

APPLICANT: Fairway Capital Partners L.P.

January 19, 2005 Public Hearing Notes:

- The applicant's representative provided testimony at the public hearing specifically requesting that the special exception to the off-street parking regulations be denied without prejudice. The applicant's representative made this request upon further review of provisions set forth in the Dallas Development Code whereby the applicant determined that his development could/would comply with these regulations.

SUMMARY:

- Two appeals are requested within this application in conjunction with developing three, office/retail structures (that will have about 30,000 square feet of gross area) on a 2.77-acre site that is under development. More specifically, the following appeals have been made:
 1. A special exception to the landscape regulations is requested since the applicant seeks relief from providing the 10'-wide residential landscape buffer strip that is required on the west side of the site.
 2. A special exception to the residential alley access restrictions for nonresidential uses of the off-street parking regulations is requested since the applicant intends to use an alley easement on the site without time limitations that are set forth in the Dallas Development Code, specifically the provision stating that no person may use a public alley or access easement that abuts a single family zoning district between the hours of 10 p.m. and 7 a.m.

STAFF RECOMMENDATION:

1. Denial of the special exception for the landscape regulations without prejudice

This recommendation was based on the following:

- Applicant had not substantiated how full compliance with the landscape regulations would unreasonably burden the use of the property, nor how the alternate landscape plan would not adversely affect neighboring property.

2. Denial of the alley access restriction special exception without prejudice

This recommendation was based on the following:

- Applicant had not substantiated that strict compliance with the alley access restriction would result in the material and substantial impairment of access to the property as a whole.

- Note that the Code states that in granting this type of special exception, the board *shall*:
- (A) specify the use or uses to which the special exception applies (which in this case, are office and retail uses); and
 - (B) establish a termination date for the special exception, which may not be later than five years after the date of the board's decision.

Additionally note that the Code states that in granting this type of special exception, the board *may*:

- (A) authorize alley access only during certain hours; or
- (B) impose any other reasonable condition that would further the purpose and intent of the alley access restriction.

ADDITIONAL FACTS:

- The requirements in this case are not imposed by a site-specific landscape plan approved by the City Plan Commission or City Council.
- The Dallas Development Code requires full compliance with the Landscape Regulations with new construction.
- The applicant is proposing an alternate landscape plan that does not fully comply with the landscape regulations, specifically a landscape plan where the applicant is specifically requesting relief from the 10'-wide residential buffer along the west side of the site.
- The City of Dallas Chief Arborist submitted a memo indicating the following way in which the alternate plan does not comply with the landscape regulations:
 - The applicant is *required* to provide a 10'-wide landscape buffer strip along the entire west side of the property and provide 1 plant group for each 50' (which in this case, would be 9 plant groups given the 435 linear feet along the west side of the site).
The applicant is *proposing* to provide a solid screening wall in the alley easement but with no buffer strip or plant groups therein.
- Section 51A-4.301(h)(1) of The Dallas Development Code states the following with regard to residential alley access restrictions for nonresidential uses:
 - "The following residential alley access restrictions are established in order to promote safety and protect the public from disturbances that interfere with the quiet enjoyment of residential properties. Between the hours of 10 p.m. and 7 a.m., no person may use a public alley or access easement that abuts or is in an R, R(A), D, D(A), TH, TH(A), or CH district for the purpose of delivering or receiving any goods or services to or from a nonresidential use in a nonresidential district. It is a defense to prosecution under this paragraph that the person is: (A) a governmental entity; (B) a communications or utility company, whether publicly or privately owned; or (C) the operator of an authorized emergency vehicle as defined in Article 6701d, Vernon's Annotated Texas Statutes."
- The Dallas Development Code establishes a provision whereby the Board of Adjustment can grant a special exception to the provision mentioned above when the board finds, based on evidence presented at a public hearing, that strict compliance with the restriction would result in the material and substantial impairment of access to the property as a whole.

- According to the applicant's representative, there is an existing alley easement for access that has been on the site for years and to the best of his knowledge, has never been used for the residential uses immediately west of the site, all of which have front entry driveways accessing Jamestown Road.
- DCAD records indicate that the property located at 5919 Forest Lane is developed as a "health spa" built in 1964 with 19,240 square feet of improvements.
- The applicant's representative submitted a letter that provides additional information on the requests (see Attachment A). (Note that the applicant has acknowledged in a conversation with the Board Administrator that the site is entirely zoned CR even though his letter of December 22nd describes the "zoning on the site is presently zoned CR Community Retail and R-16(A) Single Family.")

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail)
North: CR (Community Retail)
South: CR (Community Retail)
East: CR (Community Retail)
West: R1/2 ac (A) (Single family district ½ acre)

Land Use:

The 2.7-acre subject site is under development. The areas to the north, east, and south are developed with retail uses; and the area to the west is developed with single family uses.

Zoning/BDA History:

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

Timeline:

- Dec. 6, 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.
- Dec. 15, 2004: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Dec. 17, 2004: 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 December 27th deadline to submit additional evidence for staff to factor into their recommendation; and
- that the board will take action on the matters at the January public hearing after considering the staff recommendation that will be made at the staff review team meeting, and all other information/evidence and testimony presented to them by the applicant and all other interested parties.

Dec. 22, 2004 The applicant's representative submitted a letter that provided additional information on the requests, and an aerial photograph of the site (see Attachment A).

Dec. 27, 2004: 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 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; the Assistant City Attorney to the Board, and an Assistant City Attorney that will be substituting for him in the month of January.

No review comments sheets (with comments) were submitted in conjunction with this application; however, the City of Dallas Chief Arborist submitted a memo that will be available for review upon request at the briefing and public hearing.

BASIS FOR REQUESTS 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.

BASIS FOR A REQUEST FOR A SPECIAL EXCEPTION TO THE RESIDENTIAL ALLEY ACCESS RESTRICTIONS FOR NONRESIDENTIAL USES OF THE OFF-STREET PARKING REGULATIONS:

The Board of Adjustment may grant a special exception to the alley access restriction provided in the Dallas Development Code if the board finds, based on evidence presented at a public hearing, that strict compliance with

the restriction would result in the material and substantial impairment of access to the property as a whole. In determining whether access would be materially and substantially impaired, the board shall consider the following factors:

- (A) The extent to which access to the restricted alley between the hours of 10 p.m. and 7 a.m. is essential to the normal operation of the use or uses to which the special exception would apply.
- (B) The extent to which the property as a whole has reasonable access to other public streets, alleys, or access easements in addition to the restricted alley.
- (C) The extent to which strict compliance with the alley access restriction will necessarily have the effect of substantially reducing the market value of the property.

In granting this type of special exception, the board shall:

- (A) specify the use or uses to which the special exception applies; and
- (B) establish a termination date for the special exception, which may not be later than five years after the date of the board's decision.

In granting a special exception, the board may:

- (A) authorize alley access only during certain hours; or
- (B) impose any other reasonable condition that would further the purpose and intent of the alley access restriction.

STAFF EVALUATION (regarding the landscape special exception):

- Staff concluded from their analysis of the site and surrounding area, and from the information submitted by the applicant that full compliance with the landscape regulations (providing the 10'-wide landscape buffer strip with 9 plant groups) would not unreasonably burden the use of the property, particularly given that previous development on the site has been demolished and the site is being completely redeveloped, and that the alternate landscape plan (without the required landscape features) would adversely affect neighboring property. Provision of the 10'-wide landscape buffer and plant groups on the western side of the site adjacent to the single family uses would provide additional sound mitigation and visual buffering beyond the minimal solid screen wall the applicant is proposing to place between the proposed development and the single family homes facing Jamestown Road immediately west of the site.

STAFF EVALUATION (regarding the special exception to the residential alley access restrictions for nonresidential uses):

- Staff concluded from their analysis of the site and surrounding area, and from the information submitted by the applicant that strict compliance with the restrictions would not result in the material and substantial impairment of access to the property as a whole.

Staff made this conclusion considering the following factors that the Code specifically states that the Board should consider in granting this appeal including but not limited to:

- (A) The extent to which access to the restricted alley between the hours of 10 p.m. and 7 a.m. is essential to the normal operation of the use or uses to which the special exception would apply

(B) The extent to which the property as a whole has reasonable access to other public streets, alleys, or access easements in addition to the restricted alley.

There appeared to be reasonable access to the proposed development on the site on the north, east and south without needing unlimited access to the alley access easement that the applicant seeks on the site's western boundary.

BOARD OF ADJUSTMENT ACTION: January 19, 2005

APPEARING IN FAVOR: Ed Simons, 500 So. Ervay, Suite 112B, Dallas, TX
APPEARING IN OPPOSITION: No one

MOTION #1: Brannon

I move that the Board of Adjustment in Appeal No. **BDA 045-130**, on application of Fairway Capital Partners, L.P., **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 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:

1. Full compliance with Article X: The Landscape Regulations is required with one exception:
 - The applicant is waived the required 10-foot wide landscape buffer strip and plant groups; and
2. The applicant shall provide an 8-foot high decorative ornamental masonry wall along the entire western border of the subject site.

SECONDED: Gillespie
AYES: 5—Cox, Brannon, Cope, Gillespie, Jaffe
NAYS: 0 – None
MOTION PASSED - 5 – 0 (unanimously)

MOTION #2: Brannon

I move that the Board of Adjustment in Appeal No. **BDA 045-130**, on application of Fairway Capital Partners, L.P., **deny** the special exception requested by this applicant **without prejudice** because the board has found that strict compliance with the restriction would not result in the material and substantial impairment of access to the property as a whole.

SECONDED: **Gillespie**
AYES: 5—Cox, Brannon, Cope, Gillespie, Jaffe
NAYS: 0 – None
MOTION PASSED - 5 – 0 (unanimously)

MOTION: **Jaffe**

I move to adjourn this meeting.

SECONDED: Cope

AYES: 5 – Cox, Brannon, Cope, Gillespie, Jaffe

NAYS: 0 - None

MOTION PASSED: 5– 0 (Unanimously)

4:40 P.M. - Board Meeting adjourned for January 19, 2005.

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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