

**BOARD OF ADJUSTMENT, PANEL C  
PUBLIC HEARING MINUTES  
CITY HALL, COUNCIL CHAMBERS  
MONDAY, FEBRUARY 13, 2006**

MEMBERS PRESENT AT BRIEFING: Frank Madrigal, Vice-Chair, Sharon Boyd, Panel Vice-Chair, Joel Maten, regular member, Robert Moore, regular member and Scott Griggs, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Frank Madrigal, Vice-Chair, Sharon Boyd, Panel Vice-Chair, Joel Maten, regular member, Robert Moore, regular member and Scott Griggs, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Claire Swann, Asst. City Attorney, Donnie Moore, Chief Planner, Jennifer Hiromoto, Senior Planner, Danny Sipes, Development Code Specialist, Chau Nguyen, Traffic Engineer, and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Claire Swann, Asst. City Attorney, Donnie Moore, Chief Planner, Jennifer Hiromoto, Senior Planner, Danny Sipes, Development Code Specialist, Chau Nguyen, Traffic Engineer, and Trena Law, Board Secretary

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**10:45 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **February 13, 2006** docket.

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**1:06 P.M.**

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

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel C December 12, 2005 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 13, 2006**

**MOTION:**        **Maten**

I move approval of the Monday, December 12, 2005 public hearing minutes.

**SECONDED:**    **Boyd**

**AYES:** 5– Madrigal, Boyd, Maten, Moore, Griggs

**NAYS:** 0–

**MOTION PASSED:** 5 – 0 (unanimously)

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**FILE NUMBER:**    BDA 056-019(J)

**BUILDING OFFICIAL’S REPORT:**

Application of Jesus Gonzalez for a variance to the front yard setback regulations at 732 West Clarendon Drive. This property is more fully described as Lot 3 in City Block B/3513 and is zoned R-7.5(A) which requires a front yard setback of 25 feet. The applicant proposes to maintain an addition (porch) and provide a 19 foot front yard setback, which would require a variance of 6 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:**            732 West Clarendon Drive

**APPLICANT:**        Jesus Gonzalez

**REQUEST:**

- A variance to the front yard setback regulations of 6’ is requested in conjunction with maintaining an addition on a single family dwelling.

**PUBLIC HEARING NOTE:**

The revised site plan submitted on February 13, 2006 at the public hearing indicated the front porch addition requires a 2' greater variance request than what was advertised.

**STANDARD FOR A VARIANCE:**

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

**GENERAL FACTS:**

- A 25'-front yard setback is required in the R-7.5(A) zoning district.
- The site is slightly sloped, rectangular in shape (58' x 130'), and approximately 7,540 square feet in area.
- A typical lot size in the R-7.5(A) zoning district is 7,500 square feet for single family structures.
- A site plan has been submitted that indicates the area of the addition, specifically a front porch, to be located in the 25'-front yard setback is approximately 82.8 square feet (6' x 13.8'). The area of the front porch is approximately 110.4 square feet (8' x 13.8').
- DCAD records indicate that the site is developed with a 1,092 square foot single family structure in average condition built in 1926.

**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: R-7.5(A) (Single Family Residential 7,500 square feet)  
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 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:**

- Sept. 19, 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.
- January 19, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- January 26, 2006 Senior Planner Dominguez contacted the applicant and relayed information on the Board of Adjustment public hearing.
- January 27, 2006: Senior Planner Hiromoto mailed a letter to the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the February 2<sup>nd</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 February public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- January 30, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Development Services Transportation Engineer, Senior Planner Hiromoto, and the Assistant City Attorney to the Board.

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

**STAFF ANALYSIS:**

- From the application materials and conversations with the applicant and Senior Planner Dominguez, the existing front porch was expanded by 3'.
- A portion of the single family structure, including the front porch, encroaches in to the front yard setback.
- The elevation submitted indicates the addition to the front porch is 3'.
- The plat map indicates the request site is approximately 7,540 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 82.8 square feet.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance of 6' 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 6' is necessary to permit development of the subject site (that is slightly sloped, rectangular in shape (58' x 130'), and approximately 7,540 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-7.5(A) zoning classification.
  - The front yard setback variance of 6' 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-7.5(A) zoning classification.
- Granting this variance would allow approximately 82.8 square feet of a single family dwelling unit to encroach 6' into the 25' front yard setback.

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 13, 2006**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

**\*\*Due to an administrative error, the board lacked jurisdiction to hear this case, therefore it was held over until March 13, 2006.**

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**FILE NUMBER: BDA 056-077**

**BUILDING OFFICIAL'S REPORT:**

Application of Uvaldo Salinas for a special exception to the side yard setback regulations at 737 West 9th Street. This property is more fully described as Lot 1 in City Block 153/3212 and is zoned R-5(A) which requires a side yard setback of 5 feet. The applicant proposes to maintain a carport and provide a 0 foot side yard setback which would require a special exception. Referred to the Board of Adjustment in accordance with Section 51A-4.402 (c) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions

**LOCATION:** 737 West 9th Street

**APPLICANT:** Uvaldo Salinas

**February 13, 2006 Public Hearing Notes:**

- The applicant acknowledged at the public hearing how granting the special exception to the side yard setback regulations would not provide any relief to any item that exists or would be located in a required visibility triangle on the subject site.

**REQUEST:**

- A special exception to the side yard setback regulations of 5' is requested in conjunction with modifying and maintaining an approximately 680 square foot carport (50.5' long and 13.5' wide)\* on a site developed with what appears to be a single family home.

\* The originally submitted site plan indicated that the existing carport is 730 square feet in area (or 54' long and 13.5' wide).

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

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

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

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

**GENERAL FACTS:**

- A 5'-side yard setback is required in the R-5(A) zoning district.
- Site plans have been submitted that denote a carport located on the site's western side property line, a side of the site that immediately abuts Vernon Street.
- The scaled site plan originally submitted in conjunction with the request denoted that the carport is 54' in length and 13.5' in width.
- On February 2, 2006, the Building Inspection Development Code Specialist forwarded a revised site plan to the Board Administrator (see Attachment A). The revised site plan indicates a shortened carport from that shown on the originally submitted site plan (50.5' long versus 54' long) that is located outside the 20' visibility triangle at the drive approach on the site from Vernon Street.
- A document has been submitted with the application that provides a scaled "front side," a "rear side," and a "left side" elevation of the existing carport. This document denotes that the carport ranges from 9' – 10.5' in height. Materials have not been noted on the elevations.
- A "wall section" document has been submitted with the application that denotes "4 x 4 treated studs 6' o.c." and "2 x 6 rafters 24" o.c. with #15 felts and compositions shingles" over "5/8" Plywood decking."
- A plat map has been submitted with the application that indicates that the subject site is 116' x 50' (or 5,800 square feet) in area.
- According to DCAD, the site is developed with a structure in "good" condition built in 1930 with 1,149 square feet of living area.
- Building Inspection states that no permit was issued by the City for the existing carport on this site.
- The Dallas Development Code provides for the Board of Adjustment to consider special exceptions for *carports* in the side yard with a specific basis for this type of appeal. (Note that the Dallas Development Code does not provide a definition of "carport" however Building Inspection interprets a "carport" to be a structure that would cover a vehicle and be open on at least one side. Building Inspection has recently been interpreting what would appear to a layperson to be a garage without a garage door as a "carport").
- The Dallas Development Code provides for the Board of Adjustment to consider *variances for structures* in the side yard setback with a different basis for appeal than that of *special exceptions for carports* in the side yard setback.
- The Board Administrator noted two other carports attached to the sides of homes in the 700 block of W. Ninth Street. The administrator was not able to determine from the field visit whether or not these two carports were located in required side yard setbacks.

## **BACKGROUND INFORMATION:**

### **Zoning:**

<u>Site:</u>	R-5 (A) (Single family residential 5,000 square feet)
<u>North:</u>	R-5 (A) (Single family residential 5,000 square feet)
<u>South:</u>	D (A) (Duplex)
<u>East:</u>	R-5 (A) (Single family residential 5,000 square feet)

West: R-5 (A) (Single family residential 5,000 square feet)

**Land Use:**

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

- Dec. 19, 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.
- Jan. 18, 2006:      The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- Jan. 19, 2006:      The Board Administrator left a message with someone at the number on the application, and wrote the applicant a letter that conveyed the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the February 3<sup>rd</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 February public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Jan. 30, 2006:      The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection



Development Code Specialist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

Feb. 2, 2006: The Building Inspection Development Code Specialist forwarded a revised site plan to the Board Administrator (see Attachment A). The revised plan indicated a carport that was shorter from what conveyed on the originally submitted site plan. The shortening was most likely done in order for the structure to comply with the 20' drive approach visibility triangle on Vernon Street.

### **STAFF ANALYSIS:**

- Granting this special exception would allow the existing carport to remain on the site's western side property line (or 5' into the required 5' side yard setback).
- The originally submitted site plan indicated that approximately 270 square feet (54' x 5') of the existing 729 square foot (54' x 13.5') carport was located in the 5' side yard setback.
- A revised site plan has been submitted that indicates that the carport will be modified where approximately 250 square feet (50.5' x 5') of the modified 680 square foot (50.5' x 13.5') carport will be located in the 5' side yard setback. This modification has been done so the carport can conform with the visibility obstruction regulations.
- The applicant has the burden of proof in establishing the following:
  - That the existing wood, 9'-10.5'-high, 50.5'-long, 13.5'-wide carport (which is located 5' into the 5' side yard setback) will not have a detrimental impact on surrounding properties. The applicant has the burden of proof in establishing the existing carport will not have a detrimental impact on surrounding properties by addressing:
    1. Whether the requested special exception is compatible with the character of the neighborhood.
    2. Whether the value of surrounding properties will be adversely affected.
    3. The suitability of the size and location of the carport.
    4. The materials to be used in construction of the carport.
- As of February 3, 2006, no letters have been submitted either in support or opposition to the request.
- Typically, staff has suggested that certain conditions be imposed if the Board determines that this type of request is worthy of being granted. The following conditions would restrict the location and size of the carport's location in the side yard setback, and would require the carport in the side yard setback to be retained in its current design, materials, and configuration:
  1. Compliance with the submitted revised site plan, elevation, and wall section is required.
  2. The carport structure must remain open at all times.
  3. All applicable building permits are obtained.
  4. No item (other than a motor vehicle) may be stored in the carport.

Although staff has also typically suggested that the Board impose a condition that there is no lot-to-lot drainage in conjunction with this type of proposal in order to require the applicant to mitigate any water drainage related issues that the carport may cause on the lot immediately adjacent, there is no immediate lot/development adjacent to this carport. In this case, the carport located in the site's western side yard setback is immediately adjacent to Vernon Street.

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 13, 2006**

APPEARING IN FAVOR: Uvaldo Salinas, 737 W. 9<sup>th</sup> Street, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Moore**

I move that the Board of Adjustment, in Appeal No. **BDA 056-077**, on application of Uvaldo Salinas, **grant** the request to maintain a carport in the side yard as a special exception to the minimum side yard requirements in the Dallas Development Code because our evaluation of the property and testimony shows that the carport will not have a detrimental impact on surrounding properties. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- The carport must remain open at all times;
- All applicable building permits must be obtained;
- Compliance with the submitted revised site plan, elevation and wall section is required;
- No item (other than a motor vehicle) may be stored in the carport;
- This special exception does not allow anything to be maintained in the required visibility triangles.

SECONDED: **Boyd**

AYES: 5– Madrigal, Boyd, Maten, Moore, Griggs

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

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FILE NUMBER: BDA 056-053

**BUILDING OFFICIAL'S REPORT:**

Application of Deshazo Tang & Associates for a special exception to the parking regulations at 8383 (aka 8333) Douglas Ave. This property is more fully described as a tract of land in City Block 2/5625 and is zoned PD 314 which requires parking to be provided with new construction. The applicant proposes to construct a building and provide 1,009 of the required 1,297 parking spaces which would require a special exception of 288 spaces. Referred to the Board of Adjustment in accordance with Section 51A-4.311 (a) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

**LOCATION:** 8383 (aka 8333) Douglas Ave

**APPLICANT:** Deshazo Tang & Associates

**REQUEST:**

- A special exception to the off-street parking regulations of 288 spaces (or 22% of the required off-street parking) is requested in conjunction with constructing a new 126,000 square foot office tower and 8,500 square foot restaurant. The applicant proposes to provide 1,009 (or 78%) of the total required 1,297 off-street parking spaces on a site currently developed with an approximately 278,000 square foot office tower.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
  - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
  - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
  - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
  - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
  - (E) The availability of public transit and the likelihood of its use.
  - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:

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

**GENERAL FACTS:**

- The Dallas Development Code requires the following parking requirements for the existing/proposed uses on the subject site:
  - 1 space is required for every 333 square feet of office use.
  - 1 space is required for every 100 square feet of restaurant use.
 The applicant is proposing to construct a new office with 126,000 square feet and a new restaurant with 8,500 square feet on a site developed with an existing office with 277,500 square feet. The applicant is proposing to provide 1,009 of the required 1,297 spaces.
- On December 2, 2005, the applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included a letter that provided a more detailed account as to why the request should be granted.
- The Board of Adjustment conducted a public hearing on this matter on December 12, 2005. The applicant submitted additional information (a document entitled "Executive Summary") as to why the request should be granted on the site (see Attachment B).
- On February 3, 2003, the applicant submitted information beyond what was submitted with the original application and what was submitted at the December 12<sup>th</sup> public hearing (see Attachment C). This information included two letters that were written by that applicant to two neighboring property owners who (according to these letters) are in support of the request.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD No. 314 (Planned Development District)  
North: PD No. 314 (Planned Development District)

South: PD No. 314 (Planned Development District)  
East: PD No. 314 (Planned Development District)  
West: PD No. 314 (Planned Development District)

**Land Use:**

The subject site is developed with an office tower. The areas to the north, east, south, and west are developed with office 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:**

October 28, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

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

Nov. 21, 2005: The Board Administrator contacted the applicant and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the November 23<sup>rd</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the December 2<sup>nd</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 December public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

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

public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

- Dec. 1, 2005 The Development Services Senior Engineer submitted an unmarked review comment sheet with the following comments:
- "Based on Table 3 of the revised parking analysis dated 11/30/2005, and the 10/11/2005 parking analysis submitted with the application, the exception of 288 parking spaces or 22.2% appears excessive."
- Dec. 2, 2005 The applicant submitted information beyond what was submitted with the original application (see Attachment A).
- Dec. 12, 2005 The Board of Adjustment held a public hearing on this matter where the applicant submitted information beyond what was submitted with the original application (see Attachment B). The board delayed action on this matter until their next scheduled public hearing to be held on February 13, 2006.
- Jan. 20, 2006: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
  - the January 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
  - the February 3<sup>rd</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 February public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Jan. 30, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

Feb. 2, 2006           The Development Services Senior Engineer emailed the Board Administrator and indicated that he has no additional comments to make on the appeal.

Feb. 3, 2006           The applicant submitted information beyond what was submitted with the original application (see Attachment C).

**STAFF ANALYSIS:**

- 78 percent of the required off-street parking spaces are proposed to be provided in conjunction with constructing a new 126,000 square foot office tower and 8,500 square foot restaurant on a site developed with an approximately 278,000 square foot office tower.
- Granting this request, subject to the condition that the special exception of 288 spaces automatically and immediately terminates if and when the office and restaurant uses on the site are changed or discontinued, would allow development of the office and restaurant on the site.
- The applicant has the burden of proof in establishing the following:
  - that the parking demand generated by the proposed office and restaurant uses does not warrant the number of off-street parking spaces required, and
  - the special exception of 288 spaces (or 22% of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- The Development Services Senior Engineer made the following comments on this request prior to the December 13<sup>th</sup> public hearing:
  - “Based on Table 3 of the revised parking analysis dated 11/30/2005, and the 10/11/2005 parking analysis submitted with the application, the exception of 288 parking spaces or 22.2% appears excessive.”
- The Development Services Senior Engineer emailed the Board Administrator on February 2<sup>nd</sup> indicating that he has no additional comments to make on the appeal.
- As of February 3, 2006, the only additional information that the applicant had submitted since the December 12<sup>th</sup> public hearing were copies of two letters they had written to neighbors who (according to these letters) are in support of the request.

**BOARD OF ADJUSTMENT ACTION: December 12, 2005**

**APPEARING IN FAVOR:**           John DeShazo, 12142 Elysian Ct, Dallas, TX  
Jeff Montgomery, 5854 Burgundy Rd., Dallas, TX

**APPEARING IN OPPOSITION:** Fran Powell, 15660 N Dallas Pkwy, Dallas, TX  
Steve Bronner, 9230 Club Glen, Dallas, TX

**MOTION#1: Griggs**

I move that the Board of Adjustment, in Appeal No. **BDA 056-053**, on application of Deshazo Tang & Associates Inc., **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development code by 288 parking spaces, because our evaluation of the property and the testimony shows that the parking demand generated by the proposed use on the site does don't 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 condition 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 office and restaurant use on the site is changed or discontinued.

**SECONDED: No one**

\*Motion failed for lack of a second.

**MOTION#2: Boyd**

I move that the Board of Adjustment, in Appeal No. **BDA 056-053**, hold this matter under advisement until **February 13, 2006**.

**SECONDED: Maten**

**AYES:** 4– Madrigal, Chortek, Boyd, Maten,

**NAYS:** 1– Griggs

**MOTION PASSED:** 4 – 1

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 13, 2006**

**APPEARING IN FAVOR:** John DeShazo, 12122 Elysian Ct., Dallas, TX  
Elliot Prieur, 5516 Greenbrier, Dallas, TX  
Owen McCrory, 9510 Rockbrook Dr., Dallas, TX

**APPEARING IN OPPOSITION:** No one

**MOTION: Griggs**

I move that the Board of Adjustment, in Appeal No. **BDA 056-053**, on application of Deshazo Tang & Associates Inc., **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development code by 288 parking spaces, because our evaluation of the property and the testimony shows that the parking demand generated by the proposed uses on the site does don't 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 condition 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 office and restaurant use on the site is changed or discontinued.



**SECONDED: Maten**

**AYES:** 4– Madrigal, Maten, Moore, Griggs

**NAYS:** 1– Boyd,

**MOTION PASSED:** 4 – 1

**2:39 P.M.: Break**

**2:46 P.M.: Resumed**

\*\*\*\*\*

**FILE NUMBER:** BDA 056-084

**BUILDING OFFICIAL’S REPORT:**

Application of Eric Cline represented by Jonathan Vinson, Jackson Walker L.L.P. for a special exception to the fence height regulations and a special exception to the visibility obstruction regulations at 6909 Lloyd Valley Lane. This property is more fully described as Lot 1 in City Block 7492 and is zoned R-16(A) which limits the height of a fence in the front yard to 4 feet and does not permit any structure in the required visibility corner clip. The applicant proposes to construct an 8 foot high fence in the required front yard and to construct and maintain items in required visibility triangles which would require a special exception of 4 feet to the fence regulations and a special exception to the visibility obstruction regulations. Referred to the Board of Adjustment in accordance with Section 3.102(d)(3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

**LOCATION:** 6909 Lloyd Valley Lane

**APPLICANT:** Eric Cline  
Represented by Jonathan Vinson, Jackson Walker L.L.P.

**February 13, 2006 Public Hearing Notes:**

- The applicant’s representative submitted a map indicating where the owner of the site had obtained support of the requests, photos of the site and surrounding area, and a revised site plan and elevation at the public hearing.

**REQUESTS:**

The following appeals have been made in this application on a site developed with a single family home:

1. A special exception to the fence height regulations of 4’ is requested to construct and maintain the following in the 35’ Hillcrest front yard setback:
  - a 6’ solid masonry wall;
  - 8’ stone columns; and
  - a 6’ wooden gate.
2. Special exceptions to the visibility obstruction regulations are requested to construct and maintain portions of the solid wall, columns, and gate as described above in two, 20’-visibility triangles at the drive approach to the site on Hillcrest Road.

(Note that the subject site has two front yard setbacks: one along Lloyd Valley Lane, the other along Hillcrest Road. No fence, column or gate is proposed to be located in the Lloyd Valley Lane front yard setback or in any visibility triangle along Lloyd Valley Lane).

**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.

**STANDARD 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.

**GENERAL FACTS (related to the fence height special exception):**

- 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.
- A scale site plan has been submitted with the application that denotes the following characteristics of the proposal:
  - the fence wall to be approximately 66' in length parallel to Hillcrest Road, and 24.5' in length perpendicular to Hillcrest Road;
  - the wall to be linear in design with one drive approach,
  - the wall to be located 1' from the site's property line (or about 8' from the Hillcrest Road curb line); and
  - the metal gate to be located approximately 1' from the site's property line (or about 8' from the projected Hillcrest Road curb line).
- A "schematic/conceptual fence elevation" was submitted with the application. This conceptual plan was to scale and denoted the following:
  - "8' stone columns (approx. 1.5' wide);
  - 6' solid masonry panels; and
  - a 6' metal gate (where indicated) (approx. 20' wide)."
- A revised "schematic/conceptual fence elevation" was submitted on February 3, 2006. This conceptual plan was to scale and denoted the following:
  - "8' stone columns (approx. 1.5' wide);
  - 6' solid masonry panels; and
  - a 6' *wooden* gate (where indicated) (approx. 20' wide)."
- The proposal would be located on the subject site where three single family homes would have direct/indirect frontage, none of which have fences located in their front yard setbacks.
- The Board Administrator conducted a field visit of the site and surrounding area along Hillcrest Road (approximately 500 feet north and south of the site) and noted the no other fences/walls located in what would appear to be a front yard setback.

- As of February 6th, no letters had been submitted to staff in support or opposition to the special exception.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachments A and B). This information included the following:
  - letters that provided additional details and points of information about the appeal;
  - an amended application that added an appeal for a special exception to the visibility obstruction regulations;
  - an amended fence/gate/column elevation that changed the material of the proposed gate from metal to wood; and
  - color photos of the site.

**GENERAL FACTS (related to the visibility obstruction special exception):**

- 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 requests to construct and maintain a solid masonry wall and columns and a wood gate in the site's two 20'-visibility triangles at the Hillcrest Road drive approach.
- According to calculations made by the Board Administrator, the site plan indicates that about 10' of solid 6' high masonry wall would be located in the southern drive approach visibility triangle perpendicular to Hillcrest Road, and about 13' of solid 6' high masonry wall would be located in the northern drive approach visibility triangle parallel to Hillcrest Road.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachments A and B). This information included the following:
  - letters that provided additional details and points of information about the appeal;
  - an amended application that added an appeal for a special exception to the visibility obstruction regulations;
  - an amended fence/gate/column elevation that changed the material of the proposed gate from metal to wood; and
  - color photos of the site

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-16(A) (Single family district 16,000 square feet)  
North: R-1ac (A) (Single family district 1 acre)  
South: R-16(A) (Single family district 16,000 square feet)  
East: R-16(A) (Single family district 16,000 square feet)  
West: R-1ac (A) (Single family district 1 acre)

### **Land Use:**

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

### **Zoning/BDA History:**

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

### **Timeline:**

- Dec. 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.
- Jan. 18, 2006:      The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- Jan. 19, 2006:      The Board Administrator left a message with the applicant's representative, and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the January 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
  - the February 3<sup>rd</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 February public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Jan. 27 & Feb. 3, 2006      The applicant's representative submitted information beyond what was submitted with the original application (see Attachments A and B).

- Jan. 30, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.
- Feb. 2, 2006 A review comment sheet was submitted by the Development Services Senior Engineer in conjunction with this request. The engineer marked his comment sheet "recommends that this be denied" and made the following additional comments: " Vehicle will be on the outside of northbound Hillcrest Road if the gate is slow to open or malfunctions this creating a traffic hazard for the traveling public."

**STAFF ANALYSIS (related to the fence height special exception):**

- A scaled site plan has been submitted that documents the location of the wall/column/gate proposal in the Hillcrest Road front yard setback relative to its proximity to the property line and pavement line. The site plan also clearly shows the length of the proposal relative to the entire lot (about 66' long parallel to Hillcrest Road and about 24' long perpendicular to the street).
- A revised scaled "schematic/conceptual fence elevation" has been submitted that documents the materials and height of the proposed masonry fence/wall (6'), stone columns (8'), and wooden gate (6').
- Three single family homes would have direct/indirect frontage, none of which have fences located in their front yard setbacks.
- As of February 3, 2006, 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, and gate that are proposed to exceed 4' in height) will not adversely affect neighboring property.
- Granting this special exception of 4' with conditions imposed that the applicant complies with the submitted site plan and revised "schematic/conceptual fence elevation" would provide some assurance to how the proposed fence/wall, columns, and gate are constructed and maintained on the site. Imposing the submitted site plan as a condition with the fence height special exception would place limitations as to where the fence/wall, columns, and gate over 4' can be located on the site. And granting a fence special exception of 4' would limit the fence/wall, columns, and gate to a height no higher than 8 feet. But if the Board were to impose the submitted revised "schematic/conceptual fence elevation" as a condition to the appeal, there is no assurance as to the specific heights that the fence/wall, columns and gate could reach (other than they could not exceed 8' in height) or as to the specific materials that the fence/wall, columns, and gate could be comprised of given that the submitted revised elevation is entitled to be "schematic/conceptual" in nature.

**STAFF ANALYSIS (related to the visibility obstruction special exceptions):**

- The Development Services Senior Engineer “recommends that this be denied” and made the following additional comments: “ Vehicle will be on the outside of northbound Hillcrest Road if the gate is slow to open or malfunctions this creating a traffic hazard for the traveling public.”
- The applicant has the burden of proof in establishing the following:
  - That granting the special exceptions to the visibility obstruction regulations (whereby, according to the submitted site plan and revised “schematic/conceptual fence elevation,” a solid 6’-high solid masonry wall that totals about 23’ in length would be located in the two Hillcrest Road drive approach visibility triangles) will not constitute a traffic hazard.
- If these requests are granted, subject to compliance with the submitted site plan and revised “schematic/conceptual fence elevation,” the proposed solid fence/wall and columns would be “excepted” into the 20’ visibility triangles at the two drive approaches into the site from Hillcrest Road.

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 13, 2006**

APPEARING IN FAVOR: Jonathan Vinson, 6342 Vickery Blvd., Dallas, TX  
Eric Cline, 6909 Lloyd Valley Lane, Dallas, TX

APPEARING IN OPPOSITION: No one

**MOTION#1: Griggs**

I move that the Board of Adjustment, in Appeal No. **BDA 056-084**, on application of Eric Cline, **grant** the request of this applicant to maintain and construct a 6-8 foot fence on the property as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and testimony shows that this special exception will not adversely affect neighboring property. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan and revised schematic/conceptual fence elevation is required.

**SECONDED: Boyd**

AYES: 5– Madrigal, Boyd, Maten, Moore, Griggs

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

**MOTION#2: Griggs**

I move that the Board of Adjustment, in Appeal No. **BDA 056-084**, on application of Eric Cline, **grant** the request of this applicant to maintain and construct portions of solid wall, columns, and gate in a visibility corner clip as a 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. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan and revised schematic/conceptual fence elevation is required.
- The portion of the fence facing Lloyd Valley Lane that is substantially perpendicular to Hillcrest Road satisfy the following requirements:
  - a. removal of all existing stone/masonry columns;
  - b. use of wrought iron fencing materials to include 6 inch by 6 inch wrought iron columns;
  - c. the wrought iron columns are no less than 3 feet apart;
  - d. use of not more than a footer/header and one central cross bar;
  - e. ground lighting traversing the entirety of the fence; and ground lighting must be sufficient to light the fence and any vehicle in the driveway at night.

**SECONDED: Boyd**

**AYES:** 4– Madrigal, Boyd, Maten, Griggs

**NAYS:** 1–Moore

**MOTION PASSED:** 4 – 1

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**FILE NUMBER:** BDA 056-059

**BUILDING OFFICIAL’S REPORT:**

Application of Merriman Association for a variance to the height regulations and a variance to the front and side yard setback regulations at 3210 Carlisle Street. This property is more fully described as Lots 1-9 in City Block 13/969 and is zoned PD-193 MF-2 which limits the height of a structure to 36 feet, requires a 15 foot front yard setback and a 10 foot side yard setback. The applicant proposes to construct a building and provide a height of 42 feet, a front yard setback of 0’, and a side yard setback of 0’, which would require a variance of 6 feet to the height regulations, a variance of 15 feet to the front yard setback regulations, and a variance of 10 feet to the side yard setback regulations. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

**LOCATION:** 3210 Carlisle Street

**APPLICANT:** Merriman Association

**REQUESTS:**

- A variance to the height regulations of 6’, front yard setback variances of 15’, and side yard variance of 10’ is requested in conjunction with constructing multiple-family residential buildings.

**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:**

- PD 193 MF-2 zoning limits the height of single-family and other structures to 36' in height.
- PD 193 MF-2 zoning requires a front yard setback of 15' and a side yard setback of 10'.
- The site is sloped, rectangular in shape (560' x 155'), and approximately 86,800 square feet in area.
- The request site has frontage on Bowen Street, Carlisle Street, and Hall Street. The yards adjacent to these streets are subject to the front yard setback regulations. The yard adjacent to the 15' alley is subject to the side yard setback regulations.
- The revised site plan submitted indicates in a table the specific buildings that are requesting to exceed 36' in height: Buildings A, B, C, D, and K.
- The revised site plan indicates the proposed structures that will encroach into the front and side yard setbacks. Those structures include portions of four residential buildings, the pool house, portions of the fence and gate, stairs, and retaining walls.
- Elevations submitted indicate the portion of the proposed building which would exceed 36' in height.
- DCAD records indicate that the site is developed with an apartment building in average condition that was built in 1966 and has 73,417 square feet of floor area. (The building has since been demolished as observed on the site visit.)

### **BACKGROUND INFORMATION:**

#### **Zoning:**

Site: PD 193 MF-2 subdistrict (Multiple-family residential)  
North: PD 193 O-2 subdistrict (Office) and PD 193 PDS 8 (Residential subdistrict with MF-3 multiple-family uses)  
South: PD 193 MF-2 subdistrict (Multiple-family residential)  
East: PD 193 MF-2 subdistrict (Multiple-family residential)



West: PD 193 MF-2 and O-2 subdistricts (Multiple-family residential and Office)

**Land Use:**

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

**Zoning/BDA History:**

1. BDA 045-274  
3210 Carlisle Street

On August 15, 2005, the Board of Adjustment granted a special exception to the landscape regulations is requested in conjunction with constructing 63 townhomes on a site developed with a multifamily residential use. The board imposed the following conditions for the special exception: (1) The tree planting zone will be expanded to an area between 2.5 feet and 18 feet along Carlisle and Bowen Street; (2) the tree planting zone will be expanded to an area between 2.5 feet and 30 feet along Hall Street; (3) the sidewalk will be allowed to be located at the curb when necessary to preserve existing trees; (4) if and when an existing tree is removed or damaged, the applicant will follow the spirit and intent of PD 193 which means that the tree density will be 1 every 25 feet; and (5) all landscaping as shown on submitted landscaping plan must be completed prior to the final building inspection of the last unit or within two years from the Board's action.

2. BDA 93-114  
3210 Carlisle Street

On June 22, 1993, the Board of Adjustment granted requests for special exceptions to the fence height and visibility obstruction regulations in conjunction with constructing a 6'-high fence in the front yard and in the visibility triangles. The board imposed the following conditions to the fence height special exception: that the "exit only" signs be placed on each side of the fence adjacent to the gate, and that the drive be used for an exit only. The board imposed the following conditions to the visibility obstruction regulations: that no landscaping exceeding a height of two feet above the street curb elevation be planted in the visibility triangle in front of or behind gate and fence.

**Timeline:**

- October 28, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Nov. 17, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- Nov. 21, 2005: Senior Planner Hiromoto 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 2<sup>nd</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 December public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Nov. 28, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the 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.
- December 1, 2005 The applicant submitted a revised site plan showing the exact location and height variances requested per building. (see Attachment A)
- December 2, 2005 The applicant submitted a letter explaining the request. (see Attachment B)

- Dec. 12, 2005 The applicant submitted a revised site plan and elevations (see Attachment C). The Board of Adjustment Panel C held this case under advisement.
- Dec. 13, 2005 Senior Planner Hiromoto contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
  - the February 3<sup>rd</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- January 10, 2006 The applicant amended his application to include the front and side yard setback variance requests.
- January 27, 2006 The applicant submitted a revised site plan indicating only the additional variance requests for front and side yard setbacks.
- January 30, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the 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.
- February 3, 2006 The applicant submitted a cover letter (see Attachment D) and revised site plan (see Attachment E) that incorporates the height and setback variances on a single site plan, dated February 1, 2006.

**STAFF ANALYSIS:**

- The plat map indicates the request site is approximately 86,800 square feet.
- The applicant has indicated in Attachment A that the site is sloped by 13' to 23' across the site and is of irregular shape due to the shallow depth of 155' to 165'.
- The applicant also indicated in Attachment A that the alley is not paved and is not in use by the adjacent condominiums to the east.
- PD 193 allows for certain portions of buildings, including mechanical rooms, to exceed the maximum height by 12' when the subdistrict limits the height to 36'.
- Mechanical rooms are shown on the elevations and are not the portions of the buildings seeking a height variance. The elevations B and D show that mechanical rooms would exceed the 48' on some dwelling units if the variance is granted.

- The revised site plan submitted on February 3, 2006 shows the location of the five buildings seeking a height variance and provides a table showing the specific height variance requested per building:
  1. Buildings A is requesting a 2' height variance;
  2. Buildings B, C, D, and K are requesting a 3' height variance;
  3. Buildings E, F, G, H, J and L are not requesting a height variance.
- The revised site plan submitted on February 3, 2006 shows the location of retaining walls, steps, and portions of Buildings E, G, J, L, and the pool house that are seeking a variance to the respected front or side yard setback. Those structures encroaching into the setback are indicated by hatching.
- The revised site plan also indicates a new security fence and gate to be located within the front yard setback on Hall Street.
- The applicant has the burden of proof in establishing the following:
  - That granting the height variance of 6', front yard setback variances of 15', and side yard variance of 10' 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 height variance of 6', front yard setback variances of 15', and side yard variance of 10' are necessary to permit development of the subject site (that is sloped, rectangular in shape (560' x 155'), and approximately 86,800 square feet in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD 193 MF-2 zoning classification.
  - The height variance of 6', front yard setback variances of 15', and side yard 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 PD 193 MF-2 zoning classification.

If the Board were to grant the height variance of 6 feet (or 14% higher than what is permitted in PD No. 193 MF-2), front yard setback variances of 15', and side yard variance of 10', subject to the submitted site plan and elevations, multiple-family structures would be allowed to exceed 36 feet in height and be constructed to a maximum height of 42' notwithstanding the additional 12' height for mechanical rooms and provide a 0' setback for retaining walls, stairs, gate, and portions of five buildings.

**BOARD OF ADJUSTMENT ACTION: December 12, 2005**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 056-059**, hold this matter under advisement until **February 13, 2006**.

**SECONDED: Chortek**

**AYES:** 5– Madrigal, Chortek, Boyd, Maten, Griggs

**NAYS:** 0–

**MOTION PASSED:** 5 – 0 (unanimously)

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 13, 2006**

**APPEARING IN FAVOR:** James Schnurr, 5400 Renaissance Tower, Dallas, TX

**APPEARING IN OPPOSITION:** Frank M. Stich, 4224 N. Hall, Dallas, TX 75219

**MOTION#1: Boyd**

I move that the Board of Adjustment, in Appeal No. **BDA 056-059**, on application of Merriman Associates/Architects Inc., **grant** the 3 foot variance to the height regulations, because our evaluation of the property and testimony shows that the physical character of this property is such that 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 revised site plan and elevations is required including removing the security gates at Bowen and Hall.

**SECONDED: Maten**

**AYES:** 5– Madrigal, Boyd, Maten, Moore, Griggs

**NAYS:** 0–

**MOTION PASSED:** 5 – 0 (unanimously)

**MOTION#2: Boyd**

I move that the Board of Adjustment, in Appeal No. **BDA 056-059**, on application of Merriman Associates/Architects Inc., **grant** the 15 foot 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 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 revised site plan and elevations is required
- The Bowen Street retaining wall will be moved back to the property by 5 feet.

**SECONDED: Maten**

**AYES:** 5– Madrigal, Boyd, Maten, Moore, Griggs

**NAYS:** 1–

**MOTION PASSED:** 5 – 0 (unanimously)

**MOTION#3: Boyd**

I move that the Board of Adjustment, in Appeal No. **BDA 056-059**, on application of Merriman Associates/Architects Inc., **grant** the 10 foot variance to the side yard setback regulations, because our evaluation of the property and testimony shows that the physical character of this property is such that 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 revised site plan and elevations is required.

**SECONDED: Maten**

**AYES:** 4– Madrigal, Boyd, Maten, Moore,

**NAYS:** 1– Griggs

**MOTION PASSED:** 4 – 1

\*\*\*\*\*

**MOTION: Boyd**

I move to adjourn this meeting.

**SECONDED: Moore**

**AYES:** 5 – Madrigal, Boyd, Maten, Moore, Griggs

**NAYS:** 0 - None

**MOTION PASSED:** 5 – 0 (Unanimously)

**3:28 P. M. - Board Meeting adjourned for February 13, 2006.**

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CHAIRPERSON

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BOARD ADMINISTRATOR

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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.