

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
CITY HALL, COUNCIL CHAMBERS
MONDAY, APRIL 17, 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, Mike Sultan, Chief Arborist, Chris Bowers, Asst. City Attorney 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

10:02 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **April 17, 2006** docket.

11:49 A.M. Executive Sessions Begins

12:08 P.M. Executive Sessions Ends

1:05 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 C March 13, 2006 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: APRIL 17, 2006

MOTION: Boyd

I move approval of the Monday, March 13, 2006 public hearing minutes.

SECONDED: Maten

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

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

An executive session will be conducted by an assistant city attorney to brief the board (pursuant to Texas Open Meetings Act Section 551.071) on a matter regarding - City of Dallas, Texas, Board of Adjustment of the City of Dallas, and Raj Sharma, in his capacity as the Building Official of the City of Dallas, Petitioners v. Doug Vanesko and Grace Vanesko Respondents, Cause No. 04-0263.

***This was not an action item.**

MISCELLANEOUS ITEM NO. 3

FILE NUMBER: Unassigned

REQUEST: To waive the filing fee to be submitted in conjunction with potential Board of Adjustment appeal

LOCATION: 3255 Kinmore Street

APPLICANT: Leetha Buttler and Willie McDowell

STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:

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

GENERAL FACTS:

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waiver/s reimbursements:
 - The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.
 - The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board’s miscellaneous docket for predetermination.
 - If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.
 - In making this determination, the board may require the production of financial documents.
- The applicant submitted a letter to staff requesting a waiver of the filing fee (of an unspecified amount) to be submitted in conjunction with a possible Board of Adjustment issue (see Attachment A).

Timeline:

- | | |
|-----------------|--|
| March 14, 2005 | The Board of Adjustment Panel C waived the filing fee to be submitted in conjunction with a pending/possible appeal on the subject site (3255 Kinmore Street). |
| August 15, 2005 | The Board of Adjustment Panel C granted a request for a special exception of 2’ to the side yard regulations to maintain a carport on the subject site (BDA045-255). The board imposed the following conditions: the carport must remain open at all times; there must be no lot-to-lot drainage in conjunction with the proposal; all applicable building permits must be obtained; compliance with the submitted site plan is required; and no item (other than a motor vehicle) may be stored in the carport. |
| August 22, 2005 | The Board Administrator wrote the applicant (Willie McDowell) a letter that conveyed the action of the board and the conditions that they imposed in conjunction with the request. The letter advised the applicant to “Contact Building Inspection at 320 East Jefferson, Room 105 to file an application for a building permit or certificate of occupancy within 180 days from the date of the favorable action of the board.” |
| March 1, 2006 | The applicant phoned the Board Administrator to inquire about how to go about requesting another waiver of the filing fee that he needed in conjunction with submitting another special exception |

request for the same carport that he obtained a special exception from the Board of Adjustment Panel C in the summer of 2005. The applicant stated that he had been informed by the City that since he had failed to make application for a building permit for the carport within 180 days from August 15, 2005, that he would need to start the process again to remedy the existing carport in the side yard setback. The applicant chose to initiate the process by seeking a waiver of the associated filing fee.

March 8, 2006 The applicant submitted a letter requesting a waiver of the filing fee (amount unspecified) for a Board of Adjustment application that may be requested at the address referenced above.

March 22, 2006: The Board Administrator wrote the applicant a letter that conveyed the following information:

- the public hearing date and panel that will consider the request;
- 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 noon, April 7th 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 April public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

BOARD OF ADJUSTMENT ACTION: APRIL 17, 2006

APPEARING IN FAVOR: Willie McDowell, 3255 Kinmore St., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Maten**

I move that the Board of Adjustment **waive** the filing fee to be submitted in conjunction with a potential board of adjustment appeal.

SECONDED: **Boyd**

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

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 056-110(J)

BUILDING OFFICIAL’S REPORT:

Application of William M. Kent for a special exception to the fence height regulations at 5231 Mission Avenue. This property is more fully described as Lot 16 in City Block B/1997 and is zoned MF-2(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 7 foot fence in the required front yard setback which would require a special exception of 3 feet. Referred to the Board of Adjustment in accordance with Section 51A-4.602 (a) (6) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 5231 Mission Avenue

APPLICANT: William M. Kent

REQUEST:

- A special exception to the fence height regulations of 3’ is requested in conjunction with constructing a fence in the front yard.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS (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.
- The site is zoned MF-2(A) (Multifamily) and the Dallas Development Code states that in a multifamily districts, a fence located in the required front yard may be built to a maximum height of 6 feet above grade if all conditions in the following subparagraph are met:
 - No lot in the blockface may be zoned as a single family or duplex district.
 - No gates for vehicular traffic may be located less than 20 feet from the back of the street curb.
 - No fence panel having less than 50 percent open surface may be located less than five feet from the front lot line.
- The proposed fence will have 0% percent open surface and is proposed to be located on the front lot line. The proposed height is 7’. Therefore, the proposed fence requires a special exception to the fence height to be of the height and location indicated on the revised site plan.

March 16, 2006: The Board Administrator contacted the applicant via letter 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 April 7th 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 April public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

April 4, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Department Transportation Engineer, Senior Planner Hiromoto, Development Services Department Code Specialist, Chief Arborist, and the Assistant City Attorney to the Board.

No review comment sheets were received.

March 29, 2006 The applicant provided additional information on the request. (Attachment A)

April 7, 2006 The applicant provided a revised site plan showing a revised height and clarified the building materials proposed. (Attachment B)

STAFF ANALYSIS:

- A scaled site plan has been submitted that documents the location of the proposed fence relative to their proximity to the property line and pavement line. The site plan also clearly shows the length of the proposed wall relative to the lot.
- The fence is proposed to be located on the property line adjacent to Henderson Avenue. The fence would connect to the duplex structure and provide a fence perpendicular to the property line to create two fenced areas.
- The revised site plan shows the fence on the property line to be approximately 36' in length.

- The building materials (concrete block or brick) of the proposed fence are noted on the revised site plan.
- The applicant provided information on the elevation of the proposed fence in Attachment A and provided conceptual illustrations of the style of the fence.
- The revised site plan indicates that the concrete block or brick fence would have a façade finish that would match the exterior of the duplex structure.
- The applicant has the burden of proof to establish the special exception will not adversely affect neighboring property.
- Granting the fence height special exception of 3' with conditions imposed that the applicant complies with the revised site plan would assure that the proposed fence is constructed as shown on this document.

BOARD OF ADJUSTMENT ACTION: APRIL 17, 2006

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Griggs**

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

- Compliance with the submitted revised site plan is required.

SECONDED: **Moore**

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

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 056-121

BUILDING OFFICIAL'S REPORT:

Application of Cari Kelemen for a variance to the parking regulations at 6132 Saratoga Circle. This property is more fully described as Lot 10 in City Block 2/2954 and is zoned R-7.5(A) which requires a 20 foot setback for an enclosed parking space. The applicant proposes to construct an addition and provide a 9 foot setback for an enclosed parking space which would require a variance of 11 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: 6132 Saratoga Circle

APPLICANT: Cari Kelemen

REQUEST:

- A variance to the off-street parking regulations of 11' is requested in conjunction with constructing and maintaining an attached garage on a single family home whereby enclosed parking spaces in the garage would be less than 20' from the Saratoga Circle right-of-way line.

STANDARD FOR A VARIANCE:

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

GENERAL FACTS:

- The Dallas Development Code requires that a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley.

The applicant has made a request to vary this provision of the Code whereby the enclosed parking spaces in the new garage would be as close as 9' from the right-of-way line, hence a request for a variance of up to 11'. (Note that the submitted site plan indicates that enclosed parking spaces in the new garage will be located as close as 9' and as far as 14' from the right-of-way line or at a range of approximately 21' – 26' from the Saratoga Circle projected pavement line).

- The subject site has a 20' platted building line along its north side upon which the proposed garage would encroach. The applicant is aware that in addition to obtaining a variance to the off-street parking regulations that a replat from City Plan Commission will be required to construct the garage in the proposed location.
- The applicant could build the garage structure without garage doors (or enclosed parking spaces) if the board were to deny the variance request, assuming the applicant is successful with the replat application before the City Plan Commission. The need for the parking variance is merely to allow the parking spaces in the structure to be enclosed with a garage door.
- The subject site is flat, irregular in shape (approximately 120' on the north, 140' on the south, 98' on the east, and 64' on the west), and approximately 10,000 square feet in area. The subject site has a mature red oak tree that the applicant contends limits the placement of the expanded garage to be in compliance with the parking regulations. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- DCAD records indicate that the site is developed with a single family home in "very good" condition built in 1958 with 1,468 square feet of living space, and a 440 square foot attached garage.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - an account that provided additional details about the request;
 - a map that indicates other corner homes in the area with a 20' side yard setback;
 - Information on corner lot homes with a 20' side yard setback taken from DCAD and personal knowledge of the applicant;
 - a floor plan of the existing house with the proposed addition;
 - a site plan of the site
 - a neighborhood survey signed by 21 neighbors/owners in support of the request (and map indicating the location of these neighbors/owners in relation to the subject site).

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is developed as single family home. The areas to the north, east, south and the 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:

- March 1, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report. (Photos will be available for review at the briefing/public hearing).
- March 15, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- March 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 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 March 24th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - the April 7th 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 April public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- April 4, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April 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; the Chief Arborist, and the Assistant City Attorney to the Board.

- April 4, 2006 The Development Services Senior Engineer submitted a review comment sheet marked "Has no objections." The engineer made the following additional comments:
- "Site plan shows 21' minimum from garage door to street curb.
 - No sidewalk on the south side of Saratoga Circle, in front of garage."
- April 7, 2006 The applicant submitted information beyond what was submitted with the original application (see Attachment A).

STAFF ANALYSIS:

- The subject site is flat, irregular in shape (approximately 120' on the north, 140' on the south, 98' on the east, and 64' on the west), and approximately 10,000 square feet in area. The subject site has a mature red oak tree that the applicant contends limits the placement of the expanded garage to be in compliance with the parking regulations. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- According to information submitted by the applicant, the house with the proposed addition would be approximately 2,200 square feet in area, a size that would be commensurate with other homes on the street which average at 2,240 square feet.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the parking regulations of 11' to enclose parking spaces in a new garage structure will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance to the parking regulations of 11' requested to enclose parking spaces in a new garage structure is necessary to permit development of the subject site (that is flat, irregular in shape, and approximately 10,000 square feet in area with a mature red oak tree, and developed with single family home with 1,468 square feet and a 440 attached garage) 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 variance to the parking regulations of 11' requested to enclose parking spaces in a new garage structure would 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 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.
- Typically, when the Board has found that this type of variance request is warranted, they have imposed the following conditions:
 - Compliance with the submitted site plan is required.

- An automatic garage door must be installed and maintained in working order at all times.
- At no time may the area in front of the garage be utilized for parking of vehicles.
- All applicable permits must be obtained.

These conditions are imposed to assure that the variance will not be contrary to public interest.

- Granting the request will allow the applicant to enclose parking spaces with a garage door which otherwise could be constructed as an open garage (or carport) with an unenclosed parking space assuming the City Plan Commission approves a subsequent replat request to alter the 20' building line on the north side of the site.
- The Development Services Senior Engineer has indicated that he "Has no objections" to this request. The engineer made the following additional comments:
 - "Site plan shows 21' minimum from garage door to street curb.
 - No sidewalk on the south side of Saratoga Circle, in front of garage."
- A regular-size vehicle (defined as having a length of 17' 10") parked or stopped in front of the garage door should not significantly impact traffic flow on the Saratoga Circle since the site plan denotes that the enclosed parking spaces appear to be located approximately 21' – 26' from the Saratoga Circle projected pavement line

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Griggs**

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

- Compliance with the submitted site plan is required.
- An automatic garage door must be installed and maintained in working order at all times.
- At no time may the area in front of the garage be utilized for parking of vehicles
- All applicable permits must be obtained.

SECONDED: **Moore**

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

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 056-112(J)

BUILDING OFFICIAL'S REPORT:

Application of Scott Briggs for a variance to the front yard setback regulations at 5502 Vickery Blvd. This property is more fully described as Lot 1 in City Block 10/1928 and is zoned R-7.5(A) which requires a front yard setback of 25 feet. The applicant proposes to construct a single family dwelling and provide a 10 foot front yard setback which would require a variance of 15 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: 5502 Vickery Blvd.

APPLICANT: Scott Briggs

REQUEST:

- A variance to the front yard setback regulations of 15' is requested in conjunction with constructing a single family dwelling.

STANDARD FOR A VARIANCE:

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

GENERAL FACTS:

- The site is flat, rectangular in shape (55' x 170'), and approximately 9,350 square feet in area.
- The R-7.5(A) zoning requires a minimum lot area of 7,500 square foot for a single family structure.
- A 25'-front yard setback is required in the R-7.5(A) zoning district.
- The request site has a front yard adjacent to both Vickery Boulevard and McMillan Avenue.

- The adjacent property to the south has frontage on McMillan Avenue.
- The site plan indicates that the single family dwelling will provide a 10' front yard setback adjacent to McMillan Avenue.
- A site plan has been submitted that indicates the area of the single family dwelling proposed to be located in the 15'-front yard setback is approximately 825 square feet (15' x 115').
- The footprint of the single family dwelling is indicated as approximately 2,220 square feet (40' x 55').
- Elevations submitted show the portion of the single family dwelling that would encroach into the McMillan Avenue front yard.
- DCAD records indicate that the site is developed with a 2,200 square foot single family dwelling built in 1923 in very poor condition

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 residential use. The areas to the north, south, east and west are developed with single family uses.

Zoning/BDA History:

1. Z045-289 An authorized hearing to consider a Conservation District for the area generally bounded by Goodwin, Greenville, and Richard, also known as Vickery Place, is tentatively scheduled for City Plan Commission on May 4, 2006.

Timeline:

- February 23, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- March 15, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- March 16, 2006: The Board Administrator contacted the applicant via letter 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 April 7th 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 April public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

April 4, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Department Transportation Engineer, Senior Planner Hiromoto, Development Services Department Code Specialist, Chief Arborist, and the Assistant City Attorney to the Board.

No review comment sheets were received.

STAFF ANALYSIS:

- The plat map indicates the request site is approximately 9,350 square feet.
- The footprint of the single family dwelling is indicated as approximately 2,220 square feet.
- Elevations were submitted with the application showing the area of the proposed structure that encroaches into the McMillan Avenue front yard.
- 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 encroachment into the front yard setback would be limited in this case to an area of approximately 825 square feet.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance of 15' 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 15' is necessary to permit development of the subject site (that is flat, (55' x 170'), and approximately 9,350 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 15' 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 825 square feet of single family dwelling to encroach into the 15' front yard setback.

BOARD OF ADJUSTMENT ACTION: APRIL 17, 2006

APPEARING IN FAVOR: Scott Briggs, 4024 Morman Lane, Addison, TX
David Baxter, 3316 Cornell, Dallas, TX

APPEARING IN OPPOSITION: Carlotta Camacho, 5503 Vickery, Dallas, TX

MOTION: **Moore**

I move that the Board of Adjustment, in Appeal No. **BDA 056-112**, on application of Scott Briggs, **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 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: **Boyd**

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

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 056-116

BUILDING OFFICIAL’S REPORT:

Application of Woodmont, represented by James Schnurr, Winstead Sechrest Minick P.C., for a variance to the front yard setback regulations, a variance to the urban form front yard setback regulations, and a variance to the tower spacing side yard setback regulations at 12379 Merit Drive. This property is more fully described as a tract of land in City Block 7732 and is zoned MU-3 which requires a front yard setback of 15 feet for portions of structures 45 feet in height or less, an additional urban form front yard setback of 20 feet for portions of structures above 45 feet in height, and a 30 foot tower spacing side yard setback. The applicant proposes to construct a multifamily structure

and provide a 0 foot front yard setback which would require a variance of 15 feet to the front yard setback regulations for the portion of the structure 45 feet in height or less, and a variance to 35' to the urban form front yard setback regulations for the portion of the structure above 45 feet in height; and provide a side yard setback of 3 feet which would require a variance to 27 feet to the tower spacing 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: 12379 Merit Drive

APPLICANT: Woodmont
Represented by James Schnurr, Winstead Sechrest Minick P.C.

April 17, 2006 Public Hearing Notes:

- The applicant's representative submitted additional documentation prior to the board's briefing (see Attachment C), and requested that the board delay the variance requests until May 2006 at the public hearing .

REQUESTS:

- The following appeals have been made in this application to construct and maintain a condominium structure on a site that is undeveloped:
 1. variances to the front yard setback regulations of up to 15' for the portions of the proposed structure 45' in height or less;
 2. variances to the urban form front yard setback regulations of up to 35' for portions of the proposed structure above 45'; and
 3. variances to the tower spacing side yard setback regulations of up to 27 feet for portions of the proposed structure above 45'.

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 15' front yard setback is required in the MU-3 (A) zoning district for portions of a structure 45' in height or less.
The submitted site plan denotes a structure that is providing up to a 0' front yard setback along Merit Drive (where the structure is up to 15' into the 15' front yard setback), and an approximately 2' front yard setback along Churchill Way (where the structure is up to 13' into the 15' front yard setback).
- An urban form front yard setback is required in the MU-3 (A) zoning district where an additional 20' front yard setback is required for portions of a structure above 45' in height. (In this case, a structure over 45' in height is required to be setback 35' from the site's front property line on Merit Drive and Churchill Way).
The applicant's representative submitted a document entitled "schematic design package" on April 7, 2006. This unscaled document is of a 4-story structure. Although no scaled elevation has been submitted for the board's consideration, the applicant's representative has stated that the intent is to construct a structure straight up from the building footprint shown on the submitted site plan, and, according to an April 7th letter, a structure that will not exceed 80' in height. Assuming this, the structure over 45' in height would be at its closest point 35' into the 35' urban form front yard setback along Merit Drive since the building footprint is (at places) located as close as on the Merit Drive front property line, and 33' into the 35' urban form front yard setback along Churchill Way since the building footprint is (at places) located as close as 2' from the Churchill Way front property line.
- A tower spacing side yard setback is required in the MU-3 (A) zoning district where an additional side yard setback of one foot for each two feet in height over 45 feet is required for that portion of a structure above 45' in height for a total setback of 30 feet.
The applicant's representative submitted a document entitled "schematic design package" on April 7, 2006. This unscaled document is of a 4-story structure. Although no scaled elevation has been submitted for the board's consideration, the applicant's representative has stated that the intent is to construct a structure straight up from the building footprint shown on the submitted site plan, and, according to an April 7th letter, a structure that will not exceed 80' in height. Assuming this, the submitted site plan denotes a structure that is providing a 3' side yard setback for the portion of the structure over 45' on the west side of the site where the structure is (at its closest point) 27' into the site's 30' tower spacing side yard setback on the west; and a structure that is providing a 12' side yard setback for the portion of the structure over 45' on the south side of site where the structure is (at its closest point) 18' into the site's 30' tower spacing side yard setback on the south.
- According to calculations made by the Board Administrator from the submitted revised site plan, the structure has a building footprint of approximately 480' x 190' (or 91,200 square feet).
- The site has two, 15' front yard setbacks and as well as two, 35' front yard urban form setbacks: a front yard setback and urban form front yard setback on Merit Drive, and another front yard setback and urban form front yard setback on Churchill

Way. The front yard setbacks on this MU-3 zoned site are typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural. The site has two, 0 foot side yard setbacks for the portion of a structure 45' in height or less, and two side yard setbacks of 30' for the portion of the structure above 45' in height.

- The applicant's representative has described the subject site has having an "irregular slope" (a 25' difference in elevation across the approximately 480' width of the property), being irregular in shape, and, according to the application, 2.984 acres in area.
- The site is zoned MU-3(A) which allows a structure to reach 270' in height.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachments A and B). This information included the following:
 - a revised site plan;
 - a letter that provides additional details about the requests; and
 - a drawing entitled "schematic design package."

BACKGROUND INFORMATION:

Zoning:

Site: MU-3 (A) (Mixed Use)
North: MU-3 (A) (Mixed Use)
South: MU-3 (A) (Mixed Use)
East: MU-3 (A) (Mixed Use)
West: MU-3 (A) (Mixed Use)

Land Use:

The subject site is undeveloped. The areas to the north and east are developed with multifamily uses; and the areas to the 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:

Feb. 24, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

March 15, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

March 16, 2006: 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 April 10th 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 April public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

April 3 & 7, 2006 The applicant's representative submitted information beyond what was submitted with the original application (see Attachments A and B).

April 4, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April 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; the Chief Arborist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- A total of 6 variances have been made in conjunction with this appeal: 2 front yard setback variances (a variance for the portion of the structure under 45' in height, a variance for the portion of the structure over 45' in height) along Merit Drive on the east; 2 front yard setback variances along Churchill Way on the north; a tower spacing side yard variance on the west; a tower spacing side yard variance on the south.
- Four of the 6 variances are related to the portion of the proposed structure that, according to a letter, is to exceed 45' in height but will not exceed 80' in height. (No elevation other than an unscaled schematic design has been submitted).
- According to the applicant's representative, the approximately 480' wide subject site has a 25' grade change from east to west. The subject site is slightly irregular in shape, and according to the application, 2.984 acres in area.

- The site is zoned MU-3 where structures can reach 270' in height.
- The site has two, 15' front yard setbacks and as well as two, 35' front yard urban form setbacks: a front yard setback and urban form front yard setback on Merit Drive, and another front yard setback and urban form front yard setback on Churchill Way. The front yard setbacks on this MU-3 zoned lot are typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural.
- According to calculations made by the Board Administrator from the submitted revised site plan, the structure has a building footprint of approximately 480' x 190' (or 91,200 square feet).
- It appears from calculations taken from the submitted revised site plan by the Board Administrator that about 450 square feet of the 91,200 square foot building footprint is located in the Merit Drive front yard setback and about 420 square feet of the 91,200 square foot building footprint is located in the Churchill Way front yard setback.
- It can not be quantified from the information submitted (no documentation of how high the building will be other a letter describing the building not to exceed 80' in height) how much of the structure would be varied into the two urban form front yard setbacks or into the two side yard tower spacing setbacks.
- The applicant has the burden of proof in establishing the following related to each of the 6 variance requests:
 - That granting the variances to the front and side yard setback regulations to construct and maintain a structure in the site's two front yard setbacks, two urban form front yard setbacks, and two tower spacing side yard setback regulations 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 variances to the front yard setback regulations, urban form front yard setback regulations, and tower spacing side yard setback regulations to construct and maintain a structure is necessary to permit development of the subject site (an undeveloped site that is about 3 acres in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same MU-3 zoning classification.
 - The variances to the front yard setback regulations, urban form front yard setback regulations, and tower spacing side yard setback regulations to construct and maintain a structure would 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 this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same MU-3 zoning classification.
- If the Board were to grant to the 6 variances to the front yard setback regulations, urban form front yard setback regulations, and tower spacing side yard setback regulations, and impose the submitted revised site plan as a condition to the requests, there would be assurances as to how much of the proposed structure would be located in the front yard setbacks (the amount of structure 45' or below in the 15' front yard setback). However there would be no assurance as to how much of the structure could encroach above 45' in height in the two urban form front yard

setbacks and in the two tower spacing side yard setbacks since no building elevation has been submitted. Although the applicant's representative has submitted a letter stating that the building will not exceed 80' in height, the MU-3 zoning district allows up to 270' in height.

BOARD OF ADJUSTMENT ACTION: APRIL 17, 2006

APPEARING IN FAVOR: Jimmy Schnurr, 5400 Renaissance Tower, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Boyd

I move that the Board of Adjustment, in Appeal No. **BDA 056-116**, hold this matter under advisement until **May 15, 2006** to bring back adjustments and clarifications.

SECONDED: Maten

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

NAYS: 0-

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 056-117(J)

BUILDING OFFICIAL'S REPORT:

Application of David Bailey for a variance to the parking regulations at 5516 Gaston Avenue. This property is more fully described as Lot 16 in City Block 2/1864 and is zoned PD 99 which prohibits parking, circular driveways, and vehicular paving between the property line and front facade. The applicant proposes to maintain parking and vehicular paving between the property line and front facade, which would require a variance to the parking regulations. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

LOCATION: 5516 Gaston Avenue

APPLICANT: David Bailey

REQUEST:

- A variance to the off-street parking regulations is requested in conjunction with maintaining surface parking and vehicular paving in a front yard.

STANDARD FOR A VARIANCE:

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area ratios, height, minimum sidewalks, off-street parking or off-street loading, or

landscape regulations that will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done. The variance must be necessary to permit development of a specific parcel of land which differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same zoning classification. A variance may not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land in districts with the same zoning classification.

GENERAL FACTS:

- The request site is zoned PD 99, which prohibits surface parking and vehicular paving between the front façade and the property line.
- A site plan has been submitted that shows the surface parking and vehicular paving between the front façade and the property line, the primary drive, and the single family residential structure.
- A permit was issued on February 3, 2006 for the surface parking and vehicular paving between the front façade and the property line; it was determined after a building inspection that the surface parking and vehicular paving was not allowed in PD 99 zoning.
- DCAD records indicated that the site is developed with a 2,856 square foot single family dwelling in average condition built in 1920.
- The site is flat, rectangular in shape (70' x 180'), and approximately 12,600 square feet in area.

BACKGROUND INFORMATION:

Zoning:

Site: PD 99 (Planned Development District)
North: PD 99 (Planned Development District)
South: PD 397 (Planned Development District)
East: PD 99 (Planned Development District)
West: PD 99 (Planned Development District)

Land Use:

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

Zoning/BDA History:

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

Timeline:

February 27, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

March 15, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

March 16, 2006: The Board Administrator contacted the applicant via letter 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 April 7th 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 April public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

April 4, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Department Transportation Engineer, Senior Planner Hiromoto, Development Services Department Code Specialist, Chief Arborist, and the Assistant City Attorney to the Board.

Transportation Engineer Nguyen has no objection to the variance request.

April 7, 2006: The applicant submitted additional information (see Attachment A).

STAFF ANALYSIS:

- The applicant submitted additional information to further explain the application (Attachment A).
- Transportation Engineer Nguyen has no objection to the variance request as indicated on his comment sheet dated April 4, 2006.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the off-street parking regulations 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 off-street parking variance is necessary to permit development of the subject site (that is flat, rectangular in shape (70' x 180'), and approximately 12,600 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 99 zoning classification.
 - The off-street parking variance would 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 this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD 99 zoning classification.
- If the Board were to grant the request, imposing a condition whereby the applicant must comply with the submitted site plan, the surface parking and vehicular paving between the front façade and the right of way could be maintained.

BOARD OF ADJUSTMENT ACTION: APRIL 17, 2006

APPEARING IN FAVOR: David Bailey, 5516 Gaston Ave., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Boyd**

I move that the Board of Adjustment, in Appeal No. **BDA 056-117**, on application of David Bailey, **grant** the variance to the off-street parking regulations of PD 99, 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. 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 is required.

SECONDED: **Moore**

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

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 056-125(J)

BUILDING OFFICIAL'S REPORT:

Application of SDC Ewing Court, L.P. for a special exception to the parking regulations at 1201 S. Ewing Avenue. This property is more fully described as a tract of land in City Block 1/3747 and is zoned MF-2(A) which requires parking to be provided for new construction. The applicant proposes to construct a multi-family dwelling and provide 131 of the 168 required parking spaces which would require a special exception of 37 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: 1201 S. Ewing Avenue

APPLICANT: SDC Ewing Court, L.P.

REQUEST:

- A special exception to the off-street parking regulations of 37 spaces (or 22%) requested in conjunction with constructing apartments.

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 request site is currently undeveloped.
- The applicant will provide 131 parking spaces of the 168 spaces required with the construction of 80 unit apartments.
- The site plan shows the proposed development would construct eight buildings for 80 units, some covered parking spaces, and amenities (basketball, pool, and playground).
- The Dallas Development Code states the parking requirements for the following uses:
 - 1 space per 500 square feet of multifamily dwelling units;
 - Not less than 1 or more than 2 ½ spaces are required for each dwelling unit in a multifamily structure under 36 feet in height.
- The applicant has provided a table of parking analysis showing the square footage of each type of unit and the count of such units.
- The applicant is proposing to provide 131 (or 78%) of the total 168 required off-street parking spaces. The maximum allowed by special exception is 25%.
- There are 6 DART bus stops and 2 DART bus routes within 500 feet of the request site (see Attachment A).
- DCAD indicates that the request site is undeveloped.

BACKGROUND INFORMATION:

Zoning:

Request Site: MF-2 (A) (Multifamily Residential)
North: CS and CR (Commercial Service and Community Retail)
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 request site is undeveloped. The area to the north is developed with office and personal service uses; the area to the east, and south are developed with single family residential; the area to the west is undeveloped.

Zoning/BDA History:

1. BDA 056-095 On March 13, 2006 the request site was granted a height variance due to Residential Proximity Slope of 2'9" and was denied a Special Exception to the off-street parking regulations of 36 spaces.

Timeline:

- March 20, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- March 21, 2006: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C due to the case history.
- March 22, 2006: 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 April 7th 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 April public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

April 4, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Department Transportation Engineer, Senior Planner Hiromoto, Development Services Department Code Specialist, Chief Arborist, and the Assistant City Attorney to the Board.

A review comment sheet was submitted by the Development Services Transportation Engineer in conjunction with this application dated April 4, 2006. The engineer commented he has no objection.

April 5, 2006 The applicant submitted additional information about the request (Attachment B).

STAFF ANALYSIS (PARKING SPECIAL EXCEPTION):

- The Development Services Transportation Engineer provided comments on April 4, 2006 stating he has no objection to the request due to additional information provided to him on March 21, 2006.
- Ewing Avenue is indicated in the Thoroughfare Plan as an undivided Community Collector with 60 feet of right of way.
- Marsalis Avenue, located west of the request site, is indicated in the Thoroughfare Plan as divided Major Arterial with 90-100 feet of right of way.
- The applicant submitted a parking analysis table on the site plan that indicates the number of units at different floor areas to demonstrate the parking calculations.
- Granting this request, subject to the condition that the special exception automatically and immediately terminates if and when the multifamily use on the site is changed or discontinued, would allow the construction of 80 units of multifamily residential.
- The applicant has the burden of proof in establishing the following as related to the request for a special exception of 37 parking spaces:
 - The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - The parking demand and trip generation characteristics of all uses for which the special exception is requested.
 - Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
 - The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.

- The availability of public transit and the likelihood of its use.
- The feasibility of parking mitigation measures and the likelihood of their effectiveness.

BOARD OF ADJUSTMENT ACTION: APRIL 17, 2006

APPEARING IN FAVOR: Joseph Agumagu, Dallas, TX
Jay Oji, 3030 LBJ Freeway, Dallas TX

APPEARING IN OPPOSITION: Robert Swift, 1226 S. Idaho, Dallas, TX
Margaret Swift Sypent, 705 W. Wheatland, Dallas
Otis Buford, 1209 S. Marsalis, Dallas, TX

MOTION: Maten

I move that the Board of Adjustment, in Appeal No. **BDA 056-125**, on application of SDC Ewing Court, L.P., **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development code by **37** 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 multi-family use on the site is changed or discontinued.

SECONDED: Boyd
AYES: 5– Madrigal, Boyd, Maten, Moore, Griggs
NAYS: 0–
MOTION PASSED: 5 – 0 (unanimously)

MOTION: Boyd

I move to adjourn this meeting.

SECONDED: Maten
AYES: 5 – Madrigal, Boyd, Maten, Moore, Griggs
NAYS: 0 - None
MOTION PASSED: 5 – 0 (Unanimously)

2:27 P. M. - Board Meeting adjourned for **April 17, 2006.**

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.