

ZONING BOARD OF ADJUSTMENT, PANEL C  
MONDAY, OCTOBER 17, 2011  
AGENDA

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BRIEFING	5ES	11:00 A.M.
LUNCH		
PUBLIC HEARING	COUNCIL CHAMBERS, 1500 MARILLA STREET	1:00 P.M.

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**David Cossum, Assistant Director**  
**Steve Long, Board Administrator**

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**MISCELLANEOUS ITEMS**

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	Approval of the <b>Monday, September 19, 2011</b> Board of Adjustment Public Hearing Minutes	M1
	Consideration and approval of Panel C's 2012 Public Hearing Schedule	M2
<b>BDA 090-011</b>	3363 Park Lane <b>REQUEST:</b> Of Michael R. Coker Company to waive the two year limitation on a request for a special exception to the off-street parking regulations of 6 parking spaces that was granted with an imposed condition by Board of Adjustment Panel C on December 14, 2009	M3

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**UNCONSTESTED CASES**

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<b>BDA 101-088</b>	4345 Park Lane <b>REQUEST:</b> Application of Tahir Rana, represented by Ignacio Vasquez, for a special exception to the fence height regulations	1
<b>BDA 101-094</b>	5706 Monticello Avenue <b>REQUEST:</b> Application of Lanny E. Perkins for a handicapped special exception to the side yard setback regulations	2

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**REGULAR CASES**

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<b>BDA 101-064</b>	3403 McKinney Avenue <b>REQUEST:</b> Application of Robert Baldwin for a variance to the front yard setback regulations and a special exception to the visual obstruction regulations	3
<b>BDA 101-090</b>	3324 McKinney Avenue <b>REQUEST:</b> Application of Robert Reeves for variances to the front yard setback regulations	4
<b>BDA 101-097</b>	4020 Platinum Way (AKA 4120 Platinum Way) <b>REQUEST:</b> Application of George Moussa for special exceptions to the landscape and tree preservation regulations	5

## EXECUTIVE SESSION NOTICE

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

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

**(Rev. 6-24-02)**

**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel C September 19, 2011 public hearing minutes.

**MISCELLANEOUS ITEM NO. 2**

Consideration and approval of Panel C's 2012 Public Hearing Schedule.

**MISCELLANEOUS ITEM NO. 3**

**FILE NUMBER:** BDA 090-011

**REQUEST:** To waive the two year limitation on a request for a special exception to the off-street parking regulations of 6 parking spaces that was granted with an imposed condition by Board of Adjustment Panel C on December 14, 2009.

**LOCATION:** 3363 Park Lane

**APPLICANT:** Michael R. Coker Company

**STANDARD FOR WAIVING THE TWO YEAR TIME LIMITATION ON A FINAL DECISION REACHED BY THE BOARD:**

The Dallas Development Code states that the board may waive the two year time limitation on a final decision reached by the board if there are changed circumstances regarding the property sufficient to warrant a new hearing.

**GENERAL FACTS:**

- On December 14, 2009, the Board of Adjustment Panel C granted a request for a special exception to the off-street parking regulations of 6 spaces on the subject site (BDA 090-011), and imposed the following condition: The special exception shall automatically and immediately terminate if and when the church use is changed or discontinued as a condition to the request. (The case report stated that the request was made in conjunction with constructing and maintaining an approximately 12,000 square foot church where the applicant proposed to provide 54 of the required 60 off-street parking spaces).
- On October 3, 2011, the applicant submitted a letter to the Board Administrator requesting him to schedule for the board's consideration, a request to waive the two year time limit in place in conjunction with BDA 090-011 (see Attachment A). This letter provided an explanation as to why the owner was making the request (the applicant now seeks to add a child-care facility on the site which is a change to the church use and would cause the termination of the special exception).
- The Dallas Development Code states the following with regard to board action:
  - Except as provided below, after a final decision is reached by the board, no further request on the same or related issues may be considered for that property for two years from the date of the final decision.
  - If the board renders a final decision of denial without prejudice, the two year limitation is waived.
  - The applicant may apply for a waiver of the two year limitation in the following manner:

- The applicant shall submit his request in writing to the director. The director shall inform the applicant of the date on which the board will consider the request and shall advise the applicant of his right to appear before the board.
- The board may waive the two year time limitation if there are changed circumstances regarding the property sufficient to warrant a new hearing. A simple majority vote by the board is required to grant the waiver. If a rehearing is granted, the applicant shall follow the process outlined in the code.
- On October 4, 2011, the Board Administrator emailed the applicant the following information:
  - the public hearing date and panel that will consider the miscellaneous request (October 17, 2011 – Panel C);
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - an attachment that provided the public hearing date and panel that will consider the application; the October 7<sup>th</sup> to submit additional evidence to be incorporated into the Board’s docket materials; and
  - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

**FILE NUMBER:** BDA 101-088

**BUILDING OFFICIAL'S REPORT:**

Application of Tahir Rana, represented by Ignacio Vasquez, for a special exception to the fence height regulations at 4345 Park Lane. This property is more fully described as Lot 2A in City Block D/5547 and is zoned R-10(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain a 7 foot high fence in a required front yard setback, which will require a special exception of 3 feet.

**LOCATION:** 4345 Park Lane

**APPLICANT:** Tahir Rana  
Represented by Ignacio Vasquez

**REQUEST:**

- A special exception to the fence height regulations of 3' is requested in conjunction with constructing and maintaining a 6' high open wrought iron picket fence with 6' high "Austin stone or similar as approved by owner" veneer columns and 7' high open iron gates flanked by approximately 6.5' high, approximately 8' long "Austin stone or similar as approved by owner" entry wing walls to be located in the 30' front yard setback on a site developed with a single family home.

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to the fence height regulations since the basis for this type of appeal is *when in the opinion of the board*, the special exception will not adversely affect neighboring property.

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

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

**GENERAL FACTS:**



- The Dallas Development Code states that a person shall not erect or maintain a fence in a required yard more than nine feet above grade, and additionally states that in all residential districts except multifamily districts, a fence may not exceed four feet above grade when located in the required front yard. The applicant had originally submitted a site plan/partial elevation document indicating a proposal in the required front yard setback that reached a maximum height of 6' 4". However on September 28, 2011, the applicant submitted a revised site plan/partial elevation document indicating a proposal that reached 7' in height (see Attachment A).
- The following additional information was gleaned from the submitted site plan:
  - The proposed 6' high open iron picket fence is approximately 160 feet in length parallel to the street, and approximately 27' in length perpendicular to the street on the east and west sides of the site in the front yard setback.
  - The proposed fence/gates are shown to be located approximately 3' the front property line or about 23' from the pavement line.
- One single family home "fronts" to the proposal on the subject site. This home does not have a fence in its front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area (an area about 500 feet east and west of the subject site) and noted no other fences above 4' high which appeared to be located in a front yard setback.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-10(A) (Single family district 10,000 square feet)  
North: R-10(A) (Single family district 10,000 square feet)  
South: R-10(A) (Single family district 10,000 square feet)  
East: R-16(A) (Single family district 16,000 square feet)  
West: R-10(A) (Single family district 10,000 square feet)

**Land Use:**

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

**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:**

July 15, 2011: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

September 21, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

September 21, 2011: The Board Administrator emailed the applicant’s representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the September 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the October 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

September 28, 2011: The applicant’s representative submitted a revised site plan/partial elevation to staff (see Attachment A).

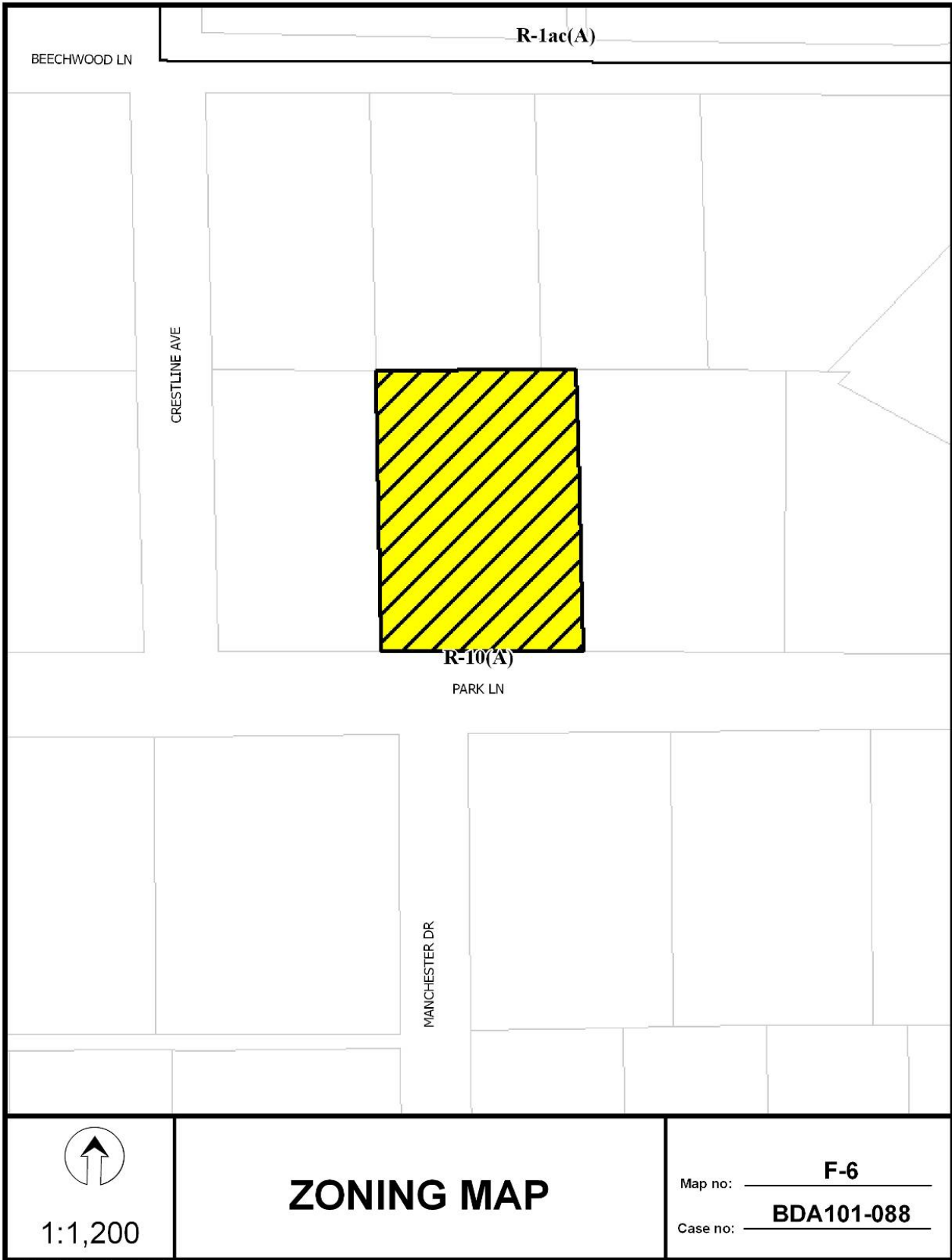
October 4, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Assistant Director, the Sustainable Development and Construction Department Engineering Assistant Director, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

October 6, 2011: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Has no objections.”

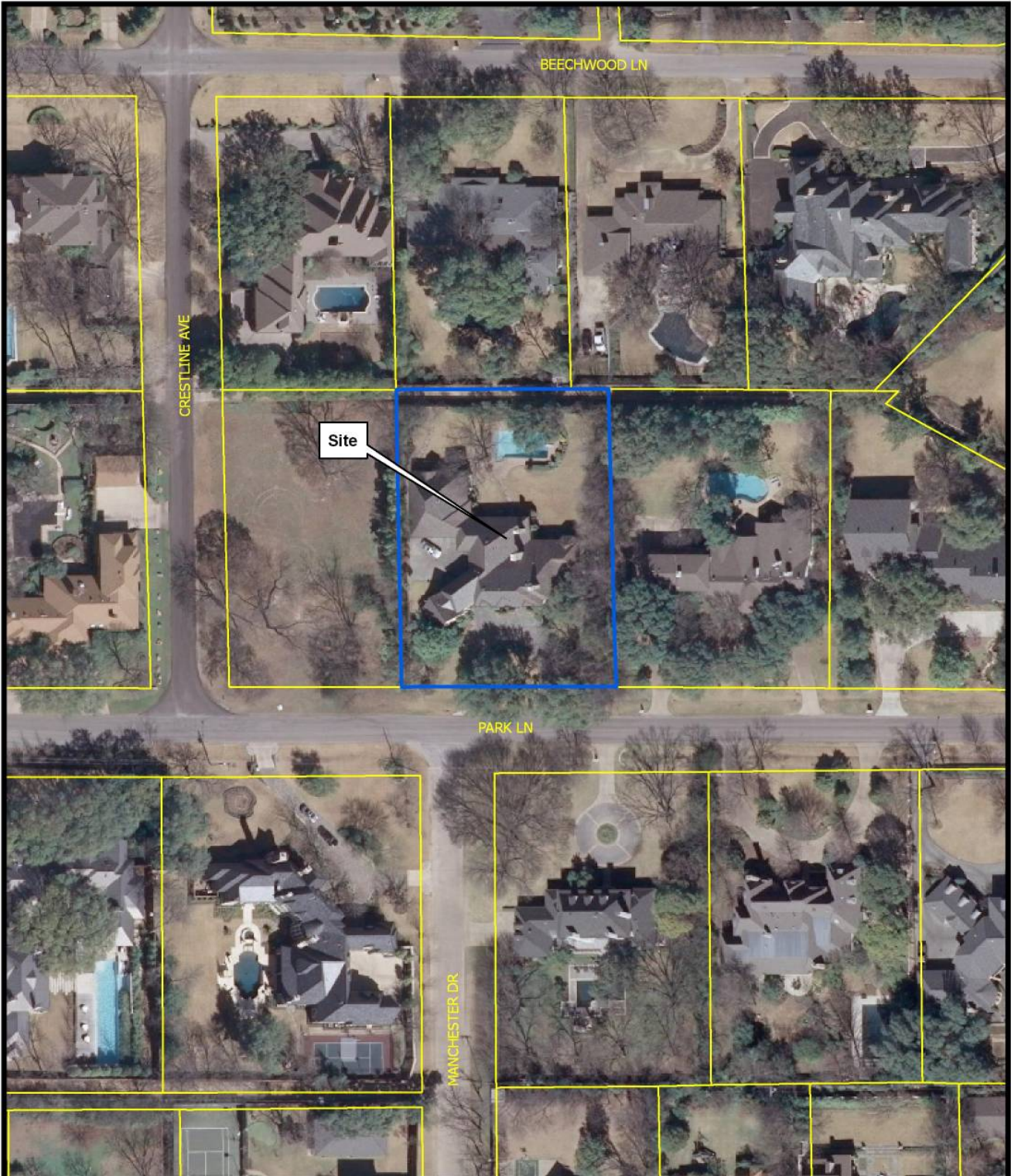
**STAFF ANALYSIS:**

- This request focuses on constructing and maintaining primarily a 6’ high open wrought iron picket fence with 6’ high “Austin stone or similar as approved by owner” veneer columns and 7’ high open iron gates to be located in the front yard setback on a site developed with a single family home. (The proposal also includes approximately 6.5’ high, approximately 8’ long “Austin stone or similar as approved by owner” entry wing walls.

- The revised submitted site plan/partial elevation documents the location, height, and materials of the proposal over four feet in height in the required front yard. The site plan shows the proposal to be approximately 160' in length parallel to the street and approximately 27' in length perpendicular to the street on the east and west sides of the site in the front yard setback. The site plan additionally shows that the fence/gates are located approximately 3' from the front property line or about 23' from the pavement line. The partial elevation denotes a 6' high open wrought iron picket fence with 6' high "Austin stone or similar as approved by owner" veneer columns and 7' high open iron gates flanked by approximately 6.5' high, approximately 8' long "Austin stone or similar as approved by owner" entry wing walls.
- One single family home "fronts" to the proposal on the subject site. This home does not have a fence in its front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area (an area about 500 feet east and west of the subject site) and noted no other fences above 4' high which appeared to be located in a front yard setback.
- As of October 10, 2011, no letters had been submitted in support or opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 3' will not adversely affect neighboring property.
- Granting this special exception of 3' with a condition imposed that the applicant complies with the submitted revised site plan/partial elevation would require that the proposal exceeding 4' in height in the required front yard would be constructed and maintained in the location and of the heights and materials as shown on this document.



DATE: September 29, 2011



1:1,200

# AERIAL MAP

Map no:           F-6          

Case no:           BDA101-088          

DATE: September 29, 2011

**General Notes**

These plans are intended to provide the basic information for the construction of the fence and gates. The contractor is responsible for obtaining all necessary permits and for verifying the accuracy of all field measurements. Any discrepancy found in the field must be reported to the designer before any construction begins. All work must be done in accordance with the applicable codes, ordinances and regulations of the City of Dallas, County and local jurisdictions. The contractor shall be responsible for obtaining all necessary permits and for verifying the accuracy of all field measurements. Any discrepancy found in the field must be reported to the designer before any construction begins. All work must be done in accordance with the applicable codes, ordinances and regulations of the City of Dallas, County and local jurisdictions. The contractor shall be responsible for obtaining all necessary permits and for verifying the accuracy of all field measurements. Any discrepancy found in the field must be reported to the designer before any construction begins. All work must be done in accordance with the applicable codes, ordinances and regulations of the City of Dallas, County and local jurisdictions.

DATE	DESCRIPTION

4316 PARK LANE  
 WYWOOD ESTATES NO. 2  
 DALLAS, TEXAS

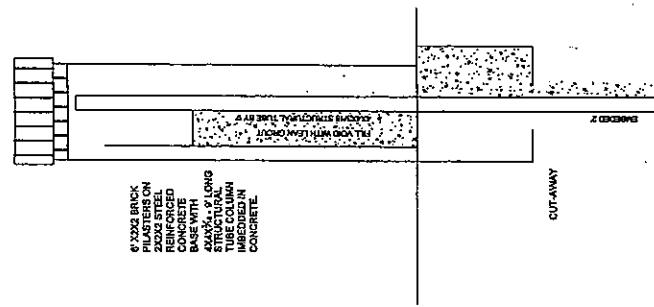
**SITE PLAN**  
**FENCE AND GATES**  
**DETAILS**

DATE: 1/1  
 DRAWN BY: [Signature]  
 CHECKED BY: [Signature]

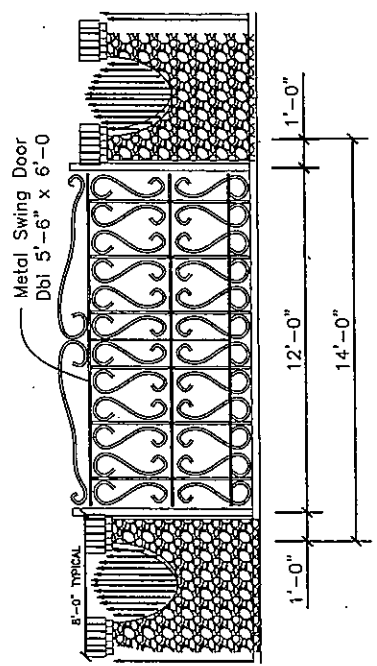
BDA  
 101-  
 088

*Attach A*

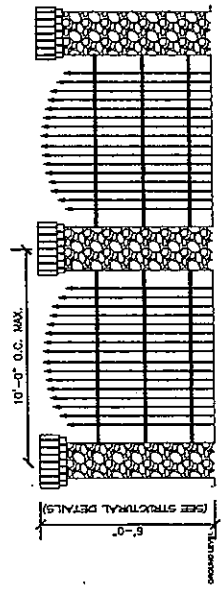
*W. J. [Signature]*  
 01/16/07



**STRUCTURAL DETAILS**  
 SCALE: 1" = 1'-0"

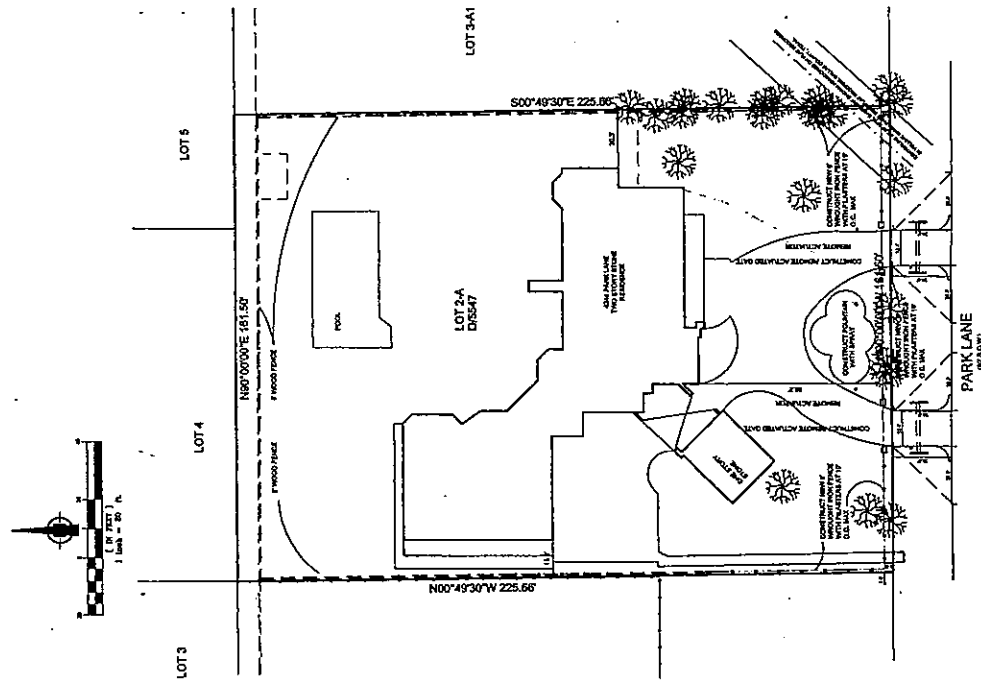


**GATES DETAIL**  
 SCALE: 1/2" = 1'-0"



**TYPICAL DETAIL - FENCE PANELS AND PILASTERS**  
 SCALE: 1/2" = 1'-0"

**NOTES:**  
 FENCE PANELS SHALL BE WROUGHT IRON WITH 1/4\"/>







City of Dallas

C

APPLICATION/APEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 101-088

Data Relative to Subject Property:

Date: 7-15-11

Location address: 4345 Park Ln DALLAS TX 75220 Zoning District: R-10(A)

Lot No.: 2-A Block No.: D/5547 Acreage: 0.8366 Census Tract: 74.00

Street Frontage (in Feet): 1) 161' 2) \_\_\_\_\_ 3) \_\_\_\_\_ 4) \_\_\_\_\_ 5) \_\_\_\_\_

NE 2A

To the Honorable Board of Adjustment :

Owner of Property/or Principal: TAHIR RANA and Aisha Rana

Applicant: TAHIR RANA Telephone: 946-268-9016

Mailing Address: 4345 Park Ln DALLAS TX 75220 Zip Code: 75220

Represented by: IGNACIO VASQUEZ Telephone: 817-235-1429

Mailing Address: 906 WINDVILLE CLUBWAY TX Zip Code: 76033

Affirm that a request has been made for a Variance, or Special Exception  of 3' fence height in a required front yard and visibility triangle obstruction at driveways

①

Application is now made to the Honorable Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described request for the following reason:

This 2 foot fence will not adversely affect neighboring property because there is no property to the right and to the left there is foliage dividing the two properties. This will not affect the neighbors security.

Note to Applicant: If the relief requested in this application is granted by the Board of Adjustment, said permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

Respectfully submitted: TAHIR RANA Applicant's name printed [Signature] Applicant's signature

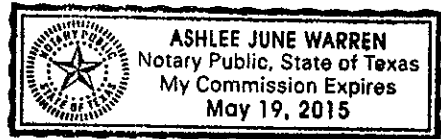
Affidavit

Before me the undersigned on this day personally appeared Ashlee Warren who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/or authorized representative of the subject property.

[Signature]  
Affiant (Applicant's signature)

Subscribed and sworn to before me this 23 day of June, 2011

Ashlee Warren  
Notary Public in and for Dallas County, Texas



MEMORANDUM OF  
ACTION TAKEN BY THE  
BOARD OF ADJUSTMENT

Date of Hearing \_\_\_\_\_

Appeal was--Granted OR Denied

Remarks \_\_\_\_\_

Chairman

**Building Official's Report**

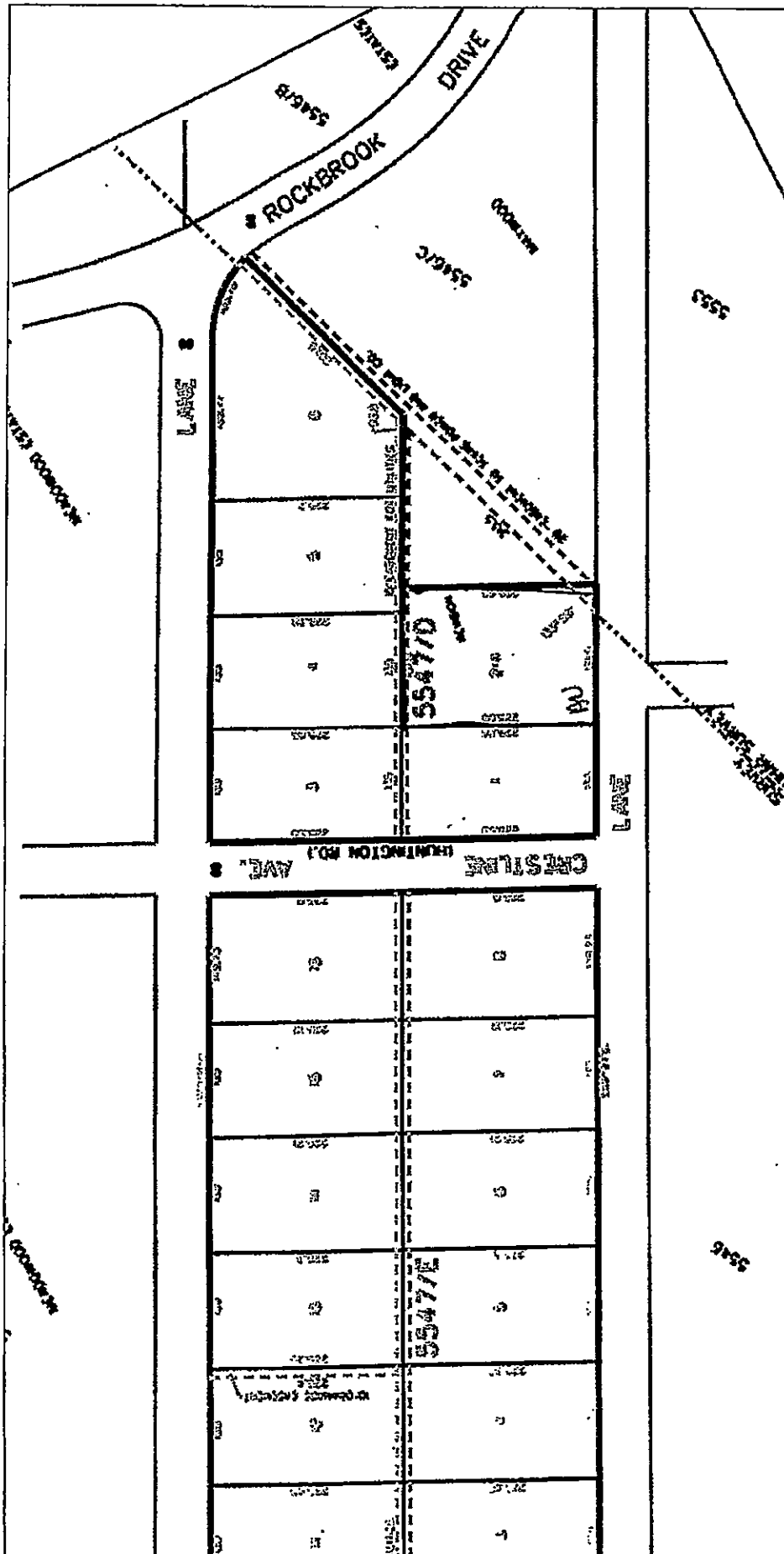
I hereby certify that Tahir Rana  
represented by Ignacio Vasquez  
did submit a request for a special exception to the fence height regulations  
at 4345 Park Lane

BDA101-088. Application of Tahir Rana represented by Ignacio Vasquez for a special exception to the fence height regulations at 4345 Park Lane. This property is more fully described as lot 2A in city block D/5547 and is zoned R-10(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 7 foot high fence in a required front yard setback, which will require a 3 foot special exception to the fence regulation.

Sincerely,

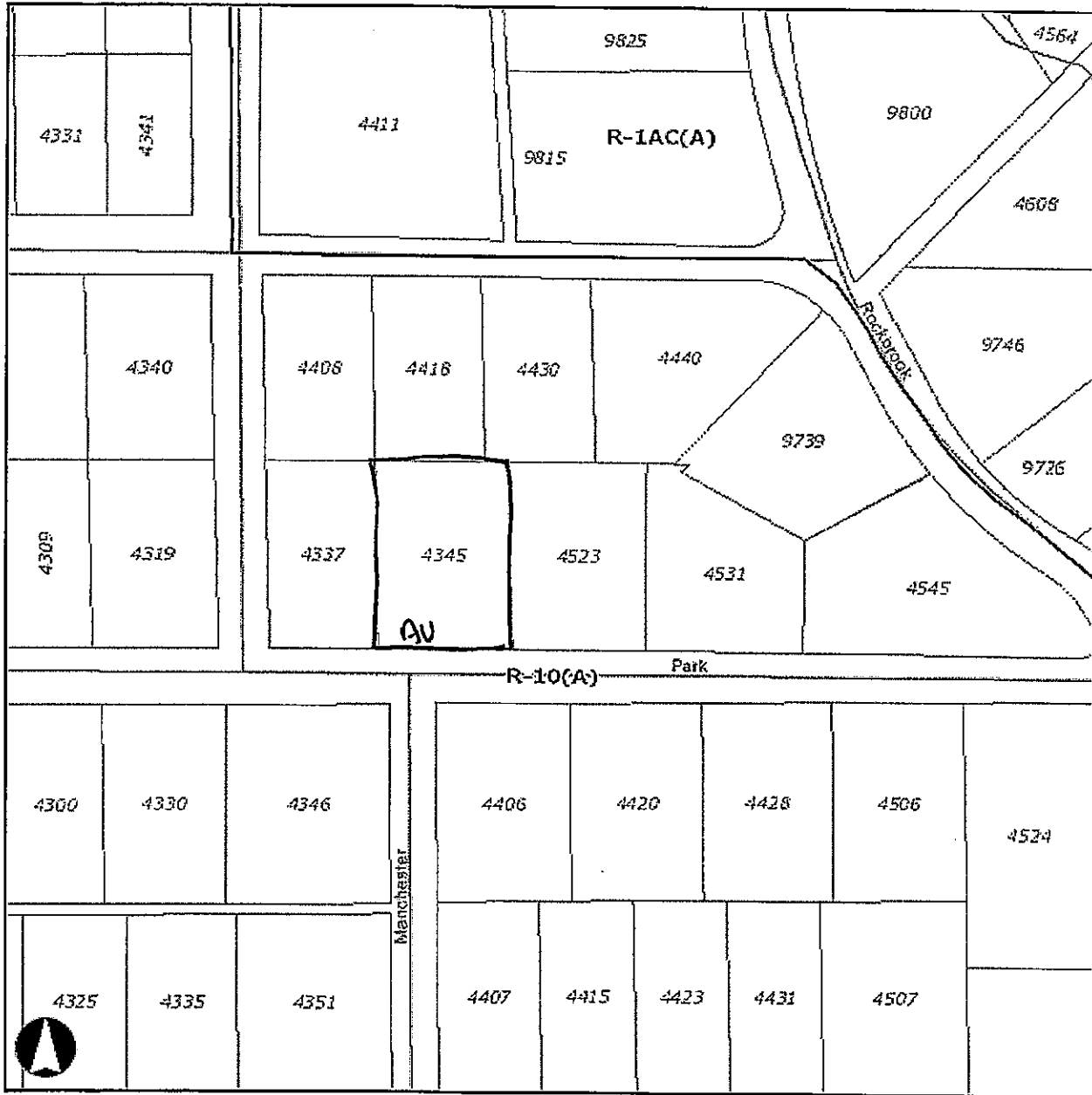
  
Lloyd Denman, Building Official





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# City of Dallas Zoning



City Boundaries



County



Certified Parcels



DISD Sites



Council Districts



Waterways



Parks



Dry Overlay



D



Historic Overlay



Historic Subdistricts



NSO Overlay



NSO Subdistricts



MD Overlay

Base Zoning



Floodplain



100 Flood Zone



Mill's Creek



Peak's Branch



X PROTECTED BY LEVEE



Pedestrian Overlay



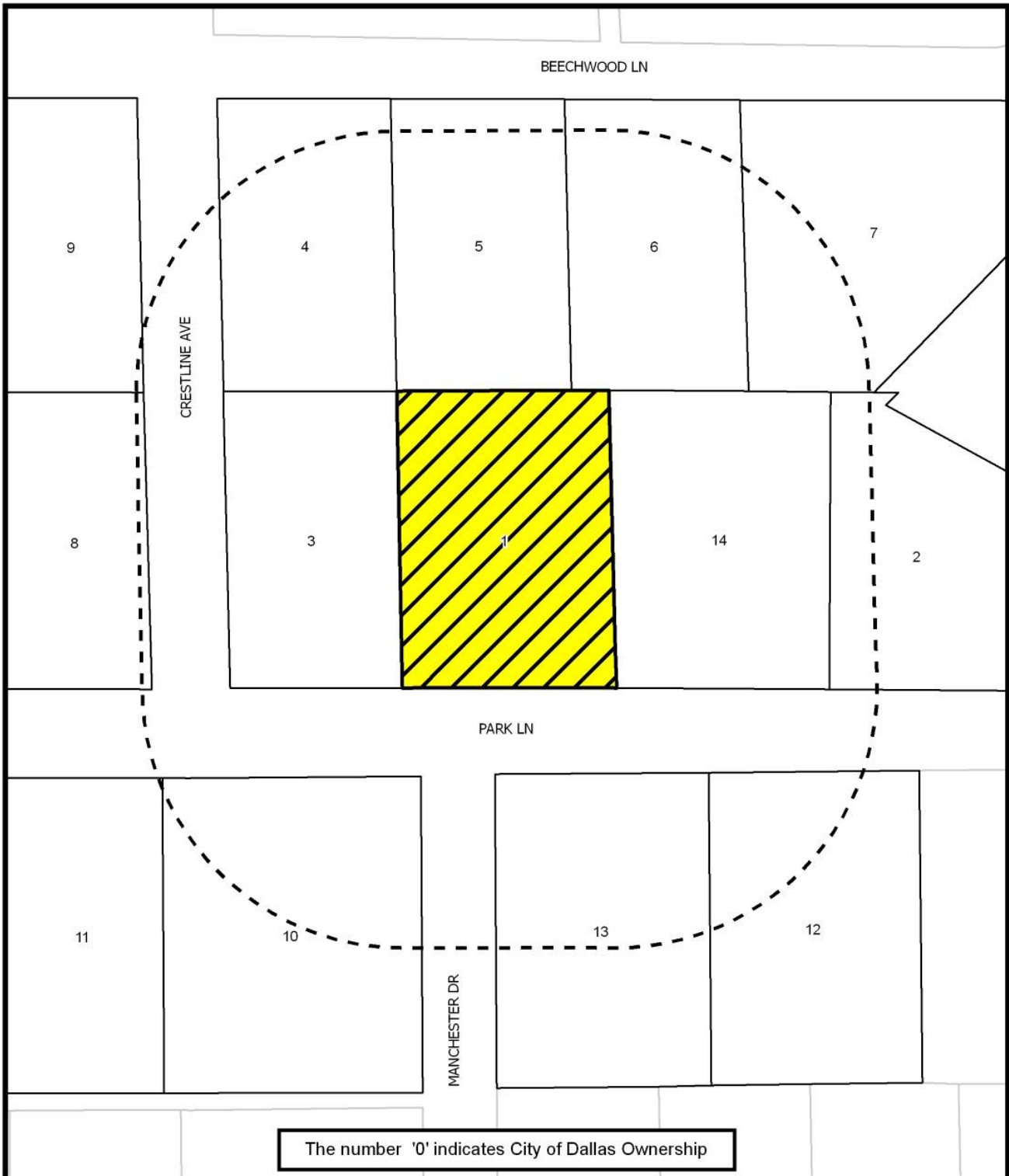
CP



SP

Environmental Corridors





 <b>1:1,200</b>	<h2>NOTIFICATION</h2> <table border="1"> <tr> <td><b>200'</b></td> <td><b>AREA OF NOTIFICATION</b></td> </tr> <tr> <td><b>14</b></td> <td><b>NUMBER OF PROPERTY OWNERS NOTIFIED</b></td> </tr> </table>	<b>200'</b>	<b>AREA OF NOTIFICATION</b>	<b>14</b>	<b>NUMBER OF PROPERTY OWNERS NOTIFIED</b>	<p>Map no: <u>          <b>F-6</b>          </u></p> <p>Case no: <u>          <b>BDA101-088</b>          </u></p>
<b>200'</b>	<b>AREA OF NOTIFICATION</b>					
<b>14</b>	<b>NUMBER OF PROPERTY OWNERS NOTIFIED</b>					

DATE: September 29, 2011

# ***Notification List of Property Owners***

***BDA101-088***

## ***14 Property Owners Notified***

<b><i>Label #</i></b>	<b><i>Address</i></b>	<b><i>Owner</i></b>
1	4345 PARK	DORFLINGER NEIL & MARY STE 230
2	4531 PARK	BANK OF TEXAS NA C/O BOK BRES BTC - 3S
3	4337 PARK	RCT INV III LLC
4	4408 BEECHWOOD	RUNDELL C A JR & SYLVIA S
5	4418 BEECHWOOD	HAMER ROBERT S
6	4430 BEECHWOOD	POER MARVIN F & AILEEN H POER
7	4440 BEECHWOOD	CONNER F WILLIAM & BETH A CONNER
8	4319 PARK	BARRETT COLLEEN
9	4340 BEECHWOOD	JARCHOW STEPHEN P STE 650
10	4346 PARK	SEIDEMAN SCOTT R
11	4330 PARK	RYAN TIMOTHY A & MELISSA S
12	4420 PARK	CONDRA Y ANSEL L & VIRGINIA G CONDRA Y
13	4406 PARK	ROSENTHAL J EDWARD & PATRICIA F
14	4523 PARK	KIRSCHNER SOL

**FILE NUMBER:** BDA 101-094

**BUILDING OFFICIAL'S REPORT:**

Application of Lanny E. Perkins for a special exception for the handicapped to the side yard setback regulation at 5706 Monticello Avenue. This property is more fully described as Lot 14 in City Block 1/2146 and is zoned CD-11 which requires a side yard setback of 10 feet. The applicant proposes to construct and maintain a structure and provide an 8 foot 9 inch side yard setback, which will require a 1 foot 3 inch special exception to the side yard setback regulation necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.

**LOCATION:** 5706 Monticello Avenue

**APPLICANT:** Lanny E. Perkins

**REQUEST:**

- A special exception for the handicapped is requested in conjunction with constructing and maintaining an approximately 68 square foot bathroom addition to an existing approximately 1,400 square foot single family home, part of which would be located in the site's required 10' eastern side yard setback.

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception for the handicapped since the basis for this type of appeal is when the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.

**STANDARD FOR A SPECIAL EXCEPTION FOR THE HANDICAPPED:** Section 51A-1.107.(b)(1) states that the Board of Adjustment shall grant a special exception to any regulation in this chapter, if, after a public hearing, the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling. The term "handicapped person," means a person with a "handicap," as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended.

**GENERAL FACTS:**

- The minimum side yard for main structures in CD (Conservation District) No. 11 is 5' on the west side and 10' on the east side.

A site plan has been submitted that denotes that the proposed bathroom addition is 8' 10.5" from the site's eastern side property line. The Building Official's Report states that structure is providing an 8' 9" setback requiring a special exception of 1' 3". (The site plan denotes that the proposed addition would be in alignment with the existing structure that according to DCAD was constructed in 1924 – a structure that is most likely a nonconforming structure – a structure that predates the provisions set forth in CD No. 11 created in 2004. Note that prior to the creation of CD No. 11 in 2004, the property had been zoned R-7.5(A) which is a zoning district that requires a 5' side yard setback).

- Section 51A-1.107(b)(1) states that the Board of Adjustment shall grant a special exception to any regulation in this chapter, if, after a public hearing, the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling. The term "handicapped person," means a person with a "handicap," as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended. A copy of the "handicap" definition from this act was provided to the Board Administrator by the City Attorney's Office. Section 3602 of this act states the following:  
“(h) “Handicap” means, with respect to a person -
  1. a physical or mental impairment which substantially limits one or more of such person's major life activities,
  2. a record of having such an impairment, or
  3. being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 802 of Title 21).”
- In this particular case, the applicant has submitted among other things a letter from a Board Certified Neurologist that the applicant's wife has multiple sclerosis and is unable to walk; and that she needs a bathroom that she can access with her scooter or a rolling chair.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: CD No. 11 (Conservation District)  
North: CD No. 11 (Conservation District)  
South: CD No. 11 (Conservation District)  
East: CD No. 11 (Conservation District)  
West: CD No. 11 (Conservation District)

### **Land Use:**

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

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

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

### **Timeline:**

July 22, 2011: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

September 21, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

September 21, 2011: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the September 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the October 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request and other related documents pertaining to this standard ; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

September 28, 2011: The Sustainable Development and Construction Department Conservation District Senior Planner emailed the Board Administrator with the following comments: "The Main house may be nonconforming but the addition is new and would have to comply with the Ordinance requirements and that is why I denied the Conservation District Work Review Form Application. I don not have any issues granting a 1' 3" variance in the East side yard for handicapped access by the homeowner in the bathroom. Once a variance is granted the Homeowner will need to apply for CD approval and bring in the variance documentation on the side yard setback."

October 4, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Assistant Director, the Sustainable Development and Construction Department Engineering Assistant Director, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection

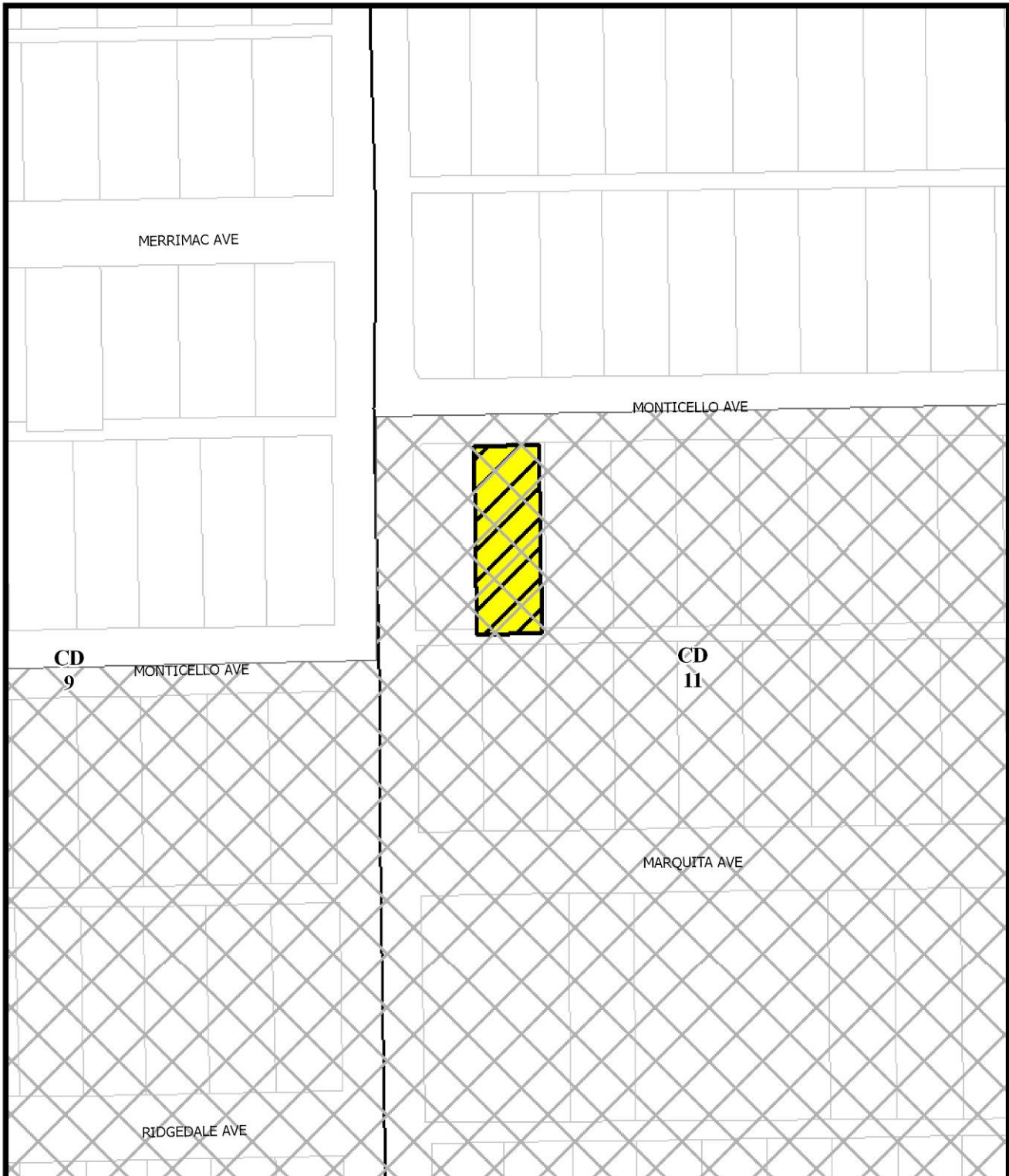


Senior Plans Examiner/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

### **STAFF ANALYSIS:**

- This request focuses constructing and maintaining an approximately 68 square foot bathroom addition to an existing approximately 1,400 square foot single family home that would be located (according to the application and Building Official's Report) 8' 9" from the eastern side property line or 1' 3" into the required 10' eastern side yard setback.
- The site plan denotes that the proposed addition would be in alignment with the existing structure that according to DCAD was constructed in 1924 – a structure that is most likely a nonconforming structure – a structure that predates the provisions set forth in CD No. 11 created in 2004. Note that prior to the creation of CD No. 11 in 2004, the property had been zoned R-7.5(A) which is a zoning district that requires a 5' side yard setback.
- Unlike most requests where the board is considering a structure that encroaches into a setback via a variance (where property hardship must be demonstrated), the board is to consider this special exception for the handicapped request solely on whether they conclude that the special exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.
- In this particular case, the applicant has submitted among other things a letter from a Board Certified Neurologist that the applicant's wife has multiple sclerosis and is unable to walk; and that she needs a bathroom which she can access with her scooter or a rolling chair.
- The applicant has the burden of proof in establishing the following:
  - The special exception (which in this case is requested to construct and maintain a bathroom addition in the eastern side yard setback) is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling; and
  - there is a person with a "handicap" (as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended) who resides and/or will reside on the site.
- If the Board were to grant the request, and impose conditions that compliance with the submitted site plan is required, and that the special exception expires when a handicapped person no longer resides on the property, the bathroom addition would be required to be constructed and maintained in the location shown on the document for as long as the applicant or any other handicapped person resides on the site.



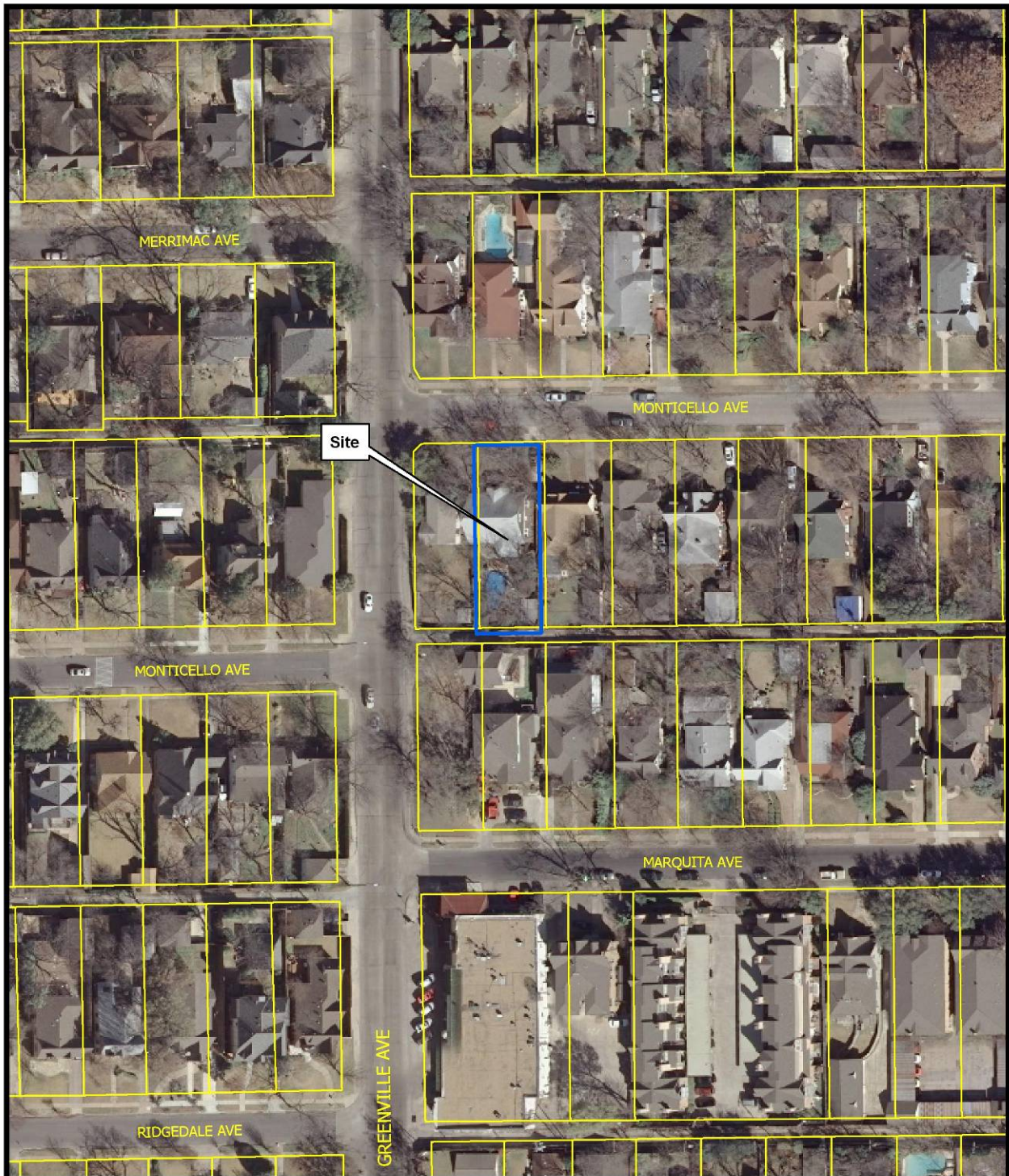
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# ZONING MAP

Map no:           H-8            
 Case no:           BDA101-094          

DATE: September 29, 2011





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# AERIAL MAP

Map no:           H-8            
Case no:           BDA101-094          

DATE: September 29, 2011



City of Dallas

C

APPLICATION/APEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 101-094

Data Relative to Subject Property:

Date: 7-22-11

Location address: 5706 Monticello Zoning District: CD 11

Lot No.: 14 Block No.: 1/2146 Acreage: 7,310 Sq. Ft. Census Tract: 2.02

Street Frontage (in Feet): 1) 50 2) \_\_\_\_\_ 3) \_\_\_\_\_ 4) \_\_\_\_\_ 5) \_\_\_\_\_

SE 2A

To the Honorable Board of Adjustment :

Owner of Property/or Principal: Lanny E. and Sara D. Perkins

Applicant: Lanny E. Perkins Telephone: 214.965.9229

Mailing Address: 5706 Monticello, Dallas, TX Zip Code: 75206

Represented by: \_\_\_\_\_ Telephone: \_\_\_\_\_

Mailing Address: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Affirm that a request has been made for a Variance X, or Special Exception \_\_\_\_\_ of I request varying 1"3" to sidewalk setback

Application is now made to the Honorable Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described request for the following reason: Need to build access bunker for disabled house

Note to Applicant: If the relief requested in this application is granted by the Board of Adjustment, said permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

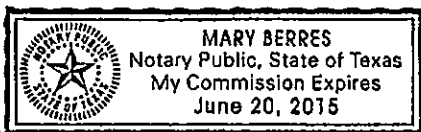
Respectfully submitted: LANNY E. PERKINS Applicant's name printed Lanny E. Perkins Applicant's signature

Affidavit

Before me the undersigned on this day personally appeared LANNY E. PERKINS who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/or authorized representative of the subject property.

Lanny E. Perkins  
Affiant (Applicant's signature)

Subscribed and sworn to before me this 22 day of July, 2011



Mary Berres  
Notary Public in and for Dallas County, Texas

(Rev. 08-26-09)

MEMORANDUM OF  
ACTION TAKEN BY THE  
BOARD OF ADJUSTMENT

Date of Hearing \_\_\_\_\_

Appeal was--Granted OR Denied

Remarks \_\_\_\_\_

Chairman


**Building Official's Report**

I hereby certify that Lanny E. Perkins

did submit a request for a special exception to the side yard setback regulations  
at 5706 Monticello Avenue

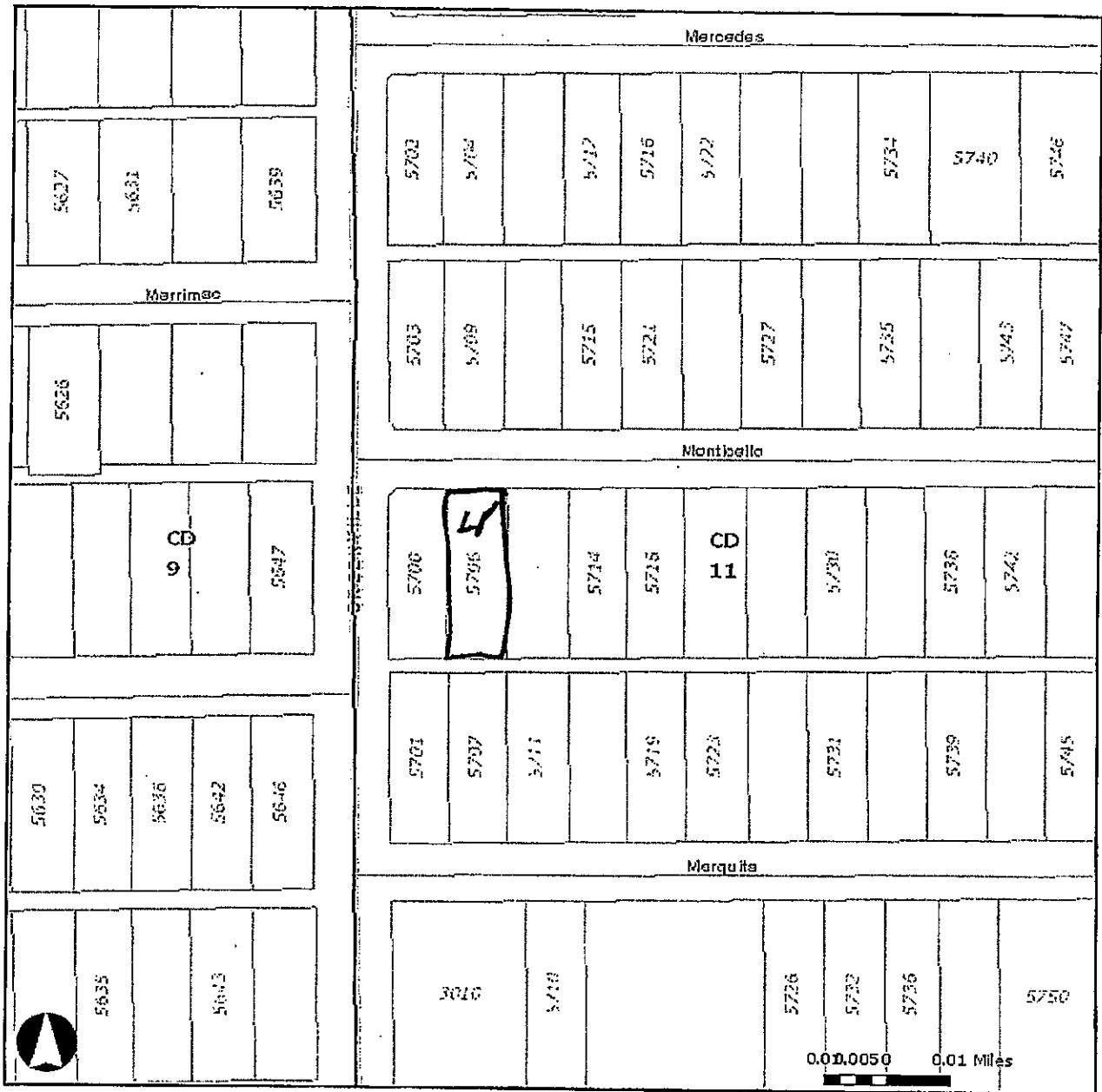
BDA101-094. Application of Lanny E. Perkins for a special exception for the handicapped to the side yard setback regulation at 5706 Monticello Avenue. This property is more fully described as lot 14 in city block 1/2146 and is zoned CD-11, which requires a side yard setback of 10 feet. The applicant proposes to construct and maintain a single family residential structure and provide an 8 foot 9 inch side yard setback, which will require a 1 foot 3 inch special exception to the side yard setback regulation necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.

Sincerely,

  
Lloyd Denman, Building Official

94  
H-8

# City of Dallas Zoning

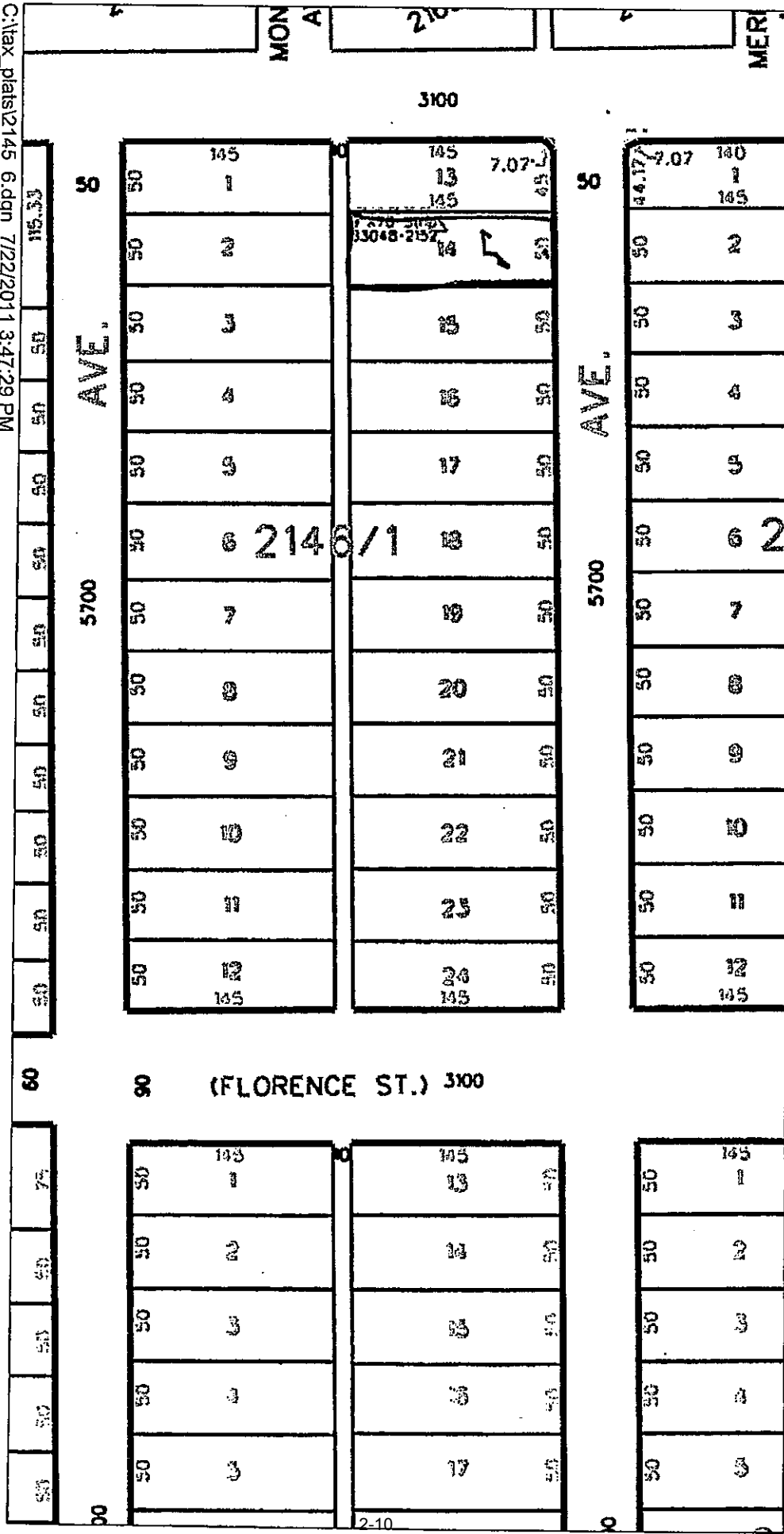


- City Boundaries
- County
- Certified Parcels
- DISD Sites
- Council Districts
- Waterways
- Parks

- Municipal Setting Designations
- Deed Restrictions
- SUP
- Historic Subdistricts
- NSO Overlay
- NSO Subdistricts
- CD Subdistricts

- PD193 Oak Lawn
- PDS Subdistricts
- Base Zoning
- Pedestrian Overlay
- CP
- SP
- Environmental Corridors
- Escarpment Overlay

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**Neurotherapy Center of Dallas, Inc.**

Jonathan E. Walker, M.D.  
Neurology  
Clinical Neurophysiology  
EEG Neurofeedback

July 26, 2011

To Whom It May Concern:

Sara Perkins has multiple sclerosis and is unable to walk. She needs to have a bathroom which she can access with her scooter or a rolling chair.

Thank you for your consideration in this matter.

Sincerely yours,

Jonathan E. Walker  
Board Certified Neurologist

12870 Hillcrest Road • Suite 201 • Dallas, Texas 75230  
Phone: 972-991-1153 • Fax: 972-991-1346

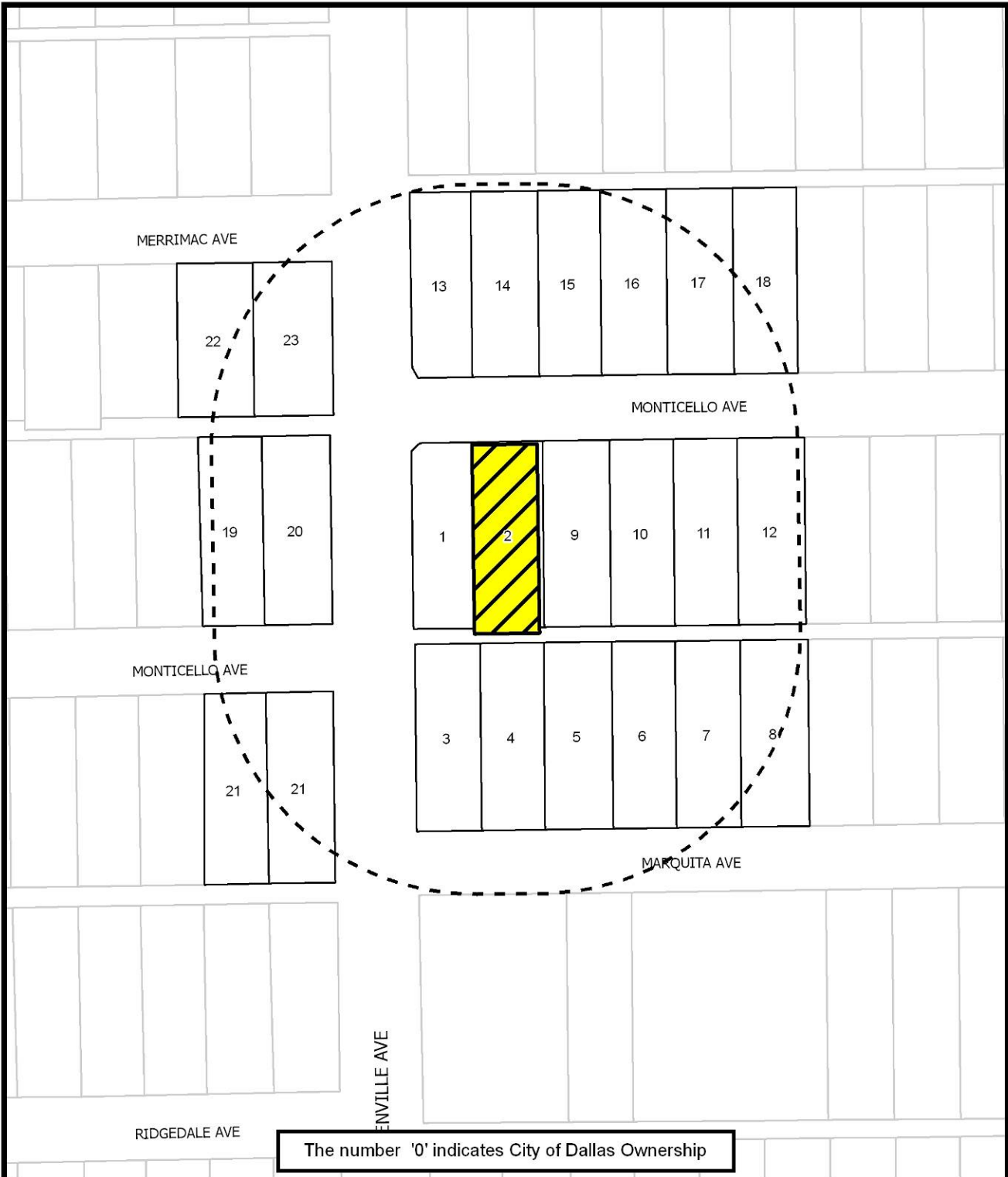
## ATTACHMENT

We wish to request a variance of side yard setback under Ordinance 25474, Section (4) to allow the construction at our house at 5706 Monticello, Dallas, Texas of a second bathroom. Based on the plan submitted, this room would extend the existing east wall of the house southward until it is even with the existing southern wall of the house.

The reason for this request is that Sara Perkins, my wife, is a disabled person suffering from multiple sclerosis such that she needs a new bathroom, which will allow her access with her scooter and/or a rolling chair to utilize the toilet and shower. Due to the need for supports on the walls, and for sufficient room to access the shower portion of the bathroom, the size of the bathroom cannot be contracted to being 10 feet from the property line, since this would require approximately a 1'3" reduction in the bathroom size based on the existing wall, which would make the bathroom inaccessible.

There is no other portion of the house which could be extended to create this additional room, since the rear of the house is taken up by a ramp giving her access to the backyard, including the swimming pool which was built based on her doctor's prescription to allow her exercise and therapy.

The proposed bathroom will be located at the rear of the house, and will not be visible from the front, because of the distance from the front of the house and because the rear of the house is enclosed in a high fence.



 <b>1:1,200</b>	<h2 style="margin: 0;">NOTIFICATION</h2> <div style="display: flex; justify-content: space-around; margin-top: 10px;"> <div style="border: 1px solid black; padding: 2px 5px;"><b>200'</b></div> <div>AREA OF NOTIFICATION</div> </div> <div style="display: flex; justify-content: space-around; margin-top: 5px;"> <div style="border: 1px solid black; padding: 2px 5px;"><b>23</b></div> <div>NUMBER OF PROPERTY OWNERS NOTIFIED</div> </div>	<p>Map no: <u>          <b>H-8</b>          </u></p> <p>Case no: <u>          <b>BDA101-094</b>          </u></p>
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DATE: September 29, 2011

# ***Notification List of Property Owners***

***BDA101-094***

## ***23 Property Owners Notified***

<b><i>Label #</i></b>	<b><i>Address</i></b>	<b><i>Owner</i></b>
1	5700 MONTICELLO	LIEBERT FRANK A
2	5706 MONTICELLO	PERKINS LANNY E
3	5701 MARQUITA	HEIDARI MOSHEN C/O SAN FRANCISCO
ROSE		
4	5707 MARQUITA	IBEX UNLIMITED LLC
5	5711 MARQUITA	LEMMA YAYEHYIRAD
6	5715 MARQUITA	CALLAHAN TRAVIS G
7	5719 MARQUITA	BOLGER DOROTHY E
8	5723 MARQUITA	VELIS BILL D
9	5710 MONTICELLO	RANGEL MANUEL R EST OF
10	5714 MONTICELLO	WALKER KELSEY
11	5718 MONTICELLO	MORVAY KAREN & STEVEN
12	5722 MONTICELLO	TOMPKINS JEFF & LETHA TOMPKINS
13	5703 MONTICELLO	GARCIA EVANGELINE R
14	5709 MONTICELLO	REYNOSO SIXTO J & RAFAILA
15	5711 MONTICELLO	LAMB BRETT D
16	5715 MONTICELLO	EATON MARY A
17	5721 MONTICELLO	SAADI PAUL D
18	5723 MONTICELLO	HOPE CHRISTOPHER E
19	5643 MONTICELLO	NEWMAN JAMES KYLE & KELLY MICHELLE COOK
20	5647 MONTICELLO	SIMCOE DAVID J
21	5646 MONTICELLO	ASKEW ANTONINA M VENTURA
22	5634 MERRIMAC	WALKER ALISON M
23	5638 MERRIMAC	FORCUM ANTHONY D & DEBORAH

**FILE NUMBER:** BDA 101-064

**BUILDING OFFICIAL'S REPORT:**

Application of Robert Baldwin for a variance to the front yard setback regulations and a special exception to the visual obstruction regulations at 3403 McKinney Avenue. This property is more fully described as part of Lot 9 in City Block 9/972 and is zoned PD 193 (LC), which requires a front yard setback of 10 feet and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct and/or maintain a structure and provide a 0 foot front yard setback, which will require a variance of 10 feet, and to locate/maintain items in a required visibility triangle, which will require a special exception to the visual obstruction regulations.

**LOCATION:** 3403 McKinney Avenue

**APPLICANT:** Robert Baldwin

**REQUESTS:**

- The following appeals have been made in this application on a site developed with a restaurant structure/use (The Patio Grill):
  1. a variance to the front yard setback regulations of 10' is requested in conjunction with maintaining an existing structure, part of which is located in the 10' front yard setback; and
  2. a special exception to the visual obstruction regulations is requested in conjunction with maintaining what is represented on the submitted site plan a portion of a structure in a 20' visibility triangle at the drive approach on the north side into the site from McKinney Avenue.

**STAFF RECOMMENDATION (variance):**

Denial

Rationale:

- Staff concludes that there is no property hardship to the site that warrants a front yard variance which in this case is requested to maintain a portion of a structure in the front yard setback.
- The site is relatively flat, somewhat irregular in shape, and over 8,000 square feet in area.
- The site is currently developed with a restaurant/bar use/structure where the part that appears to be the original structure built decades ago (and fully enclosed) complies with the front yard setback, and where another part of

what appears to be a recent addition to the original structure (and partially enclosed with a roof) encroaches into the front yard setback. As a result, the physical features of the site/lot do not create hardship or preclude its development in a manner commensurate with other developments found in the same PD No. 193 (LC) zoning district. Although the site is slightly irregular in shape, this feature does not create hardship on the lot where the applicant must encroach into a front yard setback for him to develop the lot in a manner commensurate with the development upon other parcels of land with the same PD No. 193 (LC) zoning district – in this case with what appears to be a recent addition to a decades old structure on the property that complies with the front yard setback.

- The applicant has not substantiated how the restrictive area, shape, or slope of the site/lot precludes it from being developed in a manner commensurate with development found on other PD. No. 193 (LC) zoned lots.

**STAFF RECOMMENDATION (visual obstruction special exception):**

Denial

Rationale:

- The Sustainable Development and Construction Department Project Engineer recommends denial of this request based on: 1) the applicant's lack of information that fully establishes how the request does not constitute a traffic hazard, and/or 2) the fact that the sidewalk directly adjacent to the structure creates a blind corner.
- The applicant has not substantiated how the location of the proposed item in the 20' visibility triangle at the drive approach into the site from McKinney Avenue (as conveyed on his submitted site plan) does not constitute a traffic hazard.

**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 for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

- (A) not 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;
- (B) necessary to permit development of a specific parcel of land that 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 with the same zoning; and
- (C) not 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 with the same zoning.

**STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:**

The Board shall grant a special exception to the requirements of the visual obstruction regulations when, in the opinion of the Board, the item will not constitute a traffic hazard.

**GENERAL FACTS (variance):**

- The minimum front yard setback for lots zoned PD No. 193 (LC Subdistrict) is 10 feet.  
A site plan has been submitted denoting a structure that is located 0' – 9' from the site's front property line or as much as 10' into the 10' required front yard setback.
- According to calculations taken by the Board Administrator from the submitted site plan, an approximately 150 square foot triangular-shaped area of the structure is in the 10' front yard setback -- an area that represents about 13 percent of the approximately 1,140 square foot covered dining room space of the existing structure or approximately 6 percent of the approximately 2,400 square feet of the entire structure on the property.
- According to DCAD records, the site is shows improvements being a 1,020 square foot "converted residence" built in 1920.
- The subject site is a parallelogram that is 163.5' x 50' (or 8,150 square feet) in area. The site is flat and is zoned PD No. 193 (LC - Light Commercial Subdistrict).

**GENERAL FACTS (visual 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 on properties in all zoning districts except central area districts, the Deep Ellum/Near Eastside District, State-Thomas Special Purpose District, and 20-foot visibility triangles at drive approaches on properties in all zoning districts); 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).

A site plan and elevation has been submitted that shows a portion of the structure located in the 20' visibility triangle at the drive approach on the north side into the site from McKinney Avenue.

Note that the Board Administrator emailed the applicant his concern regarding the number of visual obstruction special exceptions were being requested with this application. The Board Administrator pointed out to the applicant that his submitted site plan denotes only one drive approach on the site (which allows one to see the part of the structure located in this drive approach triangle on the site) but how photographs taken at the site and forwarded to the applicant also show that a portion of the structure may be in the drive approach triangle originating from the property south of his site.

The Board Administrator relayed to the applicant how he planned to convey to the Board:

- 1) what the applicant had written on his amended application - that being "a visibility triangle special exception;"
- 2) what could be gleaned from the submitted site plan - that being certain items as it relates to the one drive approach shown on the site plan; and
- 3) how if the board were to approve his request for a visual obstruction special exception (subject to the submitted site plan), the approval with the submitted plan would only provide exception/relief to what the applicant has requested on the application and/or what the applicant has shown on the site plan, and that approval of the requested special exception would not provide relief for any proposed/existing item on the subject site that may be located in a visibility triangle that originates from a driveway located on the property to the south.

(Note that the applicant acknowledged these conclusions/observations).

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: PD No. 193 (LC) (Planned Development – Light Commercial)  
North: PD No. 193 (LC) (Planned Development – Light Commercial)  
South: PD No. 193 (LC) (Planned Development – Light Commercial)  
East: PD No. 193 (LC) (Planned Development – Light Commercial)  
West: PD No. 193 (LC) (Planned Development – Light Commercial)

### **Land Use:**

The subject site is developed with a restaurant use (The Patio Grill). The areas to the north and south appear to be developed with retail uses; and the areas to the east and west are developed with retail and multifamily uses.

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

1. BDA 990-353, Property at 3317 McKinney Avenue ( the property immediately south of the subject site)

On October 24, 2000, the Board of Adjustment Panel A denied requests for a special exception to the landscape regulations and a variance to the parking

regulations without prejudice. The case report stated that the requests were made in conjunction with rehabilitating a 16-unit multifamily/retail structure into an office/retail development.

2. BDA 089-019, Property at 3309 McKinney Avenue ( the property two lots south of the subject site) On March 18, 2009, the Board of Adjustment Panel B granted a request for a variance to the front yard setback regulations of 10' and imposed the submitted revised site plan and elevation as a condition. The case report stated that the request was made in conjunction with maintaining a covered canopy dining area structure on the site located in the front yard setback.
3. BDA 089-020, Property at 3309 McKinney Avenue ( the property two lots south of the subject site) On March 18, 2009, the Board of Adjustment Panel B granted a request for a special exception to the landscape regulations and imposed the following conditions to this request: 1) compliance with the submitted revised site plan/landscape plan is required; 2) The open pedestrian sidewalk nearest the curb must remain open at no less than its current width with no additional temporary or permanent obstructions; 3) all plant materials must be maintained in a healthy, growing condition at all times; and 4) automatic irrigation is not required. The case report stated that the request was made in conjunction with maintaining a covered canopy dining area structure on the site located in the front yard setback.

**Timeline:**

- April 27, 2011: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- June 22, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- June 23, 2011: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the August 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the August 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

July 29, 2011: The Board Administrator acknowledged the applicant's request to postpone this application from Board of Adjustment Panel C's August 15<sup>th</sup> hearing to Panel C's September 19<sup>th</sup> hearing.

August 11, 2011: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the August 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the August 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

September 6, 2011: The Board Administrator acknowledged the applicant's request to postpone this application from Board of Adjustment Panel C's September 19<sup>th</sup> hearing to Panel C's October 17<sup>th</sup> hearing.

September 7, 2011: The applicant amended his original application for variance to the front yard setback regulations by adding a special exception to the visual obstruction regulations.

September 21, 2011: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the September 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the October 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the requests; and

- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

October 4, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Assistant Director, the Sustainable Development and Construction Department Engineering Assistant Director, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

October 6, 2011: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" with the following comments: "Sidewalk is right up against structure creating a blind corner. Need more information on visibility triangle."

**STAFF ANALYSIS (variance):**

- The request focuses on maintaining an existing restaurant/bar structure on the site (The Patio Grill), part of which is located as close as on the front property line or as much as 10' into the 10' front yard setback.
- According to calculations taken by the Board Administrator from the submitted site plan, an approximately 150 square foot triangular-shaped area of the structure is in the 10' front yard setback -- an area that represents about 13 percent of the approximately 1,140 square foot covered dining room space of the existing structure or approximately 6 percent of the approximately 2,400 square feet of the entire structure on the property.
- According to DCAD records, the site is shows improvements being a 1,020 square foot "converted residence" built in 1920.
- The subject site is a parallelogram that is 163.5' x 50' (or 8,150 square feet) in area. The site is flat and is zoned PD No. 193 (LC - Light Commercial Subdistrict).
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to front 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 variance is necessary to permit development of the subject site 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

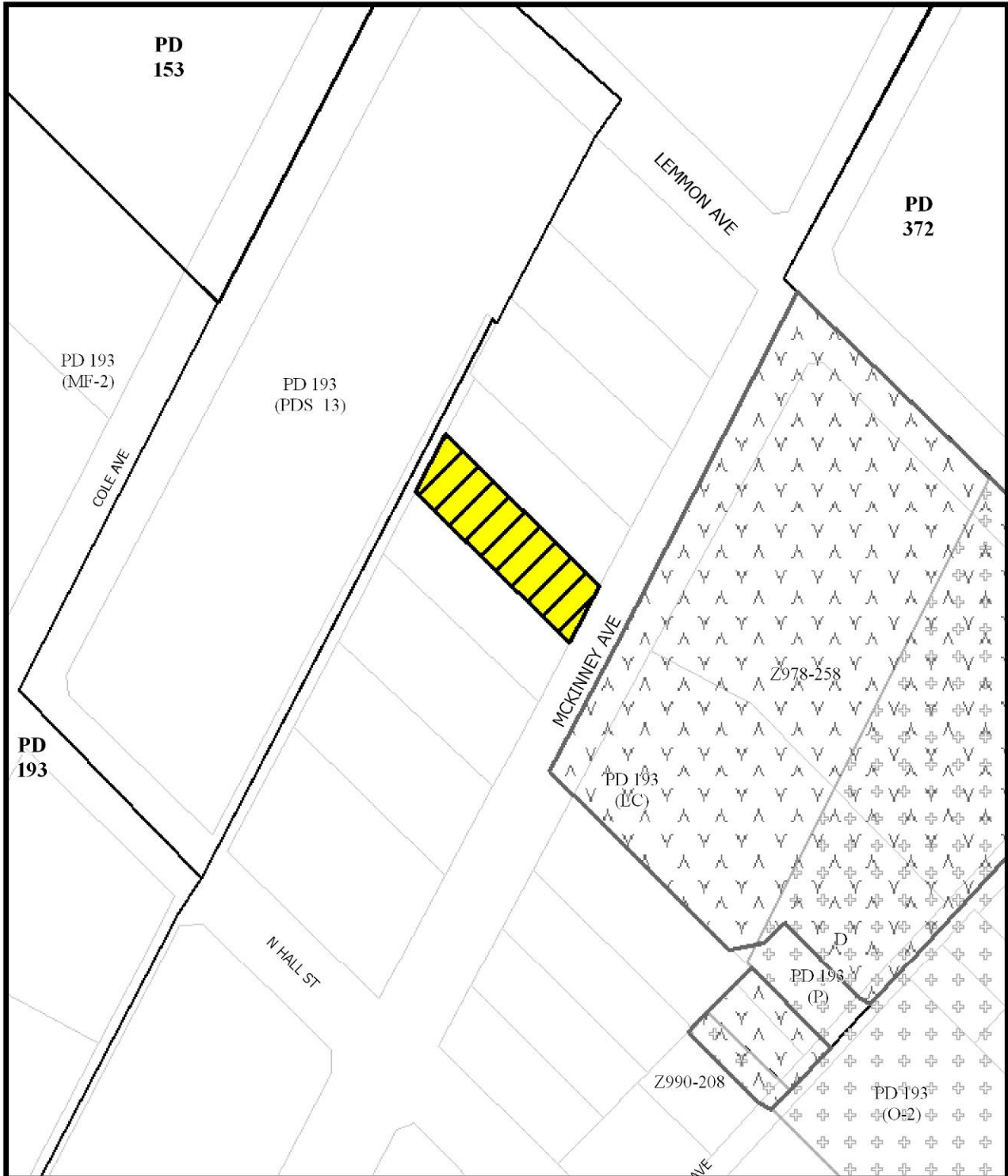
commensurate with the development upon other parcels of land in districts with the same PD No. 193 (LC) zoning classification.

- The 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 No. 193 (LC) zoning classification.
- If the Board were to grant the variance request, subject to the submitted site plan, the structure as shown on this plan would be permitted to remain as close as on the front property line or as much as 10' into the 10' front yard setback.
- Note that if the board were to grant this request and impose the submitted site plan as a condition, but deny the request for the special exception to the visual obstruction regulations, notations would be made of such action on the submitted plan whereby the location of the items in the visibility triangle would not be "excepted."

**STAFF ANALYSIS (visual obstruction special exception):**

- The applicant has requested a special exception to the visual obstruction regulations to maintain what is represented on the submitted site plan a portion of a structure in a 20' visibility triangle at the drive approach on the north side into the site from McKinney Avenue.
- The applicant has acknowledged: 1) the fact that he is requesting a singular exception to the visual obstruction regulations to address a portion of the structure on the site that is located in a drive approach visibility triangle on the north side of the site as shown on his submitted site plan; and 2) the fact that how if the board were to approve his request for a visual obstruction special exception (subject to the submitted site plan), the approval with the submitted plan would only provide exception/relief to what the applicant has requested on the application and/or what the applicant has shown on the site plan.
- The Sustainable Development and Construction Department Project Engineer "Recommends that this be denied" with the following comments: "Sidewalk is right up against structure creating a blind corner. Need more information on visibility triangle."
- The applicant has the burden of proof in establishing how granting the request for special exception to the visual obstruction regulations in order to maintain a portion of the existing structure in 20' drive approach visibility triangle on the north side of the site will not constitute a traffic hazard.
- If the Board chooses to grant this request, subject to compliance with the submitted site plan and elevation, the item shown on these documents would be "excepted" into the 20' drive approach visibility triangle that has been requested in this application – that being the 20' drive approach visibility triangle on the north side of the site.
- Note that it appears from the submitted site plan and elevation that if the board were to deny the applicant's request for variance to the front yard setback regulations, there would no longer be any item located in what is

represented in the 20' drive approach visibility triangle on the north side of the site.



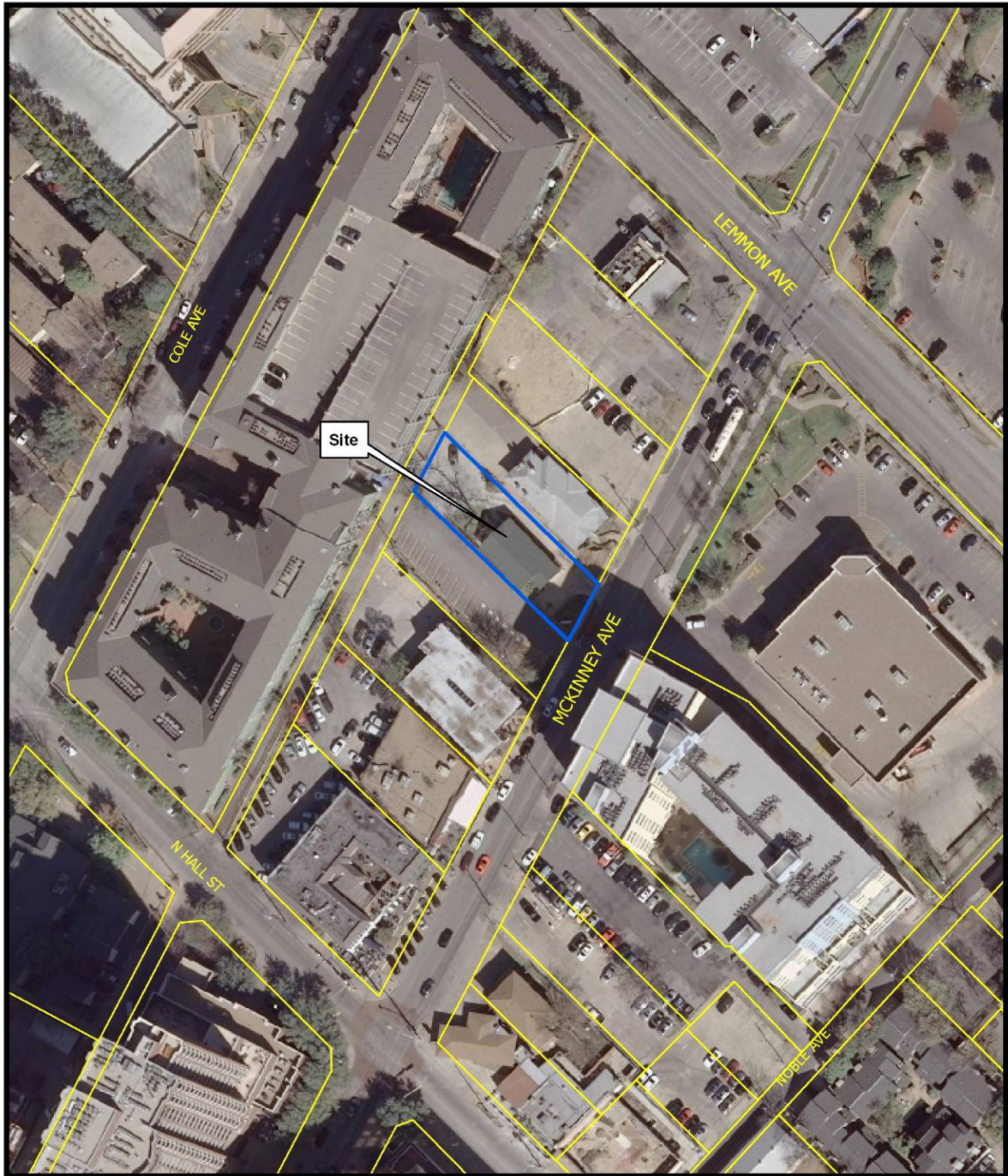
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# ZONING MAP

Map no: I-7  
 Case no: BDA101-064

DATE: July 19, 2011





1:1,200

# AERIAL MAP

Map no:           I-7          

Case no:           BDA101-064          

DATE: July 19, 2011



City of Dallas

APPLICATION/APEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 101-064

Data Relative to Subject Property:

Date: April 27, 2011

Location address: 3403 McKinney Zoning District: PD 193(LC)

Lot No.: part of 9 Block No. 9/972 Acreage: 8175 sq ft Census Tract: 18.00

Street Frontage (in Feet): 1) 50 2) \_\_\_\_\_ 3) \_\_\_\_\_ 4) \_\_\_\_\_ 5) \_\_\_\_\_

To the Honorable Board of Adjustment :

*SW 22*

Owner of Property/or Principal: Pamela or Jeffery Dowling

Applicant: Robert Baldwin Telephone: \_\_\_\_\_

Mailing Address: 3904 Elm Suite B Dallas, Tx Zip Code: 75226

Represented by: Robert Baldwin Telephone: 214-824-7949

Mailing Address: 3904 Elm Dallas, TX Zip Code: 75226

Affirm that a request has been made for a Variance X, or Special Exception    , of 10 feet to the required 10 ft front yard set back and a visibility Triangle Special Exception at a driveway

Application is now made to the Honorable Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described request for the following reason: The request will have no negative impact to the area and other locations in the area have had similar request granted RESTRICTIVE lot size

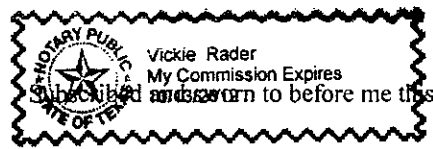
Note to Applicant: If the relief requested in this application is granted by the Board of Adjustment, said permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

Respectfully submitted: Robert Baldwin  
Applicant's name printed

[Signature]  
Applicant's signature

Affidavit

Before me the undersigned on this day personally appeared \_\_\_\_\_ who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/or authorized representative of the subject property.



3rd day of May

[Signature]  
Affiant (Applicant's signature)

Vickie Rader  
Notary Public in and for Dallas County, Texas

MEMORANDUM OF  
ACTION TAKEN BY THE  
BOARD OF ADJUSTMENT

Date of Hearing \_\_\_\_\_

Appeal was--Granted OR Denied

Remarks \_\_\_\_\_

Chairman

**Building Official's Report**

I hereby certify that ROBERT BALDWIN

did submit a request for a variance to the front yard setback regulations, and for a special exception to the visibility obstruction regulations

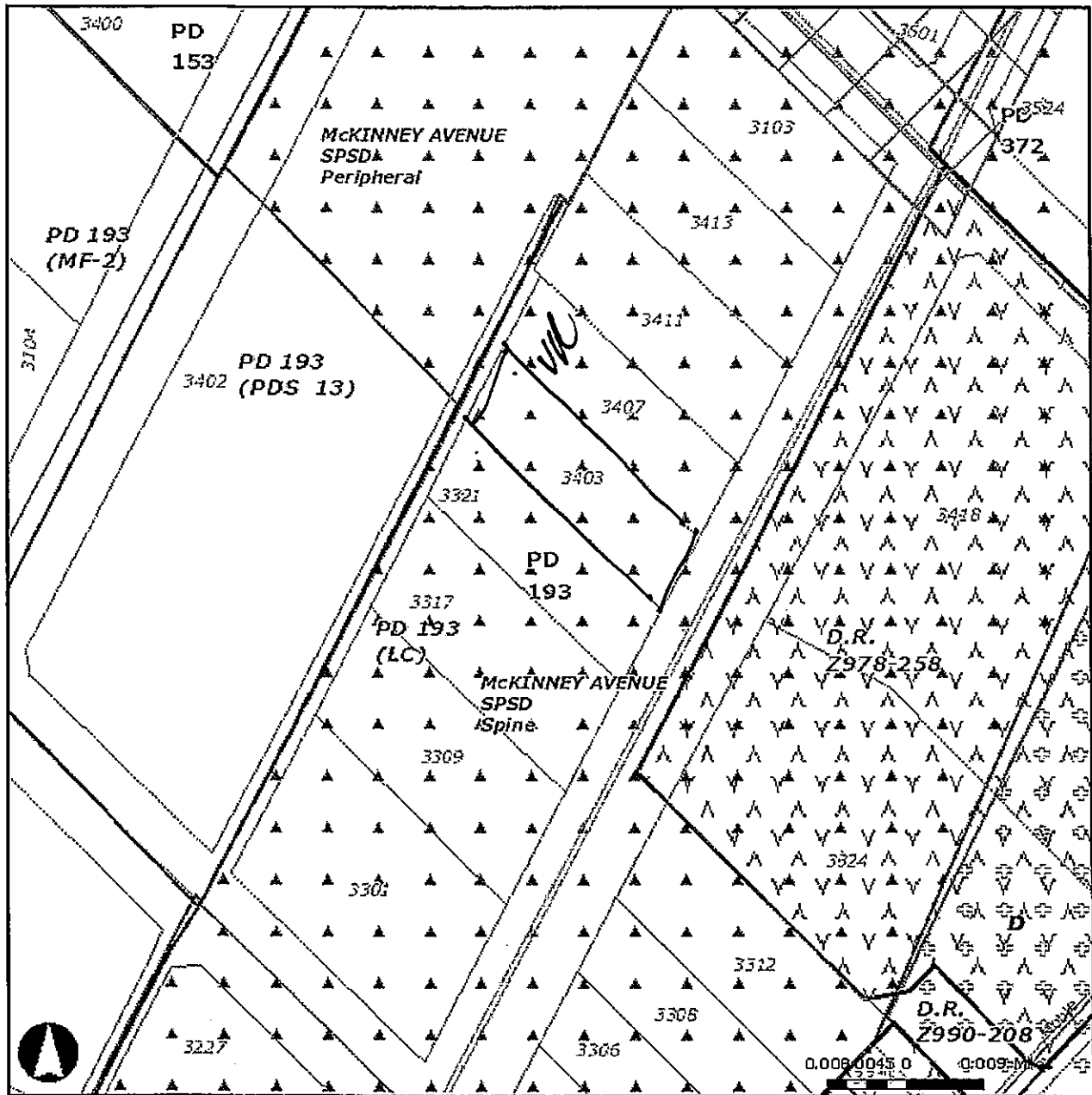
at 3403 McKinney Avenue

BDA101-064. Application of Robert Baldwin for a variance to the front yard setback regulation and visibility obstruction regulation at 3403 McKinney Avenue. This property is more fully described as part of Lot 9 in city block 9/972 and is zoned PD-193 LC, which requires a front yard setback of 10 feet and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct and maintain a nonresidential structure and provide a 0 foot front yard setback, which will require a 10 foot variance to the front yard setback regulation and a special exception to the visibility obstruction regulation.

Sincerely,

*Batsheba Antebi*  
Batsheba Antebi, Building Official

# City of Dallas Zoning



**City Boundaries**

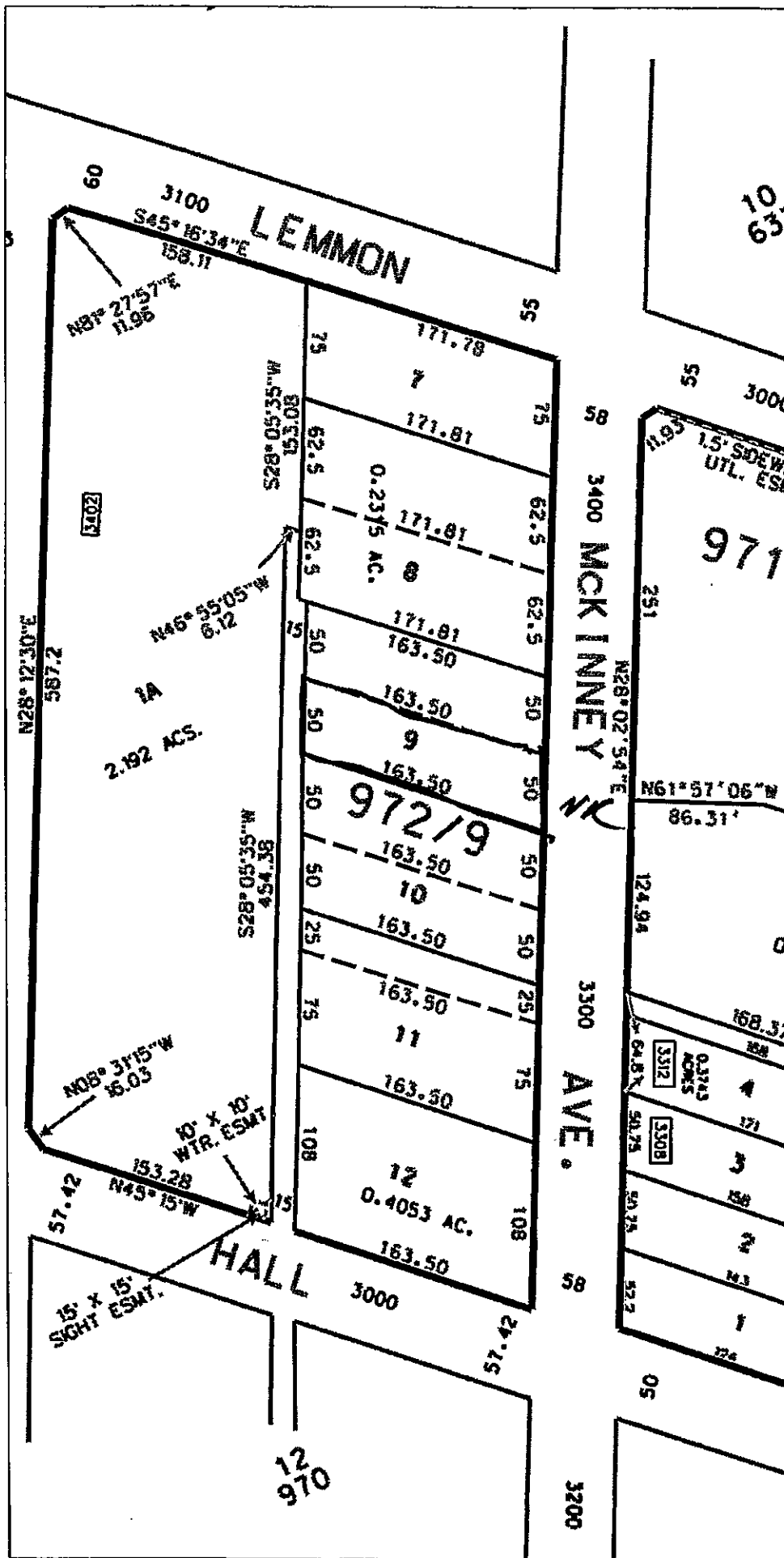
- City Boundaries
- County
- Certified Parcels
- DISD Sites
- Council Districts

**Dry Overlay**

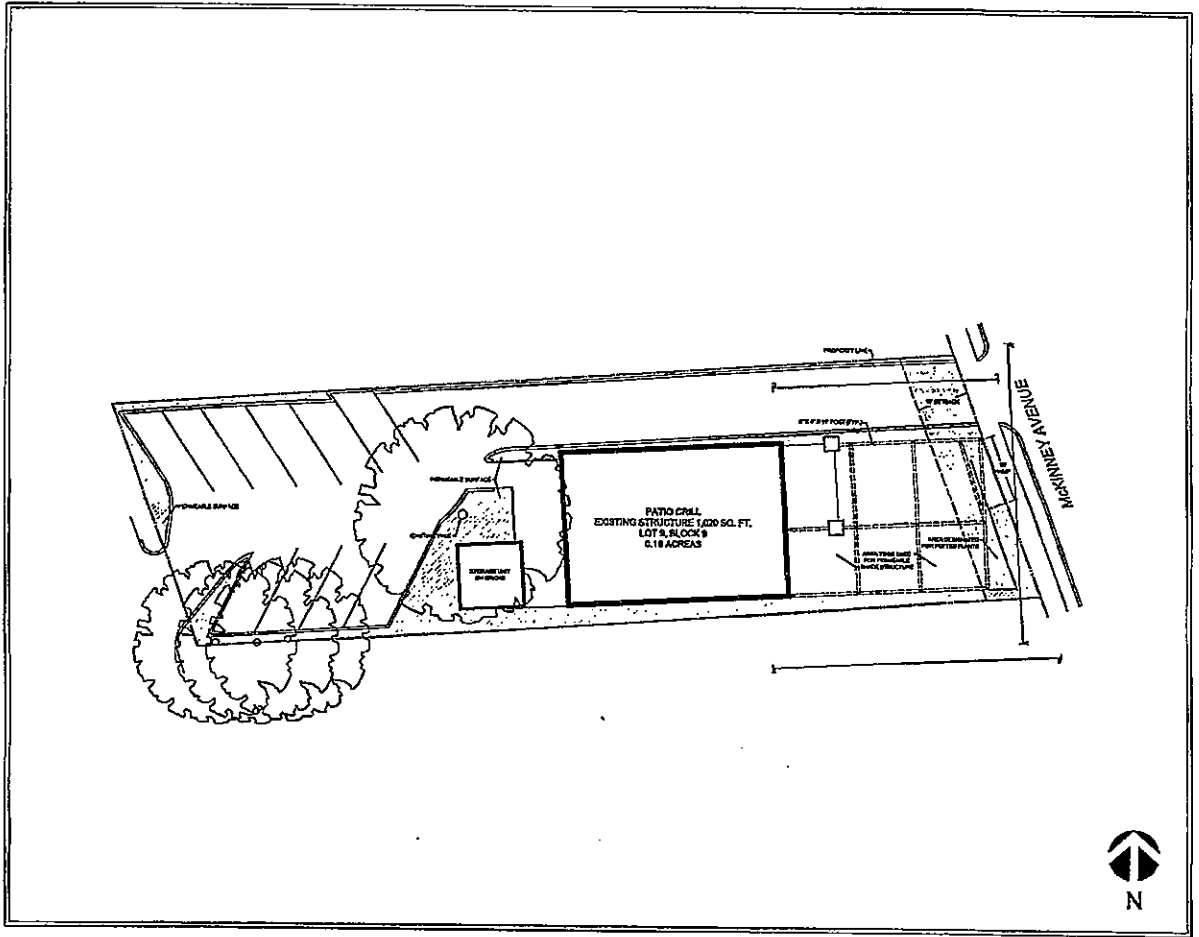
- Dry Overlay
- D
- D-1
- Historic Overlay
- Historic Subdistricts
- NSO Overlay

**Base Zoning**

- Base Zoning
- Floodplain
- 100 Flood Zone
- Mill's Creek
- Peak's Branch
- X PROTECTED BY LEVEE
- Pedestrian Overlay



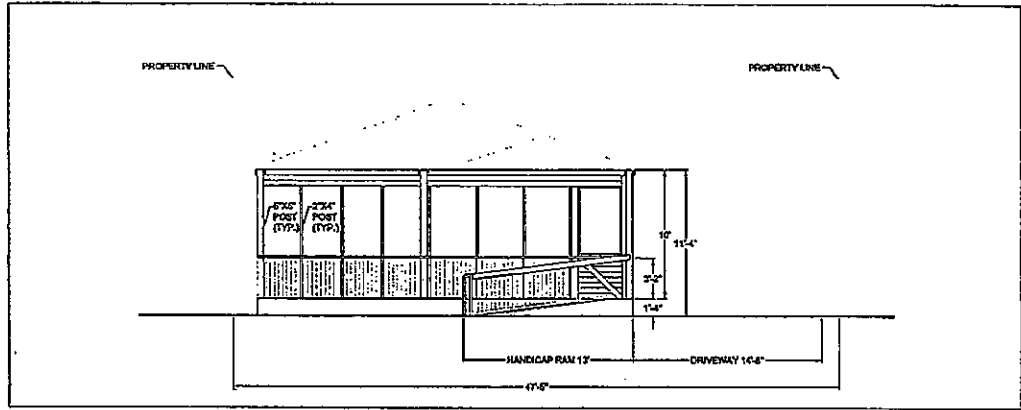
C:\tax\_plats\0971.dgn 5/4/2011 10:04:11 AM



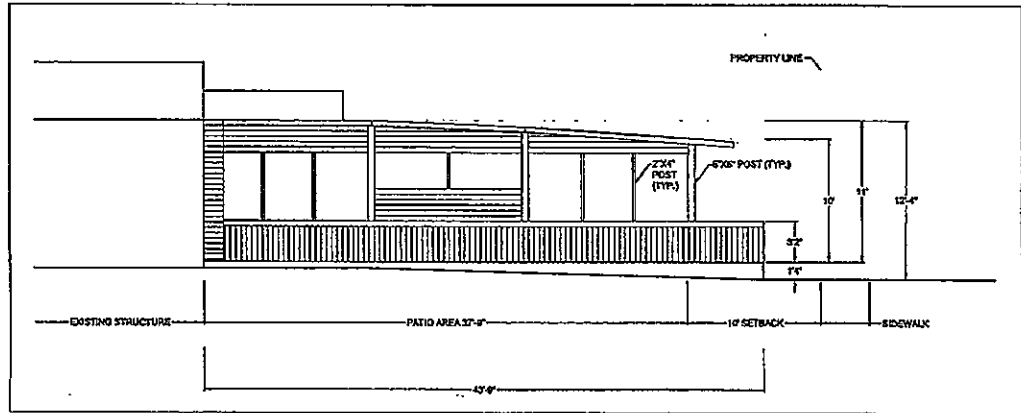
**PATIO GRILL**  
 3403 MCKINNEY AVE. DALLAS, TEXAS

**1 SITE PLAN**  
 SCALE: 1" = 10'-0"

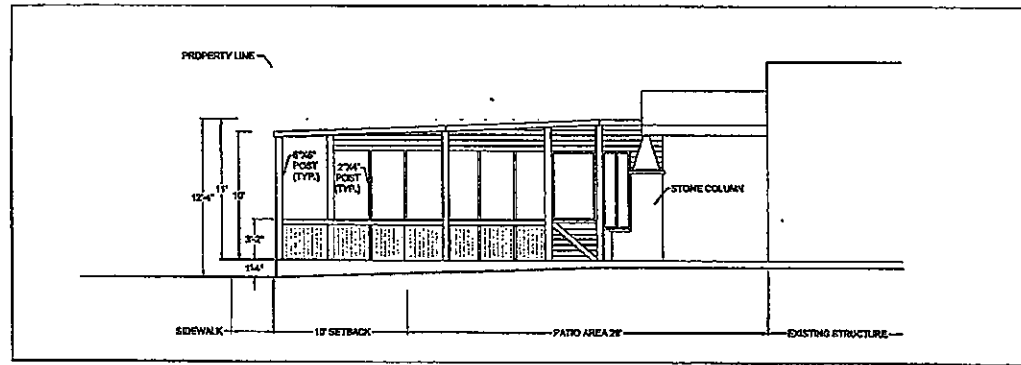
<b>Baldwin</b> <hr/> <b>Associates</b>	<b>BALDWIN ASSOCIATES</b>	<small>DATE</small> <b>5/6/11</b>
	<small>401 Exposition Avenue        Dallas, Texas 75226        MOBILE: 214.728.7943        OFFICE: 214.824.7948        rob@baldwinplanning.com</small>	<small>PROJECT NUMBER</small> <hr/>
		<small>CASE NUMBER</small> <hr/>



2 SITE ELEVATION - FRONT VIEW A - A'  
SCALE: 1/4" = 1'-0"



3 SITE ELEVATION - SOUTH VIEW B - B'  
SCALE: 1/4" = 1'-0"

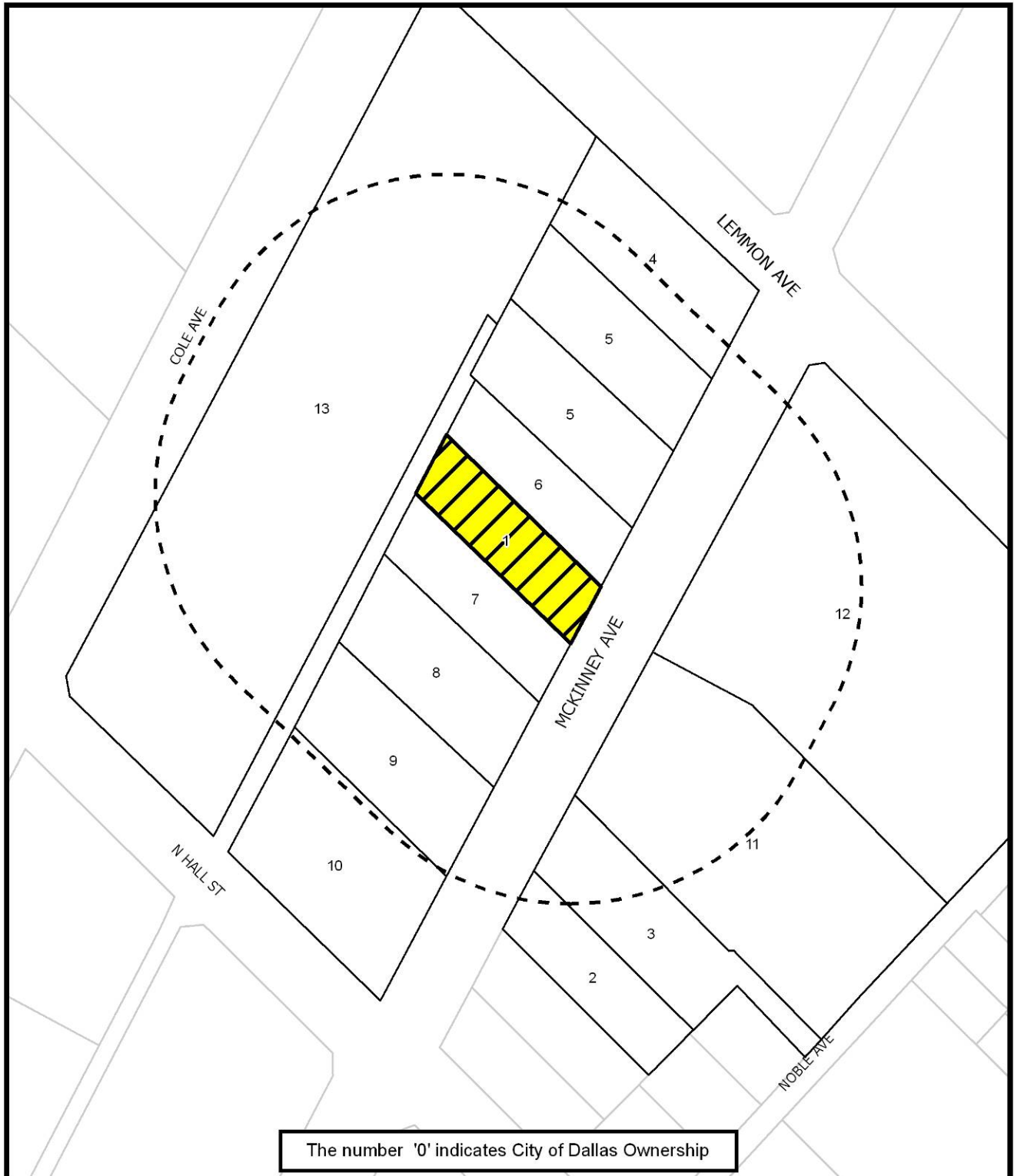


4 SITE ELEVATION - NORTH VIEW C - C'  
SCALE: 1/4" = 1'-0"

PATIO GRILL  
3403 MCKINNEY AVE. DALLAS, TEXAS

<b>Baldwin</b> <hr/> <b>Associates</b>	<b>BALDWIN ASSOCIATES</b> 401 Exposition Avenue Dallas, Texas 75225 MOBILE: 214.725.7949 OFFICE: 214.824.7949 rob@baldwinplanning.com	DATE <p style="text-align: right;">5/6/11</p>
	PROJECT NUMBER <hr/>	CASE NUMBER <hr/>





The number '0' indicates City of Dallas Ownership



1:1,200

# NOTIFICATION

**200'** AREA OF NOTIFICATION  
**13** NUMBER OF PROPERTY OWNERS NOTIFIED

Map no: I-7

Case no: BDA101-064

DATE: July 19, 2011



# ***Notification List of Property Owners***

***BDA101-064***

## ***13 Property Owners Notified***

<b><i>Label #</i></b>	<b><i>Address</i></b>	<b><i>Owner</i></b>
1	3403 MCKINNEY	DOWLING PAMELA G & JEFFERY S
2	3308 MCKINNEY	PORTOLANI FAMILY LP #325
3	3312 MCKINNEY	MCHALL PROPERTIES LLC SUITE 1500
4	3103 LEMMON	MICHAEL CARMEN M & LUDWIG A MICHAEL TRUSTEES
5	3413 MCKINNEY	HLS RESTAURANT CORP DBA HOOK LINE & SINKER
6	3407 MCKINNEY	CHEUNG LOON LLC STE 200
7	3321 MCKINNEY	CHEUNG LOON LLC SUITE 200
8	3317 MCKINNEY	CHEUNG LOON LLC
9	3309 MCKINNEY	RACHOFSKY M J TRUST ETAL % MORTON RACHOFSKY TR
10	3301 MCKINNEY	MCHALL PROPERTIES PS 1500 TWO TURTLE CREEK VLG
11	3324 MCKINNEY	CWS MCKINNEY INVESTORS LP
12	3418 MCKINNEY	WALGREEN CO
13	3402 COLE	POST APARTMENT HOMES LP POST PPTYS INC

**FILE NUMBER:** BDA 101-090

**BUILDING OFFICIAL'S REPORT:**

Application of Robert Reeves for variances to the front yard setback regulations at 3324 McKinney Avenue. This property is more fully described as Lot 5B in City Block 11/971 and is zoned PD-193 (LC), which requires a 25 foot front yard setback for any portion of a structure over 36 feet in height. The applicant proposes to construct and/or maintain a structure and provide 10 foot front yard setbacks for portions of the structure over 36 feet in height, which will require variances of 15 feet.

**LOCATION:** 3324 McKinney Avenue

**APPLICANT:** Robert Reeves

**REQUESTS:**

- Variances to the front yard setback regulations of 15' are requested in conjunction with maintaining an existing 10 story multifamily structure with an approximately 31,000 square foot building footprint (The Marquis on McKinney), part of which (the lowest three floors) is located in the site's two 25' front yard setbacks along McKinney Avenue and Noble Street.

**STAFF RECOMMENDATION:**

Denial

Rationale:

- The applicant has not substantiated how the restrictive area, shape, or slope of the site/lot precludes it from being developed in a manner commensurate with development found on other PD. No. 193 (LC) zoned lots.

**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 for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

- (A) not 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;

- (B) necessary to permit development of a specific parcel of land that 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 with the same zoning; and
- (C) not 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 with the same zoning.

**GENERAL FACTS:**

- PD No. 193 states that in the GR and LC Subdistrict (which includes this site: LC Subdistrict), the following minimum front yard setbacks must be provided for all buildings and structures:
  1. 10 feet for the first 36 feet in height.
  2. 25 feet for all portions of a building over 36 feet in height.The applicant has submitted a site plan and a revised elevation (see Attachment B) indicating that the lower portions (or first three floors) of the existing structure are 40' and 45' in height and are located 10' from the front property lines along the site's northwest side (McKinney Avenue) and southeast side (Noble Street), respectively, or are 15' into the 25' front yard setback that is required for the portion of a building over 36' in height. (The portion of the structure that reaches the maximum approximately 102' in height of the structure appears to be in compliance with the 25' front yard setbacks).
- According to calculations taken by the Board Administrator from the submitted site plan and revised elevation, the portion of the existing approximately 102' high structure with the approximately 31,000 square foot building footprint only 15' from the McKinney Avenue and Noble Street front property lines and higher than 36' in height is a 40' high portion of the existing structure that is approximately 160 square feet in the McKinney Avenue 25' front yard setback; and a 45' high portion of the existing structure that is approximately 180 square feet located in the Noble Street 25' front yard setback. The vast majority of the building footprint that reaches approximately 102' in height meets the 25' front yard setback that is required for portions of the building above 36' in height.
- A "grading plan" has been submitted that denotes contour lines of the site. The applicant has stated that there is a 5' slope between the highest and lowest points of the site. The site is slightly irregular in shape, and according to the application, 0.914 acres in area. The site is zoned PD No. 193 (LC). The site has two front yard setbacks which is typical of any lot that has two street frontages and is not zoned single family, duplex, or agricultural.
- DCAD records indicate that the "improvements" at 3324 McKinney is an "apartment" with 141,392 square feet built in 2002.
- The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachments A, B, and C). (Note

that Attachment C was a document not factored into the staff recommendation since it was submitted after the October 4<sup>th</sup> staff review team meeting).

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: PD No. 193 (LC) (Deed Restricted)\*(Planned Development, Light Commercial)  
North: PD No. 193 (LC) (Planned Development, Light Commercial)  
South: PD No. 193 (LC) (Planned Development, Light Commercial)  
East: PD No. 193 (O-2) (Planned Development, Office)  
West: PD No. 193 (LC) (Planned Development, Light Commercial)

- \* The applicant has represented that the deed restrictions on this site prohibit certain uses and required parking lot screening, and that his board of adjustment application does not violate any of the deed restrictions on the site.

### **Land Use:**

The subject site is developed with a multifamily structure (The Marquis on McKinney). The areas to the north, east, south, and west are developed with a mix of office, retail, and residential 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:**

June 23, 2011: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

September 21, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

September 22, 2011: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the September 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the October 7<sup>th</sup> deadline to

submit additional evidence to be incorporated into the Board's docket materials;

- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

Sept. 29 & October 4, 2011: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachments A and B).

October 4, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Assistant Director, the Sustainable Development and Construction Department Engineering Assistant Director, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

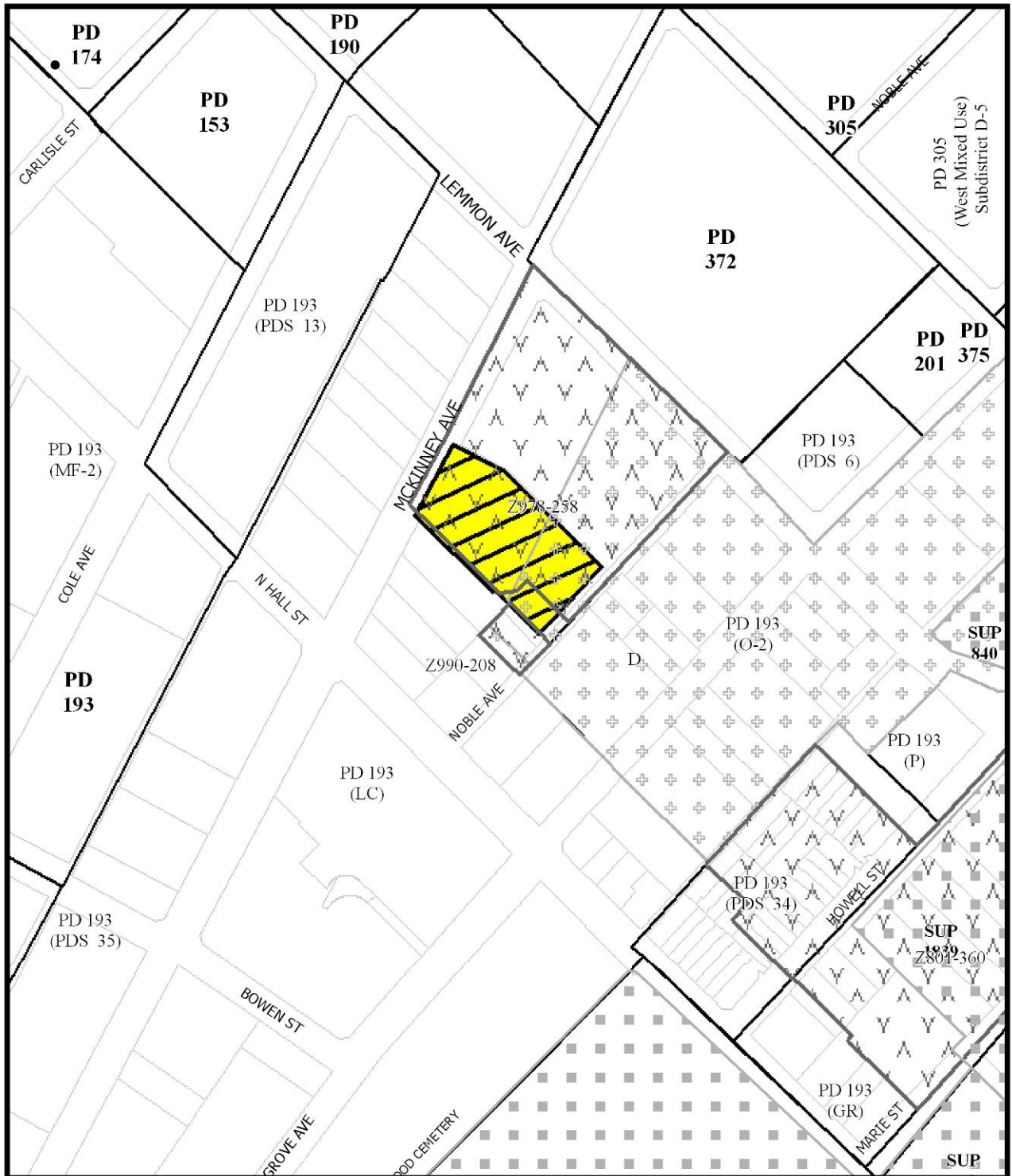
October 6, 2011: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment C).

**STAFF ANALYSIS:**

- The requests focus on maintaining an existing 10 story multifamily structure with an approximately 31,000 square foot building footprint (The Marquis on McKinney), part of which (the lowest three floors) is located in the site's two 25' front yard setbacks along McKinney Avenue and Noble Street.
- The applicant has stated that the previous owner's representative has stated that the structure was permitted in 2000 and built based on City policies for determining height, and that 40' was allowed on McKinney Avenue and 45' was allowed on Noble Street. The applicant states, however, when the new owners recently purchased the property, it was discovered that building height is based on the average of the highest and lowest finish grade and, given a 5' difference in the grade, the structure height within 25' from McKinney Avenue should be 37.5' (not the currently built 40'), and the structure height from Noble Street should be 42.5' (not the currently built 45').
- According to calculations taken by the Board Administrator from the submitted site plan and revised elevation, the portion of the existing approximately 102'

high structure with the approximately 31,000 square foot building footprint that is only 15' from the McKinney Avenue and Noble Street front property lines and higher than 36' in height is a 40' high portion of the existing structure that is approximately 160 square feet in the McKinney Avenue 25' front yard setback; and a 45' high portion of the existing structure that is approximately 180 square feet located in the Noble Street 25' front yard setback. The vast majority of the building footprint that reaches approximately 102' in height meets the 25' front yard setback that is required for portions of the building above 36' in height.

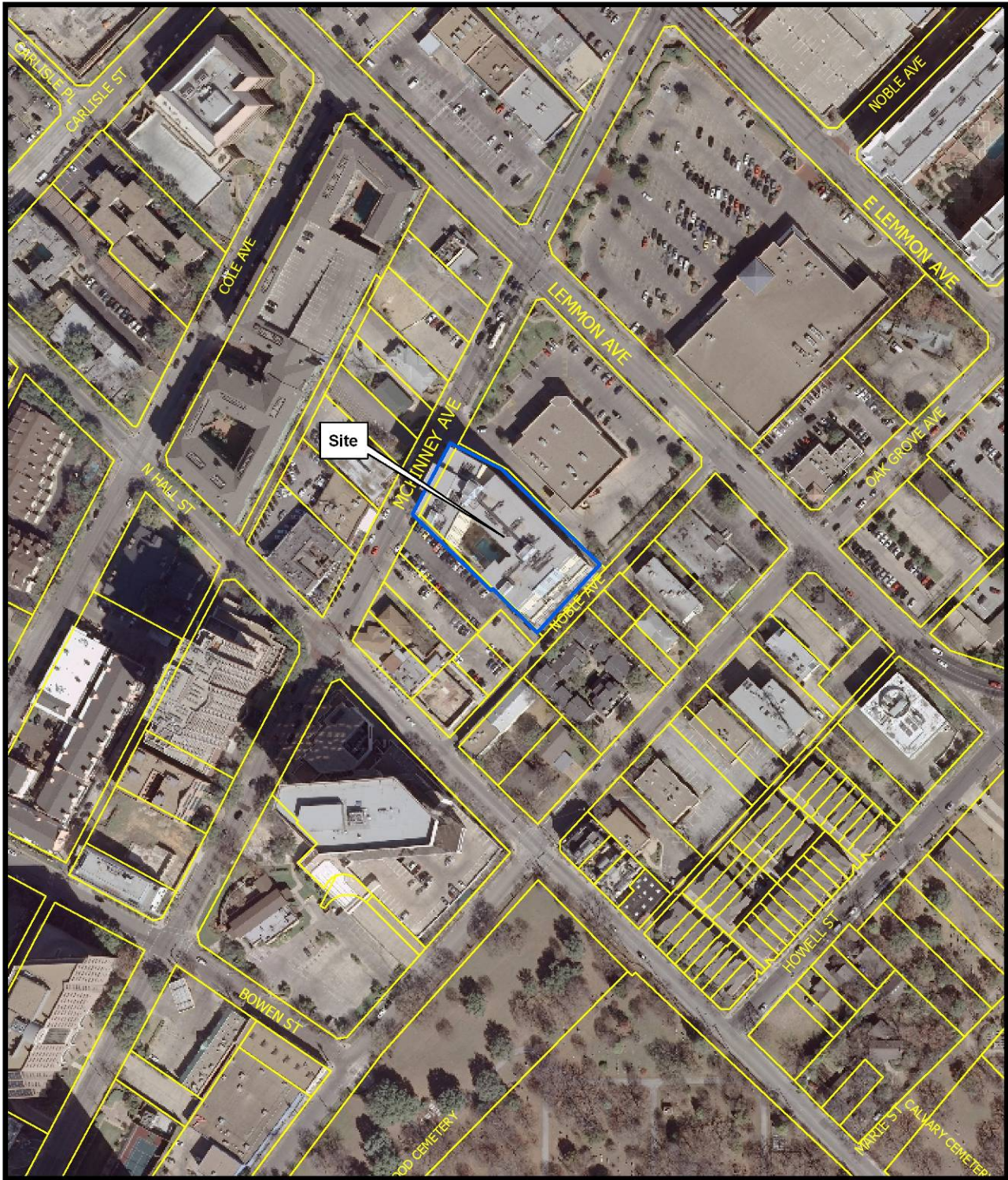
- A “grading plan” has been submitted that denotes contour lines of the site. The applicant has stated that there is a 5' slope between the highest and lowest points of the site. The site is slightly irregular in shape, and according to the application, 0.914 acres in area. The site is zoned PD No. 193 (LC). The site has two front yard setbacks which is typical of any lot that has two street frontages and is not zoned single family, duplex, or agricultural.
- DCAD records indicate that the “improvements” at 3324 McKinney is an “apartment” with 141,392 square feet built in 2002.
- The applicant has the burden of proof in establishing the following:
  - That granting the variances to front 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 are necessary to permit development of the subject site 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 No. 193 (LC) zoning classification.
  - The variances 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 No. 193 (LC) zoning classification.
- If the Board were to grant the variance requests, and impose the submitted site plan and revised elevation as conditions, the structure encroaching into the required front yard setbacks would be required to be maintained in the location and to the features shown on these documents.



 1:2,400	<h1>ZONING MAP</h1>	Map no: <u>          I-7          </u> Case no: <u>          BDA101-090          </u>
--	---------------------	--

DATE: September 29, 2011





1:2,400

# AERIAL MAP

Map no: 1-7

Case no: BDA101-090

DATE: September 29, 2011



BDA101-090

Attach A

Pg 1

ROBERT REEVES  
& Associates, Inc.

PLANNING AND ZONING CONSULTANTS

September 29, 2011

Steve Long  
Board of Adjustment Administrator  
Department of Sustainable Development and Construction  
1500 Marilla Street, Room 5BN  
Dallas, Texas 75201

RE: Update on Variance Request 3324 McKinney Avenue

Dear Long:

I wanted to provide you with some background and updated information concerning this Board of Adjustment request. My client, 3334 McKinney Avenue Apartments Investors, LLC, recently purchased this property. During the due-diligence phase, it was discovered that portion of the building exceeded the allowable height by 2.5 feet for a structure located within the 25-foot front yard setback from McKinney Avenue and Noble Avenue.

Zoning Requirements:

Section. 51P-193.118(c)(5) of the Oak Lawn Special Purpose Planned Development District states that in a GR and LC Subdistricts, the minimum front yard setbacks for all buildings and structures is 10 feet for all structures 36 feet or less and 25 feet for all structures greater than 36 feet in height. The property is zoned LC Subdistrict and has two front yards, McKinney Avenue and Noble Avenue. Planned Development District 193 also allows parapet walls to project an additional 4 feet for all structures limited to 36 feet or less.

Background:

Marquis Residential Development received a building permit around December 2000 and was built during the first half of 2001. There is a 5-foot slope between the highest point of the finished grade at 490 MSL along McKinney Avenue and the lowest point of the finished grade at 485 MSL along Noble Avenue.

A portion of the structure was permitted and built to a height of approximately 40 feet within the 25-foot front yard setback along McKinney Avenue, which is the highest

portion of the site, and a portion was permitted and built to a height of approximately 45 feet within the 25-foot front yard setback along Noble Avenue, which is the lowest point of the site. The 40-foot height included 36 feet for the main structure plus a 4-foot parapet wall. The 45-foot height along Noble Avenue included 36 feet for the main structure, plus a 4-foot parapet wall in addition to 5 feet, which is the difference in finish grade elevations at the highest and lowest points.

The previous owner's representative has stated that the structure was permitted and built based on City policies for determining height and 40 feet was allowed along McKinney and 45 feet was allowed along Noble. However, after conferring with Phil Sikes, Building Inspection, I was told that building height is based on the average of the highest and lowest finish grade for a structure. Since there is a 5-foot difference in the grades, the structure height within 25 feet of McKinney should be 37.5 feet, not the currently built 40-foot structure and the structure height within 25 feet of Noble Avenue should be 42.5 feet not the currently built 45-foot structure.

Consequently, I thought that my remedy for bringing the building into compliance was to request a 2.5-foot height variance for structures located within the 25-foot setback along McKinney and Noble is requested. However, Todd Duerksen, Building Inspection, has determined that my request should be amended to reflect a 15-foot front yard variance instead of a height variance. Therefore, I am amending my application to request a 15-foot front yard variance. The facts remain the same.

Mr. Long, please call me if you have any questions.

Sincerely:



Robert Reeves

**Subject:** Marquis Residential

BDA 101-090  
Attach B  
Pg 1

Steve:

When I was working on some additional information for the board my case for the Marquis Residential Development, I discovered an error in one of my dimension on the elevations. The height dimension along the Noble Avenue should be 41 feet instead of 40 feet. I will correct this and deliver you several plans today, so the board can consider our front yard variance subject to the correct elevation.

Thanks.

Robert Reeves  
Robert Reeves & Associates, Inc.  
900 Jackson Street, Suite 160  
Dallas, Texas 75202  
214-749-0530  
Fax: 214-749-5605

**Robert Reeves &  
Associates, Inc.**

900 Jackson Street, Suite 160  
Dallas, Texas 75202  
(214) 749-0530  
FAX (214) 749-5605

## MEMORANDUM

To: Steve Long  
From: Robert Reeves  
Date: October 4, 2011  
Re: BDA 101-090; 3324 McKinney Avenue

---

Attached are the revised elevation plans, per our earlier communication.

Thanks,

Robert



Modified for a Dallas Board of Adjustment Exhibit  
 Robert Reeves & Associates, Inc.  
 1400 Ross Street, Suite 100  
 Dallas, Texas 75203  
 214-759-6530  
 July 19, 2011

**Notes on a reproduction copy**  
 Dallas Building Department  
 This record is for informational purposes only  
 DO NOT REPRODUCE FOR OTHER PURPOSES  
 Dallas Building Department  
 Dallas, Texas 75203

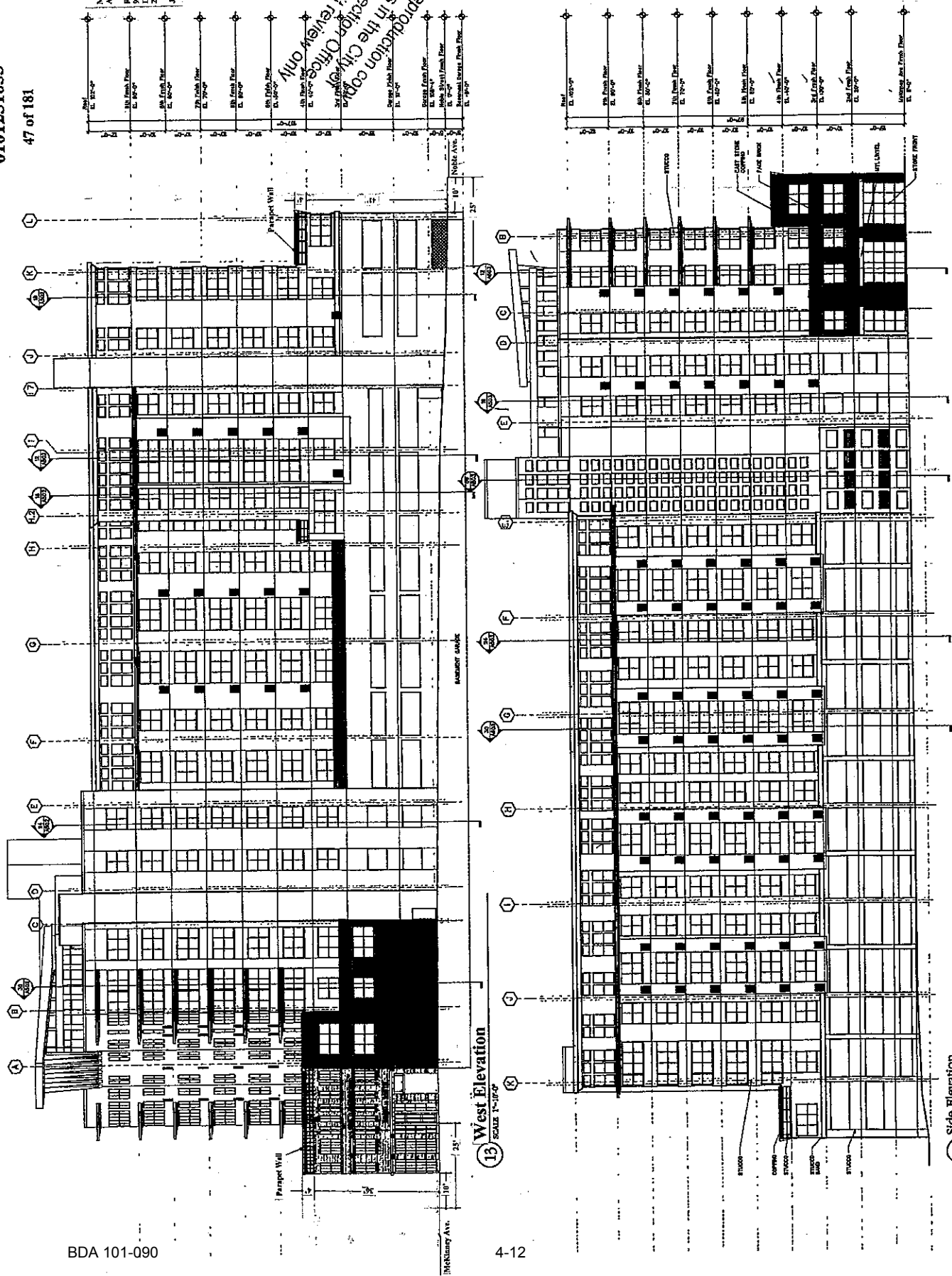
BDA 101-090  
 Attach B P 3

<b>MARQUIS</b> RESIDENTIAL DEVELOPMENT LLC	Project Name MARQUIS	Date 07/19/11
Drawn By MARCUS	Scale AS SHOWN	Sheet No. 01
<small>© 2011 MARQUIS RESIDENTIAL DEVELOPMENT LLC. ALL RIGHTS RESERVED. THIS DOCUMENT IS THE PROPERTY OF MARQUIS RESIDENTIAL DEVELOPMENT LLC. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREIN. NO PART OF THIS DOCUMENT IS TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT THE WRITTEN PERMISSION OF MARQUIS RESIDENTIAL DEVELOPMENT LLC.</small>		

CA102

0101231033

47 of 181



13 West Elevation  
 SCALE 1/8"=1'-0"

25 Side Elevation  
 SCALE 1/8"=1'-0"

ROBERT REEVES  
& Associates, Inc.

PLANNING AND ZONING CONSULTANTS

October 6, 2011

Board of Adjustment, Panel C  
City of Dallas  
1500 Marilla Street, Room 5BN  
Dallas, Texas 75201

Dear Board Members:

My client, 3324 McKinney Avenue Apartments Investors, LLC, recently purchased the Marquis on McKinney residential development. During the due-diligence phase, it was discovered that a portion of the building exceeded the allowable height by 2.5 feet for a structure located within the 25-foot front yard setback from McKinney Avenue and Noble Avenue.

Zoning Requirements:

Section. 51P-193.118(c)(5) of the Oak Lawn Special Purpose Planned Development District No. 193 states that in a GR and LC Subdistricts, the minimum front yard setbacks for all buildings and structures is 10 feet for all structures 36 feet or less and 25 feet for all structures greater than 36 feet in height. The property is zoned LC Subdistrict and has two front yards, McKinney Avenue and Noble Avenue. Planned Development District No. 193 also allows parapet walls to project an additional 4 feet for all structures limited to 36 feet or less.

Background: (See Attached Graphics)

Marquis on McKinney residential development received a building permit around December 2000 and was built during the first half of 2001. There is a 5-foot slope between the highest point of the finished grade at 490 MSL along McKinney Avenue and the lowest point of the finished grade at 485 MSL along Noble Avenue.

The structure was built to a height of approximately 40 feet within the 25-foot front yard setback along McKinney Avenue, which is the highest portion of the site, and a portion of the development was built to a height of approximately 45 feet within the 25-foot front yard setback along Noble Avenue, which is the lowest point on the site. The 40-foot height included 36 feet for the main structure plus a 4-foot parapet wall. The 45-foot

height along Noble Avenue included 41 feet for the main structure, plus a 4-foot parapet wall.

The previous owner's representative stated that the structure was built based on City policies for determining height and a 40-foot was allowed along McKinney since this was the main entrance and a 45-foot was allowed along Noble. However, after confirming with the senior Building Inspection staff, I was told that building height is based on the average of the highest and lowest finish grade for a structure. Since there is a 5-foot difference in the grades, the structure height within 25 feet of McKinney should be 37.5 feet, not the current 40-foot structure. The structure height within 25 feet of Noble Avenue should be 42.5 feet, not the current 45-foot structure.

Request:

Therefore, I am requesting a 15-foot front yard variance in order to bring the existing building into compliance with the Dallas Development Code based on the following findings:

- A) The 15-foot front yard setback variance is not 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.
- B) The variance is necessary to permit development of this site because it differs from other parcels of land by being of such a restrictive slope that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning.
- C) This variance request is not based on financial hardship nor to relieve a self-created or personal hardship because my client had no involvement in the building construction and the City of Dallas issued a permit for the structure.

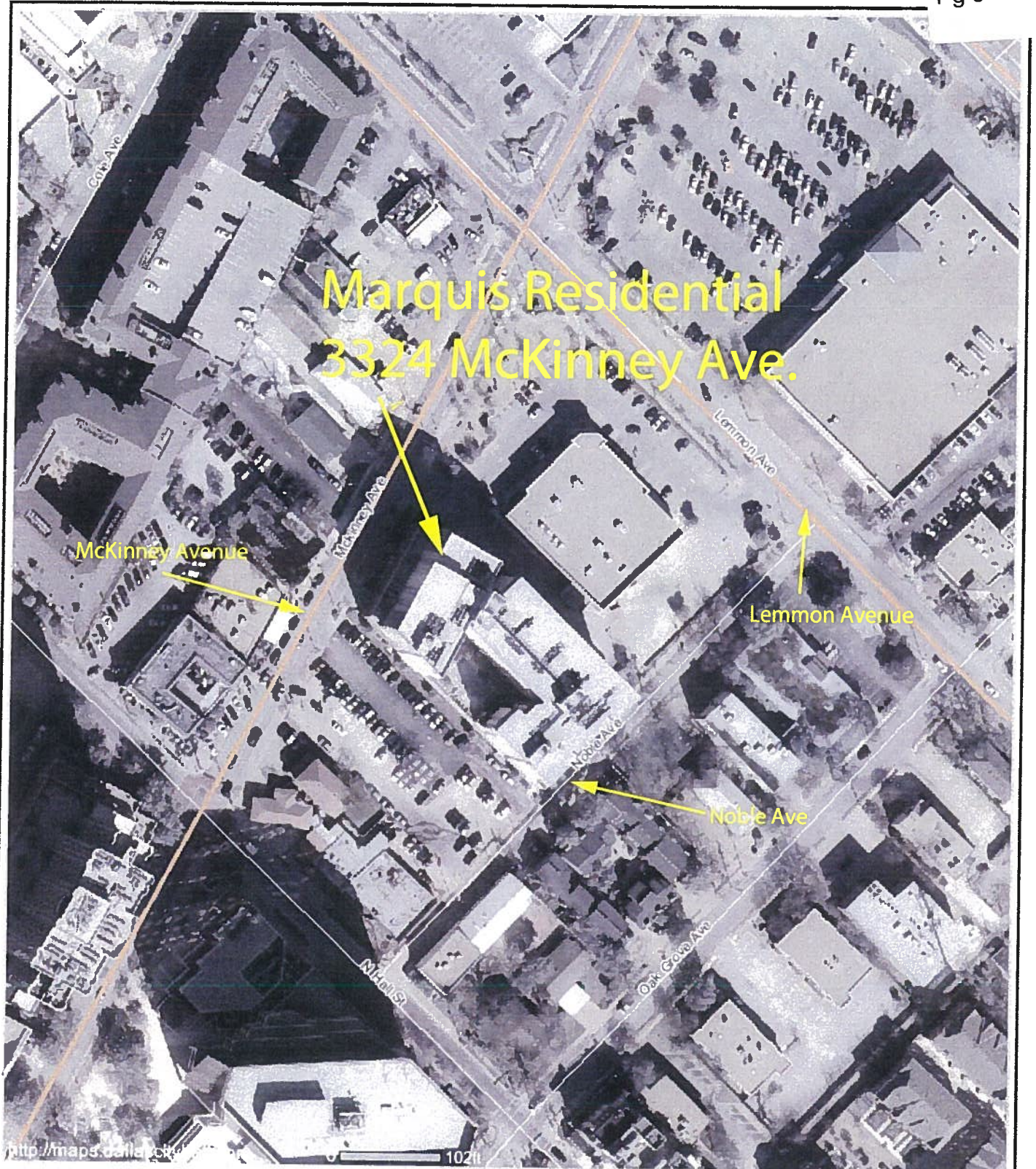
We respectfully request approval in order to bring this existing building into compliance with the zoning ordinance.

Sincerely:



Robert Reeves





**City of Dallas**  
1500 Marilla Street  
Dallas, Texas 75201

**DISCLAIMER** - The accuracy of this data within this map is not to be taken / used as data produced by a Registered Professional Land Surveyor for the State of Texas. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.





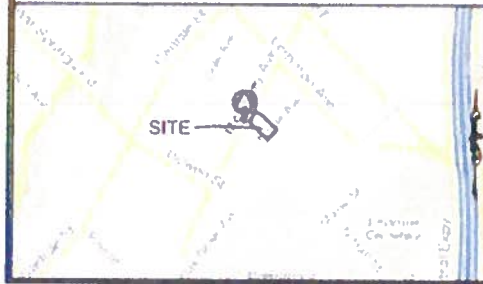
**ZONING INFORMATION**

THE SURVEYOR WAS NOT PROVIDED WITH ZONING INFORMATION FROM THE PUBLICLY PURCHASER TO TABLE A-TEN-B.

**UTILITY NOTES**

- DIG TIES  
 1.688.564.8777  
 1.214.353.4622  
 NO DISPLACEMENT
- THREE MARKER CABLE  
 DALLAS, TX 75204  
 1.214.353.4622  
 NO DISPLACEMENT
- MS1  
 3322 BRYAN STREET SUITE 200  
 DALLAS, TX 75201  
 1.800.540.8830  
 NO DISPLACEMENT
- LOUISIANA COMMERCIAL TRUSS  
 600 S KAPLAN STREET  
 DALLAS, TX 75202  
 1.214.753.8978  
 NO DISPLACEMENT
- DACOR ELECTRIC  
 1618 WOODGATE BOULEVARD PHASE 1  
 DALLAS, TX 75202  
 1.214.353.4622  
 NO DISPLACEMENT
- AT&T  
 2311 DAN LORR AVE SUITE 101  
 DALLAS, TX 75213  
 1.214.353.4622  
 MARKED
- AT&T COMMERCIAL CABLE  
 4311 RIVINGTON AVENUE  
 DALLAS, TX 75219  
 1.214.353.4622  
 MARKED
- THE TELECOM  
 3080 DALLAS PARKWAY  
 DALLAS, TX 75244  
 1.877.455.7889  
 MARKED

**VICINITY MAP - NOT TO SCALE**



**MISCELLANEOUS NOTES**

- (M1) SOME FEATURES SHOWN ON THIS PLAN MAY BE SHOWN OUT OF SCALE FOR CLARITY AND DIMENSIONS SHOWN ARE IN FEET AND DECIMALS THEREOF.
- (M2) SEWERAGE AND SANITATION ARE SHOWN ON THE RIGHT SIDE OF THE RIGHT OF WAY LINE OF NORTON AVENUE. DALLAS COUNTY TIES TO BE AT 5.42' FROM THE RIGHT OF WAY LINE.
- (M3) AT THE TIME OF SURVEY, THERE WAS NO EVIDENCE OF ANY OTHER ADJACENT BUILDING OR CONSTRUCTION BUILDING ACTS.
- (M4) AT THE TIME OF SURVEY, THERE WAS NO EVIDENCE OF ANY OTHER ADJACENT BUILDING OR CONSTRUCTION BUILDING ACTS.
- (M5) AT THE TIME OF SURVEY, THERE WAS NO EVIDENCE OF ANY OTHER ADJACENT BUILDING OR CONSTRUCTION BUILDING ACTS.
- (M6) AT THE TIME OF SURVEY, THERE WAS NO EVIDENCE OF ANY OTHER ADJACENT BUILDING OR CONSTRUCTION BUILDING ACTS.
- (M7) THE SUBJECT PROPERTY IS LOCATED ON THE EAST SIDE OF THE RIGHT OF WAY OF NORTON AVENUE. THE SUBJECT PROPERTY IS LOCATED ON THE EAST SIDE OF THE RIGHT OF WAY OF NORTON AVENUE.
- (M8) THERE ARE NO GAPS, SPILLS, OR UNUSUAL CONDITIONS PERTAINING TO THE SUBJECT PROPERTY BASED ON THE FIELD SURVEY INFORMATION AND THE TITLE COMMITMENTS PROVIDED.
- (M9) NO ENCUMBRANCES, ASSIGNMENTS OR LIENS WERE IDENTIFIED ON THE SUBJECT PROPERTY BY THIS SURVEYOR.
- (M10) FENCE INFORMATION WAS NOT DETERMINED UNDER THE SCOPE OF THIS SURVEY.
- (M11) THE PROPERTY BOUNDARIES AND CORNER MARKERS WERE LOCATED AND UNDERGROUND IMPROVEMENTS (IF ANY) WERE IDENTIFIED AND LOCATED.
- (M12) THE SURVEYED PROPERTY HAS ALLEYS TO NORTON AVENUE AND MUST HAVE EVIDENT PUBLIC RIGHT OF WAY AND NORTON AVENUE. A FENCED-IN OR GATED ALLEY OF ANY KIND IS NOT ALLOWED.
- (M13) AN ALLEY OF 30' IN WIDTH AVENUE WAS FIELD ON THE SURVEYED PROPERTY.
- (M14) SURVEY PREPARED BY MICHAEL SURVEYING INC. CALLED TO THE MARK AND FIELD OF THE SURVEY WAS USED IN THE PREPARATION OF THIS SURVEY.

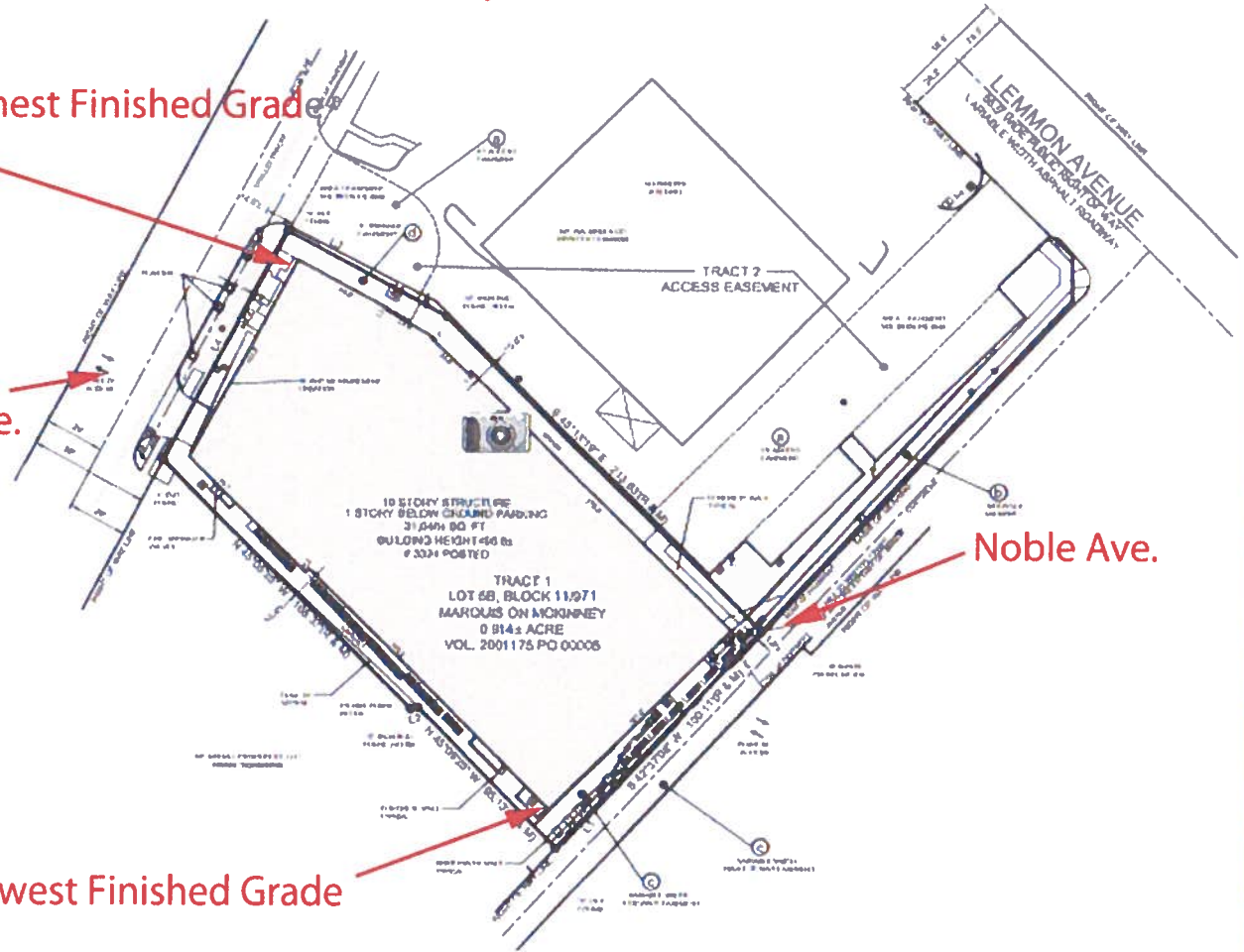
**SITE PLAN  
 MARQUIS RESIDENTIAL  
 3324 McKinney Avenue**

490' MSL Highest Finished Grade

McKinney Ave.

Noble Ave.

485' Lowest Finished Grade



**PROJECT REVISION RECORD**

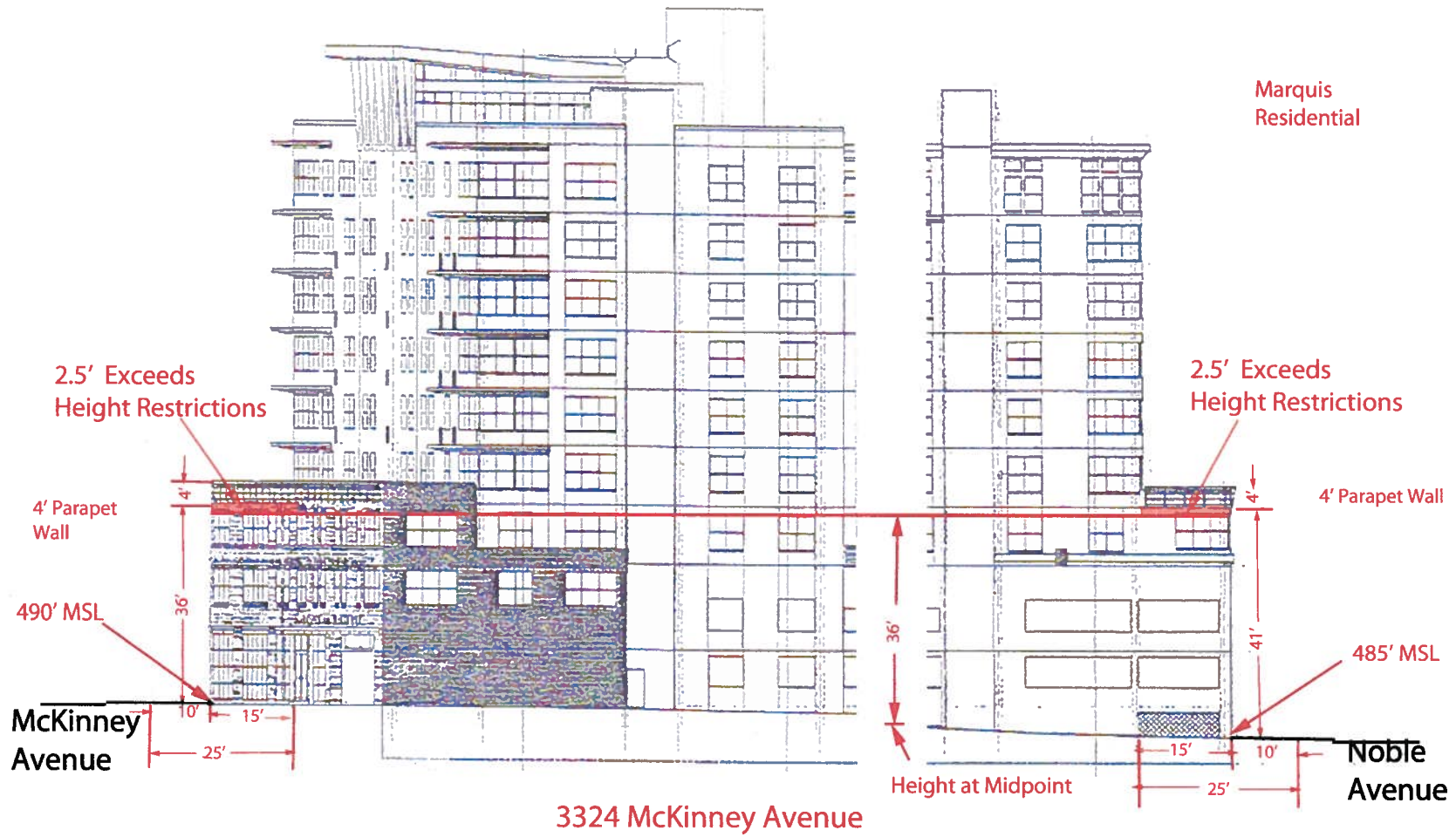
DATE	DESCRIPTION	DATE	DESCRIPTION

**SIGNIFICANT OBSERVATIONS**

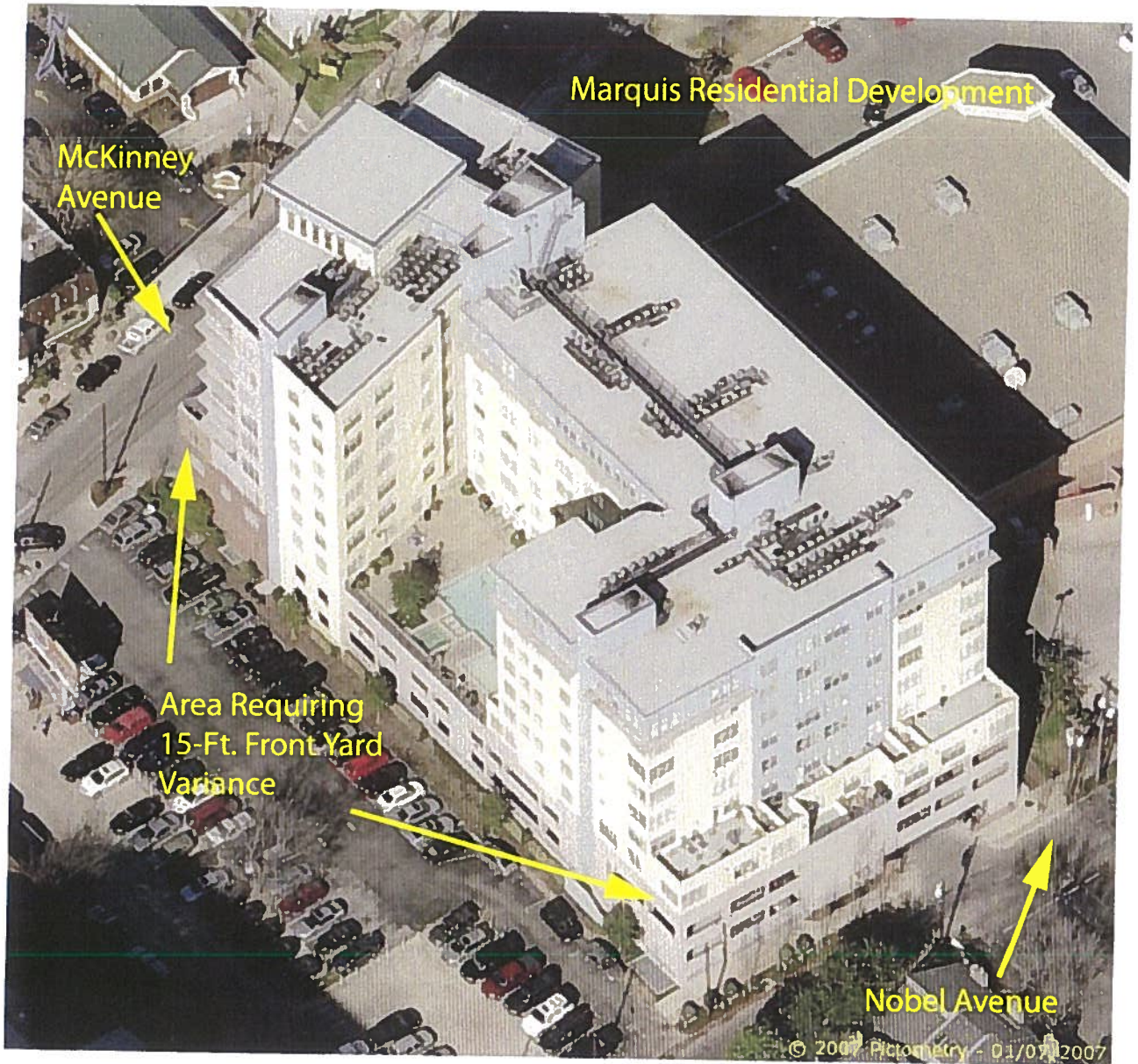
A. None observed.

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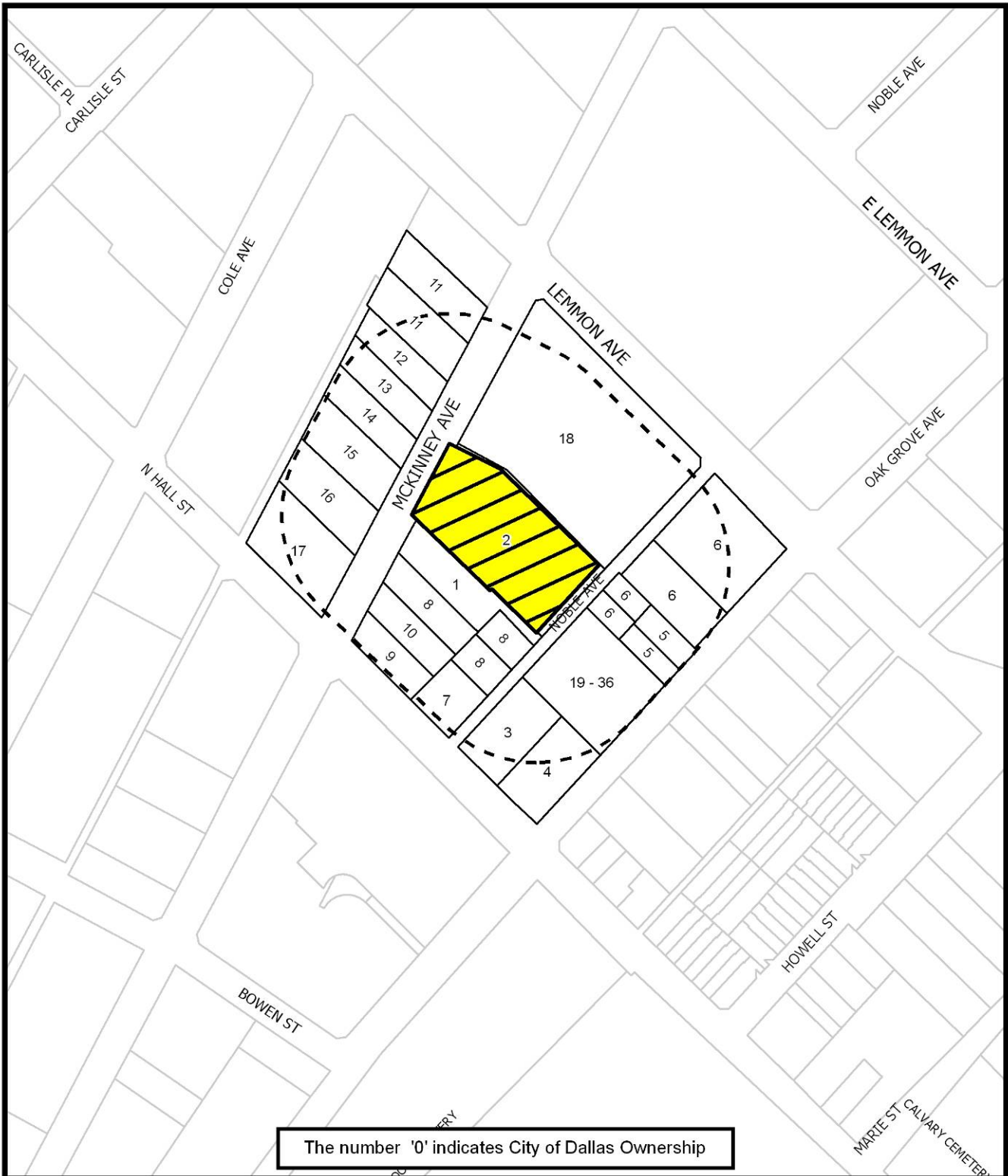












The number '0' indicates City of Dallas Ownership



1:2,400

# NOTIFICATION

**200'**

AREA OF NOTIFICATION

**36**

NUMBER OF PROPERTY OWNERS NOTIFIED

Map no:           I-7          

Case no:           BDA101-090          

DATE: September 29, 2011

# ***Notification List of Property Owners***

## ***BDA101-090***

### ***36 Property Owners Notified***

<b><i>Label #</i></b>	<b><i>Address</i></b>	<b><i>Owner</i></b>
1	3312 MCKINNEY	MCHALL PROPERTIES LLC SUITE 1500
2	3324 MCKINNEY	CWS MCKINNEY INVESTORS LP
3	2910 HALL	2910 HALL LTD
4	3301 OAK GROVE	SANDERS JOEL G
5	3401 OAK GROVE	SPAETH MERRIE
6	3409 OAK GROVE	2909 LEMMON LP STE 200
7	2916 HALL	2916 HALL STREET HOLDINGS LLC
8	3307 NOBLE	PORTOLANI FAMILY LP #325
9	3300 MCKINNEY	REGISTER CHARLES
10	3306 MCKINNEY	REGISTER CHARLES
11	3413 MCKINNEY	HLS RESTAURANT CORP DBA HOOK LINE & SINK
12	3407 MCKINNEY	CHEUNG LOON LLC STE 200
13	3403 MCKINNEY	DOWLING PAMELA G & JEFFERY S
14	3321 MCKINNEY	CHEUNG LOON LLC SUITE 200
15	3317 MCKINNEY	CHEUNG LOON LLC
16	3309 MCKINNEY	RACHOFSKY M J TRUST ETAL % MORTON RACHOF
17	3301 MCKINNEY	MCHALL PROPERTIES PS 1500 TWO TURTLE CRE
18	3418 MCKINNEY	WALGREEN CO
19	3321 OAK GROVE	DEARING GEORGE C # 101-A
20	3321 OAK GROVE	GAY DONNA BERNARD #102
21	3321 OAK GROVE	LAMB MICHAEL D
22	3321 OAK GROVE	MANRIQUE RAUL E CUBILLAS
23	3321 OAK GROVE	GODFREY DANIEL E
24	3321 OAK GROVE	HUTCHINSON JEFFREY KEITH
25	3321 OAK GROVE	MAHMALJI DAVID
26	3321 OAK GROVE	CASSEL WILLIAM SCOTT JR & PATRICIA R

27	3321	OAK GROVE	SHACKLETT SUZY BLDG B UNIT 109
28	3321	OAK GROVE	PERRY BRIAN BLDG C UNIT 110
29	3321	OAK GROVE	NOBLE JEFFREY S STE 202
30	3321	OAK GROVE	HADDOCK TYLER
31	3321	OAK GROVE	GRANDJEAN NICOLE RAE
32	3321	OAK GROVE	JERNIGAN BRUCE ALLEN
33	3321	OAK GROVE	MCMAHON NENA L BLDG D UNIT 115
34	3321	OAK GROVE	BORG STEPHEN W
35	3321	OAK GROVE	MINTER STEVEN S UNIT 117
36	3321	OAKGROVE	GOODING BRAD E UNIT 118 BLD D



**FILE NUMBER:** BDA 101-097

**BUILDING OFFICIAL'S REPORT:**

Application of George Moussa for special exceptions to the landscape and tree preservation regulations at 4020 Platinum Way (AKA 4120 Platinum Way). This property is more fully described as Lot 1A in City Block E/6044 and is zoned IM, which requires mandatory landscaping and tree preservation. The applicant proposes to construct a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations, and to remove protected trees on the site and provide an alternate tree mitigation plan, which will require a special exception to the tree preservation regulations.

**LOCATION:** 4020 Platinum Way (AKA 4120 Platinum Way)

**APPLICANT:** George Moussa

**REQUESTS:**

- The following appeals had been made in this application on site currently developed with an existing vacant approximately 175,000 square foot warehouse structure/use:
  1. A special exception to the landscape regulations is requested in conjunction with increasing the impervious surface on the site by over 2,000 square feet and not fully meeting the landscape regulations; and
  2. A special exception to the tree preservation regulations is requested in conjunction removing protected trees on the site and not fully meeting the tree preservation regulations.

**STAFF RECOMMENDATION (landscape special exception):**

Denial

Rationale:

- The applicant has not substantiated how strict compliance with the requirements of the Landscape Regulations in the Dallas Development Code will unreasonably burden the use of the property; and that the special exception will not adversely affect neighboring property.
- The City of Dallas Chief Arborist recommends denial of the request as submitted.

**STAFF RECOMMENDATION (tree preservation special exception):**



## Denial

### Rationale:

- Given that the Dallas Development Code states that the applicant has the burden of proof in establishing the necessary facts to warrant favorable action of the board, staff is recommending denial of this request. The applicant has not substantiated with his submittals how strict compliance with the requirements of the Tree Preservation Regulations of the Dallas Development Code will unreasonably burden the use of the property; and that the special exception will not adversely affect neighboring property.

### **STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE AND TREE PRESERVATION REGULATIONS:**

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

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

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

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

### **GENERAL FACTS (related to the landscape special exception):**

- The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period.  
A revised alternate landscape/tree mitigation plan has been submitted (see Attachment A) that is deficient from meeting the landscape requirements of Article X.
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator regarding the applicant's request for a special exception to the

landscape regulations (see Attachment B). The memo stated among other things how the applicant's revised landscape plan shows a site that is deficient from meeting Article X: Landscape Regulations by not providing the two required design standards, possibly not providing required screening of off-street parking, and not providing required landscaping within 6 months of completion of a project.

**GENERAL FACTS (related to tree preservation special exception):**

- The Dallas Development Code states that the Tree Preservation, Removal, and Replacement Regulations apply to all property in the city except for: a) lots smaller than two acres in size that contain single family or duplex uses; and b) lots in a planned development district with landscaping and tree preservation regulations that vary appreciably from those in the provisions set forth in Chapter 51A.
- The Dallas Development Code states that if a tree removal application is approved, one or more healthy replacement trees must be planted in accordance with the following requirements:
  1. Quantity. The total caliper of replacement trees must equal or exceed the total caliper of the protected trees removed or seriously injured.
  2. Species. A replacement tree must be one of the specific "approved replacement trees" listed, and no one species of tree may constitute more than 30 percent of the replacement trees planted on a lot or tract.
  3. Location. The replacement trees must be planted on the lot from which the protected tree was removed or seriously injured, except as otherwise allowed by the code as an "alternate method of compliance with tree replacement requirements." Replacement trees may not be planted within a visibility triangle, a water course, or an existing or proposed street or alley.
  4. Minimum size. A replacement tree must have a caliper of at least two inches.
  5. Timing. Except as otherwise provided in the code, all replacement trees must be planted within 30 days after the removal or serious injury of the protected trees.

If the property owner provides the building official with an affidavit that all replacement trees will be planted within six months, the building official shall permit the property owner to plant the replacement trees during the six-month period.

If the property owner provides the building official with a performance bond or letter of credit in the amount of the total cost of purchasing and planting replacement trees, the building official may permit the property owner up to 18 months to plant the replacement trees with the following restrictions:

- For single family or multifamily developments, at least 50 percent of the total caliper of replacement trees must be planted before 65 percent of the development has received a final building inspection or

a certificate of occupancy, and all replacement trees must be planted prior to the completion of the development; and

- In all other cases, the replacement trees must be planted prior to the issuance of a certificate of occupancy.

A replacement tree that dies within two years of the date it was planted must be replaced by another replacement tree that complies with the tree preservation regulations.

- The Dallas Development Code provides the following “alternate methods of compliance with tree replacement requirements” if the building official determines that, due to inhospitable soil conditions or inadequate space, it would be impracticable or imprudent for the responsible party to plant a replacement tree on the lot where the protected tree was removed or seriously injured (the “tree removal property”):
  1. Donate the replacement tree to the city’s park and recreation department.
  2. Plant the replacement tree on other property in the city that is within one mile of the tree removal property.
  3. Make a payment into the Reforestation Fund.
  4. Grant a conservation easement to the city.
- A revised alternate landscape/tree mitigation plan has been submitted to staff (see Attachment A) that is deficient from meeting the tree preservation requirements of Article X.
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator regarding the applicant’s request for a special exception to the tree preservation regulations (see Attachment C). The memo stated among other things how the applicant’s revised mitigation plan shows a site that is deficient from meeting Article X: Tree Preservation Regulations by not fully mitigating for 151 caliper inches of trees on the site within 18 months from removal.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: IM (Mixed Use)  
North: IR (Industrial Research)  
South: IR (Industrial Research)  
East: IR (Industrial Research)  
West: IR (Industrial Research)

**Land Use:**

The site is currently developed with a vacant warehouse structure. The areas to the north, east, and west are developed with warehouse and/or office/warehouse uses; and the area to the south appears undeveloped.

**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:**

July 28, 2011: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

September 21, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

September 22, 2011: The Board Administrator emailed a colleague of the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the September 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the October 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

October 4, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Assistant Director, the Sustainable Development and Construction Department Engineering Assistant Director, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

October 6, 2011: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Has no objections.”

October 7, 2011: The applicant forwarded additional information on this application beyond what was submitted with the original application (see Attachment A).

October 10, 2011: The Chief Arborist submitted memos pertaining to the landscape and tree preservation special exception requests to the Board Administrator (see Attachment B and C).

**STAFF ANALYSIS (related to the landscape special exception):**

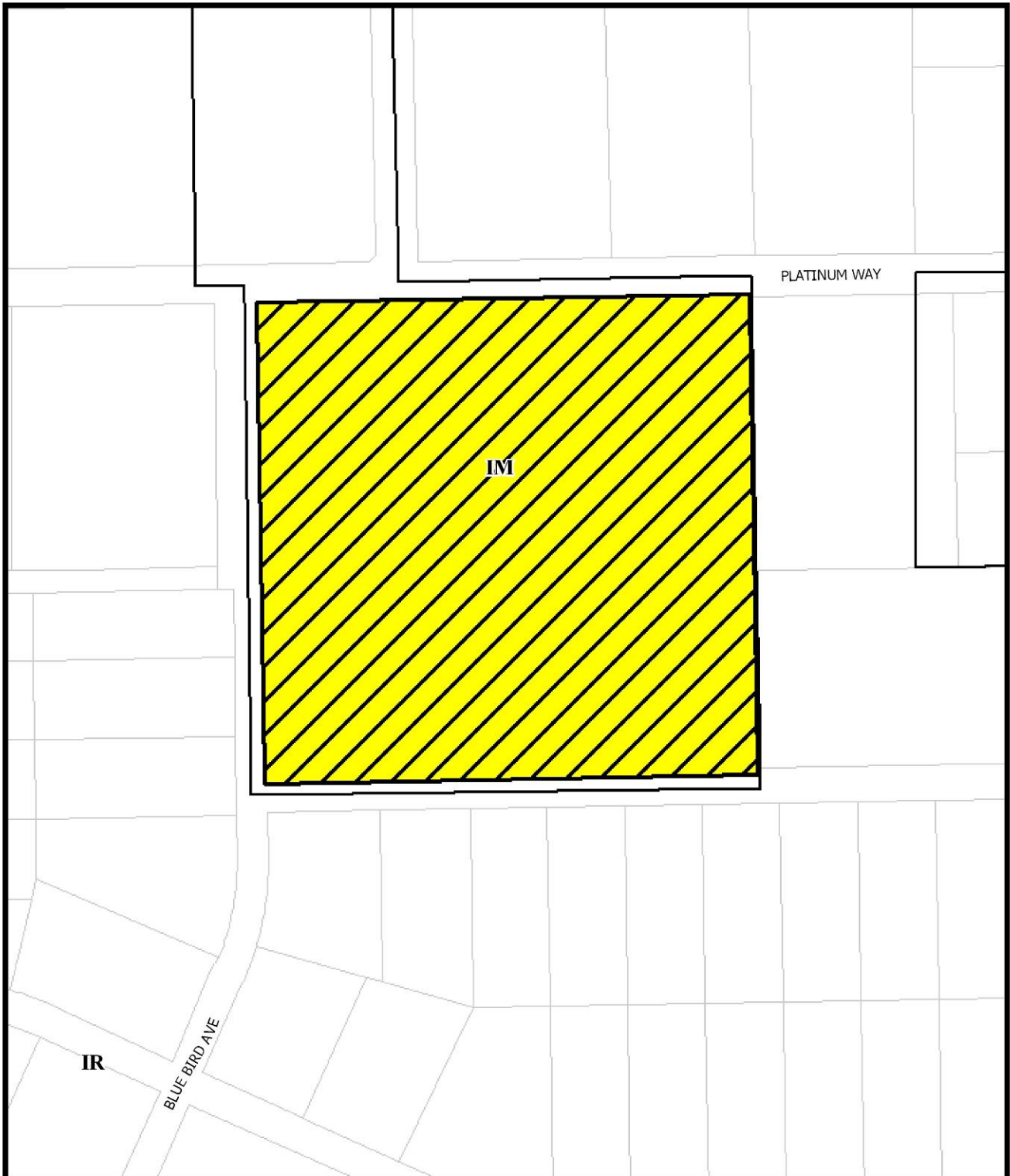
- This request focuses increasing the impervious surface on the site by over 2,000 square feet and not fully meeting the landscape regulations on site currently developed with an existing vacant approximately 175,000 square foot warehouse structure/use.
- The City of Dallas Chief Arborist states how the applicant's alternate revised landscape/tree mitigation plan shows a site is deficient from meeting Article X: Landscape Regulations by not providing the two required design standards, possibly not providing required screening of off-street parking, and not providing required landscaping within 6 months of completion of a project.
- The City of Dallas Chief Arborist recommends denial of the request.
- The applicant has the burden of proof in establishing the following:
  - Strict compliance with the requirements of the Landscape Regulations of the Dallas Development Code will unreasonably burden the use of the property; and
  - The special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose the submitted alternate revised landscape plan as a condition, the site would be provided exception to full compliance to the design standards, and parking lot screening of Article X: Landscape Regulations. Further, if the Board were to grant this request and impose a condition that the landscape on the revised landscape plan must be installed before the final inspection/approval of the street sections required by the infrastructure covenant agreement with the City, the site would be provided exception to compliance with the timing requirement of Article X: Landscape Regulations.


**STAFF ANALYSIS (related to tree preservation special exception):**

- This request focuses on removing protected trees on the site and not fully meeting the tree preservation regulations on site currently developed with an existing vacant approximately 175,000 square foot warehouse structure/use.
- The City of Dallas Chief Arborist states how the applicant's revised alternate landscape/tree mitigation plan is deficient from meeting Article X: Tree Preservation Regulations by not fully mitigating for 151 caliper inches of trees on the site within 18 months from removal.
- The City of Dallas Chief Arborist has deferred making any recommendation on this request pending the conclusions that the Board makes on the applicant's other request on this property that being a special exception to the landscape regulations, specifying the exception in that request regarding the timing of when landscape materials must be completed on the site. The Chief Arborist stated that if certain landscape elements are required to be installed,

then one or more of the applicant's mitigation issues may be resolved. The Chief Arborist also notes that the applicant should provide the Board with a clear, full, and accurate identification/representation as to when, where, and how many trees identified in tables on the submitted revised alternate landscape/tree mitigation plan will be planted.

- The applicant has the burden of proof in establishing the following:
  - Strict compliance with the requirements of the Tree Preservation Regulations of the Dallas Development Code will unreasonably burden the use of the property; and
  - The special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose the submitted alternate revised tree mitigation plan as a condition, the site would be provided exception to full compliance to mitigation and timing provisions of Article X: Tree Preservation Regulations.



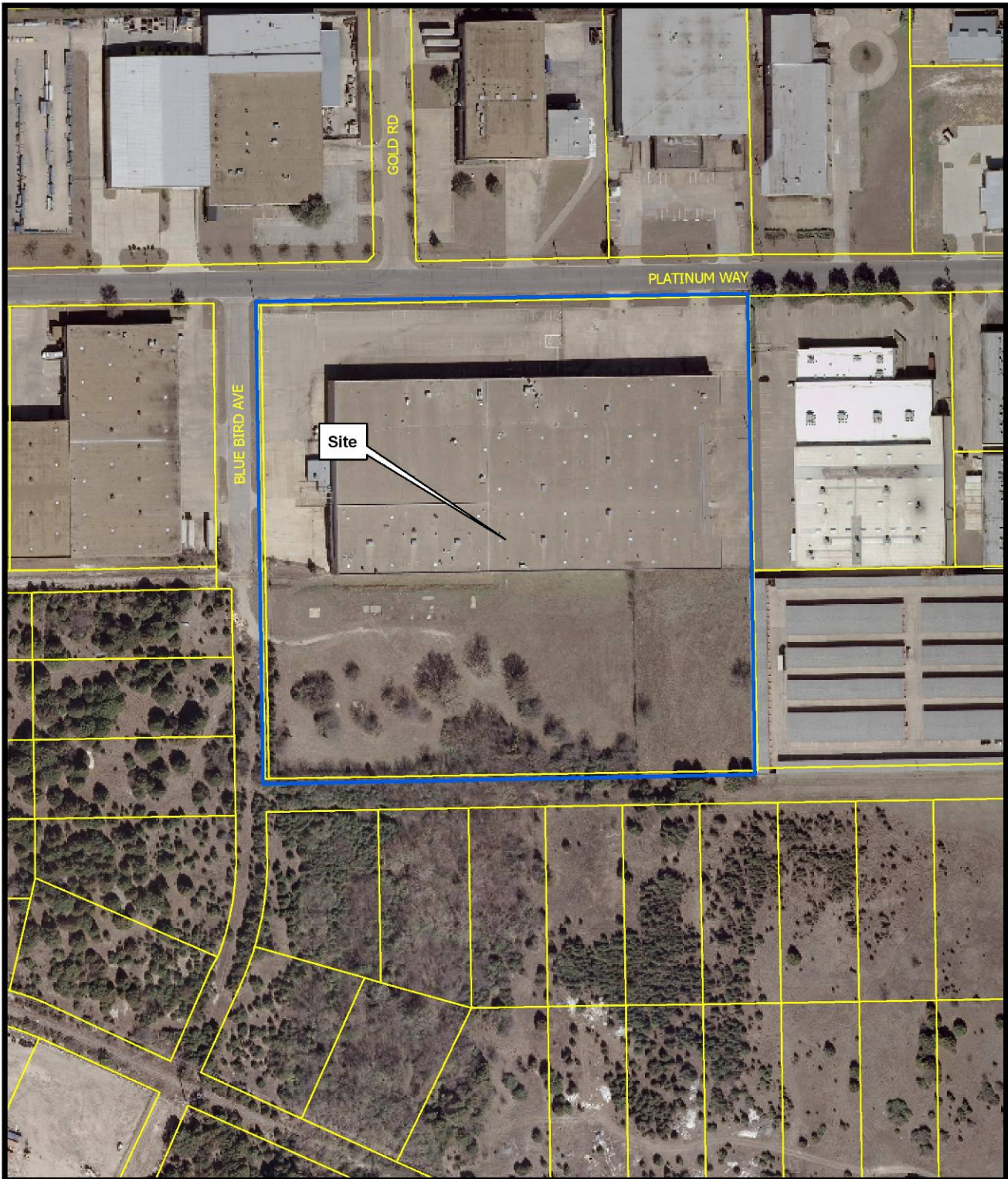
  
1:2,400

# ZONING MAP

Map no:           O-5            
Case no:           BDA101-097          

DATE: September 29, 2011





1:2,400

# AERIAL MAP

Map no:           O-5          

Case no:           BDA101-097          

DATE: September 29, 2011



BDA 101-097

Attachment A

PS!

October 7, 2011

TO: The Board of Adjustments

REF: 4100 Platinum Way, Dallas, Texas

Dear Board Members,

To be brief, we are seeking the following;

1. That the street landscaping requirement for Finch Ave and Blue Bird Lane be deferred and made part of the Covenant Agreement until the adjacent property to the South of Finch Avenue is developed. This way the entire street and landscaping can be installed at the same time.
  - Currently the entire South area is undeveloped property and heavily wooded. Adding the required landscaping at this time would serve no benefit to anyone.
2. That the remaining tree mitigation requirement be removed because the developer has gone to financial lengths to save two of the best trees on the property despite having permission to have them removed. The two Elm trees with 24 and 36" trunks were pruned and properly treated per the recommendations of a Chief Arborist who came out to the site to inspect them.
3. The area is an industrial warehouse area with very little in any public traffic. On the site there is not the room to replace the required tree inches.

We would hope the Board would grant the two above requests.

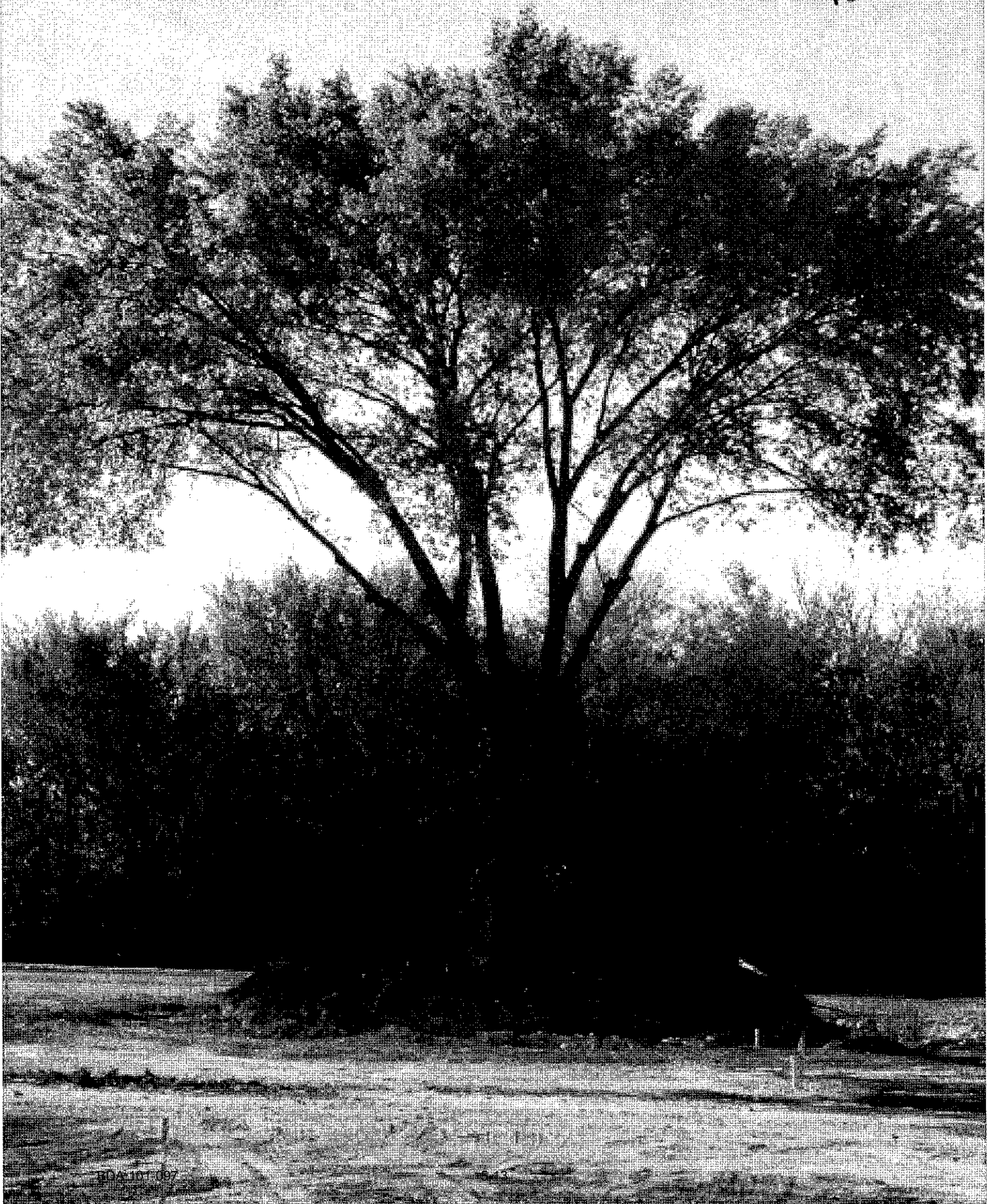
Sincerely,

George Moussa  
Manager  
4100 Platinum Way Holdings, L.P.

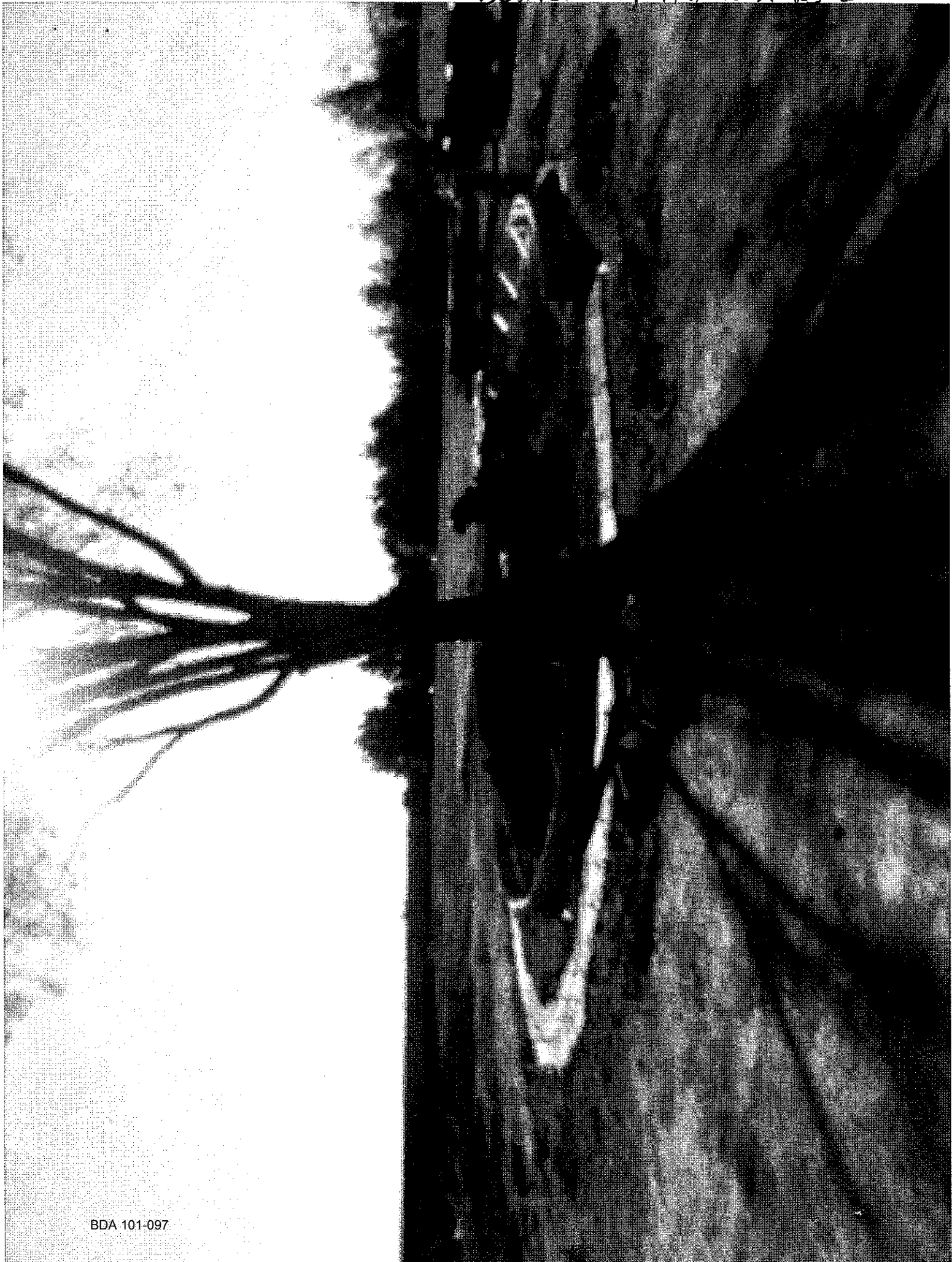


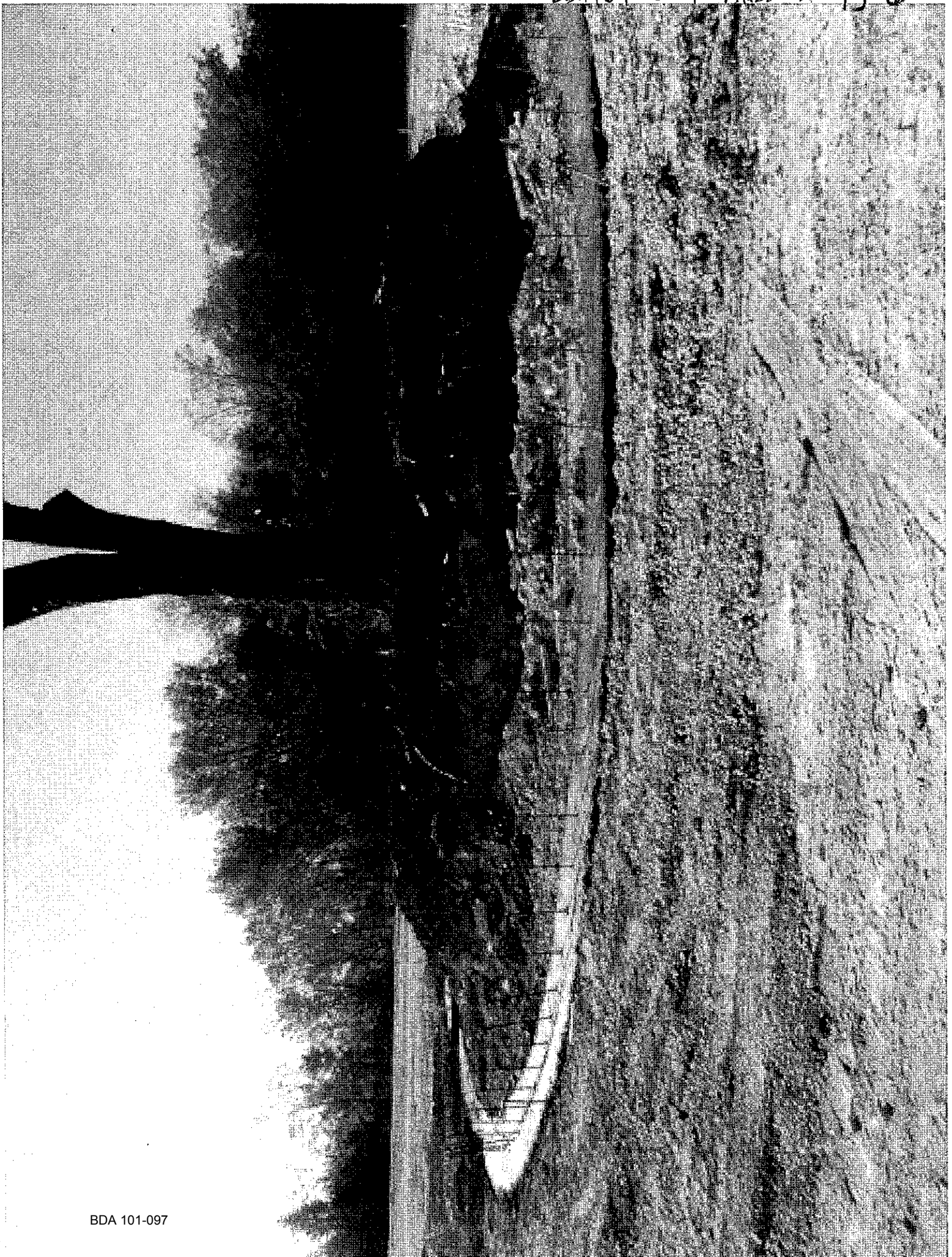


BDA101-097  
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PS4







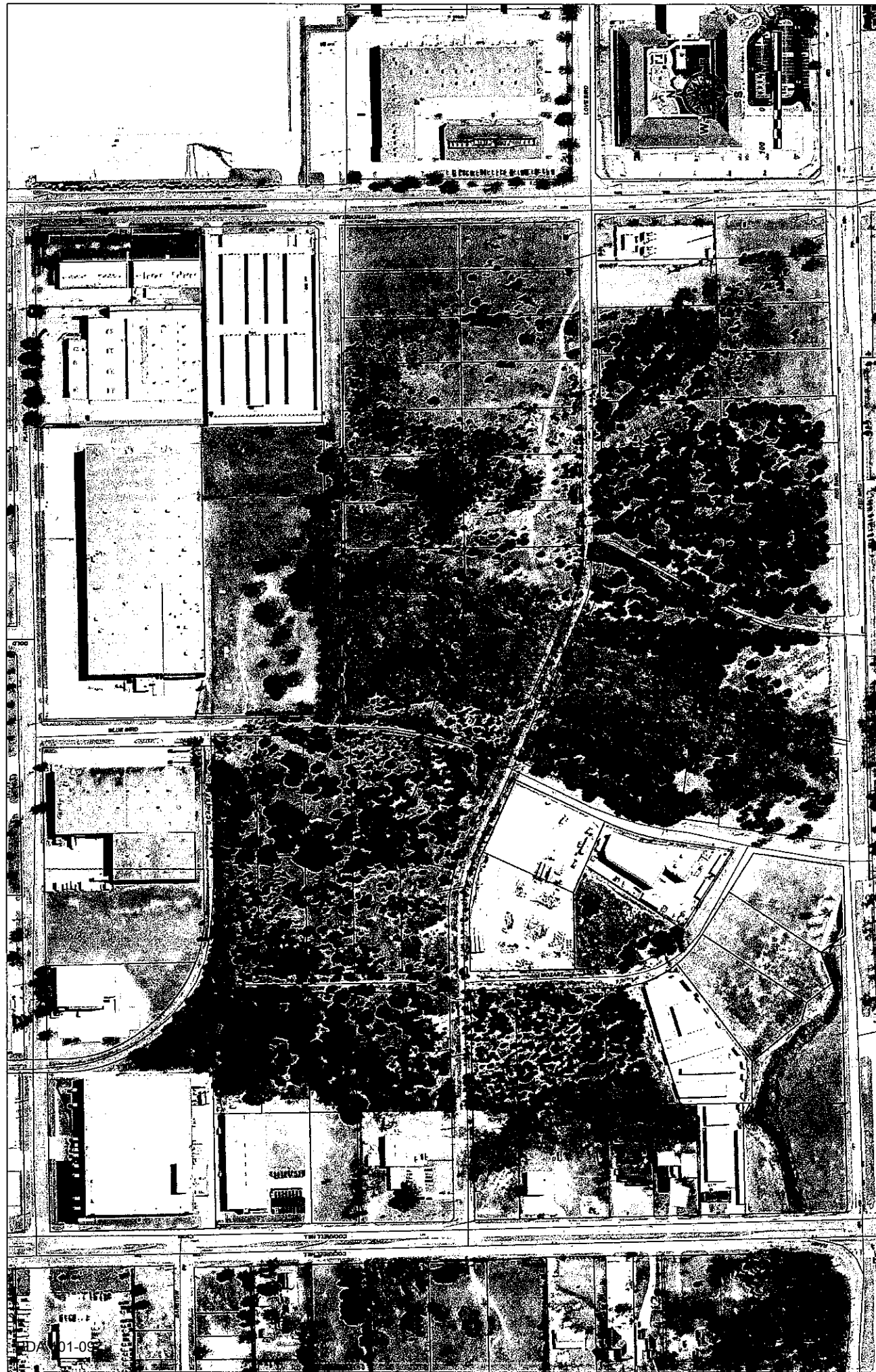


BDA 101-097









BDA  
101-  
097

Attach  
A  
89

BDA 01-03

BDA 101-097  
Attach B  
Pg 1

# Memorandum



CITY OF DALLAS

DATE October 10, 2011  
TO Steve Long, Board of Adjustment Administrator  
SUBJECT # BDA 101 · 097 4120 Platinum Way

The applicant is requesting a special exception to the landscape requirements of Article X. In particular, the request is for minor adjustments from Sections 51A-10.125, 10.126 and 10.127. The plan proposes to landscape the site under an 'artificial lot', as permissible under Article X, and at a future date not yet determined.

### Trigger

New construction of impervious surfaces over 2,000 s.f. in area.

### Deficiencies

According to the plan dated October 4, 2011, the proposed plan is deficient two design standards. The plan identifies a street buffer and screening of off-street parking. A street buffer requires plant groups of 1 per 50 linear feet with at least one large canopy tree per plant group to be placed in the buffer. The 27 large trees (eastern redcedar) are primarily in the R.O.W. while 58 small trees (81 would be required) are in the buffer.

The plan also identifies screening of off-street parking. It is doubtful that the 3" caliper evergreen wax myrtle, at its shown spacing, will screen the designated parking within the artificial lot, as specified under Section 51A-4.602(b), 'Required Screening'. Screening should be able to form a solid screen up to 3' in height.

Also, the applicant has requested an extended time to complete landscaping at time to be determined under conditions of a covenant agreement with the City of Dallas. Article X specifies that required landscaping must be completed within six months of completion of a project, under conditions stated in Section 51A-10.127.

### Factors

The street tree requirement can be considered as being met under the existing conditions by counting existing eastern redcedar in the R.O.W. The artificial lot area is also compliant with site tree requirements. The requirements are 1:4000 square feet and not the requested 1:6000 square feet as designated in the Table. The plan does not address parking lot tree requirements since the proposed parking spaces in the artificial lot are not designated required parking.

The site provides an irrigated 10' landscape buffer with crepe myrtle, wax myrtle (or yaupon holly?) and redbud trees to be planted at a time of compliance with a 'covenant agreement'.

Prior to the completion of grading the property, the owner determined to protect two large elm trees measuring 38 and 24 inches. The protection of the trees requires the construction of a protection area to attempt to keep the trees from further construction activity and work site activities. Although it is unclear the effort will be successful, the effort is recognized for the protection of an existing mature tree canopy that will contribute to the landscaping of the site.

The plan proposes to protect the eastern redcedar trees in the public R.O.W. at Finch and Blue Bird streets. It is unclear to me if the protection of the specific eastern redcedar trees called out on the plan is to be carried over through any future road construction. If all of the trees in the R.O.W. are removed in the future, the site will be deficient the required number of street trees for the property. This would then become a code compliance matter.

The proposal by the applicant is to have the perimeter buffer trees along Finch and Blue Bird to be planted at time of compliance with the Board action. There is no certainty if, or when, the roadways will be built. Further, it is unclear to me if the 10' landscape buffer (part of 'landscaping' as designated on the plan), which will house the future trees, will be created now or in the future.

#### Recommendation

Denial of the proposed landscape plan with a deferred planting date as requested because the applicant has not substantiated that strict compliance with the landscape requirement for completion will unreasonably burden the use of the property, and because the listing of trees in the document tables do not conform to the drawn landscape plan. However, I have no objection to the proposed plants along the perimeter buffer being provided with the current site construction.

Philip Erwin, ISA certified arborist #TX-1284(A)  
Chief Arborist

# Memorandum



CITY OF DALLAS

DATE October 10, 2011  
TO Steve Long, Board of Adjustment Administrator  
SUBJECT # BDA 101 · 097 4120 Platinum Way

The applicant is requesting a special exception to the tree mitigation regulations of Article X. In particular, the request is for adjustments from Sections 51A-10.134 and 10.135. The proposal is for a partial mitigation compliance at a future date.

Trigger

New construction of impervious surfaces over 2,000 s.f. in area and related tree removal.

Deficiencies

Mitigation requirements: A large number of unprotected trees have been removed under permit with protected trees. Originally, the plan called for the removal of 214 caliper inches from 17 trees. In all, we now calculate 151 inches of removal from 15 protected trees.

Timing: The owner proposed to plant 171" comprised of 3" crepe myrtle, 3" redbud, and 3" yaupon holly trees, in a time not specified and to be determined by completion of a landscape extension. Such time will most certainly extend beyond the 18 month allowed under Article X.

The proposed revised 'landscape plan' has tables that do not match up to the current revised landscape drawing. It identifies 12 Texas ash trees to be planted (originally designed for Platinum Way frontage) not identified on the revised plan.

Factors

The owner has requested in his application that 'tree mitigation fees be dismissed.' If all current mitigation was to be paid into the Reforestation Fund (alternative method), the fee would be \$17,466.00, based on 15 trees at 151 inches.

The owner is taking extensive measures to attempt to preserve two large elms trees of 38 and 24 caliper inches that reduced their overall mitigation by nearly 30%. The owner is constructing retaining walls under specifications recommended by a consulting arborist to attempt to retain the two trees. The effort is recognized and the two trees are not currently considered removed.

The plan proposes to protect the eastern redcedar trees in the public R.O.W. at Finch and Blue Bird streets. It is unclear to me if the protection of the specific eastern redcedar trees called out on the plan is to be carried over through any future road construction. It should be noted that future removal of trees for roadway construction will be reviewed under future terms and under engineering plans.

The proposal by the applicant would have the perimeter buffer trees along Finch and Blue Bird to be planted at a future date when required to construct the street at time of development of the area. There is no certainty if, or when, the roadways will be built. Further, it is unclear to me if the 10' landscape buffer (part of 'landscaping' as designated on the plan), which will house the future trees, will be created now or in the future.

If all of the crepe myrtle, redbud and yaupon holly (wax myrtle?) trees were planted, the site would be in compliance with current tree mitigation requirements for the minimum number of inches.

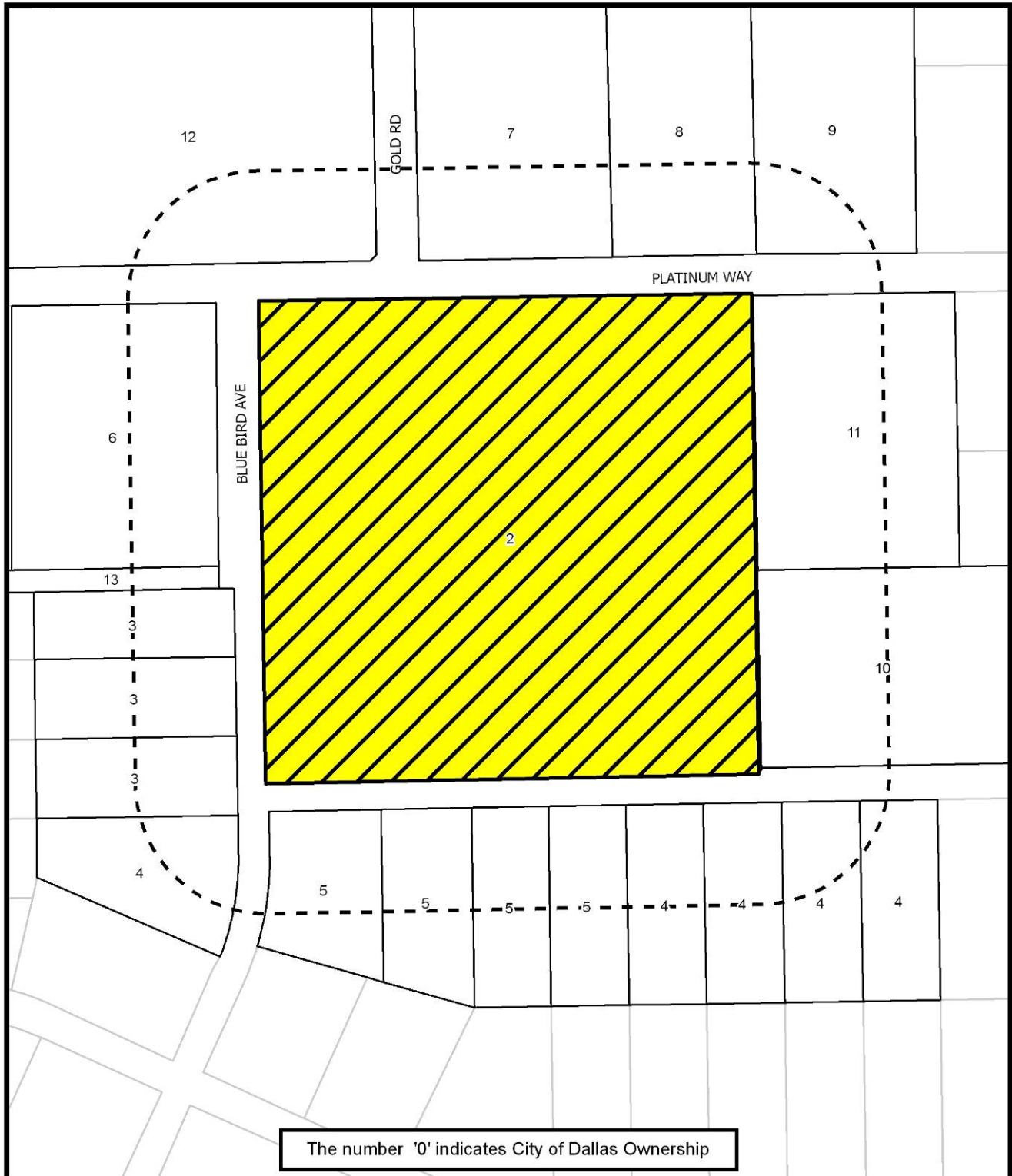
NOTE: Current ordinance allows for extending time for compliance under a performance bond or a letter of credit and only up to 18 months. Tree mitigation may be provided throughout the property and not just in the landscape artificial lot area.

#### Recommendation

Based on the question regarding landscaping, I must defer any recommendations on tree mitigation pending the conclusions of the Board regarding the landscaping provisions for timing of installation. If certain landscape elements are to be installed, then one or more mitigation issues may be resolved.

Further, it must be made clear as to when, where, and how many of the trees identified in the tables will be planted, and that these trees are fully and accurately identified on the drawing.

Philip Erwin, ISA certified arborist #TX-1284(A)  
Chief Arborist



The number '0' indicates City of Dallas Ownership



1:2,400

# NOTIFICATION

**200'**

AREA OF NOTIFICATION

**13**

NUMBER OF PROPERTY OWNERS NOTIFIED

Map no:           O-5          

Case no:           BDA101-097          

DATE: September 29, 2011

# ***Notification List of Property Owners***

***BDA101-097***

## ***13 Property Owners Notified***

<b><i>Label #</i></b>	<b><i>Address</i></b>	<b><i>Owner</i></b>
1	4131 FINCH	RED BIRD INDUSTRIAL PARK INC STE 500
2	4020 PLATINUM WAY	PARKER PLATINUM LP SUITE 1620
3	5307 BLUE BIRD	ISBELL M L & TOMMY R ISBELL
4	5417 BLUE BIRD	NAM D W
5	4118 FINCH	J O Y FOODS INC
6	4130 PLATINUM WAY	CLARIT REALTY LTD
7	4920 GOLD	FORBO ADHESIVES LLC ATTN TOMMY RILEY
8	4007 PLATINUM WAY	ROBBINS PROPERTY COMPANY NO 2 LTD
9	3939 PLATINUM WAY	P & E CONTRACTORS INC
10	5409 WESTMORELAND	REDBIRD U STOR IT LTD ATTN BARTON HEAD
11	3950 PLATINUM WAY	EURODRIVE INC
12	4111 PLATINUM WAY	WEST PAK INC
13	2300 GRAND	BNSF RAILWAY % PROPERTY TAX DEPT