

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
TUESDAY, MAY 17, 2011**

MEMBERS PRESENT AT BRIEFING: Rob Richmond, Chair, Jordan Schweitzer, Panel Vice-Chair, Scott Hounsel, regular member, Johnnie Goins, regular member and Scott Jackson, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Bert Vandenberg, Asst. City Attorney, Tammy Palomino, Asst. City Attorney, Donnie Moore, Chief Planner, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist and Trena Law, Board Secretary

MEMBERS PRESENT AT HEARING: Rob Richmond, Chair, Jordan Schweitzer, Panel Vice-Chair, Scott Hounsel, regular member, Johnnie Goins, regular member and Scott Jackson, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Bert Vandenberg, Asst. City Attorney, Tammy Palomino, Asst. City Attorney, Donnie Moore, Chief Planner, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist and Trena Law, Board Secretary

11:02 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **May 17, 2011** docket.

1:10 P.M.

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

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel A **April 19, 2011** public hearing minutes.

BOARD OF ADJUSTMENT ACTION: MAY 17, 2011

MOTION: Hounsel

I move **approval** of the Tuesday, **April 19, 2011** public hearing minutes.

SECONDED: Goins

AYES: 5 – Richmond, Schweitzer, Hounsel, Goins, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

Executive session for attorney briefing pursuant to Texas Open Meetings Act Section 551.071, regarding *The City of Dallas, Texas, Board of Adjustment; Betty Antebi-Taylor, in her official capacity; and Joey Zapata, in his official capacity v. Jamie Pierson, Civ. Action No. 05-10-03145-CV, BDA 078-092, Property at 6159 Oram Street*

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

12:20 P.M. Executive Sessions Begins

12:29 P.M. Executive Session Ends

FILE NUMBER: BDA 101-011

BUILDING OFFICIAL'S REPORT:

Application of Robert Baldwin for a variance to the front yard setback regulations at 2201 Kings Road. This property is more fully described as Lot 25 in City Block 5743 and is zoned IR and PD 193 (MF-2) which requires a front yard setback of 15 feet. The applicant proposes to maintain a structure and provide a 0 foot front yard setback which will require a variance of 15 feet.

LOCATION: 2201 Kings Road

APPLICANT: Robert Baldwin

REQUEST:

- A variance to the front yard setback regulations of 15' is requested in conjunction with maintaining an existing auto storage/shed structure, part of which is located in one of the site's two 15' front yard setbacks (Macatee Drive). (No portion of the request is made in this application to construct/maintain any portion of a structure in the site's Kings Road front yard setback).

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The applicant has substantiated how the variance is necessary to permit development of the site which is different from other lots by its irregular shape, its slope, and restrictive area caused by the floodplain on property.

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:

- (A) the 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 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) the variance is 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:

- The minimum front yard setback for lots zoned IR is 15 feet.
The subject site is a lot that runs from one street to another (Macatee Drive on the north and Kings Avenue on the south) and has double frontage.
A site plan has been submitted denoting an "existing building" located on the Macatee Drive front property line, or 15' into the 15' required front yard setback. (No encroachment is proposed in the site's Kings Road 15' front yard setback).
- According to calculations taken by the Board Administrator from the submitted site plan, the area of the structure footprint to be maintained in the site's Macatee Drive

15' front yard setback is approximately 2,500 square feet in area or approximately 1/2 of the approximately 5,400 square foot building footprint.

- According to DCAD records, the site has “no improvements.”
- The subject site is somewhat sloped down to what appears to be a creekbed, irregular in shape, and (according to the application) is 4.01 acres in area. A portion of the site appears to be located in floodplain. The site is zoned IR (Industrial Research).
- The applicant forwarded additional information beyond what was submitted with the original application (see Attachment A).

BACKGROUND INFORMATION:

Zoning:

Site: IR and PD No. 193 (Industrial Research and Planned Development)
North: PD No. 712 (Planned Development)
South: PD No. 193 (Planned Development)
East: PD No. 712 (Planned Development)
West: IR (Industrial Research)

Land Use:

The subject site is developed with a commercial storage/shed structure. The areas to the north, east, and south appear to be undeveloped; and the area to the west is developed with commercial/office uses.

Zoning/BDA History:

1. BDA 101-040, Property at 4701 Bengal Street (the property to the south and west of the subject site) On May 17, 2011, the Board of Adjustment Panel A will consider a request for a variance to the front yard setback regulations of 15' in conjunction with a maintaining a structure in the front yard setback. Note that the applicant for BDA101-040 is the same as the applicant for BDA101-011.

Timeline:

December 7, 2010: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

April 20, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

- April 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 May 2nd deadline to submit additional evidence for staff to factor into their analysis; and the May 6th 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.
- May 2, 2011: The applicant forwarded additional information on this application beyond what was submitted with the original application (see Attachment A).
- May 3, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.
- May 5, 2011: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments: "Comply with all C.O.D visibility and floodplain requirements."

STAFF ANALYSIS:

- The request focuses on maintaining an existing auto storage/shed structure, part of which is located in one of the site's two 15' front yard setbacks (Macatee Drive). (No portion of the request is made in this application to construct/maintain any portion of a structure in the site's Kings Road front yard setback).
- According to calculations taken by the Board Administrator from the submitted site plan, the area of the structure footprint to be maintained in the site's Macatee Drive 15' front yard setback is approximately 2,500 square feet in area or approximately 1/2 of the approximately 5,400 square foot building footprint.
- According to DCAD records, the site has "no improvements."
- The subject site is somewhat sloped down to what appears to be a creekbed, irregular in shape, and (according to the application) is 4.01 acres in area. A portion of the site appears to be located in floodplain. The site is zoned IR (Industrial Research).
- The applicant has the burden of proof in establishing the following:

- That granting the variance to the Macatee Drive front yard setback regulation 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 IR 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 IR zoning classification.
- If the Board were to grant the variance request, subject to the submitted site plan, the structure in the front yard setback would be limited to what is shown on this document– which in this case is a structure located on the front property line or 15’ into the 15’ Macatee Drive front yard setback.
- Note that the applicant is aware of the fact that granting his request for a variance to the front yard setback regulations will not provide any relief to any existing/proposed condition on the site that is/would become in noncompliance with the Code’s visual obstruction regulations.

BOARD OF ADJUSTMENT ACTION: MAY 17, 2011

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Schweitzer**

I move that the Board of Adjustment grant application **BDA 101-011** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted site plan is required.

SECONDED: **Goins**

AYES: 5 – Richmond, Schweitzer, Hounsel, Goins, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 101-040

BUILDING OFFICIAL’S REPORT:

Application of Robert Baldwin for a variance to the front yard setback regulations at 4701 Bengal Street. This property is more fully described as Lot 29 in City Block 5743 and is zoned IR which requires a front yard setback of 15 feet. The applicant proposes to maintain a structure and provide a 0 foot front yard setback which will require a variance of 15 feet.

LOCATION: 4701 Bengal Street

APPLICANT: Robert Baldwin

REQUEST:

- A variance to the front yard setback regulations of 15' is requested in conjunction with maintaining an existing auto storage/shed structure, part of which is located in the 15' Macatee Drive front yard setback. (Note that although the subject site is developed with two structures in the 15' Macatee Drive front yard setback, the applicant is only making application for variance to what is described as the "new structure to be varied" on the site plan, and not to what is described as the "building not a part of application – existing single story metal building 24,517 SQ. FT." on this plan).

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The applicant has substantiated how the variance is necessary to permit development of the site which is different from other lots by its irregular shape, its slope, and restrictive area caused by the floodplain on property.

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:

- (D) the 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;
- (E) the variance is 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

(F) the variance is 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:

- The minimum front yard setback for lots zoned IR is 15 feet. A site plan has been submitted denoting two structures located in the site’s 15’ front yard setback. However, this site plan specifically notes that only one of these two structures is “to be varied” – that being the structure denoted on this plan as “new structure to be varied” that is located on the site’s front property line or 15’ into the 15’ required front yard setback on Macatee Street.
- According to calculations taken by the Board Administrator from the submitted site plan, the area of the structure footprint to be varied/maintained in the site’s 15’ Macatee Drive front yard setback is approximately 900 square feet in area or approximately 16 percent of the approximately 5,700 square foot building footprint.
- According to DCAD records, the site is shows improvements being a 20,800 square foot “storage warehouse” built in 1964.
- The subject site is somewhat sloped down to what appears to be a creekbed, irregular in shape, and (according to the application) is 39,552 square feet in area. (Note that according to the submitted site plan, the site or “Tract 1” is 47,148 square feet or 1.082 acres in area). A portion of the site appears to be located in floodplain. The site is zoned IR (Industrial Research).
- The applicant forwarded additional information beyond what was submitted with the original application (see Attachment A).

BACKGROUND INFORMATION:

Zoning:

Site: IR (Industrial Research)
North: PD No. 663 & 712 (Planned Development)
South: PD No. 193 (Planned Development)
East: IR (Industrial Research)
West: IR (Industrial Research)

Land Use:

The subject site is developed with what appears to be an auto storage/shed and a garage/office structure. The area to the north is developed with multifamily use and undeveloped land; the area to the east is developed with commercial use; the area to the south appears to be undeveloped; and the area to the west is developed with commercial/office uses.

Zoning/BDA History:

1. BDA 101-011, Property at 2201 Kings Road (the property to the north and east of the subject site)

On May 17, 2011, the Board of Adjustment Panel A will consider a request for a variance to the front yard setback regulations of 15' in conjunction with a maintaining a structure in the front yard setback. Note that the applicant for BDA101-011 is the same as the applicant for BDA101-040.

Timeline:

- March 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.
- April 20, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- April 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 May 2nd deadline to submit additional evidence for staff to factor into their analysis; and the May 6th 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.
- May 2, 2011: The applicant forwarded additional information on this application beyond what was submitted with the original application (see Attachment A).
- May 3, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.
- May 5, 2011: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments: "Comply with all C.O.D visibility and floodplain requirements."

STAFF ANALYSIS:

- The request focuses on maintaining an existing auto storage/shed structure, part of which is located in the 15' Macatee Drive front yard setback.
- Note that although the subject site is developed with two structures in the 15' Macatee Drive front yard setback, the applicant is only making application for variance to what is described as the "new structure to be varied" on the site plan, and not to what is described as the "building not a part of application – existing single story metal building 24,517 SQ. FT." on this plan.
- According to calculations taken by the Board Administrator from the submitted site plan, the area of the structure footprint to be varied/maintained in the site's 15' front yard setback is approximately 900 square feet in area or approximately 16 percent of the approximately 5,700 square foot building footprint.
- According to DCAD records, the site is shows improvements being a 20,800 square foot "storage warehouse" built in 1964.
- The subject site is somewhat sloped down to what appears to be a creekbed, irregular in shape, and (according to the application) is 39,552 square feet in area. (Note that according to the submitted site plan, the site or "Tract 1" is 47,148 square feet or 1.082 acres in area). A portion of the site appears to be located in floodplain. The site is zoned IR (Industrial Research).
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the Macatee Drive front yard setback regulation 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 IR 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 IR zoning classification.
- If the Board were to grant the variance request, subject to the submitted site plan, the structure as shown and labeled as "new structure to be varied" on this plan would be permitted to remain on the front property line or 15' into the 15' Macatee Drive front yard setback.
- Note that the applicant is aware of the fact that granting his request for variance to the front yard setback regulations will not provide any relief to any existing/proposed condition on the site that is/would become in noncompliance with the Code's visual obstruction regulations.

BOARD OF ADJUSTMENT ACTION: MAY 17, 2011

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Schweitzer**

I move that the Board of Adjustment grant application **BDA 101-040** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted plan is required.

SECONDED: **Goins**

AYES: 5 – Richmond, Schweitzer, Hounsel, Goins, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 101-028

BUILDING OFFICIAL’S REPORT:

Application of Ashley Ness for a variance to the rear yard setback regulations at 707 N. Windomere Avenue. This property is more fully described as Lot 2 in City Block 24/3475 and is zoned CD-1 which requires a rear yard setback of 3 feet. The applicant proposes to maintain a structure and provide a 0-foot rear yard setback which will require a variance of 3 feet.

LOCATION: 707 N. Windomere Avenue

APPLICANT: Ashley Ness

May 17, 2011 Public Hearing Notes:

- The board heard testimony at the public hearing regarding the posting of the notification sign on the site and delayed action on this application until June 14th to allow the applicant to post the notification sign on the site.

AMENDED REQUESTS:

- The following appeals have been made in this application in conjunction with maintaining a one-story accessory structure, part of which is located in the site’s 3’ rear yard setback on a site that is developed with a single family home:
 - A special exception to the rear yard setback regulations of 3’ for tree preservation; and/or

- A variance to the rear yard setback regulations of 3’.

ORIGINAL REQUEST (March 2011):

- A special exception to the rear yard setback regulations of 3’ for tree preservation had been requested in conjunction with maintaining a one-story accessory structure, part of which is located in the site’s 3’ rear yard setback on a site that is developed with a single family home.

STAFF RECOMMENDATION (special exception):

Denial

Rationale:

1. The City of Dallas arborist staff has investigated the trees on the property and have formed an opinion that the trees within proximity to the structure (that are the nature of this request) are not worthy of preservation for a building relocation from setback requirements.
2. In addition, the applicant has not substantiated how the requested special exception is compatible with the character of the neighborhood and that the value of the surrounding properties will not be adversely affected by the granting of this special exception request.

STAFF RECOMMENDATION (variance):

Denial

Rationale:

- The applicant has not substantiated how either the restrictive area, shape, or slope of the site/lot preclude it from being developed in a manner commensurate with development found on other CD (Conservation District No 1) zoned lots.

STANDARD FOR A SPECIAL TO THE REAR YARD REGULATIONS FOR TREE PRESERVATION:

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

- A) Whether the requested special exception is compatible with the character of the neighborhood.
- B) Whether the value of the surrounding properties will be adversely affected.
- C) Whether the tree is worthy of preservation.

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:

- (A) the 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 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) the variance is 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 (related to special exception):

- Structures on lots zoned CD No. 1 are required to provide a minimum rear yard setback of 5'. However, the Code states that in a residential district, a person need not provide a full rear yard setback for a structure accessory to a residential use if the structure does not exceed 15' in height. Where the rear yard is adjacent to an alley, a three-foot setback must be provided. Where the rear yard is not adjacent to an alley, no setback is required.
The submitted site plan denotes an accessory structure adjacent to an alley that is located on the rear property line (or as much as 3' into the 3' rear yard setback).
- According to calculations taken from the site plan by the Board Administrator, about 60 square feet (or 1/10) of the existing approximately 600 square foot accessory structure is located in the site's 3' rear yard setback.
- DCAD records indicate that the site is developed a single family home in "good" condition built in 1923 with 1,530 square feet of living area.
- The applicant submitted information beyond what was submitted with the original application (see Attachments A, B, and D). This information included the following:
 - photographs of the subject site;
 - a petition signed by 6 owners/neighbors in support of the request;
 - a document stating that the block of N. Windomere on which the site is located has curbside trash pick-up; and
 - a document from a certified arborist stating among other things how "the trees located on your property would more than likely suffer adversely from being transplanted." (Note that this document was submitted after the Chief Arborist submitted his memo on this request, and after the staff had formed their recommendation of denial on this request).
- On March 7, 2011, the City of Dallas Chief Arborist submitted a memo to the Board Administrator pertaining to this request (see Attachment C). The memo stated the following:
 - The arborist staff has investigated the trees on the property and have formed an opinion that the trees within proximity to the structure (that are the nature of this

request) are not worthy of preservation for a building relocation from setback requirements.

- An Italian cypress and a plum tree appear to be within the influence of the probable building location if the structure was relocated within its current configuration but moved within the setback distance. Both trees are relatively young (approximately 3" caliper) and would be suitable for transplant to replacement. The trees are regarded as ornamental landscape trees of potential medium and small sizes, respectively.
- The "preservation of large trees" is a fundamental purpose of the city's tree preservation ordinance that was established following an initial resolution by the City Council in 1990 to preserve large trees "which, once removed, can be replaced only after generations." Although the city arborists encourage citizens to protect all trees once planted in appropriate locations, the city arborists' opinion is that the preservation status is directed towards trees, if removed, that would no longer provide the significant financial value and environmental benefits to the owner *and the community* found in large established canopy trees native to, or adapted to, this region.
- All trees on single family or duplex lots which are two acres or less in size with a residential use are not protected under city ordinance. Otherwise, only trees that a 8" in diameter or greater are protected. The city anticipates that some trees must be removed for construction purposes and allows for this with building permits for construction.
- On March 15, 2011, the Board of Adjustment heard testimony on this matter at the public hearing and delayed action on this matter until May 17th in order for the applicant to have the opportunity to file a companion case seeking a variance for the rear yard setback rather than or in addition to a special exception.
- On April 11, 2011, the applicant submitted a revised application adding a variance request of 3' to the rear yard setback regulations in addition to the previously requested special exception request of 3' to the rear yard setback regulations to preserve a tree.

GENERAL FACTS (related to variance):

- Structures on lots zoned CD No. 1 are required to provide a minimum rear yard setback of 5'. However, the Code states that in a residential district, a person need not provide a full rear yard setback for a structure accessory to a residential use if the structure does not exceed 15' in height. Where the rear yard is adjacent to an alley, a three-foot setback must be provided. Where the rear yard is not adjacent to an alley, no setback is required.
The submitted site plan denotes an accessory structure adjacent to an alley that is located on the rear property line (or as much as 3' into the 3' rear yard setback).
- According to calculations taken from the site plan by the Board Administrator, about 60 square feet (or 1/10) of the existing approximately 600 square foot accessory structure is located in the site's 3' rear yard setback.
- DCAD records indicate that the site is developed a single family home in "good" condition built in 1923 with 1,530 square feet of living area.

- The subject site is flat, rectangular in shape (50' x 150'), and (according to the application) is 0.17 acres (or 7,405 square feet) in area. The site is zoned CD No. 1 where lots in this subarea of the zoning district had been zoned R-7.5(A) until the creation of the CD in 1988.

BACKGROUND INFORMATION:

Zoning:

Site: CD No 1 (Conservation district)
North: CD No 1 (Conservation district)
South: CD No 1 (Conservation district)
East: CD No 1 (Conservation district)
West: CD No 1 (Conservation district)

Land Use:

The subject site is developed with a single family use. 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:

January 26, 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.

February 14, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

February 14 & 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 February 28th deadline to submit additional evidence for staff to factor into their analysis; and the March 4th 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.

The email also included a suggestion that the application possibly submit photographs of the mid-part of the site that the Board Administrator could not photograph, an amended site plan showing

the location of the tree or trees that the applicant feels justifies the request since typically an applicant making this type of application shows the location, species, and caliper inch of the tree or trees that the applicant feels is worthy of preservation.

- Feb. 24 & 28, 2011: The applicant submitted additional information to the Board Administrator (see Attachments A and B).
- March 1, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.
- March 3, 2011: The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" commenting "Deny – no permit, setback or standards. Tree preservation not relevant in this case. If approved, recommend indemnity for the City if damage occurs to the building."
- March 7, 2011: The Chief Arborist submitted a memo to the Board Administrator (see Attachment C). This memo stated among other things that the trees within proximity to the structure (that are the nature of this request) are not worthy of preservation for a building relocation from setback requirements.
- March 7, 2011: The applicant submitted additional information to the Board Administrator (see Attachment D). (Note that this particular information was submitted after the Chief Arborist had submitted to the Board Administrator and after staff had formed their recommendation of denial of this application).
- March 15, 2011: The Board of Adjustment Panel A conducted a public hearing on this request and delayed action until their May 17th public hearing in order for the applicant to have the opportunity to file a companion case seeking a variance for the rear yard setback rather than or in addition to a special exception.
- April 18, 2011: The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded a revised application to the Board Administrator that added a request for a variance to the rear yard setback regulations of 3'.
- April 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 May 2nd deadline to submit additional evidence for staff to factor into their analysis; and the May 6th 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.

May 3, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

May 5, 2011: The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" commenting "Deny – no permit, setback or standards. Tree preservation (not relevant in this case). If approved, recommend indemnity for the City if damage occurs to the building."

STAFF ANALYSIS (related to special exception):

- The focus of this request is maintaining a one-story accessory structure, part of which is located in the site's 3' rear yard setback on a site that is developed with a single family home.
- The Dallas Development Code allows the Board of Adjustment to consider this (or any) proposed structure encroachment in a rear yard setback on CD No. 1 zoned lot either by an application for a variance to the rear yard setback regulations with a standard largely based on the demonstration of property hardship, or by an application for a special exception to the rear yard setback regulations to preserve an existing tree with a standard largely based on compatibility, property values, and whether a tree located on a site that is worthy of preservation - not property hardship. The applicant in this case had originally made only an application for a *special exception* to the rear yard setback regulations for tree preservation but added a variance to the rear yard setback regulations as a result of testimony at the public hearing in March.
- This special exception request is made to maintain an approximately 60 square foot portion of an approximately 600 square foot accessory structure in the site's 3' rear yard setback. (Although staff suggested that the applicant denote the location, size and species of the tree or trees that she feels is worthy of preservation and in turn precludes her from locating an accessory structure in compliance with rear yard setbacks, no such denotation was made on any submitted plan). The site plan

shows what is assumed to be the accessory structure on the property that is located on the rear property line or 3' into the required 3' setback – no tree is denoted on the site plan.

- The City's Chief Arborist has stated among other things that the trees that are the nature of this request (a relatively young Italian cypress and a plum tree approximately 3" caliper) within proximity to the structure in question are not worthy of preservation for a building relocation from setback requirements.
- The applicant has the burden of proof in establishing the following related to the front yard special exception request:
 1. Whether the requested special exception is compatible with the character of the neighborhood.
 2. Whether the value of the surrounding properties will be adversely affected.
 3. Whether the tree is worthy of preservation.
- If the Board were to grant the rear yard special exception request of 3', imposing a condition whereby the applicant must comply with the submitted site plan, the structure in the rear yard setback would be limited to that what is shown on this plan – which in this case is a portion of an accessory structure located on the rear property line (or as much as 3' into the site's 3' rear yard setback).
- If the Board chooses to grant this request, it should be noted that the submitted site plan does not denote the location, size or species of a tree (or trees) that the applicant contends is the tree (or trees) that is worthy of preservation, and in turn a tree that precludes her from relocating the accessory structure out of the required rear yard setback. If the Board feels that this type of documentation is relevant to the approval of this type of tree preservation application, they may request that the applicant amend the submitted site plan by adding this information on the site plan.

STAFF ANALYSIS (related to variance):

- The focus of this request is maintaining a one-story accessory structure, part of which is located in the site's 3' rear yard setback on a site that is developed with a single family home.
- The Dallas Development Code allows the Board of Adjustment to consider this (or any) proposed structure encroachment in a rear yard setback on CD No. 1 zoned lot either by an application for a variance to the rear yard setback regulations with a standard largely based on the demonstration of property hardship, or by an application for a special exception to the rear yard setback regulations to preserve an existing tree with a standard largely based on compatibility, property values, and whether a tree located on a site is worthy of preservation - not property hardship. The applicant in this case had originally only made an application for a *special exception* to the rear yard setback regulations for tree preservation but added a variance to the rear yard setback regulations as a result of testimony at the public hearing in March.
- This variance request is made to maintain an approximately 60 square foot portion of an approximately 600 square foot accessory structure in the site's 3' rear yard setback. The site plan shows what is assumed to be the accessory structure on the property that is located on the rear property line or 3' into the required 3' setback.

- DCAD records indicate that the site is developed with a single family home in “good” condition built in 1923 with 1,530 square feet of living area.
- The subject site is flat, rectangular in shape (50’ x 150’), and (according to the application) is 0.17 acres (or 7,405 square feet) in area. The site is zoned CD No. 1 where lots in this subarea of the zoning district had been zoned R-7.5(A) until the creation of the CD in 1988.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the rear 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 CD No. 1 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 CD No. 1 zoning classification.
- If the Board were to grant the variance request, subject to the submitted site plan, the structure in the rear yard setback would be limited to what is shown on this document– which in this case is a structure located on the rear property line or 3’ into the required 3’ rear yard setback

BOARD OF ADJUSTMENT ACTION: MARCH 15, 2011

APPEARING IN FAVOR: Ashley Ness, 707 N. Windomere Ave., Dallas, TX
 Larry Ness, 2011 Cedar Springs Rd., Dallas, TX
 Stephanie Wooley, 1701 N. Collins Blvd., Ste 1100, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Harris

I move that the Board of Adjustment, in Appeal No. **BDA 101-028**, on application Ashley Ness, **grant** the request of this applicant for a special exception of 3 feet to the rear yard setback regulation to preserve an existing tree, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that this special exception is compatible with the character of the surrounding neighborhood, the value of surrounding properties will not be adversely affected, and the tree is worthy of preservation. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: Richmond
AYES: 2 – Richmond, Harris
NAYS: 3 - Schweitzer, Hounsel, Goins
MOTION FAILED: 2– 3

MOTION #2: Schweitzer

I move that the Board of Adjustment in Appeal No. **BDA 101-028**, hold this matter under advisement until **April 19, 2011**.

SECONDED: Richmond
AYES: 4 – Richmond, Schweitzer, Harris, Hounsel,
NAYS: 1 - Goins
MOTION PASSED: 4– 1

BOARD OF ADJUSTMENT ACTION: MAY 17, 2011

APPEARING IN FAVOR: Ashley Ness, 707 N. Windomere Ave., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Hounsel

Having fully reviewed the evidence in Appeal No. **BDA 101-028**, on application of Ashley Ness, and heard all the testimony and facts relating to the posting of the notification of the sign, I find that the required signs were not posted properly and I move that the Board of Adjustment in Appeal No. **BDA 101-028**, hold this matter under advisement until **June 14, 2011**.

SECONDED: Schweitzer
AYES: 5 – Richmond, Schweitzer, Hounsel, Goins, Jackson
NAYS: 0 -
MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 101-033

BUILDING OFFICIAL’S REPORT:

Application of Robert Baldwin for special exceptions to the landscape, tree preservation, and sign regulations at 9500 Forest Lane. This property is more fully described as a 3.7319 acre tract in city block V/8151 and is zoned MU-3 which requires mandatory landscaping and tree mitigation, and allows 1 detached sign for ever 450 feet, or fraction thereof, of frontage on a public street. The applicant proposes to construct a structure and provide an alternate landscape plan which will require a special exception

to the landscape regulations, an alternate tree preservation plan which will require a special exception to the tree preservation regulations, and to construct an additional detached premise sign which will require a special exception to the sign regulations.

LOCATION: 9500 Forest Lane

APPLICANT: Robert Baldwin

May 17, 2011 Public Hearing Notes:

- The Board Administrator circulated additional written documentation prepared by the applicant (a letter and revised landscape/tree mitigation plan) and the City of Dallas Chief Arborist (memo regarding the applicant's revised landscape/tree mitigation plan) to the board at their briefing (see Attachments C and D).

REQUESTS:

- The following appeals had been made in this application in conjunction with demolishing a vacant multi-story office structure and constructing and maintaining an approximately 5,700 square foot gas station/convenience store structure use (QuickTrip):
 1. A special exception to the landscape regulations is requested in conjunction with the redevelopment of the site and not fully meeting the landscape regulations;
 2. A special exception to the tree preservation regulations is requested in conjunction with not fully mitigating protected trees to be removed on a site in conjunction its redevelopment; and
 3. A special exception to the sign regulations is requested in conjunction with erecting and maintaining an additional detached sign for the proposed gas station/convenience store to be located on the site's LBJ Freeway frontage between two existing billboards.

STAFF RECOMMENDATION (landscape special exception):

Denial

Rationale:

- The City's Chief Arborist recommends denial of the request.
- The applicant has not substantiated how strict compliance with the requirements of the Landscape 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. In this case the applicant has not accounted for why the request for leniency to the landscape regulations is valid when the property is of a sufficient size and open space to allow the proposed development while simultaneously complying with Article X: the Landscape Regulations.

STAFF RECOMMENDATION (tree preservation special exception):

Denial

Rationale:

- The City's Chief Arborist recommends denial of the request.
- The applicant has not substantiated 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. In this case the applicant has not accounted for why the request for leniency to the tree preservation regulations is valid. The applicant's alternate mitigation plan provides an insufficient application of landscape and mitigation to address total removal of existing trees on the property bordering and including a riparian area - a term to describe the area that acts to interface between land and stream - in this particular case, the area on which the development is proposed and the creekbed on the east side of the site).

STAFF RECOMMENDATION (sign special exception):

Approval, subject to the following condition:

- Compliance with the submitted "sign exhibit"/site plan document and elevation is required.

Rationale:

- The applicant has substantiated how strict compliance with the sign regulations (in this case, the site being held to two detached signs along the site's expressway frontage) would result in an inequity since the site has a feature that is uncharacteristic of most lots - that being two existing billboards on the site that accounts for the site's two permitted signs (from which the applicant states he "does not control") and simultaneously precludes the applicant/owner from having a detached premise sign identifying his business along the expressway frontage - a type of sign that is typically found along the expressway frontages on other lots.
- In addition, there appears to be no corresponding benefit to the city and its citizens in accomplishing the objective of the sign regulations in this case (i.e. holding this site to just two signs along the expressway - in this case, the existing billboards on the site's LBJ Freeway frontage) since the proposed additional sign has been represented as being in compliance with all other Code requirements. (If for any reason, the "additional sign" granted by the board in this request was discovered to be out of compliance with some other Code requirement at a later date, the applicant would be required to return to the board with a new application to address any issue that the board is empowered to consider related to non-compliance with city sign codes).

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:

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

STANDARD FOR A SPECIAL EXCEPTION TO THE SIGN REGULATIONS FOR AN ADDITIONAL DETACHED SIGN:

The Board of Adjustment may, in specific cases and subject to appropriate conditions, authorize one additional detached sign on a premise in excess of the number permitted by the sign regulations as a special exception to these regulations when the board has made a special finding from the evidence presented that strict compliance with the requirement of the sign regulations will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.

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 plan has been submitted (see Attachment A) which according to the City of Dallas Chief Arborist is deficient from meeting the landscape requirements of Article X.
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Chief Board of Adjustment Planner (see Attachment B). The memo stated the following:
 - The applicant is requesting a special exception to the tree mitigation and a special exception to the landscape requirements of Article X: The Landscape Regulations.
 - Trigger:

Demolition and new construction.

- Deficiencies
 - Pertaining to “request 1” of the applicant’s May 2 letter (tree mitigation special exception), and according to the plan provided on May 3rd, a total of 507” of protected trees (33 trees) are to be removed on the general construction site, and 165” of protected trees (11 trees) to be removed from the “floodway.” This would require a tree replacement of 672 caliper inches on site or through alternate methods of mitigation (maximum replacement value of \$59,480) available through Article X. Based on the proposed planting plan, 57” (nearly 12 percent) would be planted back on property with two species of trees.
 - Pertaining to “request 2” of the applicant’s May 2 letter (landscape special exception), there is not residential adjacency to be adjacent to or directly across a street 64’ or less in width. The residences in question are across LBJ Freeway. However, after reviewing the plans provided on May 3, some landscape deficiencies to Article X have been identified to be considered by the Board.
- Factors for consideration:
 - Tree mitigation:
 - The proposed removal includes 165” of tree removal from the floodway in the property, being protected trees along the floodway. The trees are growing along slopes of the drainage and provide slope protection. Dense vegetation surrounds the protected trees. Only five of the trees (64” of protected trees) are directly tied to the construction of a proposed gabion wall, as it is shown under this plan. The gabion wall construction proposal is currently submitted and under review. The other six trees (101”) are distanced from the wall construction and support the integrity of the natural tributary system in sloped areas along the creek.
 - According to Mr. Steve Parker, the Floodplain Management administrator, the plans for the gabions identify “only two bois d’arc trees) to be removed because they conflict with the gabion wall/mattress. They show grading in an area that contains additional trees, not related to gabions.” Parker further stated that “if they proposed to remove all trees in the floodway he proposes they mitigate for them. Permits to identify the requirements of the City office, or the extent of grading and the transitional environmental impacts to exposing the creek in this area have not been seen.
 - Article X, Section 51A-10.134:
 - Species: The applicant proposes mitigating on site with honeylocust and Texas ash. Ordinance requires that “no one species may constitute more than 30 percent of the replacement trees planted on a lot or tract.
 - Location. Several open areas on the plan that may be suitable to planting additional trees have been identified. It is not recommended to plant large tree species in line of sight of highway signage that could be subject to possible inappropriate pruning practices (ex. Tree topping) in the future.

- Minimum size. The crepe myrtles identified as 1 inch trees could be upgraded to a minimum of 2 inch trees to meet minimum city standards and count toward tree mitigation.
- Timing. Mitigation for the removal of trees with demolition would require a timing extension special exception (as part of this request) to the completion date a new development, or a time that is favorable to the Board.
- Article X, Section 51A-10.135:
 - The ordinance provides multiple ways to complete mitigation when planting on site “would be impracticable or imprudent.” This may be accomplished through: 1) planting within one mile of the tree removal property; 2) donating trees to the Park Department (where an agreement of conditions can be reached); 3) forming a conservation easement; or 4) paying into the Reforestation Fund.
 - The complete removal of all trees in a vegetated tributary creek area, per the plan, is in contradiction to ForwardDallas! Policies (6.4.1) to protect riparian zones and wildlife corridors.
- Landscaping (10.125 and 10.126): There is no residential adjacency deficiency.
 - Street trees: 581’ of Forest Lane requires 12 street trees. 10 new 3” trees are provided within the required 30’ of the curb and 1 existing tree is available in the northeast corner of the lot if not removed. An additional 3 trees would be available within 40’ of the curb. Street trees are not required along the LBJ off-ramp.
 - Site trees: The 3.73-acre property requires a minimum of 41 site trees. The applicant proposes to leave no existing tree on site and to plant back 34 site trees on the property. 9 of the trees are 1” caliper crepe myrtles.
 - Parking lot trees: All required parking spaces are required to be within 120’ of the stem of a large canopy tree. 4 parking spaces near the front of the entry of the building have been measured as being in compliance with this requirement.
 - Design standards: The plan lists 3 design standards where 2 are required: 1) Screening of off-street parking is partially provided off the property in the city right-of-way on Forest. All design standards are required to be located on the development property. Licensing and permits are required for planting and irrigation in the parkway. Screening shrubs must be 3’ in height at planting. 5 gallon, 2’ high shrubs are identified for planting. 2) Pedestrian facilities are indicated in the table but not identifiable on the plan to meet code. 3) Enhanced pedestrian walkways for pedestrian use must occupy at least 5 percent of the lot. The applicant identifies 4,465 square feet of enhanced pavement in the table were a minimum of 8,124 square feet would be required on site. The type of enhancement should be identified.
 - The protection and maintenance of all “floodway trees” outside of gabion construction would provide a minimum site tree credit of 29 site trees from 7 existing trees.
- Recommendation:

- Denial of the submitted plan for tree mitigation and landscaping.
- Reason:
 - Tree mitigation – Insufficient application of landscaping and mitigation are on the plan to address the total removal of existing trees on the property bordering and including a riparian area. Justification for removal of all vegetation from riparian area should be provided.
 - Landscaping – The property is of sufficient size and open space are to adopt Article X landscape standards. The grounds for residential adjacency is not warranted and has no application to the landscape design.

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.
- The applicant submitted additional information to staff regarding the request (see Attachment A). This information included the following information:
 - a letter that provided additional details about the requests;
 - a sign elevation; and
 - an email and related “revised landscape plan.”
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Chief Board of Adjustment Planner (see Attachment B). (See the “GENERAL FACTS (related to the landscape special exception)” section of this case report for additional details provided in this memo regarding the request for the special exception to the tree preservation regulations).

GENERAL FACTS (related to the sign special exception):

- The Dallas Development Code states that only one detached sign is allowed per street frontage other than expressways, and that one expressway sign is allowed for every 450 feet of frontage or fraction thereof on an expressway.

The applicant has submitted a “sign exhibit”/site plan document which indicates the locations of two existing billboards along its approximately 515’ long LBJ Freeway frontage along with a “PROPOSED 50’ HT x 218 SF QT SIGN WITH MONUMENT BASE” located between the two existing billboards. The applicant has also submitted a site elevation that provides additional specifications about this request.
- The applicant submitted additional information to staff regarding the request (see Attachment A). This information included the following information:
 - a letter that provided additional details about the requests;
 - a sign elevation; and
 - an email and related “revised landscape plan.”

BACKGROUND INFORMATION:

Zoning:

Site: MU-3 (Mixed Use)
North: CR & PD No. 452 (Community Retail and Planned Development)
South: R-7.5(A) & PD No. 702 (Single family 7,500 square feet and Planned Development)
East: NO(A) (Neighborhood Office)
West: PD No. 702 (Planned Development)

Land Use:

The site is currently developed with a vacant multi-story office structure that the owner intends to demolish. The area to the north is developed with retail and multifamily use; the area to the east is developed with office use; the areas to the south and west are developed as the LBJ Freeway.

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:

February 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.

April 20, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

April 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 May 2nd deadline to submit additional evidence for staff to factor into their analysis; and the May 6th 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.

May 2 and 3, 2011: The applicant forwarded additional information on this application beyond what was submitted with the original application (see Attachment A).

May 3, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Board

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

May 5, 2011: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Has no objections if certain conditions are met” with the following comments: “Comply with all C.O.D visibility and floodplain requirements. Additional sign – no comment.”

May 9, 2011: The applicant submitted additional information to the Board Administrator beyond what was submitted in the original application (see Attachment B).

STAFF ANALYSIS (related to the landscape special exception):

- This request focuses on demolishing a vacant multi-story office structure and constructing and maintaining an approximately 5,700 square foot gas station/convenience store structure use (QuickTrip) and being “excepted” from fully meeting the City’s landscape regulations of Article X, more specifically, from fully meeting street tree, site tree, parking lot tree, and design standard requirements.
- The City of Dallas Chief Arborist recommends denial of the request stating among other things that the property is of a sufficient size and open spaces to adopt Article X standards.
- 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 landscape plan as a condition, the site would be “excepted” from compliance with the street tree (providing as many as 11 of the 12 required), site tree (providing 34 of the 41 required), parking lot tree (where 4 parking spaces are not within 120’ of a large canopy tree), and design standard (it appears that none of the 2 are fully provided) requirements of Article X: The Landscape Regulations.

STAFF ANALYSIS (related to tree preservation special exception):

- This request focuses on demolishing a vacant multi-story office structure and constructing and maintaining an approximately 5,700 square foot gas station/convenience store structure use (QuickTrip) and being “excepted” from fully meeting the City’s tree preservation regulations of Article X, more specifically, from fully meeting requirements related to species, location, size, and timing requirements.
- The City of Dallas Chief Arborist recommends denial of the request stating among other things that there is an insufficient application of landscaping and mitigation

noted on the alternate plan to address the removal of existing trees on the property bordering and including a riparian area on the east side of the site.

- 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 (in this case, a site that is currently planned for redevelopment from a vacant multi-story office structure to a gas station/convenience store).
 - The special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose the submitted alternate tree mitigation/landscape plan as a condition, the site would be “excepted” from compliance with the species (only two species of trees are proposed in conjunction with mitigation when no one species can constitute more than 30 percent of the replacement trees on a lot), location (several open areas on are the site suitable to plant additional trees), size (crepe myrtles denoted on plan as 1” trees do not count toward mitigation), and timing (mitigation of removal of trees do not comply with the time frame in which mitigation must be completed relative to the completion date of the proposed new development) requirements of Article X: The Tree Preservation Regulations.

STAFF ANALYSIS (related to the sign special exception):

- The request focuses on erecting and maintaining an additional detached sign for the proposed gas station/convenience store to be located on the site’s LBJ Freeway frontage between two existing billboards - billboards which, according to the applicant, he “does not control.”
- A “sign exhibit”/site plan document and sign elevation has been submitted indicating the locations of the two existing billboards sign and the proposed additional sign, and the height and dimensions of the proposed additional sign – a 50’ high sign that is about 22’ in length and about 15’ in width. (The applicant has written that the proposed additional sign “meets all of the requirements of the Dallas Sign Code.”)
- The applicant has the burden of proof in establishing the following:
 - That strict compliance with the requirement of the sign regulations (where in this case, the site would be limited to having only two signs along its expressway frontage) will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.
- Granting this special exception would allow a 3rd sign on the site – in this case, a sign along the site’s LBJ Freeway frontage that could serve to identify the applicant’s business as opposed to the existing permitted billboards on the site to which the applicant/owner “does not control.” If the Board were to impose the submitted elevation and “sign exhibit”/site plan document as a condition to the request, the additional/3rd sign would be limited to the specific location and characteristics as shown of these documents.

BOARD OF ADJUSTMENT ACTION: MAY 17, 2011

APPEARING IN FAVOR: Rob Baldwin, 401 Exposition Ave., Dallas, TX
Jake Petras, 1120 N. Industrial Blvd., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: **Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 101-033**, on application of Robert Baldwin, **grant** the special exception to allow an additional detached premise sign, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that strict compliance with the provisions of Article VII of the Dallas Development Code will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the City of Dallas and its citizens in accomplishing the objectives of that article. I further move that the following conditions be imposed to further the purpose and intent of Article VII of the Dallas Development Code:

- Strict compliance with the submitted elevation and “sign exhibit”/site plan document is required.

SECONDED: **Hounsel**

AYES: 5 – Richmond, Schweitzer, Hounsel, Goins, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION #2: **Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 101-033**, on application of Robert Baldwin, **grant** the request of this applicant to provide an alternate landscape plan as a special exception to the landscape requirements in the Dallas Development Code because our evaluation of the property, the testimony shows that strict compliance with the requirements will unreasonably burden the use of the property, the special exception will not adversely affect neighboring property and the requirements are not imposed by a site specific landscape plan approved by the city plan commission or city council. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Strict compliance with the submitted revised alternate tree mitigation/landscape plan is required, excluding the plantings in the parkway.

SECONDED: **Goins**

AYES: 5 – Richmond, Schweitzer, Hounsel, Goins, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION #3: Schweitzer

I move that the Board of Adjustment, in Appeal No. **BDA 101-033**, on application of Robert Baldwin, **grant** the request of this applicant for a special exception to the tree preservation requirements in the Dallas Development Code because our evaluation of the property, the testimony shows that strict compliance with the requirements will unreasonably burden the use of the property, the special exception will not adversely affect neighboring property and the requirements are not imposed by a site specific landscape plan approved by the city plan commission or city council. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised alternate tree mitigation/landscape plan is required, excluding the plantings in the parkway.

SECONDED: Goins

AYES: 5 – Richmond, Schweitzer, Honsel, Goins, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 101-039

BUILDING OFFICIAL’S REPORT:

Application of Jon Duperier, represented by John Hamilton for a variance to the height regulations at 2815 Greenville Avenue. This property is more fully described as Lot 10, 11 and 12 in City Block 8/ 1926 and is zoned CR which limits the height of a structure to 26 feet due to the residential proximity slope regulation. The applicant proposes to construct a structure with a height of 33 feet which will require a variance of 7 feet.

LOCATION: 2815 Greenville Avenue

**APPLICANT: Jon Duperier
Represented by John Hamilton**

REQUEST:

- A variance to the height regulations (specifically to the residential proximity slope or RPS) of 7’ is requested in conjunction with constructing and maintaining a 33’ high, approximately 96 square foot “roof access enclosure” structure to be located atop a structure under redevelopment on the site, which would be located above RPS (residential proximity slope) line that begins at the CD No. 15/single family residentially- zoned undeveloped/vacant property immediately south of the site. The structure that is under redevelopment on the site appears from submitted plans to include three storefronts/restaurant uses (Terilli’s, Rohst, and Dodie’s) each with “roof access enclosure” structures to roof patios only one of which is to exceed the

RPS line – that being the “roof access enclosure” structure to be located atop the southernmost store front (Terilli’s) nearest the single family residentially zoned undeveloped/vacant property immediately to the south. (The other two 33’ high “roof access enclosure” structures have been recently constructed atop the building on the site and are shown on the submitted elevation and site plan to be in compliance with the RPS given their height and their distance to the adjacent residentially-zoned property to the south and west).

STAFF RECOMMENDATION:

Denial

Rationale:

- The applicant has not substantiated how either the restrictive area, shape, or slope of the site/lot preclude it from being developed in a manner commensurate with development found on other CR (Community Retail) 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:

- (A) the 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 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) the variance is 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:

- The maximum height for a structure in a CR zoning district is 54’, however, any portion of a structure over 26’ in height cannot be located above a residential proximity slope, which in this case given that the subject site is immediately adjacent to property zoned CD No. 15/single family, is a 1:3-slope (or 1 foot in height for every 3 foot away from private property in a residential zoning district). The RPS slope on the subject site begins at the CD No. 15 zoned property immediately south and west of the site, however, given what is shown on the submitted site plan and elevation, the only encroachment beyond these two RPS lines is the line that begins from the currently vacant/undeveloped single family zoned property to the south. The application and Building Official’s Report states that a variance of 7’ is requested since there is a structure proposed to reach 33’ in height or 7’

higher/beyond than the 26' height allowed for a structure within the RPS line. The submitted elevation and site plan shows one of the three "roof access enclosure" structures requiring variance to the RPS that being the "roof access enclosure" structure for the southernmost restaurant/storefront on the site.

- The subject site is flat, rectangular in shape (150' x 160'), and, according to the application, is 0.5510 acres (or approximately 24,000 square feet) in area.
- DCAD states that the site is developed with a 10,875 square foot "retail strip."
- The applicant forwarded additional information beyond what was submitted with the original application (see Attachment A). This information included an elevation with the RPS line, and a document that provided additional details about the request.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	CR (Community Retail)
<u>North:</u>	CR (Community Retail)
<u>South:</u>	CD No. 15 (Conservation District)
<u>East:</u>	CR (Community Retail)
<u>West:</u>	CD No. 15 (Conservation District)

Land Use:

The subject site is being redeveloped with a structure to house three retail/restaurant uses (Terrilli's, Rohst, and Dodie's). The areas to the north and east are developed with a retail uses; the area to the south is undeveloped/vacant; and the area to the west is developed with single family uses.

Zoning/BDA History:

1. BDA 93-152, Property at 2831 Greenville Avenue (the subject site) On August 24, 1991, the Board of Adjustment granted a variance to the front yard setback regulations of 15'. The board imposed the following condition to the request: the applicant must submit a landscape plan to be approved by the Board Administrator. The case report stated that the request was made in conjunction with the placement of an existing awning added to the 3,100 square foot building (Pazzi's) in July of 1993 – an awning assumed to be in compliance because a neighboring restaurant on the site (Terilli's) had a similar type of awning. (The case report stated that according to Building Inspection, Terilli's would most likely be submitting a similar type

of variance request for their awning in the near future).

Timeline:

March 7, 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.

April 20, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

April 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 May 2nd deadline to submit additional evidence for staff to factor into their analysis; and the May 6th 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.

April 28 & May 3, 2011: The applicant forwarded additional information on this application beyond what was submitted with the original application (see Attachment A).

May 3, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The request focuses on constructing and maintaining a 33’ high, approximately 96 square foot “roof access enclosure” structure to be located atop a structure under redevelopment on the site, which would be located above RPS (residential proximity slope) line that begins at the CD No. 15/single family residentially- zoned undeveloped/vacant property immediately south of the site.

- The structure that is under development on the site appears from submitted plans to include three storefronts/restaurant uses (Terilli's, Rohst, and Dodie's) each with "roof access enclosure" structures to roof patios only one of which is to exceed the RPS line – that being the "roof access enclosure" structure to be located atop the southernmost store front (Terilli's) nearest the single family residentially zoned undeveloped/vacant property immediately to the south. (The two other 33' high "roof access enclosure" structures have been recently constructed atop the building on the site and are shown on the submitted elevation and site plan to be in compliance with the RPS given their height and their distance from the adjacent residentially-zoned property to the south and west).
- The subject site is flat, rectangular in shape (150' x 160'), and, according to the application, is 0.5510 acres (or approximately 24,000 square feet) in area.
- DCAD states that the site is developed with a 10,875 square foot "retail strip."
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to height regulations due to the residential proximity slope 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 CR (Community Retail) 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 CR (Community Retail) zoning classification.
- If the Board were to grant the height variance of 7', imposing a condition whereby the applicant must comply with the submitted site plan and elevation, the structure encroaching above and beyond the residential proximity slope would be limited to what is shown on the submitted plan and elevation which in this case is a 33' high, approximately 96 square foot "roof access enclosure" structure to be located atop a structure under redevelopment on the site – a structure of similar height and footprint as two recently constructed "roof access enclosure" structures atop the roof of the building on the site that are in locations where these structures fall below the RPS line.

BOARD OF ADJUSTMENT ACTION: MAY 17, 2011

APPEARING IN FAVOR: John Hamilton, 2802 N. Carrollton, Dallas, TX
Trey Hart, 6843 La Vista Drive, Dallas, TX

APPEARING IN OPPOSITION: Will Short, 5618 Richard Ave., Dallas, TX
Philip Kingston, 5901 Palo Pinto, Dallas, TX
Claire Collins Schwarz, 5611 Vickery Blvd., Dallas, TX

MOTION: Schweitzer

I move that the Board of Adjustment, in Appeal No. **BDA 101-039**, on application of Jon Duperier, represented by John Hamilton, **grant** the 7 foot variance to the height regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Hounsel

AYES: 4 – Richmond, Schweitzer, Hounsel, Jackson

NAYS: 1 - Goins

MOTION PASSED: 4-1

MOTION: Goins

I move to adjourn this meeting.

SECOND: Jackson

AYES: 4– Richmond, Schweitzer, Goins, Jackson

NAYS: 0 -

MOTION PASSED: 4– 0 (unanimously)

2:14 P.M. - Board Meeting adjourned for **May 17, 2011**.

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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