

**NOTICE FOR POSTING**  
**MEETING OF**  
**BOARD OF ADJUSTMENT, PANEL A**  
**TUESDAY, NOVEMBER 18, 2008**

**Briefing: 10:30 A.M.**  
**Public Hearing: 1:00 P.M.**

**5/E/S**  
**COUNCIL CHAMBERS**

**Purpose:** To take action on the attached agenda, which contains the following:

1. Zoning Board of Adjustment appeals of cases the Building Official has denied.
2. And any other business which may come before this body and is listed on the agenda.

**\*All meeting rooms and chambers are located in Dallas City Hall, 1500 Marilla, Dallas, Texas 75201**

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11-18-2008

BOARD OF ADJUSTMENT, PANEL A  
TUESDAY, NOVEMBER 18, 2008  
AGENDA

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BRIEFING	<b>5/E/S</b>	10:30 A.M.
LUNCH		
PUBLIC HEARING	<b>COUNCIL CHAMBERS</b>	1:00 P.M.

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**Donnie Moore, Chief Planner**  
**Steve Long, Board Administrator**  
**Kyra Blackston, Senior Planner**

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**MISCELLANEOUS ITEMS**

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	Approval of the <b>Tuesday, October 14, 2008</b> Board of Adjustment Public Hearing Minutes	M1
Unassigned	1535 Oates Drive <b>REQUEST:</b> Of Devinee King to waive the filing fee to be submitted in conjunction with a potential board of adjustment appeal	M2
BDA078-152	3720 Latimer Street <b>REQUEST:</b> Of James and Floreann Hunt to waive the filing fee to be submitted in conjunction with a potential board of adjustment appeal for a special exception to the visual obstruction regulations on a site where an application and filing fee has been submitted for a special exception to the fence height regulations.	M3

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**UNCONTESTED CASES**

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BDA 078-139	2606 Shelby Avenue <b>REQUEST:</b> Application of Marc Birnbaum for a special exception to the landscape regulations	1
BDA 078-142	9242 W. Lake Highlands Drive <b>REQUEST:</b> Application of Kurt Read, represented by Robert Baldwin, for a special exception to the single family regulations	2
BDA 078-144(K)	5303 Bonita Avenue	3

**REQUEST:** Application of Richard Hudson for a variance to the front yard setback regulations

BDA 078-146(K)

7906 Forest Trail

4

**REQUEST:** Application of Elizabeth Cronin for a variance to the front yard setback regulations

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**REGULAR CASE**

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BDA 078-147

1011 Corinth Street

5

**REQUEST:** Application of Pamela Green for a variance to the parking regulations

## 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 A October 14, 2008 public hearing minutes.

**MISCELLANEOUS ITEM NO. 2**

**FILE NUMBER:** Unassigned

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

**LOCATION:** 1535 Oates Drive

**APPLICANT:** Devinee King

**STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:**

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

**GENERAL FACTS:**

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waivers/reimbursements:
  - The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.
  - The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board's miscellaneous docket for predetermination.
  - If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.
  - In making this determination, the board may require the production of financial documents.
- The applicant has submitted a letter to the Board Administrator that requested a waiver of the \$600.00 filing fee to be submitted in conjunction with a potential appeal to the Board of Adjustment (see Attachment A). This letter provided some details as to why the applicant felt that the filing fee should be waived.

**Timeline:**

Sept. 24, 2008      The applicant submitted a letter requesting a waiver of the \$600.00 filing fee for a Board of Adjustment application that may be submitted/requested at the address referenced above.

Sept. 26, 2008:      The Board of Adjustment Secretary randomly assigned this request to Board of Adjustment Panel A.

Sept. 26, 2008: The Board Administrator contacted the applicant informing her of the next available Panel A hearing dates in which the miscellaneous request could be scheduled: October 14 and November 18, 2008 where the applicant chose to have the matter scheduled for November 18<sup>th</sup>. The board administrator followed the phone conversation with a letter (with attachments) to the applicant that conveyed the following information:

- the public hearing date, time, and location (where her attendance would be strongly encouraged);
- that the code states that the applicant has the burden of proof in establishing the necessary facts to warrant favorable action by the board;
- the applicable page from the Dallas Development Code pertaining to fee waivers/reimbursements including the criteria/standard that the board will use in their decision to approve or deny the request which includes the code provision which states that the board may require the production of financial documents (i.e. tax return forms, checking/savings accounts balances, etc);
- the November 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials; and
- that additional evidence brought to the board at the November 18<sup>th</sup> hearing should not exceed five pages in length (excluding signed petitions/letters by neighbors) to prevent a delay of action on the request.

**MISCELLANEOUS ITEM NO. 3**

**FILE NUMBER:** BDA078-152

**REQUEST:** To waive the filing fee to be submitted in conjunction with a potential Board of Adjustment appeal – specifically a special exception to the visual obstruction regulations

**LOCATION:** 3720 Latimer Street

**APPLICANT:** James and Floreann Hunt

**STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:**

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

**GENERAL FACTS:**

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waivers/reimbursements:
  - The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.
  - The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board's miscellaneous docket for predetermination.
  - If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.
  - In making this determination, the board may require the production of financial documents.
- The applicant has submitted financial materials and a letter to the Board Administrator that requested a waiver of the \$600.00 filing fee to be submitted in conjunction with a potential request to the Board of Adjustment, specifically a request for a special exception to the visual obstruction regulations (see Attachment A). The letter and related materials provided some details as to why the applicant feels that the fee for the visual obstruction special exception should be waived.

**Timeline:**

October 29, 2008 The applicant submitted a letter requesting a waiver of the \$600.00 filing fee for a Board of Adjustment application that may be submitted/requested at the address referenced above. This letter



makes reference to a specific board of adjustment case number (BDA078-152) where an application and \$600.00 filing fee has already been submitted for a special exception to the fence height regulations.

October 30, 2008: The Board of Adjustment Secretary randomly assigned this request to Board of Adjustment Panel A.

October 30, 2008: The Board Administrator contacted the applicant informing him of the next available Panel A hearing dates in which the miscellaneous request could be scheduled: November 18, 2008 or January 20, 2009 where the applicant chose to have the matter scheduled for November 18<sup>th</sup>. The board administrator followed the phone conversation with an email (with attachments) to the applicant that conveyed the following information:

- the public hearing date and panel that will consider the request;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the October 29<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
- the November 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

**FILE NUMBER:** BDA 078-139

**BUILDING OFFICIAL'S REPORT:**

Application of Marc Birnbaum for a special exception to the landscape regulations at 2606 Shelby Avenue. This property is more fully described as Lot 9A in City Block 4/1339 and is zoned PD-193 (MF-3) which requires mandatory landscaping. The applicant proposes to maintain a structure and provide an alternate landscape plan which will require a special exception.

**LOCATION:** 2606 Shelby Avenue

**APPLICANT:** Marc Birnbaum

**REQUEST:**

- A special exception to the landscape regulations is requested in conjunction with obtaining a final building permit and Certificate of Occupancy for a recently constructed multifamily development on the subject site.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan is required.

Rationale:

- If the board were to grant this request with the staff suggested condition imposed, the site would only be minimally "excepted" from sidewalk and street tree location provisions in order to foster the health and livelihood of four existing mature large trees along the site's Shelby Avenue street frontage.
- The City's Chief Arborist recommends approval of this request whereby if the alternate landscape plan were imposed as a condition, the special exception would not compromise the spirit and intent of the landscaping requirements of PD No. 193.

**STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS  
IN OAK LAWN:**

Section 26(a)(4) of Ordinance No. 21859, which establishes PD No. 193, specifies that the board may grant a special exception to the landscaping requirements of this section if, in the opinion of the Board, the special exception will not compromise the spirit and intent of this section. When feasible, the Board shall require that the applicant submit and that the property comply with a landscape plan as a condition to granting the special exception.

## **GENERAL FACTS:**

- PD No. 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood tornado, riot, act of the public enemy, or accident of any kind.

The applicant has submitted an alternate landscape plan that, according to the City of Dallas Chief Arborist, is seeking relief from the landscaping requirements of PD No. 193, specifically the sidewalk width/location and street tree location requirements of this ordinance (Section 51P-193.126(b)(4) and (5)).

- The City of Dallas Chief Arborist has submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner pertaining to the submitted landscape plan (see Attachment A). The memo stated the following:
  - The special exception request is triggered by the new construction of multifamily development.
  - Deficiencies:
    1. The mandatory sidewalk along Shelby Avenue is located slightly closer to the curb than the required 5' – 10' measure required per code. (The sidewalk is 4' wide as required).
    2. The existing mature large trees along Shelby Avenue are not growing within the required tree planting zone. There is no provision in code to allow for sidewalks to be placed closer to the curb in order to preserve existing trees. The tree planting zoned is a mandatory 2.5' – 5' from back of curb.
  - Factors for consideration:
    - Existing trees were kept on the property throughout the construction with the intention to keep them. Final inspections cannot be completed on site with the trees in their current location without board approval for the special exception to the placement of these trees.
    - The reconstructed sidewalk for this development is generally in line with the existing sidewalk along the blockface and is of correct width.
    - Section 51P-193.126(4)(B) states "required sidewalks must be constructed and maintained in the ... described areas, except that a required sidewalk may be located farther from the project street curb where necessary to avoid or preserve existing trees or structures." The request is to preserve trees but to have the sidewalk slightly closer, but not contiguous, to the curb.
    - All other mandatory landscape provisions under PD 193 have been met by the owner to the satisfaction of the arborist office.
  - Recommendation:
    - Approval. Staff supports all efforts to adequately preserve existing tree canopies on development sites as much as it is possible for continuing contributions to the community while the new trees grow to their full productive capacity and benefit to the property and community. Adjustments to the sidewalk, or the placement of new trees in the reduced parkway, would be counter to the health of the existing mature canopy trees.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: PD No. 193 (MF-3 Subdistrict) (Planned Development District, Multifamily)  
North: PD No. 193 (PD Subdistrict) (Planned Development District, Planned Dev. Subdistrict)  
South: PD No. 193 (GR Subdistrict) (Planned Development District, General Retail)  
East: PD No. 193 (MF-3 & P Subdistricts) (Planned Dev. District, Multifamily & Parking)  
West: PD No. 193 (GR Subdistrict) (Planned Development District, General Retail)

### **Land Use:**

The subject site is developed with a multifamily use - 19 condominium units. The area to the north, east, south, and west are developed with 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:**

- Sept. 24, 2008: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- October 16, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- October 16, 2008: The Board Administrator emailed the applicant the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the requests;
  - the October 29<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
  - the November 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matters at the November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

October 30, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, the Assistant Building Official, the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

November 6, 2008 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment A).

### **STAFF ANALYSIS:**

- This request focuses on being able to obtain a final building permit and Certificate of Occupancy on a recently constructed multifamily development on the site.
- Approval of this landscape special exception request would allow the issuance of a final building permit and Certificate of Occupancy for the recently constructed multifamily development on the site – a site where a portion of a sidewalk and four mature large trees along Shelby Avenue are slightly out of compliance with the sidewalk and street tree location requirements of PD No. 193.
- An alternate landscape plan has been submitted whereby the applicant seeks an exception from the landscape requirements in the following ways:
  - Maintaining a portion of the sidewalk on Shelby Avenue that is slightly closer to the curb than the required 5' – 10' distance from back of curb.
  - Maintaining four mature large trees along Shelby Avenue that are not in the required 2.5' – 5' from curb “tree planting zone.”The alternate landscape plan meets all other mandatory landscape provisions.
- The City of Dallas Chief Arborist supports the request.
- The applicant has the burden of proof in establishing the following:
  - The special exception (where an alternate landscape plan has been submitted that is deficient the street tree and sidewalk location requirements) will not compromise the spirit and intent of the section of the ordinance (Section 26: Landscape, streetscape, screening, and fencing standards).
- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted alternate landscape plan, the site would be minimally “excepted” from compliance to the sidewalk and street tree location requirements of the Oak Lawn PD landscape ordinance in order to preserve the health and livelihood of four existing mature large trees along the site’s Shelby Avenue street frontage.

**FILE NUMBER:** BDA 078-142

**BUILDING OFFICIAL'S REPORT:**

Application of Kurt Read, represented by Robert Baldwin, for a special exception to the single family regulations at 9242 W. Lake Highlands Drive. This property is more fully described as Lot 6 and part of 5 in City Block 3/5383 and is zoned R-7.5(A) which limits the number of dwelling units to one. The applicant proposes to construct an additional dwelling unit which will require a special exception.

**LOCATION:** 9242 W. Lake Highlands Drive

**APPLICANT:** Kurt Read  
Represented by Robert Baldwin

**REQUEST:**

- An application has been made for a special exception to the single family regulations requested in conjunction with replacing a one-story, approximately 600 square foot detached garage structure with a detached two-story, approximately 2,000 square foot additional dwelling unit/garage structure on a site currently developed with a one-story single family home.

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to authorize an additional dwelling unit in any single family zoning district since the basis for this type of appeal is *when in the opinion of the board*, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties. In granting a special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

**STANDARD FOR A SPECIAL EXCEPTION TO THE SINGLE FAMILY USE REGULATIONS TO AUTHORIZE AN ADDITIONAL DWELLING UNIT IN A SINGLE FAMILY ZONING DISTRICT:**

The board may grant a special exception within the single family use regulations to authorize an additional dwelling unit in any single family zoning district when, in the opinion of the board, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties. In granting a special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

## **GENERAL FACTS:**

- The Dallas Development Code limits the number of dwelling units on any lot where a single family use is permitted to one dwelling unit. In addition, the Dallas Development Code defines “single family” use as “one dwelling unit located on a lot;” and a “dwelling unit” as “one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms.”

A site plan was originally submitted denoting a building footprint of the “proposed new structure foundation area + 1,035 sf” and a building footprint of the “approx. location of existing house footprint area = approx. 3,050 sf includes covered porches.”

A revision was made to the originally submitted site plan on October 30, 2008 (see Attachment A). The following note was made to the site plan: “All structures shown on shown on this site plan shall comply with all the provisions of Section 51A-4.209(6)(E)(vii).” (This noted code reference pertains to accessory structure provisions for single family uses. This section includes provisions related to rental and advertisement of rental of such structures, and to the height, floor area ratio, and compatibility of the accessory structure relative to the main structure).

- Floor plans of the new structure have been submitted denoting the building footprint to be 45’ long and 23’ wide. The first floor of the structure denotes a 3-car garage, a storage room, and a utility room. The second floor of the structure denotes a guest bedroom, two baths, a storage room, a sitting area, a game table area, and a wet bar.
- According to the submitted site plan, the proposed structure has first and second floor square footages of 1,035 square feet each for a total square footage of 2,070 square feet.
- The submitted elevation denotes a maximum building height of approximately 25’.
- The site plan shows that the site is 143’ long and 115’ wide or approximately 16,675 square feet in area whereby the proposed accessory structure/dwelling unit is located nearest the northeast corner of the site, approximately 10.5’ from the site’s northern side property line (or about 2’ closer than the existing one-story garage) and approximately 5’ from the site’s eastern rear property line (or about 2’ further than the existing garage).
- DCAD records indicate that the site is developed with the following:
  - a single family home built in 1945 in excellent condition with 2,386 square feet of living area; and
  - a 608 square foot detached garage.”
- The applicant’s representative submitted additional information to staff beyond what was submitted with the original application (see Attachment B). This information included a letter that provided additional details about the request.

## **BACKGROUND INFORMATION:**

### **Zoning:**

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

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

**Land Use:**

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

**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:**

- Sept. 25, 2008      The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- October 16, 2008:    The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- October 16, 2008:    The Board Administrator emailed the following information to the applicant's representative:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - a copy of the code provisions related to accessory structures;
  - the October 29<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
  - the November 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and, if not, may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- October 29, 2008:    The applicant's representative revised the originally submitted site plan (see Attachment A).



October 30, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, the Assistant Building Official, the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

November 10, 2008 The applicant's representative submitted additional information to staff (see Attachment B).

### **STAFF ANALYSIS:**

- This request focuses on replacing a detached one-story garage with a detached two-story three-car garage structure with dwelling unit atop on a site developed with a one-story single family home. The replacement accessory/garage/dwelling unit structure is a story higher (with a footprint that is about 600 square feet greater), is 2' closer to the side yard property line, and is 2' further to the rear property line than the existing detached garage structure.
- This special exception request centers on the function of what is to be located inside the second floor of the proposed accessory structure. Building Inspection has deemed the second floor of the proposed accessory structure a "dwelling unit" based on what is shown on the submitted 2<sup>nd</sup> floor plan.
- If the board were to deny this request, the structure could be built with modifications to the function/use inside the 2<sup>nd</sup> floor of the structure (or to the floor plans) *and* with modifications to the height and size of the main structure on the site in order to comply with the code's accessory structure provisions. (The main structure on the site according to a field visit and the submitted site plan is one-story in height - presently lower than the what is shown to be the height of the proposed accessory/dwelling unit structure with a footprint of approximately 3,000 square feet - presently less than 75 percent the floor area of the accessory structure whose building footprint is about 1,000 square feet).
- The site is zoned R-7.5(A) where the Dallas Development Code permits one dwelling unit per lot. The site is developed with a single family home/dwelling unit, and the applicant proposes to construct/maintain a second/additional dwelling unit on the site hence the special exception request.
- The originally submitted site plan did not establish that the proposed accessory structure would be in compliance with the accessory structure provisions of the Dallas Development Code, specifically with regard to the accessory structure not exceeding the height of the main building or not exceeding 25 percent of the floor area of the main building. However, the applicant's representative's added notation to this site plan on October 30<sup>th</sup> established that "all structures shown on this plan shall comply with all the provisions of Section 51A-4.209(6)(E)(vii)" thus eliminating

any notion that variances to height and FAR regulations would be needed to construct and maintain what appeared to be an accessory structure higher than and greater than 25 percent the floor area of the main structure.

- Building Inspection has stated that if the board were to grant this special exception request and impose the revised site plan as a condition to the request, that initial building permits for the accessory structure could only be issued if they were made in tandem with initial building permits to renovate/enlarge the main structure whereby its height and square footage would be increased relative to the proposed accessory structure so as to comply with the code's accessory structure provisions.
- The applicant has the burden of proof in establishing that the additional dwelling unit will not be used as rental accommodations (by providing deed restrictions, if approved) and does not adversely affect neighboring properties.
- If the Board were to approve the request for a special exception to the single family regulations, subject to imposing a condition that the applicant comply with the submitted site plan, the "dwelling unit" structure would be restricted to the specific location and footprint shown on this plan, which in this case is a "dwelling unit" structure with an approximately 1,000 square foot building footprint situated on an approximately 17,000 square foot site that is approximately 10.5' at its closest point to the property to the north, and approximately 5' at its closest point to the property to the east.
- The Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

**FILE NUMBER:** BDA 078-144(K)

**BUILDING OFFICIAL'S REPORT:**

Application of Richard Hudson for a variance to the front yard setback regulations at 5303 Bonita Avenue. This property is more fully described as part of Lot 28 in City Block 22/1942 and is zoned R-7.5(A), which requires a front yard setback of 25 feet. The applicant proposes to construct a single family residential structure and provide a 5 foot front yard setback which will require a variance of 20 feet.

**LOCATION:** 5303 Bonita Avenue

**APPLICANT:** Richard Hudson

**REQUEST:**

- A variance to the front yard setback regulation.

- 

**STAFF RECOMMENDATION (variance to front yard setback):**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The site is different from other parcels of land in the R-7.5(A) zoning, that is has two 25' front yard setbacks, one along Bonita Avenue and another along Laneri Avenue.
- Granting this variance does not appear to be contrary to the public interest because the building footprint on the submitted site plan shows compliance with the site's 25' front yard setback along Bonita Avenue.

**STANDARD FOR A VARIANCE:**

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

reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land in districts with the same zoning classification.

### **GENERAL FACTS:**

- Structures on lots zoned R-7.5 (A) are required to provide a minimum front yard setback of 25 feet.
- The site is flat, rectangular in shape (134' x 50') and approximately 6,700 square feet in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- A 25' front yard setback is required in the R-7.5(A) zoning district. The applicant submitted a site plan indicating a footprint of a single family structure that is setback 7 feet from the Laneri Avenue's property line.

### **BACKGROUND INFORMATION:**

#### **Zoning:**

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

#### **Land Use:**

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

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

There is no case history for this site or other properties in the immediate area.

#### **Timeline:**

September 26 2008 The applicant submitted an "Application to the Board of Adjustment" and related documents which have been included as part of this case report.

October 16, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

October 21,2008: The Board of Adjustment Senior Planner contacted the applicant and shared the following information by phone and letter:

- the public hearing date and panel that will consider the application;
- the criteria or standard that the board will use in their decision to approve or deny the request;
- the October 29<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
- the November 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the November public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.

October 30, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearing. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Chief Arborist, and the Assistant City Attorney to the Board.

### **STAFF ANALYSIS:**

- The applicant is requesting a variance to the front yard setback for this parcel of land that is undeveloped.
- This site is different from other R-7.5(A) zoned properties in that it is encumbered by two front yard setbacks along Bonita Avenue and Laneri Avenue.
- The applicant has submitted a site plan showing a proposed single family structure that is setback 7 feet from the property's Laneri Avenue property line. The proposed development will encroach 18 feet into the site's 25 foot required front yard setback.
- Once all setbacks have been accounted for on this site, there is a remaining area of 2,088 square feet that is developable, or 31% of the lot's 6,722 square feet.
- The applicant has the burden of proof in establishing the following:
  - that granting the variance to the front yard setback regulations of 25 feet requested to construct and maintain a single family structure that is 7 feet from the front property line of Laneri Avenue is necessary to permit development of a specific parcel of land which differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same zoning classification;
- Should the Board choose to grant the request for the variance to the front yard setback, staff recommends a condition of compliance with the submitted site plan.



**FILE NUMBER:** BDA 078-146(K)

**BUILDING OFFICIAL'S REPORT:**

Application of Elizabeth Cronin for a variance to the front yard setback regulations at 7906 Forest Trail. This property is more fully described as Lot 1 in City Block C/5445 and is zoned R-7.5(A), which requires a front yard setback of 25 feet. The applicant proposes to construct a single family residential accessory structure and provide a 15 foot front yard setback which will require a variance of 10 feet.

**LOCATION:** 7906 Forest Trail

**APPLICANT:** Elizabeth Cronin

**REQUEST:**

- A variance to the front yard setback regulation.

- 

**STAFF RECOMMENDATION (variance to front yard setback):**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The site is different from other parcels of land in the R-7.5(A) zoning because it has three 25' front yard setbacks along Bargianes Lane, Forest Trail, and Square Drive.
- Granting this variance does not appear to be contrary to the public interest because the building footprint on the submitted site plan shows compliance with the site's 25' front yard setback along Forest Trail and Square Drive.

**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 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; 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 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:**

- Structures on lots zoned R-7.5 (A) are required to provide a minimum front yard setback of 25 feet.
- The site is flat, rectangular in shape (155' x 101') and approximately 17,000 square feet in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- According to DCAD, the site was developed in 1999 with a single family home that is in "excellent" condition with 4,830 square feet of living space. DCAD states that there is an attached garage (680 sq. ft) on the property.
- A 25' front yard setback is required in the R-7.5(A) zoning district. The applicant submitted a site plan indicating a "pool and deck" on the site that is located 10 feet from the front yard property line (or 15 feet into the 25 foot front yard setback).

### **BACKGROUND INFORMATION:**

#### **Zoning:**

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

#### **Land Use:**

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

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

There is no case history for this site or other properties in the immediate area.

#### **Timeline:**

September 24 2008 The applicant's representative submitted an "Application to the Board of Adjustment" and related documents which have been included as part of this case report.

October 16, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.



- October 21,2008: The Board of Adjustment Senior Planner contacted the applicant and shared the following information by phone and letter:
- the public hearing date and panel that will consider the application;
  - the criteria or standard that the board will use in their decision to approve or deny the request;
  - the October 29<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
  - the November 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the November public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.
- October 27, 2008: The Code Enforcement Manager submitted a comment sheet stating no objections (see attachment A).
- October 30, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearing. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Chief Arborist, and the Assistant City Attorney to the Board.

### **STAFF ANALYSIS:**

- The site is developed with a single family structure. According to DCAD the site was developed in 1999 and is in "excellent" condition. The following are additional improvements reported on the site:
  1. attached garage (680 sq ft)
- This site is different from other R-7.5(A) zoned properties in that it is encumbered by three front yard setbacks, one along Bargiames Lane, one along Forest Trail, and another along Square Drive.
- The applicant has submitted a site plan showing a proposed pool and deck that encroaches 10 feet into the site's 25 foot Bargiames Lane front yard setback.
- The applicant has the burden of proof in establishing the following:
  - that granting the variance to the front yard setback regulations of 25 feet requested to construct and maintain a pool, pool deck and accessory structure that is 15 feet from the front property line of Bargiames Lane is necessary to

permit development of a specific parcel of land which differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same zoning classification;

- Should the Board choose to grant the request for the variance to the front yard setback, by reducing the front yard setback requirement to 15 feet along Bargiames Lane, staff recommends a condition of compliance with the submitted site plan.

**FILE NUMBER:** BDA 078-147

**BUILDING OFFICIAL'S REPORT:**

Application of Pamela Green for a variance to the parking regulations at 1011 Corinth Street. This property is more fully described as Lots 8 & 9 in City Block E/1094 and is zoned PD-317 (Subdistrict 4-TR 1) which requires parking to be provided. The applicant proposes to construct and maintain a structure for a restaurant without drive-in or drive-through use and provide 16 of the required 31 parking spaces which will require a variance of 15 parking spaces.

**LOCATION:** 1011 Corinth Street

**APPLICANT:** Pamela Green

**REQUEST:**

- A variance to the off-street parking regulations of 15 parking spaces (or 48% of the required off-street parking) is requested in conjunction with leasing an existing circa 1970's approximately 3,100 square foot vacant structure with a "restaurant without drive in or drive-through service" use.

**STAFF RECOMMENDATION:**

Denial

Rationale:

- Even though the site is somewhat irregular in shape, this physical site characteristic (nor its size at about 0.25 acres nor slope – the site is flat) does not create hardship on the lot whereby the applicant cannot develop the site by leasing the existing approximately 3,100 square foot structure with a use (or uses) where the off-street parking can be provided on the site (as it had in its previous use as a "general merchandise or food store less than 3,500 square foot use), through a city-recognized packed, remote, or shared parking agreement, or a combination of both.
- The size, shape, or slope of the subject site does not preclude the applicant from developing it in a manner commensurate with the development found on other parcels of land in the same PD No. 317 zoning district. The applicant can choose to lease the existing structure with a use (or uses) with a lesser parking requirement or lease the existing structure with the proposed restaurant use and provide the required off-street parking through a combination of parking on-site with a city-recognized packed, remote, or shared parking agreement on lots in the area.
- Although the Development Services Senior Engineer has no objections to the request with certain conditions being imposed (i.e. a reassessment report to be submitted within a certain time period and the closure of specific drive approaches),

these conditions are applicable to specific provisions set forth in the Dallas Development Code related to a *special exception* to the parking regulations – an option not available in this application since the applicant seeks a reduction in parking greater than 25 percent of the parking requirement.

- The applicant has not substantiated property hardship on the lot (that is not self-imposed by proposing a specific high parking intensity use whereby the required off-street parking cannot be located entirely on the site along with the existing 3,100 square foot structure) or how granting the request for a 48 percent parking reduction on the site is not contrary to the public interest – even the City’s Senior Engineer is “hesitant in supporting the request” without requiring a reassessment report in two years and drive approach closures.

### **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 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; 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 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 Dallas Development Code requires the following off-street parking requirements:
  - Restaurant without drive-in or drive-through service use: as a main use, 1 space per 100 square feet of floor area.The Building Official’s Report states that 16 (or 51 percent) of the required 31 spaces will be provided in conjunction with this application.
- A *variance* to the off-street parking regulations is needed in this case (as opposed to a special exception to the off-street parking regulations) given that the amount of parking spaces requested to be reduced: 48 percent. The maximum parking reduction that the Dallas Development Code allows the board to “special except” is 25 percent or one space, whichever is greater.
- The previous use of the approximately 3,200 square foot structure appears to have been a beer barn or technically a “general merchandise or food store less than 3,500 square feet” use – a use that requires 1 space per 200 square feet of floor area, or in this case where 16 off-street parking spaces would have been required. According to the Building Inspection Development Code Specialist, the current use is a general

merchandise or food store less than 3,500 square feet and is providing the required 16 spaces as packed parking with a valet. The Development Code Specialist has stated that the site would allow the provision of 15 off-street parking spaces to be provided/located on site.

- The subject site is flat, irregular in shape (approximately 76' on the north; approximately 97' on the south, approximately 145' on the east, and approximately 120' on the west), and, according to the application, 0.26 acres in area. The site is zoned PD No. 317 (Subdistrict 4 – Tr 1). The site has three front yard setbacks which is typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural. In this particular subdistrict of PD No. 317, no minimum front yard setback is required.
- DCAD states that the site is developed with the following:
  - a “free standing retail store” built in 1977 that is 3,168 square feet in area.
- On October 29, 2008, the applicant submitted an email to staff that provided answers to specific questions asked by the Development Services Senior Engineer (see Attachment A).
- On November 5, 2008, the applicant submitted a revised site plan to staff (see Attachment B).

### **BACKGROUND INFORMATION:**

Site: PD No. 317 (Planned Development District)  
North: PD No. 317 (Planned Development District)  
South: PD No. 317 (Planned Development District)  
East: PD No. 317 (Planned Development District)  
West: PD No. 317 (Planned Development District)

### **Land Use:**

The subject site that appears to have been developed as a general merchandise/beer barn use appears to be under development. The areas to the north, east, south, and west appear to be developed with a combination of retail, commercial, and warehouse 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:**

- Sept. 26, 2008: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- October 16, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

- October 16, 2008: The Board Administrator contacted the applicant and shared the following information by phone and email:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the requests;
  - the October 29<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
  - the November 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matters at the November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- October 29, 2008 The applicant submitted additional information to staff (see Attachment A).
- October 30, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, the Assistant Building Official, the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- November 6, 2008 The applicant submitted additional information to staff (see Attachment B).
- November 7, 2008 The Development Services Senior Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments:
- "I am hesitant in recommending approval of this request. I'd like to impose these conditions:
    1. A report to be submitted within 2 years to ascertain that traffic hazard, traffic congestion do not occur;
    2. Two drive approaches on Cockrell Avenue must be closed."

### **STAFF ANALYSIS:**

- This parking *variance* request is made in conjunction with leasing an existing approximately 3,200 square foot structure constructed in 1977 with a specific use (restaurant without drive-in or drive-through) that requires more off-street parking spaces than can be located on the subject site. (According to the Building Inspection

Development Code Specialist, 15 spaces can be located on the subject site – a site currently developed with an approximately 3,100 square foot structure).

- The applicant proposes to provide 16 (or 52 percent) of the required 31 spaces in conjunction with transitioning the former beer barn/“general merchandise or food store less than 3,500 square foot” use/structure (that requires 1 space per 200 square feet of floor area) to a “restaurant without drive-in or drive through” use/structure (that requires 1 space per 100 square feet of floor area).
- The subject site is flat, irregular in shape (approximately 76’ on the north; approximately 97’ on the south, approximately 145’ on the east, and approximately 120’ on the west), and, according to the application, 0.26 acres in area. The site is zoned PD No. 317 (Subdistrict 4 – Tr 1). The site has three front yard setbacks which is typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural. In this particular subdistrict of PD No. 317, no minimum front yard setback is required.
- The site is developed with a “free standing retail store” built in 1977 with 3,168 square feet of floor area.
- The Development Services Senior Engineer has indicated that he has no objections to this request if certain conditions are met commenting that he is hesitant to recommend approval of the request but would suggest the imposition of two conditions:
  1. A report to be submitted within 2 years to ascertain that traffic hazards and traffic congestion do not occur; and
  2. That the two drive approaches into the site on Cockrell Avenue be closed.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the parking regulations of 15 spaces to lease the existing structure with a restaurant use 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.
  - 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 with the same PD No. 317 zoning.
  - 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. 317 zoning.
- If the Board were to grant the parking variance request of 15 spaces, the existing approximately 3,100 square foot structure could be transitioned from its previous beer barn/general merchandise use (with a 1 space per 200 square foot parking requirement) to a restaurant use (with a 1 space per 100 square foot parking requirement).