

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
TUESDAY, JANUARY 15, 2008**

MEMBERS PRESENT AT BRIEFING: Rob Richmond, Chair, Ben Gabriel, Panel Vice-Chair, Jordan Schweitzer, regular member, Ellen Taft, regular member and Steve Harris, regular member

MEMBERS ABSENT FROM BRIEFING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Casey Burgess, Asst. City Attorney, Donnie Moore, Chief Planner, Kyra Blackston, Senior Planner, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, Chau Nguyen, Traffic Engineer and Trena Law, Board Secretary

MEMBERS PRESENT AT HEARING: Steve Long, Board Administrator, Casey Burgess, Asst. City Attorney, Donnie Moore, Chief Planner, Kyra Blackston, Senior Planner, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, Chau Nguyen, Traffic Engineer and Trena Law, Board Secretary

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Casey Burgess, Asst. City Attorney, Donnie Moore, Chief Planner, Kyra Blackston, Senior Planner, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, Chau Nguyen, Traffic Engineer and Trena Law, Board Secretary

11:00 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **January 15, 2008** docket.

1:00 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 November 13, 2007 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: JANUARY 15, 2008

MOTION: Gabriel

I move **approval** of the Tuesday, **November 13, 2007** public hearing minutes.

SECONDED: Harris

AYES: 5 – Richmond, Gabriel, Schweitzer, Taft, Harris

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: BDA078-001

REQUEST: To reimburse the filing fee to be submitted in conjunction a request for a special exception to the front yard setback regulations

LOCATION: 3822 Wemdon Drive

APPLICANT: Linda Kappler

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 submitted a letter with the submittal of the application requesting a reimbursement of the filing fee submitted in conjunction with the request for a variance to the front yard setback regulations (see Attachment A).

Timeline:

- Nov. 5, 2007 The applicant submitted a letter with her application requesting a reimbursement of the filing fee submitted in conjunction with the request for a variance to the front yard setback regulations.
- Dec. 10, 2007: The Board of Adjustment Secretary randomly assigned BDA078-001 to Board of Adjustment Panel A.
- Dec. 13, 2007: The Board Senior Planner 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 December 27th deadline to submit additional evidence for staff to factor into their analysis;
 - the January 4th 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 January public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

BOARD OF ADJUSTMENT ACTION: JANUARY 15, 2008

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Schweitzer**

I move to reimburse the filing fee to be submitted in conjunction for a request for a special exception to the front yard setback regulations.

SECONDED: **Gabriel**

AYES: 5 – Richmond, Gabriel, Schweitzer, Taft, Harris

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 078-005

BUILDING OFFICIAL’S REPORT:

Application of Carolyn Cole for a special exception to the single family district use regulations at 4626 N. Lindhurst Avenue. This property is more fully described as Lot 4 in City Block B/5540 and is zoned R-1ac(A) which requires that a lot for a single family use may be metered by not more than one electrical meter. The applicant proposes to install an additional electrical meter on a lot with a single family residential use which will require a special exception.

LOCATION: 4626 N. Lindhurst Avenue

APPLICANT: Carolyn Cole

REQUEST:

- A special exception to the single family zoning district regulations is requested in conjunction with installing and maintaining a second electrical meter that would restore electrical power to an existing pool house, pool pump, sprinkler system, and closet in the single family home on the subject site. (According to the applicant, the existing electrical meter is no longer able to provide adequate electrical service to these areas/structures on the subject site).

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to authorize an additional electric meter in any single family zoning district since the basis for this type of appeal is *when in the opinion of the board*, the special exception will: 1)

not be contrary to the public interest; 2) not adversely affect neighboring properties; and 3) not be used to conduct a use not permitted in the zoning district.

STANDARD FOR A SPECIAL EXCEPTION TO THE SINGLE FAMILY ZONING DISTRICT REGULATIONS TO AUTHORIZE AN ADDITIONAL ELECTRICAL UTILITY SERVICE AND ELECTRICAL METER:

The board may grant a special exception to authorize more than one electrical utility service and more than one electrical meter on a lot in a single family zoning district when, in the opinion of the board, the special exception will: 1) not be contrary to the public interest; 2) not adversely affect neighboring properties; and 3) not be used to conduct a use not permitted in the zoning district.

GENERAL FACTS:

- The Dallas Development Code states that in R-1ac(A) zoning, a lot for a single family use may be supplied by not more than one electrical service, and metered by not more than one electrical meter.
The applicant submitted a site plan with the original application that merely denoted a “new elec meter” located on the existing pool house on the east side of the site. However, a revised site plan was submitted (see Attachment A) that showed not only the location of the new electrical meter on the east side of the site as well as the location of the existing electrical meter that is to remain on the west side of the site. The revised site plan denotes a cloud diagram circled around the existing pool house with a note stating that the new electrical meter would be located within this circled area if the existing pool house were ever demolished and a new pool were reconstructed in its place.
- The revised site plan indicates that two electrical meters would be approximately 140’ apart or at a distance of about 320 feet around the perimeter of the lot if a new electrical wire would be extended from the existing meter near the west side of the site southward about 80’ to the rear of the lot, eastward about 170’ along the rear of the lot, and then northward about 70’ to the pool house on the east side of the site.
- The subject site is developed with, according to DCAD records, the following:
 - a single family home built in 1952 in very good condition with 5,592 square feet of living area;
 - a pool;
 - a 315 square foot servants quarters; and
 - a 572 square foot attached garage.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a document that provided additional details about the request; and
 - site plans of the subject site noting the location of the existing and proposed meters on the site.

BACKGROUND INFORMATION:

Zoning:

Site: R-1ac (A) (Single family district 1 acre)
North: R-1ac (A) (Single family district 1 acre)
South: R-1ac (A) (Single family district 1 acre)
East: R-1ac (A) (Single family district 1 acre)
West: R-1ac (A) (Single family district 1 acre)

Land Use:

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

- Nov. 14, 2007 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Dec. 13, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Dec. 13, 2007: 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 request;
 - the December 27th deadline to submit additional evidence for staff to factor into their analysis;
 - the January 7th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the 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 January public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Dec. 28, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Assistant Director of Development Services, the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

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

Jan. 7, 2008 The applicant submitted information beyond what was submitted with the original application (see Attachment A).

STAFF ANALYSIS:

- The site is zoned R-1ac(A) where the Dallas Development Code states that lots may be supplied by not more than one electrical service, and metered by not more than one electrical meter.
- The purpose of the request is to install a second electrical meter on a site that is developed with a single family home that is supplied with an existing electrical meter. The proposed 2nd electrical meter (that was originally green-tagged by the City in September of 2007 then revoked a month later) would serve an existing pool house, pool pump, and closet in the single family home, and would be located approximately 140' away from the existing meter, or at a distance of about 320 feet around the perimeter of the lot.
- The applicant has the burden of proof in establishing that the additional electric meter will: 1) not be contrary to the public interest; 2) not adversely affect neighboring properties; and 3) not be used to conduct a use not permitted in the zoning district.
- If the board were to grant the request and impose a condition that the applicant must comply with the submitted revised site plan, the location of the second meter would be restricted to the area shown on this plan.
- Granting this request would not allow the applicant to conduct a use on the subject site that is not permitted in the zoning district.

BOARD OF ADJUSTMENT ACTION: JANUARY 15, 2008

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Gabriel**

I move that the Board of Adjustment grant application **BDA 078-005** 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 revised site plan is required.

SECONDED: Harris

AYES: 5 – Richmond, Gabriel, Schweitzer, Taft, Harris

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 067-161

REVISED BUILDING OFFICIAL’S REPORT:

Application of J. G. Moore, represented by Karl A. Crawley of Masterplan, for special exceptions to the fence height, landscape, and tree preservation regulations at 1103 Cedar Hill Avenue. This property is more fully described as Lots 1-5 and the common area in City Block C/3386 and is zoned R-7.5(A) which limits the height of a fence in the front yard to 4 feet and requires mandatory landscaping. The applicant proposes to construct an 8 foot high fence in the required front yard setback which will require a 4 foot special exception to the fence regulations; and to construct a residential development and provide alternate landscape and tree mitigation plans which will require special exceptions to the landscape and tree preservation regulations.

LOCATION: 1103 Cedar Hill Avenue

APPLICANT: J. G. Moore
Represented by Karl A. Crawley of Masterplan

January 15, 2008 Public Hearing Notes:

- The applicant’s representative submitted a letter to the Board Administrator prior to the briefing that was circulated to staff and board members. The letter stated among other things how the applicant would be requesting that the board deny the request for a fence/wall over 4’ *parallel* to Cedar Hill Avenue without prejudice, and how the applicant would be asking the board to grant the tree preservation special exception request with conditions imposed that were suggested by the Chief Arborist.
- The applicant’s representative submitted a revised site plan to the Board of Adjustment at the public hearing that deleted the need for a fence height special exception for any fence/column/gate over 4’ in height parallel to Cedar Hill Avenue.

REQUESTS:

- The following appeals have been made in this application:
 1. A special exception to the fence height regulations of 4' is requested in conjunction with constructing and maintaining from what appears on a submitted revised partial fence/wall elevation and a revised site plan, both an approximately 6.5' high combination open/solid fence/wall with approximately 7.5' high columns, and an 8' high wood fence on a site being developed as a nine lot single family shared access development.
 2. A special exception to the tree preservation regulations is requested in conjunction with removing protected trees on a site being developed as a nine lot single family shared access development.
 3. A special exception to the landscape regulations is requested in conjunction with proposing an alternate landscape plan on a site being developed as a nine lot single family shared access development.

STAFF RECOMMENDATION (related to fence height special exception):

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

STAFF RECOMMENDATION (related to the tree preservation special exception):

Denial

Rationale:

- The applicant had not substantiated:
 - how strict compliance with the requirements of the Tree Preservation Regulations of the Dallas Development Code (specifically related to the timing in which protected trees removed on the site must be mitigated) will unreasonably burden the use of the property; and
 - that the special exception will not adversely affect neighboring property .
- The City's Chief Arborist recommends denial of the request.

STAFF RECOMMENDATION (related to landscape special exception):

Approval, subject to the following conditions:

1. The applicant must fully comply with the Landscape Regulations with one exception:
 - The number of trees in the common front yard along Cedar Hill Avenue shall be reduced from 18 to 9.
2. A landscape plan shall be submitted to the Chief Arborist indicating that 6 of the 9 trees in the site's common front yard along Cedar Hill Avenue must be planted on the Cedar Hill Avenue side of the fence, and that all trees planted within 20 feet of

the overhead utility lines must be of a small tree species selected from the approved replacement tree list (i.e. large trees not required).

Rationale:

- The applicant had 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 (with the suggested condition imposed) will not adversely affect neighboring property .
- The City's Chief Arborist recommends approval of the request, subject to staff's suggested conditions being imposed.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STANDARD FOR A SPECIAL EXCEPTION TO THE TREE PRESERVATION REGULATIONS:

The board may grant a special exception to the 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.

GENERAL FACTS (related to fence height special exception):

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
A site plan/elevation was submitted with the original application that denoted that the highest component of the proposal would reach 8' in height.

A revised site plan and revised partial site plan/elevation was submitted on December 27th (see Attachment D). These plans denoted the highest component of the fence to be 8' in height as well.

- The following additional information was gleaned from the revised submitted site plan:
 - The approximately 6.5' high combination open/solid fence/wall with approximately 7.5' high columns fence/wall exceeding 4' in height parallel to Cedar Hill Avenue is shown to be approximately 110' in length (with a recessed entryway and gate that would not exceed 4' in height), and approximately on the front property line or about 11' from the pavement line;
 - The 8' high wood fence perpendicular to Cedar Hill Avenue in the front yard setback is shown to be approximately 24' in length located on the northern and southern side property lines.
- Materials of the fence/wall to be located parallel to Cedar Hill Avenue have not been noted on any of the submitted plans or elevations. Although the applicant's representative submitted a letter in October of 2007 that described the construction of a "wrought iron, stone, and brick screening wall," the originally submitted site plan/elevation document did not specify/denote the materials of the fence/wall, columns, or gate. The submitted revised site plan and partial site plan/elevation of December 27th do not provide any further descriptions of the proposal to be parallel to Cedar Hill Avenue other than "6'2" fence 7'4" columns." These specific notations appear to be close to dimensions gleaned from the revised partial fence elevation shown at 3/8" = 1' scale.
- There are four single family homes that would have direct frontage to the proposal, none of which have fences in a front yard setback that appears to exceed 4' in height.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences above four (4) feet high which appeared to be located in the front yard setback.
- The applicant's representative submitted additional documentation to staff beyond that submitted with the original application (see Attachments A, B, and D). This information included letters that provided additional details about the requests, and a revised site plan and revised partial site plan/elevation.

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

- The Dallas Development Code requires full compliance with the Tree Preservation Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet.
Although the originally submitted application made reference to "the tree mitigation requirements to allow an alternate mitigation plan," no plan was submitted with the application, and on November 5, 2007, the applicant's representative submitted a letter (see Attachment B) requesting that the "landscape portion" of the request be postponed until the board's January hearing to determine the needs associated with

the tree preservation part of the request, and to possibly add another request for an alternate landscape plan.

The applicant's representative proposes an alternate mitigation plan related to the timing of tree mitigation whereby the timing would be modified such that the interim 50 percent of the total replacement be removed from the timing and that all inches must be replaced prior to the final inspection of the last house in the development (see Attachment D).

- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Chief Board of Adjustment Planner (see Attachment F). The memo stated the following with regard to the tree preservation special exception:
 - The applicant is requesting relief from tree preservation requirements of Article X of the Dallas Development Code (The Landscape and Tree Preservation Regulations), more specifically, relief from Section 51A-10.134(5) pertaining to timing of protected tree mitigation.
 - Trigger:
 - Tree removal and new construction of shared access development.
 - Deficiencies:
 - The property has 564 caliper inches of protected trees removed that have not been mitigated within the time allowed under Article X. The ordinance allows a maximum of 18 months with a letter of credit or performance bond. The site is currently not in compliance with any of the allowed measures.
 - Factors for consideration:
 - The tree removal was permitted in June of 2005.
 - A total of 564 caliper inches of protected trees (35) were removed for development based upon a tree survey provided prior to removal. The 18 month extension for mitigation has been exceeded without a letter of credit or performance bond. The replacement value equivalent (under the Reforestation Fund formula) is \$48,374.00.
 - Development is still underway with less than half of the nine lots under construction. No new building permits are pending.
 - Final inspections are currently being upheld for completion of landscaping and tree preservation requirements.
 - The applicant has submitted a letter dated December 27, 2007 proposing "that the timing be modified such that the interim 50% of the total replacement be removed from the timing and that all inches must be replaced prior to the final inspection for the last house in the development." Timing is the only portion of the tree preservation ordinance requested to be modified.
 - Recommendation
 - Denial.
 - The proposal to hold final mitigation completion to the date of the final inspection for the last house in the development is excessive. The current scheduling for any future development is uncertain and no tentative date for completion of the ninth lot is suggested by the applicant.
 - If the board votes approval of the request, a definitive time period for mitigation to not exceed June of 2010 is suggested, and that any extension of time beyond this be subject to submittal of a letter of credit to

the building official within 30 days of approval or be in non-compliance with the board approval. In addition, it is suggested that if the board were to approve the request, that 50% of the mitigation be completed prior to the final inspection of the sixth house, or 2/3 completion of the project.

GENERAL FACTS (related to the landscape special exception):

- The Dallas Development Code requires full compliance with the Tree Preservation Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet.
Although the originally submitted application did make application for a special exception to the landscape regulations, the applicant's representative submitted a letter (see Attachment B) requesting that the "landscape portion" of the request be postponed until the board's January hearing to determine the needs associated with the tree preservation part of the request, and to possibly add another request for an alternate landscape plan.
The applicants representative submitted a letter on December 27th that made mention of this added request (see Attachment D). The applicant describes his alternate landscape proposal to be related to the landscape requirements for shared access developments, requirements that a different than that of a "normal single family development."
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Chief Board of Adjustment Planner (see Attachment F). The memo stated the following with regard to the tree preservation special exception:
 - The applicant is requesting relief from landscape requirements of Article X of the Dallas Development Code (The Landscape and Tree Preservation Regulations), more specifically, relief from Section 51A-10.134(5) pertaining to landscape requirements for a shared access development.
 - Trigger:
New construction of shared access development.
 - Deficiencies:
The property currently does not have an approved landscape plan for the shared access development. The nine individual lots required two street trees per lot (18 trees) to be planted in the common front yard along Cedar Hill Avenue. One additional tree (9 trees) is required on each individual lot.
 - Factors for consideration:
 - The property is under development without an approved landscape plan from building inspection. The property began development in June of 2005.
 - The shared access development requirements prior to April of 2006 are binding whereby ordinance modifications after this time do not apply.
 - 18 trees are required in the common front yard prior to a final inspection. The trees may be any tree from the approved list in Article X and must be a minimum caliper of 2". Existing trees may qualify for site trees on each lot. Each individual lot must have a minimum of one tree per lot prior to the final inspection of that lot.

- The applicant has proposed in a December 27th letter to: 1) reduce the required number of trees in the front yard to 9 trees; and 2) “work with the Arborist for a final design” which could be approved by the Arborist. (At the time of the drafting of the arborist’s memo on January 7th, the applicant had not submitted a final plan).
- Recommendation
 - Approval of the request to reduce the number of trees in the front yard from 18 to 9, however, the applicant has not submitted an acceptable plan for complying with this provision, therefore a recommendation cannot be made on the proposed planting plan.
 - If the board votes approval of the request, a condition should be imposed that 6 trees must be planted on the Cedar Hill Avenue side of the fence, and that all trees planted within 20 feet of the overhead utility lines be of a small tree species from the approved replacement tree list (i.e. large trees not required).

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5(A) (Single family 7,500 square feet)
North: R-7.5(A) (Single family 7,500 square feet)
South: R-7.5(A) (Single family 7,500 square feet)
East: PD No. 160 (Planned Development)
West: R-7.5(A) (Single family 7,500 square feet)

Land Use:

The subject site is currently under development. The areas to the north, east, south, and west appear to be 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:

- Sept. 28, 2007: 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 18, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- October 18, 2007: The Board Administrator contacted the applicant’s representative 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 request;
- the October 26th deadline to submit additional evidence for staff to factor into their analysis;
- the November 2nd 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.

October 29 & Nov. 5, 2007 The applicant's representative submitted additional information to staff beyond what was submitted with the original application (see Attachments A and B).

October 30, 2007: 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 Development Services Current Planning Assistant Director, 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 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.

Nov. 6, 2007 The Chief Arborist submitted a memo to the Board Administrator regarding the request for a special exception to the tree preservation regulations (see Attachment C).

Nov. 13, 2007 The Board Administrator explained at the beginning of the public hearing that this case could not be called or heard since staff had discovered that insufficient notice was sent to surrounding property owners. The administrator explained that the City would be required to re-notice and re-advertise the application in accordance with statute and code provisions.

Nov. 29, 2007 The applicant's representative submitted a zoning map that correctly conveyed the area of the subject site.

- Dec. 13, 2007: The Board Administrator contacted the applicant's representative 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 request;
 - the December 27th deadline to submit additional evidence for staff to factor into their analysis;
 - the January 7th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the 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 January public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Dec. 27, 2007 The applicant's representative submitted additional information to staff beyond what was submitted with the original application (see Attachment D).
- Dec. 28, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Assistant Director of Development Services, the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.
- Jan. 2, 2008 The Building Inspection Development Code Specialist forwarded a revised Building Official's Report to the Board Administrator (see Attachment E).
- Jan. 7, 2008 The City of Dallas Chief Arborist submitted a memo regarding the requests for special exceptions to the landscape and tree preservation regulations (see Attachment F).

STAFF ANALYSIS (related to fence height special exception):

- A revised site plan and revised *partial* site plan/elevation have been submitted that document the location of the proposal located both parallel to Cedar Hill Avenue (an approximately 110' long, 6.5' high combination open/solid fence/wall with

approximately 7.5' high columns located on the front property line or about 11' from the pavement line) and perpendicular to Cedar Hill Avenue (two approximately 24' long, 8' high wood walls/fences on the northern and southern side property lines).

- Materials of the fence/wall to be located parallel to Cedar Hill Avenue have not been noted on any of the originally or revised submitted plans or elevations even though the applicant's representative has described the proposal in an October 2007 letter as a "wrought iron, stone, and brick screening wall."
- There are four single family homes that would have direct frontage to the proposal, none with fences in a front yard setback that appears to exceed 4' in height.
- No other fences above four (4) feet high which appeared to be located in a front yard setback were noted by the Board Administrator in a field visit of the site and surrounding area.
- As of January 8th, 27 letters had been submitted in opposition to the request and 3 letters had been submitted in support.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' (whereby the proposed fence/wall/columns and wall to exceed 4' in height in the site's front yard setback) will not adversely affect neighboring property.
- Granting this special exception to the fence height regulations of 4' with the condition imposed that the applicant complies with the submitted revised site plan and submitted revised partial site plan/partial elevation would provide some assurance that the proposal would be constructed and maintained in the location as shown on these documents. However these plans would provide no assurance as to the materials of the proposal parallel to Cedar Hill Avenue since none have been noted on any submitted document. Although the submitted revised partial elevation would lead one to believe that the proposal parallel to Cedar Hill Avenue would be comprised of certain materials, and a letter has been submitted that describes a "wrought iron, stone, and brick screening wall," a fence special exception of 4' with only the submitted revised site plan and revised partial site plan/elevation imposed as a condition would allow the fence/wall/columns parallel to Cedar Hill Avenue to be comprised of any material.

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

- The applicant has requested a special exception to the tree preservation regulations with regard to the timing in which protected trees removed on the site shall be mitigated. According to the Chief Arborist, tree removal was permitted for the development of the site in June of 2005. The applicant proposes an alternate mitigation plan whereby timing would be modified such that the interim 50 percent of the total replacement be removed from the timing and that all inches must be replaced prior to the final inspection of the last house in the development.
- The code requires the trees removed on the site to be replaced by any number of allowed methods with a certain timeframe – for single family developments the timeframe is "at least 50 percent of the total caliper inches of replacement trees must be planted before 65 percent of the development has received a final building inspection of a certificate of occupancy, and all replacement trees must be planted prior to the completion of the development." Because the development of this site

consists of nine single family lots, at least 50 percent of the trees must be replaced prior to the final inspection of five homes. The applicant contends that this requirement would mean planting a large number of trees on lots for which a building permit may not have been issued and possibly a final design in place. Although the applicant states that he is not seeking a reduction in the required number of inches to be mitigated, the applicant is seeking an exception in the timing of the replacement of trees. The applicant proposes that the timing be modified such that the interim 50 percent of the total replacement be removed from the timing and that all inches must be replaced prior to the final inspection of the last house in the development.

- 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 (i.e. mitigating all protected trees removed on the site within 30 days – 18 months from removal) will unreasonably burden the use of the property (in this case, a site that is currently under development as a nine lot single family shared access development).
 - The special exception (allowing for an extension of the time period in which to fully mitigate protected trees removed on the site) will not adversely affect neighboring property.
- The Chief Arborist recommends that this request be denied.

STAFF ANALYSIS (related to the landscape special exception):

- The applicant has requested a special exception to the landscape regulations with regard to the number of trees that must be located in the common front yard of the shared access development that is under development on the subject site.
- The applicant is proposing to plant 9 of the required 18 trees in the site's common front yard along Cedar Hill Avenue.
- The applicant contends unlike a normal single family development where each lot is required to have three trees (two trees to be planted in the front yard and one in the rear), a shared access development requires that two of the three trees be planted in the front yard for the shared access development which in this case would be 18 trees to be planted along the Cedar Hill frontage. The applicant contends that this frontage of 178 feet in length (of which 30 feet is within the driveway and another 40 feet in the required visibility triangles on either side of the driveway) leaves approximately 110 feet to plant 18 trees (where spacing between these trees would be 6 feet).
- Although no actual alternate landscape plan has been submitted, the applicant proposes an alternate landscape proposal whereby the required number of trees in the front yard be reduced to nine trees, and writes that he will work with the Arborist to come up with a final design which would not be part of this request and would be approved by the Arborist.
- 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 (i.e. planting 18 of the required 18 trees in the

common front yard along Cedar Hill Avenue) will unreasonably burden the use of the property (in this case, a site that is currently under development as a nine lot single family shared access development).

- The special exception (allowing for 9 of the required 18 trees in the common front yard along Cedar Hill Avenue) will not adversely affect neighboring property.
- The Chief Arborist recommends approval of this request with conditions imposed that 6 of the 9 trees in the common front yard along Cedar Hill Avenue must be planted on the Cedar Hill Avenue side of the fence, and that all trees planted within 20 feet of the overhead utility lines be of a small tree species from the approved replacement tree list (i.e. large trees not required).

BOARD OF ADJUSTMENT ACTION: JANUARY 15, 2008

APPEARING IN FAVOR: Karl Crawley, 900 Jackson St., #640, Dallas, TX

APPEARING IN OPPOSITION: Bianca Ramirez, 740 Kessler Lake Dr., Dallas, TX

MOTION #1: Schweitzer

I move that the Board of Adjustment, in Appeal No. **BDA 067-161**, on application of J.G. Moore, represented by Karl A. Crawley of Masterplan, **grant** the request of this applicant to construct and maintain an eight-foot-tall fence on the property as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan submitted at this hearing is required.

SECONDED: Gabriel

AYES: 5 – Richmond, Gabriel, Schweitzer, Taft, Harris

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION #2: Schweitzer

I move that the Board of Adjustment, in Appeal No. **BDA 067-161**, on application of J.G. Moore, represented by Karl A. Crawley of Masterplan, **deny** the special exception to the tree preservation requirements requested by this applicant **with prejudice**, because our evaluation of the property and testimony shows that strict compliance with the requirements will not unreasonably burden the use of the property; and the special exception will adversely affect neighboring property.

SECONDED: Taft

AYES: 3 – Gabriel, Schweitzer, Taft
NAYS: 2 – Richmond, Harris
MOTION PASSED: 3– 2

MOTION #3: **Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 067-161**, on application of J.G. Moore, represented by Karl A. Crawley of Masterplan, **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 and 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:

- A minimum of 9 trees must be planted in the front yard.
- Trees planted within 20 feet of the overhead utility lines must be of a small species from the approved replacement tree list.

SECONDED: **Gabriel**

AYES: 5 – Richmond, Gabriel, Schweitzer, Taft, Harris

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 078-001(K)

BUILDING OFFICIAL’S REPORT:

Application of Linda M. Kappler for a special exception to the front yard setback regulations at 3822 Wemdon Drive. This property is more fully described as Lot 8 in City Block 4/5085 and is zoned R-7.5(A), which requires a front yard setback of 25 feet. The applicant proposes to construct and maintain a carport in a required single family residential front yard and provide an 11 foot setback which will require a special exception of 14 feet.

LOCATION: 3822 Wemdon Drive

APPLICANT: Linda M. Kappler

REQUEST:

- A special exception to the front yard setback regulations of 14 feet is requested to construct and maintain a carport in the site’s Wemdon Drive 25’ front yard setback.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to the front yard setback since the basis for this type of appeal is when in the opinion of the board, the carport will not have a detrimental impact on surrounding properties.

STANDARD FOR A SPECIAL EXCEPTION:

The board may grant a special exception to the minimum front yard requirements in this section for a carport for a single family or duplex use when, in the opinion of the board:

- (A) there is no adequate vehicular access to an area behind the required front building line that would accommodate a parking space; and
- (B) the carport will not have a detrimental impact on surrounding properties.

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) The suitability of the size and location of the carport.
- (D) The materials to be used in construction of the carport.

The storage of items other than motor vehicles is prohibited in a carport for which a special exception has been granted under this subsection.

GENERAL FACTS:

- Structures on lots zoned R-7.5(A) are required to provide a minimum front yard setback of 25'. The site is located on the 3800 block of Wemdon Drive. A scaled site plan has been submitted that shows that the existing carport is 11' from the property line.
- The site is flat, rectangular in shape (71' x 111) and 7,811 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 1950 with a single family home that is in "good" condition with 1,656 square feet of living space. DCAD states that there are no additional improvements on the subject site.
- A 25' front yard setback is required in the R-7.5(A) zoning district. The applicant submitted a site plan indicating a "new carport" on the site that is located 11' from the front yard property line (or 14' into the 25' front yard setback).
- Two other carports were noted on the block. A carport was noted in what may be a side yard setback to the east of the site. Archive maps in Development Services

show a record of 3809 Webdon Dr. having been “special excepted” by the Board of Adjustment.

- The Dallas Development Code provides for the Board of Adjustment to consider special exceptions for carports in the front yard setback with a specific basis for this type of appeal.

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:

Case 056-241 heard before Panel C received approval for a special exception to the side yard setback regulations of 4 feet.

Timeline:

Nov. 05, 2007 The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

Dec. 12, 2007: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

Dec. 13, 2007: The Board Administrator contacted the applicant and shared the following information by phone:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the December 27th deadline to submit additional evidence for staff to factor into their analysis;
- the January 4th 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 January public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Dec. 26, 2007: Applicant submitted additional information for staff to review, including a petition in support of the applicant.

Dec. 28, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December 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 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 submitted site plan indicates that about half of the proposed carport structure’s 456 square foot footprint is to be located in the site’s 25’ front yard setback.
- The site is flat, rectangular in shape (71’ x 111’) and 7,881 square feet in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- The applicant has the burden of proof in establishing the following:
 - That granting the special exception to the front yard setback regulations of 25’ requested to maintain an approximately 456 square foot wood-posted, shingle-roofed carport attached to a single family home that is 11’ from the front yard property line (or 14’ into the 25’ front yard setback) will not have a detrimental impact on surrounding properties.
- Granting this special exception would allow the carport to remain in its current location 11’ away from the site’s front yard property line (or 14’ into the required 25’ front yard setback).
- Typically, staff has suggested that the Board impose conditions with this type of appeal. The following conditions would restrict the location and size of the carport in the front yard setback; require the carport in the front yard setback to be retained in its current design, material, and configuration; and would require the applicant to mitigate any water drainage related issues that the carport may cause on the lot immediately adjacent:

1. Compliance with the submitted site plan, elevation, and sectional view document.
2. The carport structure must remain open at all times.
3. There is no lot-to-lot drainage in conjunction with this proposal.
4. All applicable building permits are obtained.
5. No item (other than a motor vehicle) may be stored in the carport.

BOARD OF ADJUSTMENT ACTION: JANUARY 15, 2008

APPEARING IN FAVOR: Linda Kappler, 3822 Wemdon Dr., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 078-001** on application of Linda M. Kappler, **grant** the request of this applicant to maintain a carport as a special exception to the minimum front yard requirements contained in the Dallas Development Code, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that there is no adequate vehicular access to an area behind the required front building line that would accommodate a parking space, and the carport will not have a detrimental impact on surrounding properties. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan, elevation, and section document is required.
- The carport structure must remain open at all times.
- Lot-to-lot drainage is not permitted in conjunction with this proposal.
- All applicable building permits must be obtained.
- No item (other than a motor vehicle) may be stored in the carport.

SECONDED: **Gabriel**

AYES: 5 – Richmond, Gabriel, Schweitzer, Taft, Harris

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 078-007

BUILDING OFFICIAL’S REPORT:

Application of DeShazo, Tang & Associates, represented by John J. DeShazo, Jr., for a special exception to the parking regulations at 8235 Douglas Avenue. This property is more fully described as Lot 1A in City Block 3/5625 and is zoned PD-314 (Tract II),

which requires parking to be provided. The applicant proposes to maintain office and financial institution without drive-in window uses and provide 397 of the 530 required off-street parking spaces which will require a special exception of 133 spaces.

LOCATION: 8235 Douglas Avenue

APPLICANT: DeShazo, Tang & Associates
Represented by John J. DeShazo, Jr

January 15, 2008 Public Hearing Notes:

- The applicant submitted a document to the Board of Adjustment at the public hearing. This document included aerial photographs of the site and data related to existing and proposed parking conditions on the subject site.

REQUEST:

- A special exception to the off-street parking regulations of 133 spaces (or 25% of the required off-street parking) is requested in conjunction with reducing the amount of off-street parking to be provided on the subject site – a site developed with an office tower (8235 Douglas Office Tower) that is currently providing the required amount of off-street parking. Although the request is not triggered by plans to add square footage to the existing tower or to transition any uses within the structure to uses that required more parking, this request is made in conjunction with plans to construct and maintain a new 220,000 square foot office tower (Park Cities Plaza) on a separately platted lot immediately west of the subject site – a lot owned by the same owner as the subject site; a lot currently developed with a hotel (Park Cities Hilton) and office tower (Fidelity Office Tower) and related surface parking lot; and a lot that is the subject site of BDA078-008 (a parking special exception request of 25 percent or 298 spaces). The construction of this new tower on the lot immediately west of the subject site on the portion of which is currently developed as a surface parking lot will create a situation where the new office tower, the existing hotel (Park Cities Hilton) and the existing office tower (Fidelity Office Tower) would no longer be providing the required off-street parking if this special exception request along with the special exception request of BDA078-008 were granted. The construction of the new tower on the lot to the west of the site will create a situation where the Fidelity Office Tower would be providing some of its off-street parking through a shared parking agreement on the lot on this site developed with the Park Cities Hilton; where the Park Cities Hilton would be providing some of its off-street parking through a shared parking agreement with 8235 Douglas Office Tower (the office use on the subject site); and where as a result, the existing office on the subject site would be providing 75 percent of its required parking spaces (397 of its 530) if the special exception request were granted.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The special exception shall automatically and immediately terminate if and when the office and financial institution without drive-in window uses are changed or discontinued.

Rationale:

- The Development Services Senior Engineer has no objections to this request based on the applicant's December 19, 2007 parking analysis.
- The applicant has substantiated how the parking demand generated by the uses does not warrant the number of off-street parking spaces required, and that the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

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

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

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

GENERAL FACTS:

- The Dallas Development Code requires the following off-street parking requirements:
 - Financial institution without drive-in window: 1 space per 333 square feet of floor area. (If more than ten off-street parking spaces are required, handicapped parking must be provided per code).
 - Office use: 1 space per 333 square feet of floor area. (If more than ten off-street parking spaces are required, handicapped parking must be provided per code).
- A December 19th revised “Parking Analysis for RM Crowe Properties on Preston Center” submitted in conjunction with this application and BDA078-008 indicates that the existing office building (8235 Douglas - Office Building) on the subject site has a total square footage of 176,400 with a total parking requirement of 530 spaces (see Attachment A). The revised Building Official’s Report and a transmittal letter from the applicant make reference to a request for a special exception request of 133 spaces (or a reduction of 25 percent of the total required parking for the existing structure/uses on the subject site).

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is developed with an office structure (8235 Douglas Office Tower). The area to the north is under development; the area to the east is developed with office uses; the area to the south is developed with residential uses; and the area to the west (and the subject site of BDA078-008) is developed with hotel use (Park Cities Hilton) and office use (Fidelity Office Tower) and related surface parking lot.

Zoning/BDA History:

1. BDA 078-008, 5944/5954 Luther Lane (the lots immediately west of the subject site)
On January 15, 2008, the Board of Adjustment Panel A will consider a request for a special exception to the parking regulations of 298 spaces (or 25% of the required parking) requested in conjunction with constructing and maintaining a 220,000 square foot office tower (Park Cities Plaza) on a site developed with a hotel use (Park Cities Hilton) and office use (Fidelity Office Tower) and related surface parking lot.
2. BDA 067-008, 5944 Luther Lane (the western portion of the lots immediately west of the subject site)
On January 16, 2007, the Board of Adjustment Panel A denied requests for a variance to the front yard setback regulations of 15' for a portion of a proposed structure under 45' in height; a variance to the urban form front yard setback regulations of 35' for a portion of a proposed structure over 45' in height; and a variance to the height regulations (specifically to the residential proximity slope or RPS) of 48 feet with prejudice. The case report stated that these appeals were requested in conjunction with constructing and maintaining an approximately 164' high, 11-level office tower structure (Park Cities Plaza Office Building) with, according to the submitted elevation, 233,911 gsf (gross square footage).
3. BDA 067-051, 8333 Douglas Avenue (aka 8383 Douglas Avenue) (the lot immediately north of the subject site)
On August 13, 2007, the Board of Adjustment Panel C denied a request for special exception to the parking regulations of 181 spaces without prejudice. The board imposed the following condition: compliance with the submitted elevation is required. The case report stated that the request was

made in conjunction with constructing an office tower with 144,400 square feet of office uses and 4,600 square foot bank use where the applicant proposed to provide 1,114 (or 86%) of the total required 1,295 off-street parking spaces on a site developed with an approximately 278,000 square foot office tower.

Timeline:

- Nov. 15, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Dec. 13, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Dec. 13, 2007: 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 request;
 - the December 27th deadline to submit additional evidence for staff to factor into their analysis;
 - the January 4th 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 January public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Dec. 19, 2007 The applicant submitted information beyond what was submitted with the original application (see Attachment A).
- Dec. 28, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Assistant Director of Development Services, the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior

Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

Jan. 2, 2008 The Building Inspection Development Code Specialist forwarded a revised Building Official's Report to the Board Administrator (see Attachment B).

Jan. 4, 2008 The Development Services Senior Engineer submitted a review comment sheet marked "Has no objections" with the following comments: "Based on the parking analysis dated 12/19/07."

STAFF ANALYSIS:

- The off-street parking reduction special exception request on the subject site is only needed if the board were to grant an off-street parking reduction special exception request on the lot immediately west of the subject site (BDA078-008) where there are plans to construct and maintain a new 220,000 square foot office tower (Park Cities Plaza) on this separately platted lot – a lot owned by the same owner as the subject site; a lot currently developed with a hotel (Park Cities Hilton) and office tower (Fidelity Office Tower) and related surface parking lot.
- While there are no plans to add square footage to the existing tower or to transition any uses within this structure to uses that required more parking on the subject site, the existing structure on the subject site would no longer be able to provide its required off-street parking if the proposed tower were constructed on the lot immediately west since the proposed tower would replace a surface parking lot that provides parking for an existing tower on this lot which in turn would create a parking deficit for the office tower and the existing hotel on this lot.
- According to the latest revised Building Official's Report, 75 percent of the required off-street parking spaces are proposed to be provided in conjunction with maintaining the existing 176,400 square foot office tower on the subject site if the proposed tower were to be constructed on the separately platted lot to the west.
- Granting this request, subject to the condition that the special exception of 133 spaces automatically and immediately terminates if and when the office and financial institution without drive-in window uses are changed or discontinued, would allow the existing approximately 176,000 square foot tower to be retained with these specific uses whereby 75% of the required parking would be provided.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the office and financial institution without drive-in window uses does not warrant the number of off-street parking spaces required, and
 - The special exception of 133 spaces (or 25% of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- The Development Services Senior Engineer has no objections to this request based on the parking analysis dated 12/19/07.

BOARD OF ADJUSTMENT ACTION: JANUARY 15, 2008

APPEARING IN FAVOR: Zach Curry, 5944 Luther Ln., #501, Dallas, TX
Steve Stoner, 400 S. Houst St., #330, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Harris**

I move that the Board of Adjustment, in Appeal No. **BDA 078-007**, on application of DeShazo, Tang & Associates, Inc., represented by John J. DeShazo, **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development Code by 133 parking spaces, because our evaluation of the property and the testimony shows that the parking demand generated by the proposed use on the site does not warrant the number of off-street parking spaces required, and the special exception would NOT create a traffic hazard nor increase traffic congestion on adjacent and nearby streets. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception shall automatically and immediately terminate if and when the office and financial institution without drive-in window uses on the site are changed or discontinued.

SECONDED: **Taft**

AYES: 5 – Richmond, Gabriel, Schweitzer, Taft, Harris

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 078-008

BUILDING OFFICIAL’S REPORT:

Application of DeShazo, Tang & Associates, represented by John J. DeShazo, Jr., for a special exception to the parking regulations at 5944/5954 Luther Lane. This property is more fully described as Lot 3A in City Block 3/5625 and is zoned PD-314 (Tract II), which requires parking to be provided. The applicant proposes to maintain and construct office, financial institution with drive-in window use, and hotel or motel uses and provide 892 of the 1190 required off-street parking spaces which will require a special exception of 298 spaces.

LOCATION: 5944/5954 Luther Lane

APPLICANT: DeShazo, Tang & Associates
Represented by John J. DeShazo, Jr.

January 15, 2008 Public Hearing Notes:

- The applicant submitted a document to the Board of Adjustment at the public hearing. This document included aerial photographs of the site and data related to existing and proposed parking conditions on the subject site.
- The Development Services Senior Engineer stated that he was in support of the request after reviewing this additional information submitted by the applicant.

REQUEST:

- A special exception to the off-street parking regulations of 298 spaces (or 25% of the required off-street parking) is requested in conjunction with constructing and maintaining a new 220,000 square foot office tower (Park Cities Plaza) on a site developed with a hotel (Park Cities Hilton), office tower (Fidelity Office Tower) and related surface parking lot. This request is made in tandem with a request for a special exception to the parking regulations on the lot immediately east adjacent to the subject site (BDA078-007) – a lot that is developed as an office tower (8235 Douglas Office Tower). The construction of this new tower on the subject site on the portion of which is currently developed as a surface parking lot will create a situation where the new office tower, the existing hotel (Park Cities Hilton) and the existing office tower (Fidelity Office Tower) on the subject site as well as the office tower on the site immediately adjacent to the east would no longer be providing the required off-street parking if the two special exception requests (007 and 008) were granted. The construction of the new tower on the site will create a situation where the Fidelity Office Tower would be providing some of its off-street parking through a shared parking agreement on the lot on this site developed with the Park Cities Hilton; where the Park Cities Hilton would be providing some of its off-street parking through a shared parking agreement with 8235 Douglas Office Tower (the office use on the site immediately east of the subject site); and where as a result, the proposed office tower, the existing office, and hotel on the subject site would be providing 75 percent of its required parking spaces (892 of its 1190) if the special exception request were granted.

STAFF RECOMMENDATION:

Denial

Rationale:

- The applicant had not substantiated how the parking demand generated by the uses does not warrant the number of off-street parking spaces required, nor that the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- Although the Development Services Senior Engineer has made no recommendation regarding this request, he has noted how no information has been submitted related to potential car pool, bike riders, number of staff expected to ride DART.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
 - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
 - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
 - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
 - (E) The availability of public transit and the likelihood of its use.
 - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
 - (A) establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
 - (B) impose restrictions on access to or from the subject property; or
 - (C) impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:

- (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
- (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

GENERAL FACTS:

- The Dallas Development Code requires the following off-street parking requirements:
 - Financial institution without drive-in window: 1 space per 333 square feet of floor area. (If more than ten off-street parking spaces are required, handicapped parking must be provided per code).
 - Office use: 1 space per 333 square feet of floor area. (If more than ten off-street parking spaces are required, handicapped parking must be provided per code).
 - Hotel or motel: 1 space for each unit for units 1 to 25; ¾ space for each unit for units 250 to 500; ½ space for all units over 500; plus one space per 200 square feet of meeting room. (If more than ten off-street parking spaces are required, handicapped parking must be provided per code).

A December 19th revised “Parking Analysis for RM Crowe Properties on Preston Center” submitted in conjunction with this application and BDA078-007 indicates that the proposed 220,000 square foot office use (Park Cities Plaza Office Building) would have a total parking requirement of 661 spaces; the existing 82,260 square foot office and financial institution use (Fidelity Office Tower existing office building (8235 Douglas - Office Building) would have a total parking requirement of 247 spaces; and the existing 224-room hotel use (Park Cities Hilton) would have a total parking requirement of 282 spaces (see Attachment A). The revised Building Official’s Report and a transmittal letter from the applicant make reference to a request for a special exception request of 298 spaces (or a reduction of 25 percent of the total required parking for the proposed and existing structures/uses on the subject site).

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is developed with hotel use (Park Cities Hilton) and office use (Fidelity Office Tower) and related surface parking lot. The area to the north is under development, the area to the east (and the subject site of BDA078-007) is developed with an office structure (8235 Douglas Office Tower); the area to the south is developed with residential uses; and the area to the west is the Dallas North Tollway.

Zoning/BDA History:

1. BDA 078-007, 8235 Douglas Avenue (the lot immediately east of the subject site)

On January 15, 2008, the Board of Adjustment Panel A will consider a request for a special exception to the parking regulations of 133 spaces (or 25% of the required parking) requested in conjunction with reducing the amount of off-street parking on the subject site – a site developed with an office tower (8235 Douglas Office Tower) that is currently providing the required amount of off-street parking.
2. BDA 067-008, 5944 Luther Lane (the western portion of the subject site)

On January 16, 2007, the Board of Adjustment Panel A denied requests for a variance to the front yard setback regulations of 15' for a portion of a proposed structure under 45' in height; a variance to the urban form front yard setback regulations of 35' for a portion of a proposed structure over 45' in height; and a variance to the height regulations (specifically to the residential proximity slope or RPS) of 48 feet with prejudice. The case report stated that these appeals were requested in conjunction with constructing and maintaining an approximately 164' high, 11-level office tower structure (Park Cities Plaza Office Building) with, according to the submitted elevation, 233,911 gsf (gross square footage).
3. BDA 067-051, 8333 Douglas Avenue (aka 8383 Douglas Avenue) (the lot immediately northeast of the subject site)

On August 13, 2007, the Board of Adjustment Panel C denied a request for special exception to the parking regulations of 181 spaces without prejudice. The board imposed the following condition: compliance with the submitted elevation is required. The case report stated that the request was made in conjunction with constructing an

office tower with 144,400 square feet of office uses and 4,600 square foot bank use where the applicant proposed to provide 1,114 (or 86%) of the total required 1,295 off-street parking spaces on a site developed with an approximately 278,000 square foot office tower.

Timeline:

- Nov. 15, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Dec. 13, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Dec. 13, 2007: 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 request;
 - the December 27th deadline to submit additional evidence for staff to factor into their analysis;
 - the January 4th 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 January public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Dec. 19, 2007 The applicant submitted information beyond what was submitted with the original application (see Attachment A).
- Dec. 28, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Assistant Director of Development Services, the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior

Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

Jan. 2, 2008 The Building Inspection Development Code Specialist forwarded a revised Building Official's Report to the Board Administrator (see Attachment B).

Jan. 4, 2008 The Development Services Senior Engineer submitted an unmarked review comment with the following comments: "The parking analysis dated 12/19/07, no recommendation due to:

1. The analysis shows a reduction of 26.5% for the proposed office building;
2. The analysis appears to request a reduction of 22% for the hotel which includes guest rooms, meeting space and restaurant;
3. No information on potential car pool, bike riders, numbers of staff expected to ride DART."

STAFF ANALYSIS:

- This off-street parking reduction special exception request is made in conjunction with replacing an existing surface parking lot (that provides required off-street parking for an existing office tower on the site) with a new approximately 220,000 square foot office tower.
- If the proposed tower were constructed on the site, the existing office tower and hotel on the subject site as well as the office tower on the separately platted lot immediately east would no longer be providing the required off-street parking.
- According to the latest revised Building Official's Report, 75 percent of the required off-street parking spaces are proposed to be provided in conjunction with constructing the new 220,000 square foot office tower, and maintaining the existing 82,260 square foot office tower and 224-room hotel on the subject site.
- Granting this request, subject to the condition that the special exception of 298 spaces automatically and immediately terminates if and when the office, financial institution with drive-in window, and hotel/motel uses are changed or discontinued, would allow the construction of the new office tower and maintenance of the existing office tower and hotel whereby 75% of the required parking would be provided.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the office, financial institution without drive-in window, and hotel/motel uses does not warrant the number of off-street parking spaces required, and
 - The special exception of 298 spaces (or 25% of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- Although the Development Services Senior Engineer has made no recommendation regarding this request, he has noted how no information has been submitted related to potential car pool, bike riders, number of staff expected to ride DART.

BOARD OF ADJUSTMENT ACTION: JANUARY 15, 2008

APPEARING IN FAVOR: Zach Curry, 5944 Luther Ln., #501, Dallas, TX
Steve Stoner, 400 S. Houst St., #330, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 078-008**, on application of DeShazo, Tang & Associates, Inc., represented by John J. DeShazo, **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development Code by 298 parking spaces, because our evaluation of the property and the testimony shows that the parking demand generated by the proposed use on the site does not warrant the number of off-street parking spaces required, and the special exception would NOT create a traffic hazard nor increase traffic congestion on adjacent and nearby streets. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception shall automatically and immediately terminate if and when the office, financial institution with drive-in window, and hotel or motel uses on the site are changed or discontinued.

SECONDED: **Gabriel**

AYES: 5 – Richmond, Gabriel, Schweitzer, Taft, Harris

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION: **Schweitzer**

I move to adjourn this meeting.

SECONDED: **Gabriel**

AYES: 5– Richmond, Gabriel, Schweitzer, Taft, Harris

NAYS: 0 -

MOTION PASSED: 5– 0 (Unanimously)

2:05 P.M. - Board Meeting adjourned for **January 15, 2008.**

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.