

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM
TUESDAY, AUGUST 16, 2005**

MEMBERS PRESENT AT BRIEFING: Randall White, Chair, Peggy Hill, Panel Vice-Chair, Ben Gabriel, regular member, Marla Beikman, regular member and Linda Wise, alternate member

MEMBERS ABSENT FROM BRIEFING: Rev. H.J. Johnson, regular member

STAFF PRESENT AT BRIEFING: Donnie Moore, Chief Planner, Steve Long, Board Administrator, Trena Law, Board Secretary, Ileana Fernandez, Asst. City Attorney, Claire Swann, Asst. City Attorney, Danny Sipes, Development Code Specialist, Jennifer Pitner, Senior Planner, Chau Nguyen, Traffic Engineer and Michael Sultan, Chief Arborist

MEMBERS PRESENT AT HEARING: Randall White, Chair, Peggy Hill, Panel Vice-Chair, Ben Gabriel, regular member, Marla Beikman, regular member and Linda Wise, alternate member

MEMBERS ABSENT FROM HEARING: Rev. H.J. Johnson, regular member

STAFF PRESENT AT HEARING: Donnie Moore, Chief Planner, Steve Long, Board Administrator, Trena Law, Board Secretary, Ileana Fernandez, Asst. City Attorney, Claire Swann, Asst. City Attorney, Danny Sipes, Development Code Specialist, Jennifer Pitner, Senior Planner, Chau Nguyen, Traffic Engineer and Michael Sultan, Chief Arborist

9:15 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's August 16, 2005 docket.

1:05 P.M.

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

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel A June 14, 2005 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: August 16, 2005

MOTION: Hill

I move to approve the Board of Adjustment June 14, 2005 public hearing minutes.

SECONDED: Gabriel

AYES: 5 – White, Hill, Gabriel, Beikman, Wise

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: Unassigned

REQUEST: To waive the \$600.00 filing fee to be submitted in conjunction with a potential Board of Adjustment application

LOCATION: 5327 Richard Avenue

APPLICANT: Jose and Josephina Perez

STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:

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

GENERAL FACTS:

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waiver/s reimbursements:
 - The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.
 - The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board's miscellaneous docket for predetermination.
 - If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.
 - In making this determination, the board may require the production of financial documents.
- The applicant submitted a letter to staff requesting a waiver of the \$600.00 filing fee to be submitted in conjunction with a possible Board of Adjustment issue that contained some details on the applicant's finances (see Attachment A), and an email that provided additional details on the applicant's income and expenses (see Attachment B).

Timeline:

- July 12, 2005 The applicant submitted a letter requesting a fee waiver for a Board of Adjustment application that may be requested at the address referenced above (see Attachment A).
- July 19, 2005: The Board of Adjustment Secretary randomly assigned this request to Board of Adjustment Panel A.
- July 19, 2005: The Board Administrator wrote the applicant a letter that conveyed the following information:
 - the public hearing date and panel that will consider the request (where his attendance is strongly encouraged);
 - the criteria/standard that the Board will use in their decision to approve or deny the request; and
 - the importance of evidence submitted by the applicant with regard to the Board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board.
- August 5, 2005 The applicant submitted additional information pertaining to the request (see Attachment B).

BOARD OF ADJUSTMENT ACTION: August 16, 2005

APPEARING IN FAVOR: Olga Perez-Guardado, 2406 Araphao, Dallas, TX
Josephina Perez, 5327 Richard Ave, Dallas, TX

APPEARING IN OPPOSITION: Mike Ward, 5331 Richard, Dallas, TX 75206

MOTION: **Beikman**

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

SECONDED: **Hill**

AYES: 3 – White, Hill, Beikman

NAYS: 2 – Gabriel, Wise

MOTION PASSED: 3– 2

FILE NUMBER: BDA 045-256

BUILDING OFFICIAL'S REPORT:

Application of Julio Vasquez for a special exception to the side yard setback regulations at 3110 Culver Street. This property is more fully described as Lot 22 in City Block H/2108 and is zoned R 7.5 (A) which requires a 5 foot side yard setback. The applicant proposes to maintain a carport and provide a 0 foot setback which would require a special exception of 5 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 3110 Culver Street

APPLICANT: Julio Vasquez

REQUEST:

- A special exception to the side yard setback regulations of 5' is requested in conjunction with maintaining a carport on a site developed with a single family home.

STANDARD FOR A SPECIAL EXCEPTION TO ALLOW A CARPORT IN THE SIDE YARD:

The Board of Adjustment may grant a special exception to the minimum side yard requirements to allow a carport for a single family or duplex use when, in the opinion of the Board, the carport will not have a detrimental impact on surrounding properties. In determining whether to grant a special exception, the Board shall consider the following:
(1) Whether the requested special exception is compatible with the character of the neighborhood.

- (2) Whether the value of surrounding properties will be adversely affected.
- (3) The suitability of the size and location of the carport.
- (4) The materials to be used in construction of the carport.

(Storage of items other than motor vehicles is prohibited in a carport for which a special exception is granted in this section of the Code).

GENERAL FACTS:

- A 5'-side yard setback is required in the R-7.5(A) zoning district.
- The existing carport is located on the site's eastern side property line.
- The existing carport has the following characteristics:
 - 46' x 11' (or 506 square feet) in area
 - constructed of metal materials
 - 7' 9" in height
- The subject site is 150' x 50' (or 7,500 square feet) in area.
- According to DCAD, the site is developed with a single family home in fair condition built in 1926 with 1,162 square feet of living area, and two storage buildings (200 and 400 square feet in area).
- Building Inspection states that no permit was issued by the City for the existing carport on this site.
- The Dallas Development Code provides for the Board of Adjustment to consider special exceptions for *carports* in the side yard with a specific basis for this type of appeal. (Note that the Dallas Development Code does not provide a definition of "carport" however Building Inspection interprets a "carport" to be a structure that would cover a vehicle and be open on at least one side. Building Inspection has recently been interpreting what would appear to a layperson to be a garage without a garage door as a "carport").
- The Dallas Development Code provides for the Board of Adjustment to consider *variances for structures* in the side yard setback with a different basis for appeal than that of *special exceptions for carports* in the side yard setback.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information was a petition signed by 17 neighbors who support the request to maintain the carport in its current location.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

- | | |
|---|--|
| 1. Unassigned, 3110 Culver (the subject site) | On May 17, 2005, the Board of Adjustment Panel A waived the filing fee to be submitted in conjunction with a potential board appeal. |
| 2. BDA 045-170, 3114 Culver (the lot immediately east of the subject site) | On April 19, 2005, the Board of Adjustment Panel A granted a request for a special exception of 5' requested in conjunction with maintaining an approximately 756 square foot carport on the site's side property line. The board imposed the following conditions: the carport must remain open at all times; lot-to-lot drainage is prohibited; all applicable permits must be obtained; and compliance with the submitted site plan is required. |
| 3. BDA 978-217, 3119 Culver Street (two lots northeast of the subject site) | On August 25, 1998, the Board of Adjustment Panel A granted a request for a special exception of 5' requested in conjunction with maintaining an approximately 900 square foot carport on the site's side property line. The board imposed the following conditions: the carport must remain open at all times; lot-to-lot drainage is prohibited; all applicable permits must be obtained; and compliance with the submitted site plan is required. |

Timeline:

- | | |
|----------------|--|
| June 16, 2005 | The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report. |
| July 14, 2005: | The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If any preliminary action is required on a case, including but not limited to a fee waiver or waiver of the two year waiting period, the case must be returned to the panel taking the preliminary action." |

July 15, 2005: The Board Administrator contacted the applicant's representative and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the July 25th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the August 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

July 27, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

August 2, 2005 The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).

STAFF ANALYSIS:

- Granting this special exception would allow the carport to remain in its current location on the side property line (or 5' into the required 5' side yard setback).
- The applicant has submitted a petition signed by 17 neighbors/owners who support the request.
- Three other carports were identified on the block in the field visit conducted by the Board Administrator. One carport located in a side yard setback is immediately east of the site (and was "granted" by the Board of Adjustment Panel A in April of 2005);

another carport located in the side yard setback two lots northeast of the site (and was “granted” by the Board of Adjustment Panel A in August of 1998; and another carport appears to be located in the side yard setback northeast of the site with no recorded Board of Adjustment history.

- 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’s location in the side yard setback; would require the carport in the side yard setback to be retained in its current design, materials, 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 and elevation is required.
 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 items (other than a motor vehicle) may be stored in the carport.

BOARD OF ADJUSTMENT ACTION: August 16, 2005

APPEARING IN FAVOR: No one
APPEARING IN OPPOSITION: No one

MOTION: Hill

I move that the Board of Adjustment **grant** application **BDA 045-256** 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:

- The carport must remain open at all times;
- There must be no lot-to-lot drainage in conjunction with this proposal;
- All applicable building permits must be obtained;
- Compliance with the submitted site plans and elevations is required; and
- No item (other than a motor vehicle) may be stored in the carport.

SECONDED: Gabriel

AYES: 5 – White, Hill, Gabriel, Beikman, Wise

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 045-268

BUILDING OFFICIAL'S REPORT:

Application of Robert and Judith Pierson represented by James R. Schnurr, Winstead Sechrest & Minick, P.C for a special exception to the fence regulations at 5810 Park Lane. This property is more fully described as a tract of land in City Block A/5615 and is zoned R-1Ac(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 10 foot fence in the required front yard setback which would require a special exception of 6 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 5810 Park Lane

APPLICANT: Robert and Judith Pierson
Represented by James R. Schnurr, Winstead Sechrest & Minick,
P.C

REQUEST:

- A special exception to the fence height regulations of 6' is requested in conjunction with constructing the following on a site being developed with a single family home:
 - a 6' 2"-high open wrought iron fence with approximately 6' 8"-high stone veneer columns, three 6' 9"-high open metal gates with approximately 9'-high entry columns (including decorative lamps) in the 40'-Park Lane and Douglas Avenue front yard setbacks; and
 - a 10'-high vinyl-coated chain link tennis court fence in the 40'-Douglas Avenue front yard setback.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
- The submitted site plan makes the following notations:
 - The proposed open metal fence to be located parallel to Park Lane and Douglas Avenue with recessed entryways (two entryways on Park Lane, one entryway on Douglas Avenue);
 - The proposed open metal fence to be approximately 280 feet long along Park Lane and approximately 243' along Douglas Avenue;

- The proposed open metal fence to be located about 1' from on the Park Lane property line and approximately 16' from the Park Lane pavement line;
 - The proposed open metal fence to be located about 9' from on the Douglas Avenue property line and approximately 24' from the Douglas Avenue pavement line;
 - The proposed entry gates on Park Lane to be located about 20' from the property line and approximately 36' from the projected Park Lane pavement line;
 - The proposed entry gate on Douglas Avenue to be located about 19' from the property line and approximately 41' from the projected Douglas Avenue pavement line; and
 - The proposed vinyl coated tennis court fence to be located about 22' from the Douglas Avenue front property line or about 47' from the Douglas Avenue pavement line.
- A "landscape plan" has been submitted in conjunction with the application that details the landscape materials to be located adjacent to the fence.
 - The proposed fence would be located on a site where three single family homes would have direct/indirect frontage to the proposed fence along Park Lane. The home immediately to the northwest has an approximately 7'-high solid wall, the home immediately north has an approximately 6'-high open metal fence behind significant landscaping, and the home to the northeast has an approximately 6'-high open fence (behind landscape materials) and gate.
 - The proposed fence would be located on a site where three single family homes would have direct/indirect frontage to the proposed fence along Douglas Avenue. The home immediately to the northwest has an approximately 7'-high solid wall, the home immediately west has no fence, and the home southwest has an approximately 7'-high open metal fence.
 - The Board Administrator conducted a field visit of the site and surrounding area along Park Lane and noted the following which appeared to be located in the front yard setback (Note that these locations and dimensions are approximations):
 - a 6'-high open metal fence with 8'-high brick columns behind heavy landscaping north of the site (see "Zoning/BDA History" section of this case report for further details);
 - a 6'-high open metal fence with 6.5'-high brick columns behind heavy landscaping northeast of the site (see "Zoning/BDA History" section of this case report for further details);
 - a 7'-high solid wall with 8' high columns two lots northeast of the site;
 - a 6'-high open metal fence with 7'-high columns east of the site (see the "Zoning/BDA History" section of this case report for further details); and
 - a 7'-high solid masonry wall northwest of the subject site.
 - The Board Administrator conducted a field visit of the site and surrounding area along Douglas Avenue and noted the following which appeared to be located in the front yard setback (Note that these locations and dimensions are approximations):
 - a 7'-high open metal fence with 8' high brick columns south of the site (see "Zoning/BDA History" section of this case report for further details); and
 - a 7'-high open metal fence southwest of the site.

- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a letter that further details why the request should be granted; and
 - photos of the site and surrounding properties.

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

Zoning/BDA History:

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. BDA 94-004, 5811 Park Lane (the lot immediately north of the subject site) | <p>On January 11, 1994, the Board of Adjustment granted a request to maintain a fence 7' in height, subject to compliance with the submitted site plan and elevation.</p> |
| <ol style="list-style-type: none"> 2. BDA 956-189, 5825 Park Lane (the lot northeast of the subject site) | <p>On April 23, 1996, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 4', subject to the following conditions: compliance with the submitted revised site/landscape plan and elevation is required. The case report states that the original request was made to construct a 6' 8" high solid brick and stone fence with 7'3" high stone columns and an 8' high entry gate and columns.</p> |
| <ol style="list-style-type: none"> 3. BDA 989-109, 5834 Park Lane (the lot immediately east of the subject site) | <p>On October 20, 1998, the Board of Adjustment Panel B granted a request to the fence height regulations of 5' and imposed the following conditions: compliance with the submitted site plan/elevation plan is required. The case reports states that the request was made to construct a 5.5' – 7.5' high open steel picket fence with 7.5' high solid brick</p> |

4. BDA 88-197, 9006 Douglas Avenue (the lot immediately south of the site) columns and 9' high entry columns. On September 9, 1986, the Board of Adjustment Panel A granted a request for a special exception to the fence regulations "to maintain a 7 foot 10 inch fence, and imposed the following condition: compliance with the landscape plan that was submitted to the board was required. The case report did not detail the materials of the fence approved by the board.

Timeline:

- June 23, 2005 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 14, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- July 15, 2005: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the July 25th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - the August 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- July 25, 2005 The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A).

July 27, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- A scaled site plan and landscape plan have been submitted that document the location of the proposed fence, columns, and gates relative to their proximity to the property line and pavement line. The site plan and landscape plan also clearly show the length of the proposed fence relative to the lot.
- A scaled elevation has been submitted that documents the height of the proposed open iron fence (6' 2"), columns (6' 8"), and gates (6' 9"), and the building materials of the fence (open wrought iron), columns (stone veneer), and gates (open wrought iron). (No elevation of the tennis court fence has been submitted although the site plan describes the tennis court fence as "tennis court fencing to be 3" x 10' posts, powder coated LCX fencing at 8'-10' spacing with 10' vinyl coated chainlink. 9' windscreening on all 10' fencing.")
- The proposed fence is to be constructed of durable material.
- The proposed fence along Park Lane would be located immediately across from a single family home that has a fence higher than 4' in its front yard setback.
- The proposed decorative open iron and tennis court fences along Douglas Avenue would be located immediately across from a single family home that does not have a fence in its front yard setback.
- As of August 5th, no letters had been submitted to staff either in support or in opposition to the proposed fences.
- Granting this special exception of 6' with conditions imposed that the applicant complies with the submitted site plan, landscape plan, and elevation would assure that the proposed fences, columns, and gates are constructed and maintained as shown on these documents.

BOARD OF ADJUSTMENT ACTION: August 16, 2005

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Hill

I move that the Board of Adjustment **grant** application **BDA 045-268** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Gabriel

AYES: 5 – White, Hill, Gabriel, Beikman, Wise

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 045-273

BUILDING OFFICIAL'S REPORT:

Application of Runyan Springs, L.P., represented by Robert Baldwin, for a variance to the front yard setback regulations at 1658 Sax Leigh Drive. This property is more fully described as Lot 22 in City Block 12/6898 and is zoned P.D. 658 which requires a 25 foot front yard setback (along Old Ox Road). The applicant proposes to construct a single family dwelling and provide a 12 foot front yard setback which would require a variance of 13 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances

LOCATION: 1658 Sax Leigh Drive

APPLICANT: Runyan Springs, L.P.
Represented by Robert Baldwin

REQUEST:

- A variance to the front yard setback regulations of 13' is requested in conjunction with constructing a single family home in the undeveloped site's Old Ox Road 25' front yard setback.

STANDARD FOR A VARIANCE:

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor

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

GENERAL FACTS:

- The site has two front yard setbacks: a 20'-front yard setback along Sax Leigh Drive, and a 25'-front yard setback along Old Ox Road given the configuration of adjacent lots and zoning districts.
- The Dallas Development Code states the following with regard to front yard provisions for residential district:
 - If a corner lot in a single family, duplex, or agricultural district has two street frontages of equal distance, one frontage is governed by the front yard regulations of this section, and the other frontage is governed by the side yard regulations. If the corner lot has two street frontages of unequal distance, the shorter frontage is governed by this section, and the longer frontage is governed by side yard regulations. Notwithstanding this provision, the continuity of the established setback along street frontage must be maintained.
- The site's longer frontage is along Old Ox Road, however, this longer frontage is deemed a front yard setback in order to maintain the established setback of lots/homes along this street to the south that "front" Old Ox Road.
- A 25'-front yard setback is required on the site's frontage along Old Ox Road. Even though the site is zoned PD No. 658 which requires generally a 20'-front yard setback, a 25'-front yard setback is required along Old Ox Road since the Dallas Development Code states that if street frontage is divided by two or more zoning districts (as in this case with PD No. 658 and R-7.5(A) zoning districts), the front yard for the entire block must comply with the requirements of the district with the greatest front yard requirement (which is the 25'-front yard setback along Old Ox Road required for lots zoned R-7.5 immediately south).
- The submitted site plan indicates that the approximately 2,400 square foot single family home is to be located at a distance ranging from 12' – 19.5' from the site's front property line on Old Ox Road. The site plan indicates that the single family home is in compliance with the 20' front yard setback along Sax Leigh Drive.
- According to the submitted site plan, it appears that approximately ¼ of the home is located in the 25'-Old Ox Road front yard setback.

- The site is flat, irregular in shape (44' on the north, 90' on the east, 67' on the south, and 100' on the west), and approximately 6,000 square feet in area.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included a letter that further explained the merits and scope of the request, and an aerial photograph of the site and surrounding subdivision.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 658 (Planned Development District)
North: PD No. 658 (Planned Development District)
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: PD No. 658 (Planned Development District)

Land Use:

The subject site is undeveloped. The area to the north is undeveloped; the area to the east is developed with a park (Singing Hill Park); and the areas to the south and west are developed with single family uses.

Zoning/BDA History:

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

Timeline:

- June 24, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 15, 2005 The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 15, 2005: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the

applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;

- the July 25th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the August 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

July 25, 2005 The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A).

July 27, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The site has two front yard setback (a 20' front yard setback along Sax Leigh Drive and a 25' front yard setback along Old Ox Road). The site is flat, irregular in shape (44' on the north, 90' on the east, 67' on the south, and 100' on the west), and approximately 6,000 square feet in area.
- A 15'-wide area for development remains on the approximately 45'-wide site once a 25' front yard setback is accounted for on the east side of the site, and a 5' side yard setback is accounted for on the west side of the site. The applicant states that a 15'-wide building pad is not wide enough to accommodate a 20'-wide garage that is needed to accommodate the required off-street parking.
- If the Board were to grant the front yard variance request, subject to the submitted site plan, the site could be developed with a single family structure that (according to the site plan) will have about 2,400 square feet of area. The area shown on this plan encroaching into the Old Ox Road front yard setback is approximately 500 square

feet (or approximately 59' x 8.5'), resulting in a front yard setback ranging from 12' – 19.5'.

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Hill

I move that the Board of Adjustment **grant** application **BDA 045-273** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: Gabriel

AYES: 5 – White, Hill, Gabriel, Beikman, Wise

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 045-280

BUILDING OFFICIAL'S REPORT:

Application of Gwen Gaylen for a special exception to the parking regulations at 1400 Sullivan Drive. This property more fully described as a tract of land in City Block A/447 and is zoned P.D. 317 which requires parking to be provided for a multi-family use. The applicant proposes to convert a building to a multi family use and provide 15 spaces of the required 20 spaces, which would require a special exception of 5 parking spaces or 25%. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 1400 Sullivan Drive

APPLICANT: Gwen Gaylen

REQUEST:

- A special exception to the off-street parking regulations of 5 spaces is requested in conjunction the conversion of storage warehouses into loft apartments.

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

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

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

GENERAL FACTS:

- The request site is currently developed with approximately 10,000 square feet of storage warehouses with 14 parking spaces.
- The applicant will provide 15 parking spaces with the conversion of the warehouses into loft apartments.
- The Dallas Development Code states the parking requirements for the following uses:
 - 1 space per 500 square feet of multifamily dwelling units;
 - 1 space per 600 square feet of inside industrial use.
- The applicant is proposing to provide 15 (or 75%) of the total 20 required off-street parking spaces, which is the maximum allowed by special exception.
- There are 3 DART bus stops within 500 feet of the request site (see Attachment A). The Cedars DART rail station is within 1,000 feet.

BACKGROUND INFORMATION:

Zoning:

Request Site: PD 317 (Subdistrict 2-Moderate Density Mixed Use Corridors)
North: PD 317 (Subdistrict 2-Moderate Density Mixed Use Corridors)
South: PD 317 (Subdistrict 2-Moderate Density Mixed Use Corridors)
East: PD 317 (Subdistrict 2-Moderate Density Mixed Use Corridors)
West: PD 317 (Subdistrict 2-Moderate Density Mixed Use Corridors)

Land Use:

The request site is developed with storage warehouses. The area to the north is developed with retail and restaurants; the area to the west and south are undeveloped; the area to the east is developed with inside industrial 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 sites.

Timeline:

- June 28, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 12, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 18, 2005: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the requests;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the August 5th deadline to submit additional evidence for staff to factor into their analysis;
 - that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- July 27, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Department Transportation Engineer; the Chief Arborist, Senior Planner Pitner and the Assistant City Attorney to the Board.
- A review comment sheet was submitted by the Development Services Transportation Engineer in conjunction with this application dated July 29, 2005. The engineer commented that each unit would have an average of 1.67 parking spaces which appears reasonable.

STAFF ANALYSIS:

- The Development Services Transportation Engineer provided comments on July 29, 2005 stating that the number of spaces provided for each unit, 1.67, appeared to be reasonable.
- The applicant has indicated that the gate and fence around the parking area will be maintained with the proposed multifamily use.
- Granting this request, subject to the condition that the special exception automatically and immediately terminates if and when the multifamily use on the site is changed or discontinued, would allow the conversion of warehouse into multifamily residential.

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Hill**

I move that the Board of Adjustment **grant** application **BDA 045-280** 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:

- The special exception shall automatically and immediately terminate if and when the multifamily use on the site is changed or discontinued.

SECONDED: **Gabriel**

AYES: 5 – White, Hill, Gabriel, Beikman, Wise

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 045-261

BUILDING OFFICIAL'S REPORT:

Application of Javier and Patricia Flores for a special exception for the handicapped at 621 N. Madison Avenue. This property is more fully described as part of Lot 6 in City Block 2/3324 and is zoned P.D. 160 which requires a 5 foot side yard setback. The applicant proposes to maintain a carport for a handicapped person and provide a 0 foot setback which would require a special exception of 5 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 621 N. Madison Avenue

APPLICANT: Javier and Patricia Flores

REQUEST:

- A special exception for the handicapped is requested in conjunction with maintaining a carport that is located 5' into the 5'-side yard setback on a site developed with a single family home.

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

GENERAL FACTS:

- A 5'-side yard setback is required in the PD No. 160 zoning district.
- The existing carport is located on the site's southern side property line.
- The existing carport has the following characteristics:
 - 45'-long and about 13'-wide (or 585 square feet) in area
 - one-vehicle-wide, 2 to 3-vehicles-long
 - constructed of metal materials
 - 8' – 10' in height
- The subject site is 155' x 50' (or 7,500 square feet) in area.
- According to DCAD, the site is developed with the following:
 - a single family home in average condition built in 1998 with 1,920 square feet of living area;
 - a 210 square foot "det fr stg;"
 - a 360 square foot "living qtrs."
- Building Inspection states that no permit was issued by the City for the existing carport on this site.
- Section 51A-1.10 (b)(1) states that the Board of Adjustment shall grant a special exception to any regulation in this chapter, if, after a public hearing, the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit. The term "handicapped person," means a person with a "handicap," as that term is defined in the Federal Fair Housing Act Amendment of 1988, as amended.
A copy of the "handicap" definition from this act was provided to the Board Administrator by the City Attorney's Office. Section 3602 of this act states the following:
“(h) “Handicap” means, with respect to a person -

1. a physical or mental impairment which substantially limits one or more of such person's major life activities,
 2. a record of having such an impairment, or
 3. being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 802 of Title 21)."
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a letter from doctor that explained the conditions of a person who resides on the site (and the doctor's support of the request); and
 - petitions/letters in support of the request to maintain the carport in its current location.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 160 (Planned Development District 160)
North: PD No. 160 (Planned Development District 160)
South: PD No. 160 (Planned Development District 160)
East: PD No. 160 (Planned Development District 160)
West: PD No. 160 (Planned Development District 160)

Land Use:

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

Zoning/BDA History:

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. Unassigned, 621 N. Madison (the subject site) | <p>On February 15, 2005, the Board of Adjustment Panel A waived the filing fee to be submitted in conjunction with a potential board appeal.</p> |
| <ol style="list-style-type: none"> 2. BDA045-221, 621 N. Madison (the subject site) | <p>On June 14, 2005, the Board of Adjustment Panel A denied a request for a special exception to the side yard setback regulations for a carport of 5' without prejudice. The case report stated the special exception was requested to maintain an existing 585 square foot carport.</p> |

Timeline:

- June 21, 2005 The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report. Loose photographs were submitted with the application that will be available for review at the briefing/public hearing upon request.
- July 14, 2005: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, “If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case.”
- July 15, 2005: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the July 25th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board’s docket;
 - the August 5th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- July 27, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.

August 5, 2005 The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information was submitted after the July 27th staff review team meeting. Therefore staff did not have an opportunity to review and analyze this information.

STAFF ANALYSIS:

- Granting this special exception for the handicapped would allow the carport to remain in its current location which is on the side property line (or 5' into the required 5' side yard setback).
- As of August 5th, two letters and two petitions (with 43 signatures) had been submitted to staff in support of the request, and no letters in opposition.
- Historically, 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's location in the side yard setback; would require the carport in the side yard setback to be retained in its current design, materials, and configuration; would require the applicant to mitigate any water drainage related issues that the carport may cause on the lot immediately adjacent; and would allow the special exception for as long as a handicapped person resides on the site:
 1. Compliance with the submitted site plan and elevation is required.
 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. The special exception expires when a handicapped person no longer resides on the property.

BOARD OF ADJUSTMENT ACTION: August 16, 2005

APPEARING IN FAVOR:

Patricia Flores, 621 N Madison, Adllas, Tx
Victor Martinez, 2606 Jim Loftin Rd., Dallas, TX
Joe Martinez, 3518 Grafton, Dallas, TX
Adelina Flores, 4003 Rockford Dr., Dallas, TX
Miguel Martinez, 617 N Madison, Dallas, TX
Martha Sulgudo, 617 N Madison, Dallas, TX
Jobita Ponce, 620 N Madison, Dallas, TX
Fillimon Ponce, 620 N Madison, Dallas, TX

APPEARING IN OPPOSITION:

Jack Keene, 738 Cedar Hill, Dallas, TX
Ezequiel Castro, 3447 Tennessee, Dallas, TX
Vicki Keene, 738 Cedar Hill, Dallas, TX
Keith Jasiocki, 718 Haine, Dallas, TX

MOTION: Gabriel

I move that the Board of Adjustment in Appeal No. **BDA 045-261** on application of the Javier and Patricia Flores, **grant** the request of this applicant to maintain a carport for a handicapped person with a zero foot setback as a special exception to the side yard setback regulations in the Dallas Development Code because the property and testimony show that an exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Carport must remain open at all times;
- There must be no lot-to-lot drainage in conjunction with this proposal;
- All applicable building permits must be obtained;
- Compliance with the submitted site plan and elevation is required;
- No item (other than a motor vehicle or play equipment) may be stored in the carport; and
- This special exception expires when a handicapped person no longer resides at the property.

SECONDED: Wise

AYES: 3 – Hill, Gabriel, Wise

NAYS: 2 – White, Beikman

MOTION FAILED: 3– 2 ***Since the motion to grant the request did not get four concurring votes, the motion failed. No subsequent motion was made, therefore action on this request was deemed denied with prejudice.**

FILE NUMBER: BDA 045-277

BUILDING OFFICIAL'S REPORT:

Application of John and Shirlene Harris for a variance to the side yard setback regulations at 5131 Vanderbilt Avenue. This property is more fully described as Lot 16 in City Block V/2190 and is zoned CD-9 which requires a 5 foot side yard setback on the west side and a 10 foot side yard setback on the east side. The applicant proposes to construct an addition and provide a 2 foot setback on the west side and an 8 foot setback on the east side which would require a variance of 3 feet on the west and 2 feet on the east. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

LOCATION: 5131 Vanderbilt Avenue

APPLICANT: John and Shirlene Harris

REQUEST:

- A variance to the side yard setback regulations of 3' on the east and 2' on the west side is requested in conjunction with constructing an addition on a single-family home.

STANDARD FOR A VARIANCE:

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

GENERAL FACTS:

- A 5' side yard setback on the west and a 10' side yard setback on the east are required in the CD-9 zoning district.
- The addition to the single family structure is proposed to be located 2' from the east property line and 8' from the west, following the same setbacks as the existing structure.
- The site is slightly sloped, rectangular in shape (50' x 145'), and approximately 7,250 square feet in area.
- The typical lot size in CD 9 (R-7.5 (A)) zoning district is 7,500 square feet.
- The site plan indicates that the building footprint of the proposed single family structure is approximately 1,300 square feet or 54' x 24.8' in area.
- DCAD records indicate that the site is developed with a single family home in fair condition that was built in 1928 and has 1,066 square feet of living area.

BACKGROUND INFORMATION:

Zoning:

Site: CD 9 (Conservation District 9-M Streets-R-7.5(A))
North: CD 9 (Conservation District 9-M Streets-R-7.5(A))
South: CD 9 (Conservation District 9-M Streets-R-7.5(A))
East: CD 9 (Conservation District 9-M Streets-R-7.5(A))
West: CD 9 (Conservation District 9-M Streets-R-7.5(A))

testimony presented to them by the applicant and all other interested parties.

July 27, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Department Transportation Engineer; the Chief Arborist, Senior Planner Pitner and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The site plan indicates that the site is 50' x 145' and approximately 7,250 square feet in area.
- This total lot size is less than the typically-sized lot in the R-7.5(A) zoning district at 7,500 square feet.
- The applicant proposes to maintain the existing setbacks of the main structure for an addition.
- The elevations will be reviewed for compliance with the CD 9 ordinance. The elevations as submitted do not meet the conservation district standards for the roof and visibility of the addition. The applicant will need to provide architecture that meets CD 9 standards and receive approval from the Conservation District Planners before the issuance of a building permit.
- If the Board were to grant the variance, imposing a condition whereby the applicant must comply with the submitted site plan, the approval would allow an addition to the structure to be built to the footprint shown on the site plan.

BOARD OF ADJUSTMENT ACTION: August 16, 2005

APPEARING IN FAVOR: John Harris, 5131 Vanderbilt, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Beikman**

I move that the Board of Adjustment in Appeal No. **BDA 045-277**, hold this matter under advisement until **September 20, 2005**.

SECONDED: **Wise**

AYES: 4 – Hill, Gabriel, Beikman, Wise

NAYS: 0 -
MOTION PASSED: 4- 0 (unanimously)

***Member Randall White was out of room and did not vote.**

FILE NUMBER: BDA 045-281

BUILDING OFFICIAL'S REPORT:

Application of Centex Homes, represented by James R. Schnurr, Winstead Sechrest & Minick P.C., for a variance to the front yard setback regulations at 3100 N Harwood Drive. This property is more fully described as a tract of land in City Blocks 2/932 and 2/985 and is zoned P.D. 193 MF-3 and LC which requires a 25 foot front yard setback. The applicant proposes to construct multi-family dwellings and provide a 10 foot front yard setback which would require a variance of 15 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

LOCATION: 3100 N Harwood Drive

APPLICANT: Centex Homes
Represented by James R. Schnurr, Winstead Sechrest & Minick P.C.

REQUEST:

- Variances to the front yard setback regulations of 15' are requested in conjunction with constructing 7 multifamily structures on a site that is undeveloped.

STANDARD FOR A VARIANCE:

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

permitted by this chapter to other parcels of land in districts with the same zoning classification.

GENERAL FACTS:

- The site is zoned PD No. 193 (MF-3 Subdistrict and LC Subdistrict) where a 10'-front yard setback is required for structures 36' in height and under, and a 25'-front yard setback is required for portions of structures above 36' in height.
- A 10'-front yard setback is provided for all 7 multifamily structures on the site, however, the structures are to exceed 36' (approximately 50' in height), and not provide any additional setback for the portions of these structures exceeding 36' in height. As a result, variance requests have been of 15' to the front yard setback for the portions of the structures over 36' in height along Harwood Street, Ivan Street, Jack Street, and Harry Hines Boulevard. The variance are requested to allow for interior stairway access for each town home to the finished roof deck and for screened mechanical equipment located atop each unit.
- The additional 15' setback for structures (or portions of structures) higher than 36' in height was created to discourage canyon effects that would be created with structures that reached beyond a specific height. This urban form front yard setback was enacted to ensure openness, light, and airflow between tower structures.
- The approximately 1.89 subject site has four front yard setbacks, is (according to the applicant) of irregular slope (40' of elevation change from the Harry Hines pavement line to the property line along the northern boundary), and is slightly irregular in shape.
- 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 information regarding the request and why it should be granted;
 - a site plan and section drawing (that notes the location/portion of the structures on the site that are at issue in this application); and
 - photos of the site and surrounding area.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (LC and MF-3 Subdistricts)(Light commercial and multifamily)
North: PD No. 193 (O-2 Subdistrict)(Office)
South: PD No. 193 (I-2 Subdistrict)(Industrial)
East: PD No. 193 (LC and MF-3 Subdistricts)(Light commercial and multifamily)
West: PD No. 193 (I-2 Subdistrict)(Industrial)

Land Use:

The subject site is undeveloped. The areas to the north, east, south, and west appear to be developed with office uses.

Zoning/BDA History:

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

Timeline:

- June 30, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 15, 2005 The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 15, 2005: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the July 25th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - the August 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- July 25, 2005 The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A).
- July 27, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the

Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The approximately 1.89 subject site has four front yard setbacks, is (according to the applicant) of irregular slope (40' of elevation change from the Harry Hines pavement line to the property line along the northern boundary), and is slightly irregular in shape.
- If the Board were to grant the front yard variance requests, subject to the submitted site plan and elevation, the site could be developed with structures that would comply with the 10' front yard setback required for structures 36' in height or less, whereby the variances would allow setback encroachments for the portion of these structures exceeding 36', which in this case, are to allow stairways to lead to finished roof decks, and screened mechanical equipment located atop each approximately 50'-high, 3-story unit.

BOARD OF ADJUSTMENT ACTION: August 16, 2005

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

APPEARING IN OPPOSITION: No one

MOTION: Beikman

I move that the Board of Adjustment in Appeal No. **BDA 045-281**, on application of Centex Homes, **grant** the 15 foot variance to the front yard setback regulations, because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan and elevation is required; and
- A 48 foot height maximum is permitted for the screened mechanical elements and stairways.

SECONDED: Gabriel

AYES: 5 – White, Hill, Gabriel, Beikman, Wise

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 045-282

BUILDING OFFICIAL'S REPORT:

Application of Panagiotis Triantos, represented by Douglas E. Lattanzio for a special exception to the visibility obstruction regulations at 4207 Williamsburg Road. This property is more fully described as Lot 20 in City Block 5542 and is zoned R-10 (A), which requires that no structure or plant life be located in a visibility corner clip. The applicant proposes to maintain existing plant life in a visibility corner clip which would require a special exception. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions

LOCATION: 4207 Williamsburg Road

APPLICANT: Panagiotis Triantos
Represented by Douglas E. Lattanzio

REQUESTS:

- Special exceptions to the visibility obstruction regulations are requested in conjunction with maintaining plant life that is located in the 45'-visibility triangle at the intersection of Williamsburg Road and Midway Road. The site is currently developed with single family use.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISIBILITY OBSTRUCTION REGULATIONS:

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

GENERAL FACTS:

- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - In a visibility triangle as defined in the Code (45-foot visibility triangles at intersections and 20-foot visibility triangles at drive approaches); and
 - Between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- Williamsburg Road is a local street that extends from Midway Road to Crestline.

- Midway Road is a street with a median where traffic going west on Williamsburg Road must turn right/north.

BACKGROUND INFORMATION:

Zoning:

Site: R-10 (A) (Single Family Residential 10,000 square feet)
North: R-10 (A) (Single Family Residential 10,000 square feet)
South: R-10 (A) (Single Family Residential 10,000 square feet)
East: R-10 (A) (Single Family Residential 10,000 square feet)
West: R-10 (A) (Single Family Residential 10,000 square feet)

Land Use:

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

Zoning/BDA History:

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

Timeline:

- June 24, 2005: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- July 12, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 21, 2005: The Board Administrator contacted the applicant’s representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the August 5th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board’s docket;

- that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

July 27, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Department Transportation Engineer; the Chief Arborist, Senior Planner Pitner and the Assistant City Attorney to the Board.

A review comment sheet was submitted by the Development Services Transportation Engineer in conjunction with this application. The engineer commented that his site visit indicated that existing plant life consisting of tree and shrubs does not significantly affect the sight distance for eastbound traffic on Williamsburg Road. The left turn lane for southbound Midway Road and the traffic signal at Midway-Walnut Hill regulate traffic.

August 4, 2005 The applicant's representative submitted an email providing a narrative description of plant life in the visibility triangle. (see Attachment A)

STAFF ANALYSIS:

- The Development Services Transportation Engineer has indicated that the plant life does not significantly obstruct visibility and that traffic will be regulated by the traffic signal at Midway/Walnut Hill and the southbound turn lane on Midway.
- Midway Road is a six-lane divided principle arterial as defined in the Thoroughfare Plan.
- At the intersection of Williamsburg Road and Midway Road, it was observed that traffic travels north on Midway Road requiring drivers to look left, away from the request site. Drivers look right, through the trunks of the crape myrtles, to look for southbound traffic when they travel south on Midway.
- The site plan provided is not to scale and does not identify the location, type, or quantity of plant life in the visibility triangle.
- If the request is granted, there is no landscape plan or site plan showing the plant life in the visibility triangle to reference for compliance in a condition of approval.

- The email from the applicant's representative on August 4, 2005 indicates his observation of one oak tree and 4 crape myrtles in the approximate visibility triangle. He states the plant life is mature and spaced approximately 3 feet apart.
- If the request is granted, the existing plant life would be "excepted" into the Williamsburg Road/Midway Road 45' visibility triangle.

BOARD OF ADJUSTMENT ACTION: August 16, 2005

APPEARING IN FAVOR: Douglas Lattanzio, 3890 W. NW Highway, #550, Dallas, TX
 Ronald L Bastak, 4206 Williamsburg Rd., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Wise

I move that the Board of Adjustment in Appeal No. **BDA 045-282**, on application of Panagiotis and Catherine Triantos, **grant** the request of this applicant to maintain existing plant life in a visibility corner clip as a special exception to the visibility obstruction regulation contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- No structures or plant materials will be located within the Williamsburg Road and Midway Road visibility clip except for one oak tree and four crape myrtle trees and that they be maintained and pruned as shown in the photograph as Exhibit "A".

SECONDED: Beikman

AYES: 5 – White, Hill, Gabriel, Beikman, Wise

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 045-283

BUILDING OFFICIAL'S REPORT:

Application of Zone Systems Inc. for a special exception for tree preservation to the side yard setback regulations at 12115 Fieldwood Lane. This property is more fully described as Lot 16 in City Block A/6394 and is zoned R-16 (A) which requires a 10 foot side yard setback. The applicant proposes to construct an addition and provide a 1 foot side yard setback which would require a special exception of 9 feet. Referred to the Board of

Adjustment in accordance with Section 51A-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to special exceptions.

LOCATION: 12115 Fieldwood Lane

APPLICANT: Zone Systems Inc.

August 16, 2005 Public Hearing Notes:

- The Board Administrator informed the Board of Adjustment of his discovery on August 12th that city staff had not properly notified property owners within a 200 foot radius of the subject site within 10 days from the public hearing. The administrator informed the board that the notification error was partially a result of the zoning map submitted with the application where the applicant's representative had circled the subject site to be located at the northwest corner of Nashwood Lane and Fieldwood Lane rather than the northwest corner of Myerwood Lane and Fieldwood Lane.

REQUEST:

- A special exception of 9' to the side yard setback regulations for tree preservation is requested in conjunction with constructing a 2-story garage/bedroom addition on a single family home.

STANDARD FOR A SPECIAL EXCEPTION TO THE SIDE YARD SETBACK REGULATIONS FOR TREE PRESERVATION:

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

- 1) whether the requested special exception is compatible with the character of the neighborhood;
- 2) whether the value of surrounding properties will be adversely affected; and
- 3) whether the tree is worthy of preservation.

GENERAL FACTS:

- A 10'-side yard setback is required for structures in the R-16 (A) zoning district.
- The applicant proposes to locate a garage/bedroom addition 1' from the site's western side property line in order to preserve 5 mature Crape Myrtles (ranging in size from 8" – 10 ¾") and one 31 caliper inch Fruitless Mulberry tree located in the site's western and northern side yard setbacks.
- The site is approximately 16,500 square feet (or 120' x 138') in area. The site has two 35'-front yard setbacks and two 10'-side yard setbacks. A 15' alley separates the existing home and the house nearest the side yard encroachment on the west.

- The site plan indicates that the 2-story garage/bedroom addition will have a building footprint of approximately 21' in length by 34' in length (or 714 square feet).
- The applicant has stated that the home will be about 3,800 square feet in area after remodeling with the existing building footprint being maintained. The applicant has stated that the added 2nd floor will be only on a part of the structure to maintain roof lines that are compatible with other nearby homes.
- The subject site is developed with, according to DCAD records, the following:
 - a single family home that is in good condition, built in 1959 with 2,871 square feet of living area;
 - a 528 square foot attached carport; and
 - pool.
- The applicant submitted additional documentation regarding this request (see Attachment A). This information included the following:
 - a letter that provides additional information about the request and why it should be granted;
 - a site plan and table indicating the total land area and net land area (after setbacks are accounted) for the site and the lots west and north of the subject site;
 - photos of the site and the alley that separates the site and the house nearest the side yard encroachment (that will be available for review at the briefing and hearing upon request); and
 - two letters of support from the property owner immediately west of the site (and nearest the encroachment) and the other from the property owner immediately southwest of the site.
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Chief Board of Adjustment Planner (see Attachment B). This memo stated the following:
 - The applicant is required to provide a 10'-side yard setback but is proposing a 1' side yard setback in order to preserve existing trees that the applicant claims will be compromised if they have to meet the 10' setback.
 - The crepe myrtles are in decent condition and are located directly below low overhead power lines and may become misshapen as a result of pruning for line clearance.
 - The large mulberry is showing some indication that it is in slow decline where 2 major stems have died and were cut back and where one area of the canopy is beginning to die back. This tree may live a while longer but is in a declining state.

BACKGROUND INFORMATION:

Zoning:

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

West: R-16 (A) (Single family district 16,000 square feet)

Land Use:

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

Zoning/BDA History:

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

Timeline:

- July 5, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 15, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 15, 2005: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the July 25th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - the August 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- July 20, 2005 The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).

July 27, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

Although no review comments sheets (with comments) were submitted in conjunction with this application, the City of Dallas Chief Arborist submitted a memo regarding this appeal (see Attachment B).

STAFF ANALYSIS:

- The Chief Arborist has provided his assessment as to whether there is a tree (or are trees) on the site worthy of preservation.
- The applicant has obtained support of the request from the property owner who is immediately west of the site and nearest the encroachment.
- If the Board were to grant the side yard special exception request, subject to the submitted site plan, the encroachment would be limited into the site's western side yard setback, a side yard on the site that is separated from the nearest property to the west by a 15'-wide alley. (No side yard encroachment would be granted into the site's northern side yard setback if the submitted site plan was imposed as a condition). Additionally if granted, subject to the submitted site plan, the area of encroachment would be limited to an area for a garage/bedroom addition with, according to the applicant's representative, the same building footprint as a carport that had been in this location since 1997, resulting in a 1' side yard setback on the west side of the site.

BOARD OF ADJUSTMENT ACTION: August 16, 2005

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Wise**

I move that the Board of Adjustment in Appeal No. **BDA 045-283**, hold this matter under advisement until **September 20, 2005**.

SECONDED: **Gabriel**

AYES: 5 – White, Hill, Gabriel, Beikman, Wise

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 045-284

BUILDING OFFICIAL'S REPORT:

BDA 045-284- Application of Blane Ladymon and Harvey McLean, represented by Blane Ladymon- Metro Townhomes, LP., for a variance to the side yard setback regulations at 4235 Holland Avenue. This property is more fully described as Lot 12 in City Block 35/1575 and is zoned P.D. 193 (MF2) which requires a 10 foot side yard setback. The applicant proposes to construct a multi-family dwelling and provide a 5 foot side yard setback which would require a variance of 5 feet. Referred to the Board of Adjustment in accordance with Section 51-3.102(d)(10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

LOCATION: 4235 Holland Avenue

APPLICANT: Application of Blane Ladymon and Harvey McLean
Represented by Blane Ladymon- Metro Townhomes, LP.

REQUEST:

- A variance to the side yard setback regulations of 5' is requested in conjunction with constructing a 3-story multifamily structure.

STANDARD FOR A VARIANCE:

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

GENERAL FACTS:

- A 10'-side yard setback is required in the PD 193 MF-2 zoning district.
- The multifamily structure is proposed to be located 5' from the northwest property line and 10' from the southeast property line.
- The site is flat, rectangular in shape (50' x 160'), and approximately 8,000 square feet in area.
- The site plan indicates that the proposed 3 story multifamily structure has 4 condo units and provides a total 8,434 square footage of living area. The building provides a footprint of approximately 3,240 square feet (24x135).
- The area of the proposed multifamily structure located in the 10'-side yard setback is approximately 675 square feet or 5' x 135' in area.
- DCAD records indicate that the site is developed with a single family home in fair condition that was built in 1938 and has 1,233 square feet of living area. (A field visit to the site shows that this house has been demolished.)

BACKGROUND INFORMATION:

Zoning:

Site: PD 193 and MF-2 (Oak Lawn PD and Multifamily residential)
North: PD 193 and MF-2 (Oak Lawn PD and Multifamily residential)
South: PD 193 and MF-2 (Oak Lawn PD and Multifamily residential)
East: PD 193 and MF-2 (Oak Lawn PD and Multifamily residential)
West: PD 193 and MF-2 (Oak Lawn PD and Multifamily residential)

Land Use:

The subject site is undeveloped. The area to the northeast across Holland is undeveloped. The area to the northwest, west, and southeast are developed with multifamily 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 sites.

Timeline:

July 11, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

July 12, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

- July 21, 2005: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the August 5th deadline to submit additional evidence for staff to factor into their analysis;
 - that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

July 27, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Department Transportation Engineer; the Chief Arborist, Senior Planner Pitner and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The attached plat map indicates that the site is 8,000 square feet.
- If the Board were to grant the request, imposing a condition whereby the applicant must comply with the submitted site plan, the amount of encroachment into the side yard setback would be limited in this case to an area of less than 675 square feet.
- Granting this variance would allow an approximately 8,434 square foot multifamily building to encroach 5' into the 10' side yard setback.
- The applicant has indicated that the notification of public hearing sign was not posted 10 days before the hearing date.
- Per the Development Code, if the Board of Adjustment determines that the applicant has failed to comply with the provisions of the section on notification signs, it shall

take no action on the application other than to postpone the public hearing or deny the applicant's request, with or without prejudice.

BOARD OF ADJUSTMENT ACTION: August 16, 2005

APPEARING IN FAVOR: Blane Ladymon, 6008 Monticello Ave., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Hill

I move that the Board of Adjustment in Appeal No. **BDA 045-284**, hold this matter under advisement until **September 20, 2005**.

SECONDED: Gabriel

AYES: 5 – White, Hill, Gabriel, Beikman, Wise

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 045-259

BUILDING OFFICIAL'S REPORT:

Application of Glen D. Kirksey, represented by Brian D. Adams SMR Landscape Architects for a special exception to the landscape regulations at 7201-15 Skillman Street. This property is more fully described as a tract of land in City Block C/8130 and is zoned CR which requires landscaping to be provided with new construction. The applicant proposes to construct a building and provide an alternate landscape plan which would require a special exception to the landscape regulations. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 7201-15 Skillman Street

APPLICANT: Glen D. Kirksey
Represented by Brian D. Adams SMR Landscape Architects

August 16, 2005 Public Hearing Notes:

- The applicant submitted a revised landscape plan at the public hearing after meeting to resolve issues from the opposition who were present at the public hearing.

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with new construction on a site that is developed with a shopping center.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

The board may grant a special exception to the landscape 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:

- The Dallas Development Code requires full compliance with the Landscape Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet.
- The applicant has submitted a site plan that does not fully comply with the landscape regulations, specifically a plan where (according to the City of Dallas Chief Arborist) the applicant is requesting relief from portions of the required landscaping.
- The requirements that the applicant is seeking the special exception from are not imposed by a site-specific landscape plan approved by the city plan commission or city council.
- According to the submitted site plan, the 7.24-acre site will be redeveloped with a structure that will be 44,982 square feet of retail use.
- According to DCAD, the site is developed with the following:
 - approximately 78,000 square feet of shopping center built in 1978;
- The City of Dallas Chief Arborist submitted a memo to Senior Planner Pitner, the Board Administrator and the Chief Board of Adjustment Planner that stated the following:
 - The applicant is requesting relief from the residential landscape buffer strip and from having to provide a second design standard.
 - The special exception request is triggered by new construction.
 - Deficiencies:

1. The applicant is required to provide a 10' wide landscape buffer strip with one large canopy tree or two large non-canopy trees for each 50' adjacent to residential uses. 542 linear feet to the north that requires either 11 large canopy trees or 22 large non-canopy trees and 515 linear feet to the east that requires either 10 large canopy trees or 20 large non-canopy trees.
 - north side · proposing to deviate from the 10' width along 145 linear feet and proposing 27 small trees (17 eastern red cedar and 10 redbud)
 - east side · proposing to deviate from the 10' width along 365 linear feet and proposing 9 small trees (9 redbud)
 2. The applicant is required to provide two design standards.
The applicant is providing one design standard.
- Factors for consideration:
 - The need for the special exception to the residential landscape buffer is due in part to an existing structure along the east side.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail)
North: D(A) (Duplex)
South: D(A) (Duplex)
East: MF-1(A) (Multifamily)
West: D(A) (Duplex)

Land Use:

The 7.24-acre subject site is developed with a shopping center and a restaurant. The areas to the north, south, and west are developed with single family residential; and the area to the east is multifamily residential.

BDA History:

- | | |
|----------------|---|
| 1. BDA 989-218 | On May 25, 1999, the Board of Adjustment Panel A approved a Special Exception for an additional detached premise sign and a Special Exception to the Landscape requirements located at the northwest corner of Skillman Street and Kingsley Road. |
|----------------|---|

Timeline:

May 31, 2005:	The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
---------------	--

July 12, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

July 21, 2005: The Board Administrator contacted the applicant's representative and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the August 5th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

July 27, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Department Transportation Engineer; the Chief Arborist, Senior Planner Pitner and the Assistant City Attorney to the Board.

A review comment sheet was submitted by Chief Arborist submitted a memo that has been detailed in the "General Facts" section of this case report.

STAFF ANALYSIS:

- The applicant has submitted a site plan that provides a portion of the landscaping required with plans to pave more than 2,000 square feet of non-permeable coverage on the site.
- The applicant is providing the following alternative landscaping:
 - Perimeter landscaping buffer adjacent to residential provides three areas that meet the 10' buffer, approximately 73' of the 1,056 linear feet. Approximately

- 302' provide a 6' wide buffer and 110' provide a 9' buffer. Approximately 571' of the perimeter adjacent to residential uses provides no landscaping buffer.
- The fenced buffer strip provides 37 of the required 40 non-canopy trees. One canopy tree is provided (live oak at southwest corner).
 - Of the 2 required design standards, parking space screening is provided.
 - The sidewalk adjacent to the south wall of the proposed building is 13' wide. A 3' foundation planting strip of large shrubs along 50% of the portion that face a public street could be provided with a 10' sidewalk. The only foundation planting shown on the landscape plan is about 570 square feet at the southwest corner of the proposed building.
 - Per conversation with the applicant, 17 parking spaces will be provided above the required spaces.
 - Granting this request, subject to a condition that the applicant comply with the submitted site plan, will allow the site to be redeveloped without providing all of the landscaping requirements.
 - Granting this request for a special exception to the landscape regulations does not allow the applicant to deviate from fully meeting the tree preservation regulations of the Dallas Development Code.

BOARD OF ADJUSTMENT ACTION: August 16, 2005

APPEARING IN FAVOR:

Brian Adams, 1708 N Griffin, Dallas, TX 75202
Glen Kirksey, 1845 Woodall Rodgers

APPEARING IN OPPOSITION:

Doug Osborn, 7204 Claybrook DR, Dallas, TX
Jim McMullen, 7201 Claybrook Drive, Dallas, TX
Larry Sears, 7601 Arborgate, Dallas, TX
Bill Headrick, 7156 Blackwood, Dallas, TX

MOTION: Gabriel

I move that the Board of Adjustment in Appeal No. **BDA 045-259** on application of the Glen D. Kirksey, **grant** the request of this applicant to provide an alternate landscape plan as a special exception to the landscape requirements 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 condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised landscape plan dated 8-16-05 is required.

SECONDED: Hill

AYES: 5 – White, Hill, Gabriel, Beikman, Wise

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 045-196

BUILDING OFFICIAL'S REPORT:

Application of Robert Reeves, Robert Reeves & Assoc., Inc. for a variance to the height regulations at 2133 Olive Street (aka 2112 N. Harwood Street). This property is more fully described as a tract of land in City Block 525 and is zoned P.D. 193 HC which limits the height of a structure to 240 feet. The applicant proposes to construct a 370 foot building which would require a variance of 130 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102 (d) (10) of the Dallas Development Code, as amended, which states the power of the Board to variances.

LOCATION: 2133 Olive Street (aka 2112 N. Harwood Street)

APPLICANT: Robert Reeves
Robert Reeves & Assoc., Inc

REQUEST:

- A variance to the height regulations of 85' is requested to construct a 325'-high office tower on site that is partially undeveloped and partially developed with office uses. On August 5, 2005, the applicant amended the original request that had been a variance to the height regulations of 130' to construct a 370'-high tower).

STANDARD FOR A VARIANCE:

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

GENERAL FACTS:

- The maximum permitted height in the PD No. 193 (HC Subdistrict) is 240 feet.

- The originally submitted site plan indicated that the site will be developed with a 7-level parking garage and a 23-story, 507,000 square foot, 370'-high office building. (The applicant explained that the reference made in his letter about a "twenty-four story high-rise office building" accounted for a story/floor devoted for mechanical equipment atop 23 floors devoted for parking structure/office use).
- The originally submitted site plan indicated that only about 20% of the site would be devoted to the tower.
- The originally submitted site plan indicated that the tower building footprint was about 210' x 110' (or about 23,100 square feet per floor).
- The site is flat, irregular in shape (171' on the south, 737' on the east, 226' on the north, and 644' on the west), and approximately 2.90 acres in area.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a letter that provides further details about the request and why it should be granted;
 - an aerial photo of the site and surrounding area;
 - drawings of the tower in context with other existing buildings in the area;
 - an elevation of the proposed tower; and
 - an exhibit that identifies areas where the zoning allows buildings to exceed 240' in height.
- The Board held a public hearing on this matter on May 17, 2005. The following information was submitted at the public hearing:
 - a letter from the applicant requesting a delay of the matter until June 14, 2005, to enable his clients to finalize their preparations (Attachment B).
 - a document entitled "Empty Spaces: Are Texas Office Markets on the Road to Recovery?" from a person in opposition to the request (Attachment C).
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment D). This information included a revised exhibit that identifies areas where the zoning allows buildings to exceed 240' in height.
- On June 14, 2005, the Board of Adjustment held a public hearing on this matter. The applicant submitted a letter to the Board of Adjustment at the June 14th briefing (see Attachment E). This letter requested an additional delay until August 16, 2005 "to enable his clients to further refine their development plans." The board requested that staff incorporate all hearing letters submitted to date on this request as an attachment to the case report (see Attachment F).
- The applicant submitted information beyond what was submitted with the original application (see Attachment G). This information (submitted after the July 27th staff review team meeting) included the following:
 - a letter that provides further details about the request and why it should be granted;
 - an amended site plan indicating a 20-story office building (as opposed to a 24-story office tower); and
 - amended elevations of the proposed 325'-high tower.

BACKGROUND INFORMATION:

Zoning:

- Site: PD No. 193 HC (Planned Development District, Heavy Commercial)
- North: PD No. 334 (Planned Development District)
- South: PD No. 145 (Planned Development District)
- East: PD No. 193 HC (Planned Development District, Heavy Commercial)
- West: PD No. 193 HC (Planned Development District, Heavy Commercial)

Land Use:

The subject site is partially undeveloped and partially developed with office uses. The area to the north is undeveloped; and the areas to the east, south, and west are developed with office uses.

Zoning/BDA History:

- 1. BDA 967-292, 2100 McKinney Avenue (the lot northeast of the subject site) On September 15, 1997, the Board of Adjustment Panel C granted a request for a variance to height regulations of 40’ in conjunction with constructing a 280’ high office tower.

Timeline:

- March 22, 2005: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- April 21, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- April 21, 2005: The Board Administrator left a message with the applicant’s representative and shared the following information:
 - the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the April 29th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board’s docket;
 - that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and

- that the board will take action on the matter at the May public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

April 29, 2005 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).

May 2, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

A review comment sheet was submitted from a District Manager from Code Compliance that indicated "Has no objections."

May 17, 2005: The Board of Adjustment Panel A conducted a public hearing on this appeal and delayed action until June 14, 2005, per the request of the applicant's representative.

May 27, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

June 2, 2005 The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment D).

June 14, 2005: The Board of Adjustment Panel A conducted a public hearing on this appeal and delayed action until August 16, 2005, per the request of the applicant's representative (see Attachment E). The board requested that all hearing letters to date be submitted as part of their August 16th docket materials (see Attachment F).

July 15, 2005: The Board Administrator contacted the applicant's representative and shared the following information:

- the public hearing date and panel that will consider the application;

- the July 25th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the August 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

July 27, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

August 5, 2005 The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment G). This information was submitted after the July 27th staff review team meeting. Therefore staff did not have an opportunity to review and analyze this information.

STAFF ANALYSIS:

- The site is flat and approximately 2.90 acres in area.
- If the Board were to grant the August 5th amended/revised height variance request of 85 feet (or 35% higher than what is permitted in PD No. 193 HC Subdistrict), subject to the submitted site plan and elevation, the site could be developed with a 20-story, 325'-high office tower that would occupy about 20% of the site's total 2.9-acre area.

BOARD OF ADJUSTMENT ACTION: May 17, 2005

APPEARING IN FAVOR: Richard Brink, 1999 McKinney, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Beikman

I move that the Board of Adjustment in **Appeal No. BDA 045-196**, hold this matter under advisement until **June 14, 2005**.

SECONDED: **Gabriel**

AYES: 5 – White, Hill, Johnson, Gabriel, Beikman,

NAYS: 0–,

MOTION PASSED: 5–0 (unanimously)

BOARD OF ADJUSTMENT ACTION: **June 14, 2005**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Hill**

I move that the Board of Adjustment in **Appeal No. BDA 045-196**, hold this matter under advisement until **August 16, 2005**.

SECONDED: **Beikman**

AYES: 5 – White, Hill, Gabriel, Beikman, Neumann

NAYS: 0–,

MOTION PASSED: 5–0 (unanimously)

BOARD OF ADJUSTMENT ACTION: **August 16, 2005**

APPEARING IN FAVOR: Robert Reeves, 900 Jackson St., #160, Dallas, TX
Elliot Prayer, 5516 Greenbriar Dr., Dallas, TX
Owen McKory, 1919 McKinney, Dallas, TX

APPEARING IN OPPOSITION: Yolanda Eisenstein, 1999 McKinney, Dallas, TX
Walter Ludwig, 1999 McKinney, #1804, Dallas, TX
Steve Rasido, 2521 Worthington, Dallas, TX

MOTION: **Hill**

I move that the Board of Adjustment, in Appeal No. **BDA 045-196**, on application of Corrigan Properties, Inc., as represented by Robert Reeves, **deny** the variance requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: **Beikman**

AYES: 5 – White, Hill, Gabriel, Beikman, Wise

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION: **Hill**

I move to adjourn this meeting.

SECONDED: **Gabriel**

AYES: 5 – White, Hill, Gabriel, Beikman, Wise

NAYS: 0 -

MOTION PASSED: 5 – 0 (Unanimously)

4:33 P.M. - Board Meeting adjourned for August 16, 2005.

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.