

NOTICE FOR POSTING
MEETING OF
BOARD OF ADJUSTMENT, PANEL B
WEDNESDAY, NOVEMBER 14, 2007

Briefing: 10:00 A.M. 5/E/S
Public Hearing: 1:00 P.M. COUNCIL CHAMBERS

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

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

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

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11-14-2007

ZONING BOARD OF ADJUSTMENT, PANEL B
WEDNESDAY, NOVEMBER 14, 2007
AGENDA

BRIEFING	5ES	10:00 A.M.
PUBLIC HEARING	COUNCIL CHAMBERS	1:00 P.M.

Donnie Moore, Chief Planner
Steve Long, Board Administrator

MISCELLANEOUS ITEMS

Approval of the Wednesday, October 17, 2007 Board of Adjustment Public Hearing Minutes	M1
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UNCONSTESTED CASES

BDA 067-0793051 Norwalk Avenue REQUEST: Application of Raul Rodriguez, represented by Enrique Vieyra, for a special exception to the side yard setback regulations	1
BDA 067-083 3055 Norwalk Avenue REQUEST: Application of Pedro Rodriguez, Represented by Enrique Vieyra, for a special exception to the side yard setback regulations	2
BDA 067-152 1802 S. Ervay St. (aka 1802 Millers Ferry Row) REQUEST: Application of Bennett Miller Homes, represented by Robert Baldwin, for a special exception to the visual obstruction regulations	3
BDA 067-159 4627 Kelsey Road (aka 10401 Lennox Lane) REQUEST: Application of Yigal Lelah for a special exception to the fence height regulations	4
BDA 067-165 10301 Inwood Road REQUEST: Application of Plan II Partners, LLC, represented by Jonathan Vinson, for a special exception to the fence height regulations	5

HOLDOVER CASES

BDA 067-127	11420 Emerald Street REQUEST: Application of Robert E. McKenzie for a special exception to the parking regulations	6
BDA 067-128	11434 Emerald Street REQUEST: Application of Robert E. McKenzie for a special exception to the parking regulations	7

REGULAR CASES

BDA 067-156	10531 Oakwood Drive REQUEST: Application of Gerald Baker for Variances to the floor area ratio and building height regulations	8
BDA 067-158	5429 Kiwanis Road (et al) REQUEST: Application of Steve Maglisceau for a special exception to the tree preservation regulations	9

EXECUTIVE SESSION NOTICE

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

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

(Rev. 6-24-02)

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel B October 17, 2007 public hearing minutes.

FILE NUMBER: BDA 067-079

BUILDING OFFICIAL'S REPORT:

Application of Raul Rodriguez, represented by Enrique Vieyra, for a special exception to the side yard setback regulations at 3051 Norwalk Avenue. This property is more fully described as Lot 25 in City Block 1/5775 and is zoned R-7.5(A) which requires a side yard setback of 5 feet. The applicant proposes to maintain a residential carport structure and provide a 0' side yard setback which will require a special exception of 5 feet.

LOCATION: 3051 Norwalk Avenue

APPLICANT: Raul Rodriguez
Represented by Enrique Vieyra

REQUEST:

- A special exception to the side yard setback regulations of 5' is requested in conjunction with addressing a carport on a site developed with a single family home. This request is immediately adjacent to the subject site of BDA067-083, property located at 3055 Norwalk. (BDA067-083 is an application for a special exception to the side yard regulations to address a carport in this site's western side yard setback made by the brother of the owner of the subject site). This application along with BDA067-083 is requested to address a structure that currently functions as one carport that is located on a side property line across two separately platted adjacent lots.

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION 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 applicant has submitted a site plan indicating a "prop. carport" on the site that is located on the site's western side property line (or 5' into the 5' side yard setback).
- The following information was gleaned from the submitted site plan:
 - The portion of the carport on the subject site is 27' in width and 30' in length (810 square feet in area) that is attached to a house.
- The following information was gleaned from the submitted document that includes a section drawing and plan view drawing:
 - 14' 3" high (materials are not specified).
- The subject site is 125 x 60' (or 7,500 square feet) in area.
- According to calculations made by the Board Administrator from the submitted site plan, approximately 150 square feet of the approximately 810 square foot carport is located in the 5' side yard setback.
- According to DCAD, the site is developed with a single family home in "good" condition built in 1951 with 1,104 square feet of living area, and a 242 square foot detached garage.
- Other than the carport immediately adjacent (which is essentially the same carport on the subject site), no other carports were noted on the block.
- 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.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	R-7.5 (A) (Single family residential 7,500 square feet)
<u>North:</u>	R-7.5 (A) (Single family residential 7,500 square feet)
<u>South:</u>	R-7.5 (A) (Single family residential 7,500 square feet)
<u>East:</u>	R-7.5 (A) (Single family residential 7,500 square feet)
<u>West:</u>	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. BDA 067-083, 3051 Norwalk (the lot immediately east of subject site) On November 14, 2007, the Board of Adjustment Panel B will consider a request for a special exception to the side yard setback regulations of 5' requested in conjunction with addressing a carport located in the site's western side yard setback.

Timeline:

- April 16, 2007 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- October 18, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- October 18, 2007: The Board Administrator contacted the applicant's representative and shared the following information by phone and email:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the October 26th deadline to submit additional evidence for staff to factor into their analysis;
 - the November 2nd deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- October 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Development Services Current Planning Assistant Director, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building

Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

October 31, 2007: The Board Administrator forwarded an email to the Building Inspection Development Code Specialist (with a copy forwarded to the applicant's representative) that documented a conversation that he had with the owner of the subject site regarding points of discussion that were raised about the carport on the site at the October 30th staff review team meeting (see Attachment A).

STAFF ANALYSIS:

- Although the submitted application specifically references only that a request has been made to "carport in side yard setback" with a site plan and elevation that documents the features of the existing carport on the site (and on the adjacent site that is owned by the applicant's brother), granting this request would not allow the existing carport to remain as is nor preclude the applicant from bringing the existing carport into compliance with the City's building codes. Compliance with the required building codes could significantly alter the function and appearance of the existing carport as it currently straddles a side property line shared by the owner's brother.
 - According to the Building Inspection Development Code Specialist, bringing the carport on this site (that straddles the side property line shared by the owner's brother) would include (but not be limited to) separating the structure and installing a one hour rated fire wall.
 - No other carports were noted on the block in a side yard setback.
 - The applicant has the burden of proof in establishing the following:
 - That granting the special exception to the side yard setback regulations of 5' requested to locate/maintain a carport on the side property line (or 5' into the 5' side yard setback) will not have a detrimental impact on surrounding properties.
 - As of November 6th, no letters or petitions have been submitted either in support or in opposition to the request.
 - Typically, staff suggests that the if the board determines that the carport in the side yard setback does not have a detrimental impact on surrounding properties, that conditions are imposed that restrict the location and size of the carport 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 section document 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 item (other than a motor vehicle) may be stored in the carport.
- But, in this particular case, where one carport structure straddles a side property line shared by the owner's brother, the submitted site plan and elevation is not in compliance with development codes. As a result, the board may feel that it is not in the best interest of the applicant or the adjacent neighbors to grant the request and

impose the submitted documents as conditions that must be met in conjunction with maintaining the carport in the side yard setback. The board may feel that is it necessary for the applicant to submit revised documents that better reflect the features of a carport to be maintained on the subject site as it would be in compliance with development codes.

FILE NUMBER: BDA 067-083

BUILDING OFFICIAL'S REPORT:

Application of Pedro Rodriguez, represented by Enrique Vieyra, for a special exception to the side yard setback regulations at 3055 Norwalk Avenue. This property is more fully described as Lot 26 in City Block 1/5775 and is zoned R-7.5(A) which requires a side yard setback of 5 feet. The applicant proposes to maintain a residential carport structure and provide a 0' side yard setback which will require a special exception of 5 feet.

LOCATION: 3055 Norwalk Avenue

APPLICANT: Pedro Rodriguez
Represented by Enrique Vieyra

REQUEST:

- A special exception to the side yard setback regulations of 5' is requested in conjunction with addressing a carport on a site developed with a single family home. This request is immediately adjacent to the subject site of BDA067-079, property located at 3051 Norwalk. (BDA067-079 is an application for a special exception to the side yard regulations to address a carport in this site's eastern side yard setback made by the brother of the owner of the subject site). This application along with BDA067-079 is requested to address a structure that currently functions as one carport that is located on a side property line across the two separately platted adjacent lots.

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION 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 applicant has submitted a site plan indicating a "prop. carport" on the site that is located on from the site's western side property line (or 5' into the 5' side yard setback).
- The following information was gleaned from the submitted site plan:
 - The portion of the carport on the subject site is 7' in width and 30' in length (210 square feet in area) that is attached to a house that is approximately length (1,000 square feet in area).
- The following information was gleaned from the submitted document that includes a section drawing and plan view drawing:
 - 14' 3" high (materials are not specified).
- The subject site is 125 x 60' (or 7,500 square feet) in area.
- According to calculations made by the Board Administrator from the submitted site plan, approximately 150 square feet of the approximately 210 square foot carport is located in the 5' side yard setback.
- According to DCAD, the site is developed with a single family home in "fair" condition built in 1951 with 1,128 square feet of living area, and a 242 square foot detached garage.
- Other than the carport immediately adjacent (which is essentially the same carport on the subject site), no other carports were noted on the block.
- 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.

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:

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| 1. BDA 067-079, 3051 Norwalk (the lot immediately west of subject site) | On November 14, 2007, the Board of Adjustment Panel B will consider a request for a special exception to the side yard setback regulations of 5' requested in conjunction with addressing a carport located in the site's eastern side yard setback. |
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Timeline:

- April 16, 2007 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- October 18, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- October 18, 2007: The Board Administrator contacted the applicant's representative and shared the following information by phone and email:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the October 26th deadline to submit additional evidence for staff to factor into their analysis;
 - the November 2nd deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- October 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Development Services Current Planning Assistant Director, the

Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

October 31, 2007: The Board Administrator forwarded an email to the Building Inspection Development Code Specialist (with a copy forwarded to the applicant's representative) that documented a conversation that he had with the brother of the owner of the subject site regarding points of discussion that were raised about the carport on the site at the October 30th staff review team meeting (see Attachment A).

STAFF ANALYSIS:

- Although the submitted application specifically references only that a request has been made to "carport in side yard setback" with a site plan and elevation that documents the features of the existing carport on the site (and on the adjacent site that is owned by the applicant's brother), granting this request would not allow the existing carport to remain as is nor preclude the applicant from bringing the existing carport into compliance with the City's building codes. Compliance with the required building codes could significantly alter the function and appearance of the existing carport as it currently straddles a side property line shared by the owner's brother.
- According to the Building Inspection Development Code Specialist, bringing the carport on this site (that straddles the side property line shared by the owner's brother) would include (but not be limited to) separating the structure and installing a one hour rated fire wall.
- No carports were noted on the block in a side yard setback.
- The applicant has the burden of proof in establishing the following:
 - That granting the special to the side yard setback regulations of 5' requested to locating/maintaining a carport on the side property line (or 5' into the 5' side yard setback) will not have a detrimental impact on surrounding properties.
- As of November 6th, no letters or petitions have been submitted either in support or in opposition to the request.
- Typically, staff suggests that the if the board determines that the carport in the side yard setback does not have a detrimental impact on surrounding properties, that conditions are imposed that restrict the location and size of the carport 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 section document 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 item (other than a motor vehicle) may be stored in the carport.

But in this particular case where one carport structure straddles a side property line shared by the owner's brother, the submitted site plan and elevation is not in compliance with development codes. As a result, the board may feel that it is not in the best interest of the applicant or the adjacent neighbors to grant the request and impose the submitted documents as conditions that must be met in conjunction with maintaining the carport in the side yard setback. The board may feel that is it necessary for the applicant to submit revised documents that better reflect the features of carport to be maintained on the subject site as it would be in compliance with development codes.

FILE NUMBER: BDA 067-152

BUILDING OFFICIAL'S REPORT:

Application of Bennett Miller Homes, represented by Robert Baldwin, for a special exception to the visual obstruction regulations at 1802 S. Ervay St. (aka 1802 Millers Ferry Row). This property is more fully described as Lot 1A in City Block B/914 and is zoned PD-317 which requires a 45 foot visibility triangle at street intersections. The applicant proposes to maintain a fence in a visibility triangle which will require a special exception.

LOCATION: 1802 S. Ervay St. (aka 1802 Millers Ferry Row)

APPLICANT: Bennett Miller Homes
Represented by Robert Baldwin

REQUEST:

- A special exception to the visual obstruction regulations is requested in conjunction with maintaining a 4' high open steel tube picket fence (1" x 1" steel tubing at 3" centers) in the site's 45' visibility triangle at the intersection of S. Ervay Street and Beaumont Street. (The site is developed with an attached single family home).

STAFF RECOMMENDATION:

Approval, subject to the following condition:

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

Rationale:

- The City's Development Services Senior Engineer has indicated that he has no objections to the request – that the request to maintain the open steel tube picket fence in the 45' S. Ervay Street/Beaumont Street visibility triangle would not constitute a traffic hazard.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL 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).
 The applicant has submitted a site plan and elevation that denotes a 4' high steel picket fence that is located in the 45' visibility triangle at the intersection of S. Ervay Street and Beaumont Street. According to the submitted site plan, about 30 linear feet of the fence is located in the visibility triangle.
- 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 provides additional details about the request; and
 - photos of the site and adjacent property.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is developed with an attached single family home. The areas to the north and west are developed with commercial uses; the area to the east is developed with single family use; and the area to the south is undeveloped.

Zoning/BDA History:

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

Timeline:

- Sept. 26, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- October 18, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

- October 18, 2007: The Board Administrator contacted the applicant's representative and shared the following information by phone and email:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the October 26th deadline to submit additional evidence for staff to factor into their analysis;
 - the November 2nd deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- October 26, 2007 The applicant's representative submitted additional information to the Board Administrator (see Attachment A).
- October 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Development Services Current Planning Assistant Director, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- November 1, 2007 The Development Services Senior Engineer submitted a Review Comment Sheet marked "Has no objections."

STAFF ANALYSIS:

- The request is made to maintain a 4' high steel tube picket fence that is located in the 45' visibility triangle at the intersection of S. Ervay Street and Beaumont Street.
- The City's Development Services Senior Engineer has indicated that he has no objections to the request.
- The applicant has the burden of proof in establishing the following:
 - Granting the special exception to the visual obstruction regulations (whereby, according to the submitted site plan and elevation, portions of a 4' high steel tube picket fence would be maintained in the 45' visibility triangle at the intersection of S. Ervay Street and Beaumont Street) will not constitute a traffic hazard.
- If this request is granted, subject to compliance with the submitted site plan and elevation, the item be "excepted" into the 45' intersection visibility triangle would be

restricted to the location and characteristics shown on these documents which in this case is an approximately 30 linear foot, 4' high steel tube picket fence.

FILE NUMBER: BDA 067-159

BUILDING OFFICIAL'S REPORT:

Application of Yigal Lelah for a special exception to the fence height regulations at 4627 Kelsey Road (aka 10401 Lennox Lane). This property is more fully described as Lot 2 in City Block A/5532 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 7 foot fence in a required front yard setback which will require a special exception of 3 feet.

LOCATION: 4627 Kelsey Road (aka 10401 Lennox Lane)

APPLICANT: Yigal Lelah

REQUEST:

- A special exception to the fence height regulations of 3' is requested in conjunction with constructing and maintaining generally a 6' high open wrought iron fence* with 6' high stucco stone columns, and 7' high arched wrought iron gate on a site developed with a single family home.

* The submitted site plan/elevation denotes an approximately 7' long fence panel along Lennox Lane that will reach 7' in height given an approximately 1' high recessed area on the site where there is a drainage ditch.

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The subject site is located at the intersection of Lennox Lane and Kelsey Road. The site has a 40' front yard setback along Lennox Lane (since this frontage is the shorter of the site's two frontages) and a 40' front yard setback along Kelsey Road in order to maintain continuity of an established front yard setback on this street.

- 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 revised site plan/elevation indicates that the proposal in the site's two front yard setbacks will reach a maximum height of 7'.
- The following additional information was gleaned from the revised site plan/elevation:
 - Notes of an approximately "6 ft tall iron fence panel (typical)," "2 ft x 2 ft x 6 ft tall masonry column (typical) painted to match house color;" and "Approx. 6' 6" to 7 ft tall wrought iron and wood gates;"
 - Approximately 220' in length parallel to Lennox Lane;
 - Approximately 230' in length parallel to Kelsey Road (and approximately 40' in length perpendicular to Kelsey Road);
 - Located about 2' from the site's Lennox Lane and Kelsey Road front property lines or about 22' from the pavement lines; and
 - Generally linear in design with a recessed entry way on Lennox Lane
- The site plan/elevation document includes a "panel detail" denoting an approximately 6' high open wrought iron fence with approximately 6' high stucco/stone columns. In addition, the site plan/elevation document includes a full fence elevation of Lennox Lane denoting a 6' high fence (with the exception of a 7' high, 7' long fence panel to address a drainage ditch) with 6' high stucco/stone columns, and a 7' arched gate.
- There is one single family home that would have direct frontage to the proposal to be located in the site's Lennox Lane front yard setback, and one single family home that would have direct frontage to the proposal to be located in the site's Kelsey Road front yard setback. Neither of these homes have fences in a front yard setback that appears to exceed 4' in height.
- The Board Administrator conducted a field visit of the site and surrounding area along both Lennox Lane and Kelsey Road and noted no other fences above four (4) feet high which appeared to be located in the front yard setback.
- The applicant submitted information beyond what was submitted with the original application (see Attachment B). This information included the following:
 - a copy of a revised site plan/elevation;
 - an aerial of the site;
 - a photo of the previous fence on the site;
 - a perspective drawing of the proposed fence on the site; and
 - photos of the site.

BACKGROUND INFORMATION:

Zoning:

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

1. BDA 067-070, 4627 Kelsey Road, the subject site
On May 16, 2007, the Board of Adjustment Panel B denied a request for a special exception to the fence height regulations of 4' with prejudice. The case report stated that the request was made in conjunction with constructing and maintaining an 8' high iron fence with 8' high masonry columns, and an approximately 6.5' – 7.5' high wrought iron and wood gate on a site being developed with a single family home.
2. Miscellaneous Item #2, 4627 Kelsey Road, the subject site
On September 19, 2007, the Board of Adjustment Panel B waived the two year limitation in place on a request for a special exception to the fence height regulations that was denied with prejudice by Board of Adjustment Panel B on May 16, 2007.

Timeline:

- Sept. 28, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- October 18, 2007: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B. 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."
- October 18 & 23, 2007: The Board Administrator contacted the applicant and shared the following information by phone and email:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the requests;
 - the October 26th deadline to submit additional evidence for staff to factor into their analysis;
 - the November 2nd deadline to submit additional evidence to be incorporated into the Board's docket materials;

- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

October 30, 2007 The Building Inspection Development Code Specialist forwarded a revised Building Official’s Report to the Board Administrator (see Attachment A).

October 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Development Services Current Planning Assistant Director, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

November 2, 2007: The applicant submitted additional information to the Board Administrator (see Attachment B).

STAFF ANALYSIS:

- A revised scaled site plan/elevation document has been submitted that documents the location of the proposed generally 6’ high open wrought iron fence with 6’ high stucco stone columns, and 7’ high arched wrought iron gate relative to their proximity to the front property lines and pavement lines (the fence is shown to be located about 2’ from the site’s two front property lines or about 22’ from the pavement lines). The site plan clearly shows the length of the proposal relative to the entire lot (the proposal is to be about 220’ long parallel to Lennox Lane and about 230’ long parallel to Kelsey Road).
- There is one single family home that would have direct frontage to the proposal to be located in the site’s Lennox Lane front yard setback, and one single family home that would have direct frontage to the proposal to be located in the site’s Kelsey Road front yard setback. Neither of these homes have fences in a front yard setback that appears to exceed 4’ in height.
- No other fences were noted in the immediate area above four (4) feet high which appeared to be located in the front yard setback other than a 6’ high open metal fence on the subject site which the applicant states that he proposes to replace with

an 8' high fence. (There is no recorded Board of Adjustment history of the 6' fence on the subject site).

- As of November 6th no letters had been submitted in support or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 3' (whereby the proposed fence, columns, and gate to exceed 4' in height in the site's two front yard setbacks) will not adversely affect neighboring property.
- Granting this special exception of 3' with a condition imposed that the applicant complies with the submitted revised site plan/elevation would assure that the proposal would be constructed of/maintained as/limited to the materials, heights, and location shown on this document.

FILE NUMBER: BDA 067-165

BUILDING OFFICIAL'S REPORT:

Application of Plan II Partners, LLC, represented by Jonathan Vinson, for a special exception to the fence height regulations at 10301 Inwood Road. This property is more fully described as a 3.697 acre tract in City Block 5525 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 15 foot fence in a required front yard setback which will require a special exception of 11 feet.

LOCATION: 10301 Inwood Road

APPLICANT: Plan II Partners, LLC, represented by Jonathan Vinson

REQUEST:

- A special exception to the fence height regulations of 11' is requested in conjunction with constructing and maintaining a solid CMU block/stucco/stone finish wall in the site's 40' front yard setback that would reach a maximum height of 15'.

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts; and that fences in single family districts shall be measured from the top of the fence to the level ground on the inside and outside of any fence within the required front yard with fence height being the greater of these two measurements. If the fence is constructed on fill material that alters grade, as determined by the building official, the height of the artificially altered grade shall be included in the height of the fence. For purposes of this provision, artificially altered grade means

the placement of fill material on property that exceeds a slope of one foot in height for three feet of distance.

A revised wall plan, wall sections, and wall elevation have been submitted that denote a proposal that will reach a maximum height of 15 feet.

- The most recently submitted “proposed wall plan” dated November 1st indicates intervals of the proposal where the “public” and “private” side range in height from 9’ – 15’.
- The most recently submitted “proposed wall sections” plan dated November 1st indicates three sections of the proposal where the “private” side ranges in height from 10.5’ – 11.5’ and the “public” side ranges in height from 9.5’ – 10’. This plan includes a drawing entitled “engineered wall” that shows a CMU block wall where the “private side” has a stucco finish and the “public side (faces street)” has a stone wall finish.
- The most recently submitted “proposed wall elevation” plan dated November 1st indicates elevations of the proposal where the Inwood Road side ranges in height from 9’ – 15’.
- The following additional information regarding the proposal was gleaned from the “proposed wall plan” dated November 1, 2007:
 - Approximately 250’ in length. (Although the site has a frontage of approximately 370 feet, approximately 120’ of the proposed wall is located at or behind the 40’ front yard setback line).
 - Ranging from 20’- 39’ from the property line (or about 23’ – 42’ from the pavement line).
 - Nine existing trees are shown to be located between the proposed wall in the front yard setback and Inwood Road.
- There are no single family homes that would have direct frontage to the proposed wall given that the lots immediately east face north/south on Kelsey Road and south on Meaders Lane.
- In addition, the Board Administrator noted one other fence/wall in the immediate area above four feet high which appeared to be located in the front yard setback. There is an approximately 5’ high open iron fence with an approximately 7’ high open iron gate located immediately south of the site.
- The applicant’s representative submitted information beyond what was submitted with the original application (see Attachments A, B, C, and D). This information included a series of revised plans and documents that provided additional details about the request.

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 appears to be 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:

Sept. 28, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

October 18, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

October 18, 2007: The Board Administrator contacted the applicant's representative and shared the following information by phone and email:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the October 26th deadline to submit additional evidence for staff to factor into their analysis;
- the November 2nd deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

October 26, 29, &
November 2, 5, 2007

The applicant's representative submitted additional information to the Board Administrator (see Attachments A, B, C and D).

October 30, 2007 The Building Inspection Development Code Specialist forwarded a revised Building Official's Report to the Board Administrator (see Attachment E).

October 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the

Development Services Current Planning Assistant Director, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- A series of revised plans including a wall plan, wall sections, and a wall elevation have been submitted that document the location and materials of the proposal to exceed 4' in height in the 40' front yard setback which in this case is a solid CMU block/stucco/stone finish wall in the site's 40' front yard setback that would reach a maximum height of 15'. The plans indicate that the portion of this proposed wall in the site's 40' front yard setback would be approximately 250' long, and range at a distance from 20' – 39' from the site's front property line.
- There are no single family homes that would have direct frontage to the proposed wall given that the lots immediately east face north/south on Kelsey Road and south on Meaders Lane.
- In addition, one other fence/wall was noted in the immediate area above four feet high which appeared to be located in the front yard setback. There is approximately 5' high open iron fence with an approximately 7' high open iron gate located immediately south of the site.
- As of November 6th, no letters had been submitted in support or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 11' (whereby the proposal that would exceed 4' in height) will not adversely affect neighboring property.
- Granting this special exception of 11' with a condition imposed that the applicant complies with the submitted revised proposed wall plan, revised proposed wall sections plan, and revised proposed wall elevation plan would assure that the proposed fence/wall would be constructed of/maintained as/limited to the materials, heights, and location shown on these documents.

FILE NUMBER: BDA 067-127

ORIGINAL BUILDING OFFICIAL'S REPORT:

Application of Robert E. McKenzie for a special exception to the parking regulations at 11420 Emerald Street. This property is more fully described as Lot 1 in City Block B/6548 and is zoned RR which requires parking to be provided. The applicant proposes to maintain a nonresidential structure with restaurant, office, and general merchandise or food store uses and provide 53 of the required 71 parking spaces which will require a special exception to the off-street parking regulations of 18 spaces.

REVISED BUILDING OFFICIAL'S REPORT:

Application of Robert E. McKenzie for a special exception to the parking regulations at 11420 Emerald Street. This property is more fully described as Lot 1 in City Block B/6548 and is zoned RR which requires parking to be provided. The applicant proposes to maintain a nonresidential structure with restaurant, medical clinic or ambulatory surgical center, and general merchandise or food store 3500 square feet or less uses and provide 64 of the 75 required parking spaces, which will require a special exception of 11 spaces (14.7% reduction) to the parking regulations.

LOCATION: 11420 Emerald Street

APPLICANT: Robert E. McKenzie

REVISED REQUEST:

- A special exception to the off-street parking regulations of 11 parking spaces (or 15% of the required off-street parking) is requested in conjunction with leasing an existing approximately 9,000 square foot strip center (currently in the process of renovation) with restaurant, medical clinic or ambulatory surgical center, and retail (general merchandise or food store 3,500 square feet or less) uses.

STAFF RECOMMENDATION:

Approval, subject to the following conditions:

1. The special exception shall automatically and immediately terminate if and when the restaurant without drive-in, medical clinic or ambulatory surgical center, and general merchandise or food store 3,500 square feet or less uses are changed or discontinued.
2. The special exception shall be terminated if the pending Remote Parking Agreement of 35 spaces with the property located at 11434 Emerald Street is not executed within 180 days from the date of the favorable action of the board.

Rationale:

- The Development Services Senior Engineer has no objections to the request based on parking analyses dated September 7 and 28, 2007.
- The applicant has substantiated how the parking demand generated by the uses does not warrant the number of off-street parking spaces required, and that the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

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

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

- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
- (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
 - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

GENERAL FACTS:

- The Dallas Development Code requires the following off-street parking requirements:
 - General merchandise or food store 3,500 square feet or less: 1 space per 200 square feet of floor area.
 - Medical clinic or ambulatory surgical center use: 1 space per 200 square feet of floor area.
 - Restaurant use: 1 space per 100 square feet of floor area.

A revised “parking analysis” chart submitted on September 28th indicates that the proposed mix of restaurant, general merchandise or food store less than 3,500 square feet, and medical clinic or ambulatory surgical center uses in the four suites in the existing center would require 75 off-street parking spaces. The revised Building Official’s Report (Attachment F) states that 64 of the required 75 spaces will be provided (in this case either on site or through a City-recognized remote parking agreement).
- The applicant and his designated parking consultant submitted additional information beyond what was submitted with the original application and beyond what was discussed at the August 28th staff review team meeting (see Attachments B and C). This information included the following:
 - a document entitled “Parking Analysis” for the site;
 - a document entitled “Parking Analysis for Emerald Retail Center” prepared by a parking consultant.
- The Board Administrator forwarded a September 11th email from the applicant’s representative to the board members at the September 19th briefing (see Attachment D). This email stated the applicant’s intention of requesting that the board postpone action on the application in order to research some more information about the property and associated parking requirements.
- The Board of Adjustment conducted a public hearing on this matter on September 19th and delayed action on this request until October 17th.
- The applicant’s designated parking consultant submitted additional information beyond what was submitted with the original application, what was discussed at the August 28th staff review team meeting, and what was presented at the September 19th hearing (see Attachments E and G). This information included a document entitled “Technical Memorandum” and an email that provided additional details about the request.

- The Board of Adjustment conducted a public hearing on this matter on October 17th where the applicant's representative submitted additional written information to the board members at the hearing (see Attachment H). The board delayed action on this request until November 14th.
- The only additional information that the applicant's representative has been forwarded to staff since the October hearing was an October 26th email stating that the owners are working on strategies to resolve parking issues at the subject properties.

BACKGROUND INFORMATION:

Zoning:

Site: RR (Regional Retail)
North: IR (Industrial Research)
South: RR (Regional Retail)
East: RR (Regional Retail)
West: IR (Industrial Research)

Land Use:

The subject site is developed with a strip center currently in the process of being renovated. The area to the north is developed with a strip center (under renovation and the subject site of BDA067-128), the area to the east is Stemmons Freeway, and the areas to the south and west are developed with retail uses.

Zoning/BDA History:

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. BDA 067-128, 11434 Emerald Street (the lot immediately north of subject site) | <p>On September 19 and October 17, 2007, the Board of Adjustment Panel B delayed action on a request for a special exception to the parking regulations of 9 spaces (or 24% of the required parking) requested in conjunction with leasing an existing strip center with retail, restaurant, and office showroom/warehouse uses until November 14, 2007. (The applicant has since submitted an email requesting that this request be denied without prejudice).</p> |
|--|---|

Timeline:

- July 18, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

- August 16, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- August 16, 2007: The Board Administrator contacted the applicant and shared the following information by phone and email:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the August 27th deadline to submit additional evidence for staff to factor into their analysis;
 - the September 7th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the September public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- August 28, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- August 29, 2007 The Building Inspection Development Code Specialist forwarded a revised Building Official's Report to the Board Administrator (see Attachment A).
- Sept. 5, 2007 The applicant submitted information beyond what was submitted with the original application and discussed at the staff review team meeting (see Attachment B).
- Sept. 5, 2007 The Development Services Senior Engineer submitted a review comment sheet marked "Recommends that this be denied" with the following comments: "The parking analysis does not provide sufficient study/detail/rationale."
- Sept. 7, 2007 The applicant's parking consultant submitted information beyond what was submitted with the original application, discussed at the staff review team meeting, and the date in which the staff recommendation of denial was formed (see Attachment C).

- Sept. 19, 2007 The Board Administrator forwarded a September 11th email from the applicant's representative to the board members at the September 19th briefing (see Attachment D). This email stated the applicant's intention of requesting that the board postpone action on the application in order to research some more information about the property and associated parking requirements. The Board of Adjustment conducted a public hearing on this matter and delayed action on this request until October 17th.
- Sept. 28, 2007 The applicant's parking consultant submitted information beyond what was submitted with the original application, and presented at the September 19th public hearing (see Attachment E).
- October 1, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- October 2, 2007 The Building Inspection Development Code Specialist forwarded a revised Building Official's Report to the Board Administrator (see Attachment F).
- October 2, 2007 The Development Services Senior Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments: "Based on the revised parking analysis dated September 28, 2007 and parking agreement for 35 spaces is reached with adjacent tract (11434 Emerald) and is filed."
- October 8, 2007 The applicant's parking consultant submitted an email that summarized his request to the board (see Attachment G).
- October 17, 2007 The Board of Adjustment conducted a public hearing on this matter on October 17th where the applicant's representative submitted additional written information to the board members at the hearing (see Attachment H). The board delayed action on this request until November 14th.
- October 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Development Services Current Planning Assistant Director, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

November 1, 2007 The Development Services Senior Engineer submitted a review comment sheet marked "Has no objections" with the following comments: "Parking analyses dated 9/7/07 and 9/28/07."

STAFF ANALYSIS:

- This off-street parking reduction request is made in conjunction with leasing space in an existing strip center (constructed in the 80s) with a mix of uses that require more off-street parking spaces that can either be provided on the site or in a City-recognized parking agreement. The request does not involve any proposed increase in square footage to the existing center.
- According to the latest revised Building Official's Report, 85 percent of the required off-street parking spaces are proposed to be provided in conjunction with leasing suites within an existing strip center with a combination of restaurant, medical clinic or ambulatory surgical center, and retail (general merchandise or food store 3,500 square feet or less) uses on the subject site.
- Granting this request, subject to the condition that the special exception of 11 spaces automatically and immediately terminates if and when the restaurant without drive-in or drive through service; general merchandise or food store 3,500 square feet or less; and medical clinic or ambulatory surgical center uses are changed or discontinued, would allow the existing approximately 9,000 square foot center to be leased with these specific uses.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the restaurant without drive-in or drive through service; general merchandise or food store 3,500 square feet or less; and medical clinic or ambulatory surgical center uses does not warrant the number of off-street parking spaces required, and
 - The special exception of 11 spaces (or 15% of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- The Development Services Senior Engineer has indicated that he has no objections to this request.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 19, 2007

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Gillespie**

I move that the Board of Adjustment, in Appeal No. **BDA 067-127**, hold this matter under advisement until **October 17, 2007**.

SECONDED: **Beikman**

AYES: 5—Cox, Brannon, Gillespie, Beikman, Chernock

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: OCTOBER 17, 2007

APPEARING IN FAVOR: Steve Stoner, DeShazo Tang, 400 S Houston St., Dallas, TX

APPEARING IN OPPOSITION: Min Pak, 2313 Incline Dr., Carrollton, TX

MOTION: **Gillespie**

I move that the Board of Adjustment, in Appeal No. **BDA 067-127**, hold this matter under advisement until **November 14, 2007**.

SECONDED: **Beikman**

AYES: 5—Cox, Gillespie, Beikman, Scott, Ruiz

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 067-128

BUILDING OFFICIAL'S REPORT:

Application of Robert E. McKenzie for a special exception to the parking regulation at 11434 Emerald Street. This property is more fully described as Tract 3 in City Block 6548 and is zoned IR which requires parking to be provided. The applicant proposes to maintain a nonresidential structure with general merchandise or food store, office showroom/warehouse, and restaurant uses and provide 28 of the 37 required parking spaces which will require a special exception to the off-street parking regulations of 9 spaces.

LOCATION: 11434 Emerald Street

APPLICANT: Robert E. McKenzie

ORIGINAL REQUEST:

- A special exception to the off-street parking regulations of nine parking spaces (or 24% of the required off-street parking) had been requested in conjunction with leasing an existing approximately 7,700 square foot strip center (currently in the process of renovation) with retail (general merchandise or food store), restaurant, and office showroom/warehouse uses.

REVISED REQUEST (October 8, 2007):

- On October 8, 2007, the applicant's designated parking consultant submitted an email to the Board Administrator requesting that this application be denied without prejudice (see Attachment F).

STAFF RECOMMENDATION:

Denial without prejudice

Rationale:

- The applicant has requested that this application be denied without prejudice. It appears from information submitted that the applicant is intending to provide the required parking.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds,

after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.

- 2) In determining whether to grant a special exception, the board shall consider the following factors:
 - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
 - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
 - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
 - (E) The availability of public transit and the likelihood of its use.
 - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
 - (A) establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
 - (B) impose restrictions on access to or from the subject property; or
 - (C) impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
 - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
 - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

GENERAL FACTS:

- The Dallas Development Code requires the following off-street parking requirements:
 - General merchandise or food store 3,500 square feet or less: 1 space per 200 square feet of floor area.
 - Office showroom/warehouse use: office: 1 space is required per each 333 square feet of floor area; showroom/warehouse: 1 space per each 1,000 square feet of floor area.
 - Restaurant use: 1 space per 100 square feet of floor area.

A revised “parking analysis” chart submitted on September 28th indicated that the proposed mix of restaurant, and office showroom/warehouse uses in the four suites in the existing center would require 24 off-street parking spaces.

- The applicant and his designated parking consultant submitted additional information beyond what was submitted with the original application and beyond what was discussed at the August 28th staff review team meeting (see Attachments A and B). This information included the following:
 - a document entitled “Parking Analysis” for the site;
 - a document entitled “Parking Analysis for Emerald Retail Center” prepared by a parking consultant.
- The Board Administrator forwarded a September 11th email from the applicant’s representative to the board members at the September 19th briefing (see Attachment C). This email stated the applicant’s intention of requesting that the board postpone action on the application in order to research some more information about the property and associated parking requirements.
- The Board of Adjustment conducted a public hearing on this matter on September 19th and delayed action on this request until October 17th.
- The applicant’s designated parking consultant submitted additional information beyond what was submitted with the original application, what was discussed at the August 28th staff review team meeting, and what was presented at the September 19th hearing (see Attachments D and E). This information included a document entitled “Technical Memorandum” and an email that provided additional details about the request. The consultant stated in this email that he is requesting that the board deny this application without prejudice.
- The Board of Adjustment conducted a public hearing on this matter on October 17th and delayed action on this request until November 14th.

BACKGROUND INFORMATION:

Zoning:

Site: IR (Industrial Research)
North: IR (Industrial Research)
South: RR (Regional Retail)
East: IR (Industrial Research)
West: IR (Industrial Research)

Land Use:

The subject site is developed with a strip center currently in the process of being renovated. The area to the north is developed with a commercial use, the area to the east is Stemmons Freeway, the area to the south is developed with a strip center (under renovation and the subject site of BDA067-127), and the area to the west is developed with retail uses.

Zoning/BDA History:

- | | |
|--|---|
| 1. BDA 067-127, 11420 Emerald Street (the lot immediately south of subject site) | On September 19 and October 17, 2007 and October 17 th , the Board of Adjustment Panel B delayed action on a request for a special exception to the parking regulations of 11 spaces (or 15% of the required parking) requested in conjunction with leasing an existing strip center with restaurant, clinic or ambulatory surgical center, and retail (general merchandise or food store 3,500 square feet or less) uses until November 14, 2007. |
|--|---|

Timeline:

- July 18, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- August 16, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- August 16, 2007: The Board Administrator contacted the applicant and shared the following information by phone and email:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the August 27th deadline to submit additional evidence for staff to factor into their analysis;
 - the September 7th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the September public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

- August 28, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- Sept. 5, 2007 The applicant submitted information beyond what was submitted with the original application and discussed at the staff review team meeting (see Attachment A).
- Sept. 5, 2007 The Development Services Senior Engineer submitted a review comment sheet marked "Recommends that this be denied" with the following comments: "The parking analysis does not provide sufficient study/detail/rationale."
- Sept. 7, 2007 The applicant's parking consultant submitted information beyond what was submitted with the original application, discussed at the staff review team meeting, and the date in which the staff recommendation of denial was formed (see Attachment B).
- Sept. 19, 2007 The Board Administrator forwarded a September 11th email from the applicant's representative to the board members at the September 19th briefing (see Attachment C). This email stated the applicant's intention of requesting that the board postpone action on the application in order to research some more information about the property and associated parking requirements. The Board of Adjustment conducted a public hearing on this matter and delayed action on this request until October 17th.
- Sept. 28, 2007 The applicant's parking consultant submitted information beyond what was submitted with the original application, and presented at the September 19th public hearing (see Attachment D).
- October 1, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- October 8, 2007 The applicant's parking consultant submitted an email that summarized his request to the board (see Attachment E).
- October 17, 2007 The Board of Adjustment conducted a public hearing on this matter on October 17th and delayed action on this request until November 14th.

October 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Development Services Current Planning Assistant Director, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

STAFF ANALYSIS:

- An off-street parking reduction request had been made in conjunction with leasing space in an existing strip center (constructed in the 80s) with a mix of uses that require more off-street parking spaces than can either be provided on the site or in a City-recognized parking agreement. The request had not involved any proposed increase in square footage to the existing center.
- According to the latest revised Building Official's Report, 76 percent of the required off-street parking spaces were proposed to be provided in conjunction with leasing suites within an existing strip center with a combination of restaurant, retail (general merchandise or food store 3,500 square feet or less), and office showroom/warehouse uses on the subject site.
- However, on October 8, 2007, the applicant's designated parking consultant submitted an email to the Board Administrator requesting that this application be denied without prejudice (see Attachment E). It appears from information submitted that the applicant is intending to provide the required parking.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 19, 2007

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Gillespie**

I move that the Board of Adjustment, in Appeal No. **BDA 067-128**, hold this matter under advisement until **October 17, 2007**.

SECONDED: **Beikman**

AYES: 5—Cox, Brannon, Gillespie, Beikman, Chernock

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: OCTOBER 17, 2007

APPEARING IN FAVOR: Steve Stoner, DeShazo Tang, 400 S Houston St., Dallas, TX

APPEARING IN OPPOSITION: Min Pak, 2313 Incline Dr., Carrollton, TX

MOTION: **Gillespie**

I move that the Board of Adjustment, in Appeal No. **BDA 067-128**, hold this matter under advisement until **November 14, 2007**.

SECONDED: **Beikman**

AYES: 5—Cox, Gillespie, Beikman, Scott, Ruiz

NAYS: 0 —

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 067-156

BUILDING OFFICIAL'S REPORT:

Application of Gerald Baker for variances to the floor area ratio and building height regulations at 10531 Oakwood Drive. This property is more fully described as Tract 13 in City Block 8772 and is zoned CR which requires that the floor area of any individual single family residential accessory structure may not exceed 25% of the floor area of the main structure and that an accessory structure may not exceed the height of the main structure. The applicant proposes to construct a single family residential accessory structure with 1,020 square feet of floor area (85% of the 1,200 square foot floor area of the main structure) which will require a variance of 720 feet to the floor area ratio regulations; and to construct a single family residential accessory structure with a height of 16 feet 6 inches which will require a 4 foot 6 inch variance to the accessory building height regulation.

LOCATION: 10531 Oakwood Drive

APPLICANT: Gerald Baker

REQUESTS:

- The following appeals have been made in this application:
 1. A variance to the FAR (Floor Area Ratio) regulations of 720 square feet is requested in conjunction with constructing/maintaining a one story 1,020 square foot accessory structure; and
 2. A variance to the height regulations of 4.5' in requested in conjunction with constructing/maintaining this one story accessory structure at a height that will reach 16.5'.

The site is developed with a one story 12.5' high, 1,200 square foot single family/manufactured home.

STAFF RECOMMENDATION:

Denial of the both requests

Rationale:

- Although staff concluded that granting the FAR and height variances do not appear to be contrary to the public interest since these requests focus on constructing/maintaining an accessory structure of a reasonable size and height in virtually the center of an approximately 1.5 acre site, neither the site's slope, its shape, or size precludes it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same CR zoning classification.

- The applicant has not substantiated how the physical features of the flat, 1.5 acre subject site (that is generally rectangular in shape) constrain it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same CR zoning classification while simultaneously complying with development code standards including FAR and height regulations.

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 (related to the FAR variance):

- The Dallas Development Code states that the floor area of any individual accessory structures on a lot, excluding floor area used for parking, may not exceed 25 percent of the floor area of the main building.
The Building Official's Report states and a submitted site plan denote a proposed accessory structure that is 30' x 34' (or 1,020 square feet in area). According to the Building Official's Report the main structure is 1,200 square feet in area). The proposed accessory structure will be 85 percent of the floor area of the 1,200 square foot house on the site.
- The existing single family use on the subject site is a nonconforming use, however, the Dallas Development Code states that an accessory structure for a nonconforming residential use may be constructed in accordance with all other code requirements such as setbacks, heights, and FAR's.
- A floor plan has been submitted denoting that the accessory structure will be comprised of a room with faucets, a closet, and a bath.
- The site is flat, generally rectangular in shape (157' on the north, 175' on the south, 373' on the east, and 371' on the west) and, according to the application, 1.58 acres in area. The site is zoned CR Community Retail.
- DCAD records indicate that the site is developed with the following:
 - a mobile home built in 1975;
 - a 300 square foot storage building;
 - a 400 square foot detached carport, and
 - a 1,216 square foot "concrete storage building."

GENERAL FACTS (related to the height variance):

- The Dallas Development Code states that the height of an accessory structure may not exceed the height of the main building.
The Building Official's Report states and a submitted elevation denote a proposed accessory structure that is 16.5' high or 4.5' higher than the 12.5' height of the main structure on the site.
- The existing single family use on the subject site is a nonconforming use, however, the Dallas Development Code states that an accessory structure for a nonconforming residential use may be constructed in accordance with all other code requirements such as setbacks, heights, and FAR's.
- The site is flat, generally rectangular in shape (157' on the north, 175' on the south, 373' on the east, and 371' on the west) and, according to the application, 1.58 acres in area. The site is zoned CR Community Retail.
- DCAD records indicate that the site is developed with the following:
 - a mobile home built in 1975;
 - a 300 square foot storage building;
 - a 400 square foot detached carport, and
 - a 1,216 square foot "concrete storage building."

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Sept. 28, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

October 18, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

October 18, 2007: The Board Administrator contacted the applicant and shared the following information by phone and email:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the October 26th deadline to submit additional evidence for staff to factor into their analysis;
- the November 2nd deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

October 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Development Services Current Planning Assistant Director, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

Although no review comment sheets with comments were submitted in conjunction with this application, it was discovered at the staff review team meeting that the proposed accessory structure appeared to exceed the height of the main structure. The Building Inspection Development Code Specialist offered to contact the applicant and advise him of his choice to either bring the height of the accessory structure into compliance with code provisions or to make application to the board for a variance to the height regulations.

October 31, 2007 The Building Inspection Development Code Specialist forwarded a revised Building Official's Report to the Board Administrator (see Attachment A).

STAFF ANALYSIS (related to the FAR variance):

- This FAR variance request of 720 square feet focuses on constructing/maintaining an accessory structure with 1,020 square feet or an accessory structure that would be 85 percent of the size of the main structure's 1,200 square feet.
- The current provisions in the code would allow a new accessory structure no larger than 300 square feet in area with the 1,200 square foot main structure on the site.
- The site is flat, generally rectangular in shape (157' on the north, 175' on the south, 373' on the east, and 371' on the west) and, according to the application, 1.58 acres in area. The site is zoned CR Community Retail.
- According to DCAD records is developed with a mobile home built in 1975, a 300 square foot storage building, a 400 square foot detached carport, and a 1,216 square foot "concrete storage building."
- The applicant has the burden of proof in establishing the following related to the FAR variance request:
 - That granting the variance to the FAR regulations of 720 square feet requested in conjunction with constructing/maintaining a 1,200 square foot accessory structure 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 FAR variance is necessary to permit development of the subject site (a site that is according to DCAD developed with a mobile home, two storage buildings, and a detached carport, and is flat, generally rectangular in shape, and, according to the application, 1.58 acres in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same CR zoning classification.
 - The FAR variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the CR zoning classification.
- If the Board were to grant the FAR variance request of 720 square feet, imposing a condition whereby the applicant must comply with the submitted site plan, the floor areas of the accessory and main structures would be restricted to the sizes and locations of what is shown on this plan (which in this case, is an accessory structure that is 60 percent larger in terms of floor area than the 25 percent floor area permitted by right).

STAFF ANALYSIS (related to the height variance):

- This height variance request focuses on constructing/maintaining a 16.5' high accessory structure, or an accessory structure that would be 4.5' higher than the 12' high main structure.
- The current provisions in the code limit the height of any new accessory structure to the 12' height of the main structure on the site.
- The site is flat, generally rectangular in shape (157' on the north, 175' on the south, 373' on the east, and 371' on the west) and, according to the application, 1.58 acres in area. The site is zoned CR Community Retail.

- According to DCAD records is developed with a mobile home built in 1975, a 300 square foot storage building, a 400 square foot detached carport, and a 1,216 square foot “concrete storage building.”
- The applicant has the burden of proof in establishing the following related to the height variance request:
 - That granting the variance to the height regulations of 4.5’ requested in conjunction with constructing/maintaining a 16.5’ high accessory structure 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 height variance is necessary to permit development of the subject site (a site that is according to DCAD developed with a mobile home, two storage buildings, and a detached carport, and is flat, generally rectangular in shape, and, according to the application, 1.58 acres in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same CR zoning classification.
 - The height variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the CR zoning classification.
- If the Board were to grant the height variance request of 4.5 feet, imposing a condition whereby the applicant must comply with the submitted site plan and elevation, the building footprints and heights of the accessory and main structures would be restricted to the sizes, locations, and heights of what is shown on these documents (which in this case, is an accessory structure that is 4.5’ higher than the 12’ height permitted by right).

FILE NUMBER: BDA 067-158

BUILDING OFFICIAL'S REPORT:

Application of Steve Maglisceau for a special exception to the tree preservation regulations at 5429 Kiwanis Road (et al). This property is more fully described as Lots 13-19 & 54 in City Block A/8712, Lots 1-18 in City Block B/8712, Lots 1-14 in City Block C/8712, Lots 1-7 in City Block D/8712, Lots 1-14 in City Block F/8712 and Lots 1-6 in City Block G/8712 and is zoned PD No. 701 which requires mandatory landscaping. The applicant proposes to construct a residential development and provide an alternate tree mitigation plan which will require a special exception to the tree preservation regulations.

LOCATION: 5429 Kiwanis Road (et al)

APPLICANT: Steve Maglisceau

REQUEST:

- A special exception to the tree preservation regulations is requested in conjunction with removing protected trees on a site that is currently being developed with a single family development (Grady Nilbo Estates).

STAFF RECOMMENDATION:

Denial

Rationale:

- The applicant has not substantiated:
 - how strict compliance with the requirements of this article (The Landscape and Tree Preservation Regulations) will unreasonably burden the use of the property; and
 - that the special exception will not adversely affect neighboring property.
- The City's Chief Arborist recommends denial of the request for a number of reasons provided in a November 6, 2007, memo (see Attachment B).

STANDARD FOR A SPECIAL EXCEPTION TO THE TREE PRESERVATION REGULATIONS:

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

- (1) strict compliance with the requirements of this article will unreasonably burden the use of the property;
- (2) the special exception will not adversely affect neighboring property; and

- (3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

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

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

GENERAL FACTS:

- The Dallas Development Code requires full compliance with the Tree Preservation Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet.

The applicant has submitted an alternate mitigation plan that “will fully comply with tree mitigation requirements set forth in Article X and the PD with one exception. Although the city code states in SEC. 51A-10.134.5(C) that MA has 18 months to plant replacement trees, MA proposes to implement an Alternate Mitigation Plan that would extend tree replacement planting five (5) years. The extension would allow tree planting on the lots to be completed in conjunction with the building of new homes in the community.” (See Attachment A). The applicant has stated that they are not asking for any reduction in inches to be mitigated, nor any changes to our plan in terms of conservation area dedication or amount of landscaping and replanting.

Note that the applicant has referenced in his application materials of a time extension request to mitigate by October 1, 2012, which is roughly 5 years from the November 2007 board of adjustment public hearing, or roughly 7 years from when a tree removal permit was issued on the subject site in August of 2005.

- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Chief Board of Adjustment Planner (see Attachment B). The memo stated the following:
 - The applicant is requesting relief from tree mitigation regulations of Article X. The applicant requests the Board to consider allowance of an extension of time beyond that which is allowed by Article X to fulfill final mitigation with the completion of the Grady Niblo Estates development.
 - Trigger:

Trees were removed under a tree removal permit issued August 4, 2005 for the development of a two phase single family residential tract governed under PD No. 701. Article X conditions for the removal of trees apply to this district.
 - Deficiencies:

PD No. 701 stipulates how mitigation is to be calculated and how it is to be completed. The ordinance does *not* indicate a time period when all tree mitigation is to be completed. Since PD No. 701 is silent on this issue, Article X of the Dallas Development Code determines the regulation on this provision.

Under Article X, the development is currently in non-compliance with Section 51A-10.134 that pertains to timing.

- Factors for consideration:
 - The Grady Niblo Estates development was started under zoning established by City Council in PD No. 710. The ordinance was written with variations from the Article X conditions regarding the mitigation of trees on the property.
 - Determination of mitigation numbers:
(Please refer to Attachment B for the city arborist's detailed explanation on this issue. The city arborist generally concludes that the city and the owners of the property have not completed a final agreement on the total mitigation requirements on the lot).
 - Mitigation requirements:
 - Timing: Under direct Article X condition, all mitigation should have been accounted for prior to the date of the November 14th hearing. Article X stipulates that the owner of the property must mitigate within 30 days of removal, or within 6 months of removal with an affidavit requesting an extension, or within 18 months of removal with a letter of credit or performance bond. None of the stated conditions have been met.
 - How to mitigate: (Please refer to Attachment B for the city arborist's detailed explanation on this issue).

- Recommendation

- Denial
 - Rationale
 1. The methods of mitigation initially proposed by the developer prior to beginning Grady Niblo Estates was based primarily on alternate methods of mitigation beyond planting back on the property. Any of the alternate mitigation procedures can be accomplished without a full finish-out of both phases on both phases of the development. The owner can only plant back a fraction of the complete mitigation requirements on the property based on current assessments of full build out.
 2. The procedures for establishing the final mitigation accounting may be resolved by the developer by amending PD 701 through City Council to reassess mitigation exemptions and timing in the ordinance, and/or they may be established by providing the building official with an approximate building pad site layout for each lot through both phases of development and giving an assessment of tree mitigation based upon the estimated number of exempt trees.
 3. The dedication of park land and trees may be considered as a mitigation credit at this time if it is determined that the accounting of mitigation can be credited for a survey of the trees on land after that land has already been dedicated.

If the board determines to extend the mitigation timeline to October 1, 2012, it is recommended that a letter of credit be produced for the cost of the purchase and planting of mitigation trees. Section 51A-10.134 (5)(C) (i) conditions stating "at least 50 percent of the total caliper of replacement trees must be planted before 65 percent of the development has received a final building inspection" should be enforced. In addition, any additional

mitigation to be completed through alternate methods of mitigation (provided in Article X) should be completed by that benchmark period. The total caliper of replacement trees should be as approved by the building official.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 701 (Planned Development)
North: MF-1(A) & A(A) (Multifamily and Agricultural)
South: PD No. 478 & A(A) (Planned Development and Agricultural)
East: R-1/2 (A) (Single family residential ½ acre)
West: A(A) (Agricultural)

Land Use:

The subject site is currently under development. The areas to the north, west, and south appear to be undeveloped; and the area to the east is developed with single family uses.

Zoning/BDA History:

1. Z034-273, south of Grady Niblo Road, west of Kiwanis (the subject site) On October 27, 2004, the City Council granted an application for a Planned Development District on property that had been zoned A(A) Agricultural. The case report stated that the request was to allow the property to be developed with single family homes with minimum lot sizes ranging from 7,800 square feet to 15,000 square feet in size.

Timeline:

- Oct. 10, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- October 18, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- October 18, 2007: The Board Administrator contacted the applicant's representative and shared the following information by phone and email:
- the public hearing date and panel that will consider the application;

- the criteria/standard that the board will use in their decision to approve or deny the request;
- the October 26th deadline to submit additional evidence for staff to factor into their analysis;
- the November 2nd deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

October 25, 2007 The applicant's representative submitted additional information to the Board Administrator (see Attachment A).

October 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Development Services Current Planning Assistant Director, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

November 6, 2007 The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment B).

STAFF ANALYSIS:

- The applicant has submitted an alternate tree mitigation plan that proposes to fully mitigate all protected trees removed on the site within 7 years from the date of the tree removal permit issued in August of 2005 (or within approximately 5 years from the date of the November 2007 hearing) rather than the 30 days – 18 months required by Article X of the Dallas Development Code.
- The applicant has the burden of proof in establishing the following:
 - Strict compliance with the requirements of the Tree Preservation Regulations of the Dallas Development Code (i.e. mitigating all protected trees removed on the site within 30 days – 18 months from removal) will unreasonably burden the use of the property (in this case, a site that is currently under development as a single family subdivision).

- The special exception (allowing for an extension of the time period in which to fully mitigate protected trees removed on the site) will not adversely affect neighboring property.
- Staff recommends that if the board chooses to grant the request whereby the mitigation timeline is extended to October 1, 2012, that the following conditions be imposed:
 1. A letter of credit is required to be produced to the Building Official for the cost of the purchase and planting of mitigation trees within 60 days from the date of the board's favorable action.
 2. That the applicant complies with Section 51A-10.134 (5) (C) (i) stating "at least 50 percent of the total caliper of replacement trees must be planted on site before 65 percent of the development has received a final building inspection," and that any additional mitigation through alternate methods provided in Article X should be completed by this benchmark period.
 3. The applicant shall mitigate the total caliper of replacement trees once this amount has been determined by the Building Official.