

**NOTICE FOR POSTING**  
**MEETING OF**  
**BOARD OF ADJUSTMENT, PANEL B**  
**WEDNESDAY, APRIL 19, 2006**

<b>Briefing:</b>	<b>10:00 A.M.</b>	<b>L1FN CONFERENCE CENTER AUDITORIUM</b>
<b>Public Hearing:</b>	<b>1:00 P.M.</b>	<b>L1FN CONFERENCE CENTER AUDITORIUM</b>

**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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4-19-2006

ZONING BOARD OF ADJUSTMENT, PANEL B  
WEDNESDAY, APRIL 19, 2006  
AGENDA

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BRIEFING	L1FN CONFERENCE CENTER AUDITORIUM	10:00A.M.
PUBLIC HEARING	L1FN CONFERENCE CENTER AUDITORIUM	1:00 P.M.

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**Donnie Moore, Chief Planner**  
**Steve Long, Board Administrator**  
**Jennifer Hiromoto, Senior Planner**

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**MISCELLANEOUS ITEMS**

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Approval of the **Wednesday, March 15, 2006** Board of Adjustment Public Meeting Minutes M1

**EXECUTIVE SESSION:** M2

Executive session for attorney briefing pursuant to Texas Open Meetings Act Section 551.071, regarding – City of Dallas, Texas, Board of Adjustment of the City of Dallas, and Raj Sharma, in his capacity as the Building Official of the City of Dallas, Petitioners v. Doug Vanesko and Grace Vanesko Respondents, Cause No. 04-0263.

**EXECUTIVE SESSION:** M3

Executive session for attorney briefing pursuant to Texas Open Meetings Act Section 551.071, regarding – Steve Crossett v. City of Dallas's Board of Adjustment; Cause No. 06-02076-J.

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**UNCONTESTED CASES**

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BDA 045-285(J)	4246 Ridge Road <b>REQUEST:</b> Application of Marc Jennings for a special exception to the side yard setback regulations	1
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BDA 056-106	2750 West Northwest Highway <b>REQUEST:</b> - Application of TY Commercial Group, represented by Karl A Crawley, for a special exception to the parking regulations	2
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BDA 056-113	7206 Royal Lane	3
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	<b>REQUEST:</b> Application of Bryan Martin, represented by Zone Systems, for a special exception to the single family use regulations and for a variance to the side yard setback regulations	
BDA 056-119	6245 Vickery Blvd <b>REQUEST:</b> - Application of Reinhard Ziegler, represented by Elizabeth Newman Custom Homes, for a variance to the front yard setback regulations and for a special exception to the fence height regulations	4
BDA 056-120	4005 Flintridge Drive <b>REQUEST:</b> - Application of Robert Gould for a special exception to the fence height regulations	5
BDA 056-122(J)	4722 Walnut Hill Lane <b>REQUEST:</b> - Application of Will Hartnett for a special exception to the fence height regulations	6

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**HOLDOVER COMPLIANCE CASE**

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BDA 056-C02	4538 Scyene Road <b>REQUEST:</b> Application of True Lee Missionary Baptist Church and the Bertrand Neighborhood Association requesting a compliance date and discontinuance of a nonconforming motel use	7
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## 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 March 15, 2006 public hearing minutes.

**MISCELLANEOUS ITEM NO. 2**

An executive session will be conducted by an assistant city attorney to brief the board (pursuant to Texas Open Meetings Act Section 551.071) on a matter regarding - City of Dallas, Texas, Board of Adjustment of the City of Dallas, and Raj Sharma, in his capacity as the Building Official of the City of Dallas, Petitioners v. Doug Vanesko and Grace Vanesko Respondents, Cause No. 04-0263.

**MISCELLANEOUS ITEM NO. 3**

An executive session will be conducted by an assistant city attorney to brief the board (pursuant to Texas Open Meetings Act Section 551.071) on a matter regarding - Steve Crossett v. City of Dallas's Board of Adjustment; Cause No. 06-02076-J.

**FILE NUMBER:** BDA 045-285(J)

**BUILDING OFFICIAL'S REPORT:**

Application of Marc Jennings for a special exception to the side yard setback regulations at 4246 Ridge Road. This property is more fully described as Lot 6 in City Block 5/5537 and is zoned R-16(A) which requires a side yard setback of 10 feet. The applicant proposes to construct a carport and provide a 3 foot 6 inch setback which would require a special exception of 6 feet 6 inches. Referred to the Board of Adjustment in accordance with Section 51A-4.402 (c) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

**LOCATION:** 4246 Ridge Road

**APPLICANT:** Marc Jennings

**REQUEST:**

- A special exception to the side yard setback regulations of 6'6" is requested in conjunction with constructing a carport on a site developed with a single family home.

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

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

- (1) Whether the requested special exception is compatible with the character of the neighborhood.
- (2) Whether the value of surrounding properties will be adversely affected.
- (3) The suitability of the size and location of the carport.
- (4) The materials to be used in construction of the carport.

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

**GENERAL FACTS:**

- The application for this request was received in June 2005. A site visit was conducted at that time. At the applicant's request, the application was put on hold until the applicant indicated that they wished to move forward with the request via email on March 6, 2006. A subsequent site visit was conducted in March 2006.



- At the time of the first site visit, the house had been partially demolished to include a garage for renovation. The garage had provided a 3'6" side yard setback.
- A 10'-side yard setback is required in the R-16(A) zoning district.
- The proposed carport will be located 3'6" from the site's western side property line.
- The subject site is approximately 100' x 190' (or 18,000 square feet) in area.
- According to DCAD in June 2005, the site is developed with a single family home in fair condition built in 1925 with 1,113 square feet of living area. DCAD indicates in April 2006 that the site is developed with a single family home built in 2005 with 3,441 square feet of living area.
- A building permit was issued for the renovation of the dwelling unit. The building permit included the open, unenclosed carport and a fence in the side yard setback.
- The Dallas Development Code provides for the Board of Adjustment to consider special exceptions for *carports* in the side yard with a specific basis for this type of appeal. (Note that the Dallas Development Code does not provide a definition of "carport" however Building Inspection interprets a "carport" to be a structure that would cover a vehicle and be open on at least one side. Building Inspection has recently been interpreting what would appear to a layperson to be a garage without a garage door as a "carport").
- The Dallas Development Code provides for the Board of Adjustment to consider *variances for structures* in the side yard setback with a different basis for appeal than that of *special exceptions for carports* in the side yard setback.
- The Dallas Development Code specifies that no side yard setback is required in residential districts for "a structure accessory to a residential use if the structure does not exceed 15 feet in height; and is located in the rear 30 percent of the lot." In this case, the special exception is required since:
  - The "carport" structure can not be deemed "a structure accessory to a residential use" since it is attached to the main structure.
  - Even if the "carport" structure was detached from the main structure and could be deemed "a structure accessory to a residential use," it is not located in the rear 30 percent of the 190'-long lot.

## **BACKGROUND INFORMATION:**

### **Zoning:**

<u>Site:</u>	R-16 (A) (Single family residential 16,000 square feet)
<u>North:</u>	R-16 (A) (Single family residential 16,000 square feet)
<u>South:</u>	R-16 (A) (Single family residential 16,000 square feet)
<u>East:</u>	R-16 (A) (Single family residential 16,000 square feet)
<u>West:</u>	R-16 (A) (Single family residential 16,000 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:**

There have been no recent Board of Adjustment requests in the immediate area.

**Timeline:**

April 21, 2005      The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

July 28, 2005:      The Board of Adjustment Secretary randomly assigned this request to Board of Adjustment Panel B.

March 16, 2006:    The Board Administrator wrote the applicant a letter that conveyed the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the April 7<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the April public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

April 4, 2006:      The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Department Transportation Engineer, Senior Planner Hiromoto, Development Services Department Code Specialist, Chief Arborist, and the Assistant City Attorney to the Board.

April 5, 2006      The applicant provided a letter further explaining his request (Attachment A) and a revised site plan and elevation.

**STAFF ANALYSIS:**

- The revised site plan provides a side yard setback of 3'6" on the west side for a carport. The label states +/- 3'6" but the applicant confirmed the setback provided is 3'6".
- The revised elevations show the carport from the north, south, and west views. The north and south elevation shows vehicular gates on the carport and the west elevation shows an opening.
- The revised elevations show the materials of the carport, stone and stucco, and identify the vehicular gate as being constructed of wrought iron.
- Granting this special exception would allow the carport to remain in its current location which is 3'6" away from the side property line (or 6'6" into the required 10' side yard setback).
- Historically, staff has suggested that the Board impose conditions with this type of appeal. The following conditions would restrict the location and size of the carport's location in the side yard setback; would require the carport in the side yard setback to be retained in its current design, materials, and configuration; and would require the applicant to mitigate any water drainage related issues that the carport may cause on the lot immediately adjacent:
  1. Compliance with the submitted site plan and elevation is required.
  2. The carport structure must remain open at all times.
  3. There is no lot-to-lot drainage in conjunction with this proposal.
  4. No item (other than a motor vehicle) may be stored in the carport.
  5. All applicable building permits are obtained.

**FILE NUMBER:** BDA 056-106

**BUILDING OFFICIAL'S REPORT:**

Application of TY Commercial Group, represented by Karl A Crawley, for a special exception to the parking regulations at 2750 West Northwest Highway. This property is more fully described as a tract of land in City Block 5779 and is zoned CR which requires parking to be provided. The applicant proposes to maintain a shopping center with mixed uses and provide 128 of the required 156 parking spaces which would require a special exception of 28 spaces. Referred to the Board of Adjustment in accordance with Section 51A-4.311 (a) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

**LOCATION:** 2750 West Northwest Highway

**APPLICANT:** TY Commercial Group  
Represented by Karl A Crawley

**REQUEST:**

- A special exception to the off-street parking regulations of 28 spaces (or 18% of the required off-street parking) is requested in conjunction with leasing two existing structures (that have a combined total square footage of 28,214 square feet) in the Community Crossing Retail Center with a combination of retail, restaurant, office, and medical clinic uses.

**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 parking requirements for the proposed uses on the subject site:
  - 1 space is required for every 100 square feet of floor area for “restaurant” use.
  - 1 space is required for every 200 square feet of floor area for “retail” use.
  - 1 space is required for every 200 square feet of floor area for “ medical clinic” use
  - 1 space is required for every 333 square feet of floor area for “office” use.
 The applicant had originally proposed to provide 135 (or 87%) of the total required 156 off-street parking spaces on the site. However, on April 5, 2006, a revised Building Official's Report was forwarded to the Board Administrator that conveyed that the applicant proposed to provide 128 (or 82%) of the total required 156 off-street parking spaces on the site.
- Plans have been submitted denoting that the center contains 28,214 square feet.
- No enlargements or additions to the existing structures are planned in conjunction with this request, therefore this special exception request is triggered by the

applicant's intent to reallocate the distribution of proposed uses within the 28,214 square foot center.

- The originally submitted site plan had denoted the tenant, parking ratio, and required spaces for each of the 13 suites in one of the existing buildings on the site, as well as the tenant, parking ratio and required spaces for the other building on the site. The original site plan denoted that the proposed tenant mix for the two structures on the site requires 156 off-street parking spaces, and that 135 spaces are proposed to be provided.
- The applicant's representative submitted a revised table indicating the tenant names, sizes, and uses of the businesses in the center. This revised table states that 128 (or 82%) of the total required 156 off-street parking spaces will be provided.
- According to DCAD records, the subject site is developed with a "retail strip" with 25,540 square feet built in 1985.
- 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 provided additional details about the request;
  - a table indicating tenants, sizes, and uses (and related parking requirements) for the proposed businesses in the center;
  - parking counts conducted on the site; and
  - a revised site plan indicating that 128 of 156 spaces will be provided on the site.

## **BACKGROUND INFORMATION:**

### **Zoning:**

<u>Site:</u>	CR (Community Retail)
<u>North:</u>	CR (Community Retail)
<u>South:</u>	MF-2(A) (Multifamily)
<u>East:</u>	CR (Community Retail)
<u>West:</u>	CR (Community Retail)

### **Land Use:**

The subject site is developed with a shopping center (The Community Crossings Retail Center). The areas to the north, east, and west are developed with retail uses; and the area to the south is developed with multifamily 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:**

- Undated The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- March 15, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- March 16, 2006: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the April 10<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the April public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- April 4, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April 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 Board of Adjustment Senior Planner; the Chief Arborist, and the Assistant City Attorney to the Board.
- April 4, 2006 The Development Services Senior Engineer submitted a review comment sheet marked "Has no objections." The engineer made the following additional comments:
- "Based on parking study of the site provided by the representative for the applicant."
- April 6 & 7, 2006 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).

**STAFF ANALYSIS:**

- 82 percent of the required off-street parking spaces are proposed to be provided in conjunction with leasing an existing 28,214 square foot center with retail, restaurant, office, and medical clinic uses.
- Granting this request, subject to the condition that the special exception of 28 spaces automatically and immediately terminates if and when the retail, restaurant, office, and medical clinic uses on the site is changed or discontinued, would allow the 28,214 square foot center to be leased with this mix of uses.
- The applicant has the burden of proof in establishing the following:
  - The parking demand generated by the proposed retail, restaurant, office, and medical clinic uses does not warrant the number of off-street parking spaces required, and
  - The special exception of 28 spaces (or 18% of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- The applicant has submitted parking count information to the Development Services Senior Engineer (and to the board in Attachment A) showing that the maximum number of cars parked on the site during any of the counts was less than 50. (128 spaces are proposed to be provided on the site and 156 spaces are required for the proposed uses on the site).
- The Development Services Senior Engineer had commented that he has no objections to this request.



**FILE NUMBER:** BDA 056-113

**BUILDING OFFICIAL'S REPORT:**

Application of Bryan Martin, represented by Zone Systems, for a special exception to the single family regulations and for a variance to the side yard setback regulations at 7206 Royal Lane. This property is more fully described as Lot 12 in City Block 5/6586 and is zoned R-16(A) which limits the number of dwelling units to one and requires a 10 foot side yard setback for a structure. The applicant proposes to construct an additional dwelling unit which would require a special exception to allow an additional dwelling unit, and to construct a structure and provide a 1 foot 8 inch side yard setback which would require a variance of 8 feet 4 inches. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(10) and 51A-4.209 (b)(6)(E)(i) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions and variances.

**LOCATION:** 7206 Royal Lane

**APPLICANT:** Bryan Martin  
Represented by Zone Systems

**REQUESTS:**

- The following appeals have been made in this application in conjunction with constructing and maintaining a one story dwelling unit/cabana structure on a site currently developed with a single family home:
  1. a variance to the side yard regulations of 8' 4"; and
  2. a special exception to the single family use regulations for an additional "dwelling unit" structure.

**STANDARD FOR A VARIANCE:**

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

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

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

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

**GENERAL FACTS (related to the variance):**

- A 10' side yard setback is required in the R-16 (A) zoning district. A site plan has been submitted that indicates that the proposed dwelling unit/cabana structure would be located 1' 8" from the site's eastern side property line (or 8' 4" into the 10' side yard setback).
- No side yard setback is required for lots in R-16 (A) zoning district for structures accessory to a residential structure if the structure does not exceed 15' in height and is located in the rear 30 percent of the lot.
- A 10' side yard is required for the proposed dwelling unit structure on the site given that the proposed accessory dwelling unit structure is not located in the rear 30% of the lot. (Approximately 44' – 60' of the lot's 141.72' – 270.62' depth encompasses a lake that is deemed part of the subject site).
- The applicant has submitted a site plan/floor plan/elevation document that denotes a site with the following features:
  - a "one story brick residence;"
  - an "existing pool;"
  - a "lake;"
  - "three existing trees;"
  - an "existing brick wall;"
  - an "existing concrete wall;"
  - an "existing driveway;" and
  - a 12' 11/2" high, approximately 400 square foot (26' 8 1/2" x 14' 1 1/2") "one story addition detached" structure that is located 1' 8" from the site's eastern side property line.
- The subject site is relatively flat, irregular in shape (81.07' on the north, 113' on the south, 270.62' on the east, and 141.72' on the west), and approximately 20,000 square feet in area. The site is zoned R-16(A) where lots are typically 16,000 square feet in area. The applicant's representative contends that the location of mature trees on the site (that are intended to be preserved) and the lake that encompasses virtually the entire rear 30% of the site create limitations as to where the proposed dwelling unit/cabana structure can be located on the site.
- DCAD records indicate that the site is developed with the following:

- a single family structure in “average” condition built in 1958 with 3,132 square feet of living space;
- a 572 square foot attached garage; and
- a pool.
- 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 provided additional details about the requests;
  - a site plan (indicating the rear 30% of the site); and
  - photos of the site and surrounding area (that will be available for review at the briefing/public hearing).

**GENERAL FACTS (related to the special exception):**

- “Single family” use is defined in the Dallas Development Code as “one dwelling unit located on a lot,” however, the code allows the Board of Adjustment to grant a special exception to this provision to allow an additional dwelling unit when, in their opinion, the additional dwelling unit will not:
  - 1) be used as rental accommodations; or
  - 2) adversely affect neighboring properties.
- The applicant has submitted a site plan/floor plan/elevation document that denotes a site with the following features:
  - a “one story brick residence;”
  - an “existing pool;”
  - a “lake;”
  - “three existing trees;”
  - an “existing brick wall;”
  - an “existing concrete wall;”
  - an “existing driveway;” and
  - a 12’ 11/2” high, approximately 400 square foot (26’ 8 1/2” x 14’ 1 1/2”) “one story addition detached” structure.
- The site plan/floor plan/elevation document denotes that the “one story addition detached” structure will consist of a “bath,” “stor.” room, and a “cabana.”
- The Dallas Development Code requires that the height of an accessory structure can not exceed the height of the main building on lots zoned R-16 (A).
- The site plan/floor plan/elevation document denotes that the “one story addition detached” structure is 12’ 1 1/2” high and the existing single family structure is 17’ 8 1/2” high.
- The Dallas Development Code defines “family” as “individuals living together as a single housekeeping unit in which not more than four individuals are unrelated to the head of the household by blood, marriage, or adoption.”
- The Dallas Development Code defines “single family” use as “one dwelling unit located on a lot.”
- On May 11, 2005, the City Council adopted an ordinance that amended the provisions set forth in the Dallas Development Code regarding single family accessory structures.

- The Dallas Development Code had defined “dwelling unit” as “one or more rooms designed to accommodate one family and containing only one kitchen plus living, sanitary, and sleeping conditions.” The Dallas Development Code *now* defines “dwelling unit” as “one or more rooms designed to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms.”
- If this special exception request is granted, a completed deed restriction stating that the additional dwelling unit on the site will not be used for rental accommodations must be submitted to the Board Administrator, approved by the City Attorney’s Office as to form, and filed in the deed records of the applicable county (in this case, Dallas County) before the applicable permits for this additional dwelling unit can be issued by the City.
- 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 provided additional details about the requests;
  - a site plan (indicating the rear 30% of the site); and
  - photos of the site and surrounding area (that will be available for review at the briefing/public hearing).

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

The subject site is developed with a 1-story single family home with a 1-story detached garage and pool. The areas to the north, east, and west are developed with single family uses; and the area to the south is developed as a small lake.

**Zoning/BDA History:**

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

**Timeline:**

Feb. 24, 2006: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

March 15, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

March 16, 2006: The Board Administrator contacted the applicant's representative and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the April 10<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the April public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

March 30, 2006 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).

April 4, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April 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 Board of Adjustment Senior Planner; 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 (related to the variance):**

- The subject site is relatively flat, irregular in shape (81.07' on the north, 113' on the south, 270.62' on the east, and 141.72' on the west), and approximately 20,000 square feet in area.
- The site is zoned R-16(A) where lots are typically 16,000 square feet in area. The applicant's representative contends that the location of mature trees on the site (that are intended to be preserved) and the lake that encompasses virtually the entire rear 30% of the site create limitations as to where the proposed dwelling unit/cabana structure can be located on the site.

- According to calculations taken from the submitted site plan by the Board Administrator, approximately 44' – 60' of the lot's 141.72' – 270.62' depth encompasses a lake that is deemed part of the subject site.
- The site is currently developed with a one story single family home that, according to DCAD, has 3,132 square feet of living space, as well as a 572 square foot attached garage, and pool.
- According to calculations taken from the submitted site plans, approximately 225 square feet of the proposed 400 square foot dwelling unit/cabana structure is proposed to be located in the site's 10' eastern side yard setback.
- A site plan has been submitted indicating that virtually the entire rear 30% of the subject site is lake/water. This would be the area where no side yard setback would be required for the proposed dwelling unit/cabana structure since the structure is proposed to be below 15' in height.
- The applicant has the burden of proof in establishing the following related to the side yard variance request:
  - That granting the variance to the side yard setback regulations of 8' 4" to construct and maintain an approximately 400 square foot dwelling unit/cabana structure in one of the site's two side yard setbacks 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 to the side yard setback regulations of 8' 4" to construct and maintain an approximately 400 square foot dwelling unit/cabana structure in one of the site's two side yard setbacks is necessary to permit development of the subject site (an approximately 20,000 square foot site that is encumbered with mature trees and lake, and developed with a single family home with 3,132 square feet of living space, an attached 572 square foot garage, and pool) 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 R-16 (A) zoning classification.
  - The variance to the side yard setback regulations of 8' 4" to construct and maintain an approximately 400 square foot dwelling unit/cabana structure in one of the site's two side yard setbacks would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-16 (A) zoning classification.
- If the Board were to grant the side yard variance request of 8' 4' imposing a condition whereby the applicant must comply with the submitted site plan, the dwelling unit/cabana structure would be permitted to be located as close as 1' 8" from the eastern side property line (or 8' 4" into the 10' side yard setback).

**STAFF ANALYSIS (regarding the dwelling unit special exception request):**

- A site plan/floor plan/elevation document has been submitted that documents the location and size (approximately 400 square foot or 26' 8 ½" x 14' 1 ½") of the additional dwelling unit/cabana structure on the site.
- The site plan/floor plan/elevation document denotes a "one story addition detached" structure that will consist of a "bath," "stor." room, and a "cabana," and will be 12' 11/2" high.
- As of April 10<sup>th</sup>, staff had not received any letters in opposition or support of this request.
- The applicant has the burden of proof in establishing the following related to this special exception request:
  - The additional dwelling unit will not:
    - 1) be used as rental accommodations; or
    - 2) adversely affect neighboring properties.
- The Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations (if the Board concludes that the special exception will not adversely affect neighboring properties).
- If the Board were to approve this request (along with the request for the variance to the side yard regulations), subject to imposing a condition that the applicant comply with the submitted site plan/floor plan/elevation document, the dwelling unit/cabana structure would be restricted to the specific location, size, and height shown on the this document, which in this case is a 1-story, approximately 12' high, 400 square foot structure that includes a "cabana," a "bath;" and "stor." room.

**FILE NUMBER:** BDA 056-119

**BUILDING OFFICIAL'S REPORT:**

Application of Reinhard Ziegler, represented by Elizabeth Newman Custom Homes, for a variance to the front yard setback regulations and for a special exception to the fence height regulations at 6245 Vickery Blvd. This property is more fully described as Lot 12 in City Block 4/2159 and is zoned R-7.5(A) which requires a front yard setback of 25 feet and limits the height of a fence in the front yard to 4 feet. The applicant proposes to maintain a single family dwelling and provide a 5 foot front yard setback which would require a variance of 20 feet, and to construct a 6 foot fence in the required front yard setback which would require a special exception of 2 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(10), and 51A-4.602 (a) (6) of the Dallas Development Code, as amended, which states the power of the Board to grant variances and special exceptions.

**LOCATION:** 6245 Vickery Blvd.

**APPLICANT:** Reinhard Ziegler  
Represented by Elizabeth Newman Custom Homes

**REQUESTS:**

- The following appeals have been made in this application:
  1. Variances to the front yard setback regulations of up to 20' are requested in conjunction with completing and maintaining two structures (a single family home and garage/storage building) and pool in the site's 25' Alderson Street front yard setback; and
  2. A special exception to the fence height regulations of 2' is requested in conjunction with completing and maintaining a 6' solid board fence in the 25' front yard setback on Alderson Street.

The site is currently developed with a two story single family home that, according to calculations made by the Board Administrator from the submitted site/plot plan, has an approximately 2,300 square foot building footprint, a two story garage/storage building that, according to the submitted site/plot plan, has a building footprint of 1,268 square feet (or 31' 7" x 40'), and 200 square foot pool (20' x 10').

**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.

### **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 (related to the variance):**

- A 25' front yard setback is required in the R-7.5 (A) zoning district.
- The site has two 25' front yard setbacks: one on Vickery Boulevard, the other on Alderson Street.  
The single family home, garage/storage building, and pool are located as close as 5' from the Alderson Street front property line (or as much as 20' into the Alderson Street 25' front yard setback). (No structures are shown to encroach into the site's Vickery Boulevard front yard setback).
- Two site plans entitled "plot plans" have been submitted in conjunction with the appeal: a site/plot plan submitted with the original application and a revised site/plot plan that was submitted on April 10, 2006 (see Attachment A). The originally submitted site/plot plan denotes that the existing house and garage/storage building are in compliance with the site's 25' front yard setback along Vickery Boulevard. The revised site/plot plan denotes the same but additionally notes a "pool" located in the 25' Alderson Street front yard setback.
- The Dallas Development Code states the following with regard to front yard provisions for residential district:
  - If a corner lot in a single family, duplex, or agricultural district has two street frontages of equal distance, one frontage is governed by the front yard regulations of this section, and the other frontage is governed by the side yard regulations. If the corner lot has two street frontages of unequal distance, the shorter frontage is governed by this section, and the longer frontage is governed by side yard regulations. Notwithstanding this provision, the continuity of the established setback along street frontage must be maintained.
- The site is deemed to have two front yard setbacks even though the longer of the site's two sides is along Alderson Street in order to maintain the established setback of lot/home to the north of the site that "fronts" Alderson Street.
- According to calculations taken from the originally submitted site/plot plan, approximately 1,100 square feet of the home's 2,300 square foot building footprint and approximately 630 square feet of the 1,268 square foot garage/storage room footprint are located in the Alderson Street front yard setback.

- According to calculations taken from the revised submitted site/plot plan, approximately 180 square feet of the pool's 200 square foot is located in the Alderson Street front yard setback.
- The subject site is flat, rectangular in shape. The size of the subject site varies depending on different documents submitted with the application. The plat map indicates that the site is 200' x 50'. The originally submitted site/plot plan denoted the same dimensions, however, when one measured the site on this site/plot plan based on the 1' = 20' scale indicated on this plan, the length of the site was 220' in length, and when one calculated the dimensions provided at intervals denoted on the site/plot plan, the site was approximately 215' in length. (The Board Administrator informed the applicant's representative of these discrepancies on March 24<sup>th</sup>, and encouraged the applicant to submit documents with true and accurate representations of the lot size and the structure size in relation to setbacks on the subject site). On April 10<sup>th</sup>, the applicant's representative submitted a revised site/plot plan that established that the site was 200' in length and 50' in width (or 10,000 square feet in area).
- The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- DCAD records indicate that the site is developed with the following:
  - a single family structure built in 2004 with 4,334 square feet of living space;
  - a 506 square foot detached garage;
  - a 374 square foot storage building;
  - a 1,280 square foot outbuilding; and
  - pool.
- The Building Inspection Development Code Specialist has stated that the two structures on the site located in the Alderson Road front yard setback are a result of a permit erroneously issued by the City.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
  - a revised site/plot plan;
  - a plat map of the subject site;
  - a revised fence elevation; and
  - photos of the site and surrounding area.

**GENERAL FACTS (related to the fence special exception):**

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.  
The site has two 25' front yard setbacks: one on Vickery Boulevard, the other on Alderson Street. The fence that is proposed to exceed 4' in height on the subject site is limited to a location in the site's Alderson Street front yard setback. The proposed fence will function somewhat as a screen around the proposed pool in the Alderson Street front yard setback.
- Two site plans entitled "plot plans" have been submitted in conjunction with the appeal: a site/plot plan submitted with the original application and a revised site/plot plan that was submitted on April 10, 2006 (see Attachment A).

- The following additional information was gleaned from the originally submitted site/plot plan:
  - The proposed fence to exceed 4' in height in the Alderson Street front yard setback totaled approximately 200' linear feet (approximately 160' of which was parallel to Alderson Street and approximately 40' of which was perpendicular).
  - The proposed fence to exceed 4' in height was parallel to Alderson Street, and was located on the property line (or about 11' from the curb line).
- The following additional information was gleaned from the revised submitted site/plot plan:
  - The proposed fence to exceed 4' in height in the Alderson Street front yard setback totals approximately 126' linear feet (approximately 95' of which is parallel to Alderson Street and approximately 31' of which is perpendicular).
  - The fence/wall parallel to Alderson Street is located on the property line (or about 11' from the curb line).
- Two fence elevation plans have been submitted in conjunction with the appeal: an elevation submitted with the original application and a revised elevation that was submitted on April 10, 2006 (see Attachment A).
- The following additional information was gleaned from the submitted elevation:
  - A fence/wall labeled "Location of Proposed 6' Tall Fence."
 Note that this elevation did not denote building materials, and appeared to show a fence with vertical fence slats/panels when the existing fence on the site has fence slats/panels that are horizontally oriented. (Note that the Board Administrator informed the applicant's representative on March 24<sup>th</sup> that the Board may be inclined to condition this request to a submitted elevation if they deem that the special exception would not adversely affect neighboring property. The administrator informed the applicant's representative, that it may be in the applicant's best interest to label the fence materials and to provide a true and detailed account of the fence that is proposed to exceed 4' in height in plan and elevation form).
- The following additional information was gleaned from the submitted revised elevation:
  - A "Stained Clear Cedar Fence" labeled "Location of Proposed 6' Tall Fence."
 This revised fence elevation was drawn to represent the existing fence on the site with horizontal fence slats/panels.
- No single family home would have indirect frontage to the proposed fence/wall.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences that appeared to be above 4' in height and located in a front yard setback in the area. (An approximately 9' high solid board fence was noted immediately across Alderson Street from the subject site, however, this fence appears to be located in a side yard setback where a 9' high fence is permitted by right).
- The Building Inspection Development Code Specialist has stated that the City has records that permits were issued for the fence on the subject site.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
  - a revised site/plot plan;
  - a plat map of the subject site;

- a revised fence elevation; and
- photos of the site and surrounding area.

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

The subject site is developed with a single family home, garage/storage building, and pool. The area to the north is under development as what appears to be a single family home; the areas to the east and south are developed with single family uses; and the area to the west is undeveloped.

**Zoning/BDA History:**

- |   |   |
|---|---|
| <p>1. BDA 056-047, 2829 Alderson Street (the lot immediately north of the subject site)</p> | <p>On December 13, 2005, the Board of Adjustment Panel A denied a request for a variance to the off-street parking regulations of 10' without prejudice. The case report stated that the request was made in conjunction with constructing a garage on the site where the enclosed parking space would be located 10' from the alley right of way line.</p> |
|---|---|

**Timeline:**

- Feb. 27, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- March 15, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- March 16, 2006: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the

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

- the April 10<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the April public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

April 4, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April 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 Board of Adjustment Senior Planner; the Chief Arborist, and the Assistant City Attorney to the Board.

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

April 10, 2006 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).

#### **STAFF ANALYSIS (related to the variance):**

- The subject site is flat, rectangular in shape (200' x 50'), and 10,000 square feet in area.
- The site is zoned R-7.5 (A) where lots are typically 7,500 square feet in area. The subject site has two, 25' front yard setbacks that the applicant's representative contends limits the placement of the house, accessory structure, and pool outside both of the site's two front yard setbacks.
- The site is currently developed with a two story single family home that, according to DCAD, has 4,334 square feet of living space, as well as a 506 square foot detached garage, a 374 square foot storage building, and a 1,280 square foot outbuilding.
- According to calculations taken from the originally submitted and revised site/plot plans, approximately 1,100 square feet of the home's 2,300 square foot building footprint, approximately 630 square feet of the 1,268 square foot garage/storage room footprint, and approximately 180 square feet of the 200 square foot pool are located in the Alderson Street front yard setback.
- The site plan indicates that once a 25' front yard setback is accounted for along Alderson Street and a 5' side yard setback is accounted for on the west side of the subject site, the 50' wide subject site has 20' of developable space remaining. A review of submitted plat map indicating the lots immediately west of the subject site show that although they are 50' in width as well, these lots have a 40' width of

developable space remaining once two, 5' side yard setbacks are accounted for on these lots.

- The applicant has the burden of proof in establishing the following related to the front yard variance requests:
  - That granting the variances to the front yard setback regulations of up to 20' to complete and maintain two structures and pool in one of the site's two front yard setbacks 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 variances to the front yard setback regulations of up to 20' requested to complete and maintain two structures and pool in one of the site's two front yard setbacks is necessary to permit development of the subject site (a 10,000 square foot site that is encumbered with two, 25' front yard setbacks being developed with a single family home, a garage/storage outbuilding, and pool) 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 R-7.5 (A) zoning classification.
  - The variances to the front yard setback regulations of up to 20' requested to complete and maintain two structures and pool in one of the site's two front yard setbacks would not to be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5 (A) zoning classification.
- If the Board were to grant the front yard variance requests of up to 20' imposing a condition whereby the applicant must comply with the submitted revised site/plot plan, the single family structure, the garage/storage structure, and pool would be permitted to be located as close as 5' from the Alderson Street front property line (or up to 20' into the site's Alderson Street 25' front yard setback).

**STAFF ANALYSIS (related to the fence special exception):**

- A scaled revised site/plot plan elevation has been submitted that documents the location of the proposed fence in the Alderson Street front yard setback relative to the entire lot/subject site. (About 95' of the proposed fence is requested to exceed 4' in height and be located in the Alderson Street front yard setback).
- A revised fence elevation has been submitted that documents the height and materials of the proposed fence: a 6 foot tall stained cedar fence.
- No single family home would have indirect frontage to the proposed fence/wall.
- No other fences that appeared to be above 4' in height and located in a front yard setback in the area were noted in a field visit conducted by the Board Administrator. (An approximately 9' high solid board fence was noted immediately across Alderson Street from the subject site, however, this fence appears to be located in a side yard setback where a 9' high fence is permitted by right).
- Landscape materials have not been identified on a submitted landscape plan that will be adjacent to the proposed fence/wall.

- As of April 10<sup>th</sup>, no letters had been submitted to staff in opposition or in support of the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' (whereby the proposed fence that would exceed 4' in height) will not adversely affect neighboring property.
- Granting this special exception of 2' with conditions imposed that the applicant complies with the submitted revised site/plot plan and revised fence elevation would assure that the fence is completed and maintained as shown on these documents.

**FILE NUMBER:** BDA 056-120

**BUILDING OFFICIAL'S REPORT:**

Application of Robert Gould for a special exception to the fence height regulations at 4005 Flintridge Drive. This property is more fully described as Lot 1 in City Block A/ 8389 and is zoned R-10(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct an 8 foot fence in the required front yard setback which would require a special exception of 4 feet. Referred to the Board of Adjustment in accordance with Section 51A-4.602 (a) (6) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

**LOCATION:** 4005 Flintridge Drive

**APPLICANT:** Robert Gould

**REQUEST:**

- A special exception to the fence height regulations of 4' is requested in conjunction with constructing and maintaining the following in the 15' front yard setback on Candlenut Lane on a site developed with a single family home:
  - an 8' high solid "board over board" wall that would be oriented generally parallel to Candlenut Lane; and
  - an 8' high open wrought iron fence that would be oriented perpendicular to Candlenut Lane.

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:**

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

**GENERAL FACTS:**

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.

The applicant requests a special exception to the fence regulations to construct and maintain a fence that would reach a maximum height of 8'.
- The subject site has two front yard setbacks: one along Flintridge Drive, the other along Candlenut Lane. Although the Dallas Development Code states that if a corner lot in a single family district has two street frontages of unequal distance (as the subject site has), the shorter of frontage is governed by the front yard provisions (which in this case is Flintridge Drive) and the longer frontage is governed by the



side yard regulations (which in this case is Candlenut Lane). However because the code continues to state that notwithstanding this provision, the continuity of the established setback along street frontage must be maintained, the established setback of homes that front Candlenut Lane west of the subject site create a situation where the subject site's Candlenut Lane frontage is a front yard setback where a maximum 4' high fence is permitted by right. (If it were not for this specific code provision and the fact that homes west of the site front Candlenut Lane, the subject site's frontage along Candlenut Lane would be deemed a side yard setback where a 9' high fence could be erected by right).

- Elevations and a site plan have been submitted that indicate that the proposed fence and wall exceeding 4' in height are limited to the site's front yard setback on Candlenut Lane. (No fence higher than 4' is proposed to be located in the Flintridge Drive front yard setback).
- Three plan documents have been submitted in conjunction with this appeal: a site plan, a site/plan elevation, and an elevation/landscape plan.
- The following additional information was gleaned from the submitted *site plan*:
  - A notation of "proposed fence" that runs parallel (approximately 65' in length), slightly diagonal (approximately 28' in length), and perpendicular (approximately 14' in length) to Candlenut Lane.
  - The fence ranges at distances from 0' – 15' from the Candlenut Lane front property line (or 13.5' – 28.5' from the Candlenut Lane curb line).
- The following additional information was gleaned from the submitted *site plan/elevation*:
  - A notation of "eight foot tall, 6" board over board fence" (with other notations that are not fully legible) that labels a fence/wall that runs parallel to Candlenut Lane.
  - A notation of "black wrought iron" that labels a fence that runs perpendicular to Candlenut Lane.
- The following additional information was gleaned from the submitted *elevation/landscape plan*:
  - Notations denoting "7 or 8, 10 gal. Weeping Redbud Trees, 25, 5 gal. Indian Hawthorne (Pink Dancer) bushes, seasonal flower bed, and mulched bed from fence to sidewalk.

The landscape materials mentioned above are not shown in a plan view of the site, however will most likely be located in the public right-of-way given that the submitted site plan indicates that the fence is to be located mostly on the site's front property line. Any landscape materials that would be located in the public right-of-way would require an approved license from the City of Dallas' Development Services Real Estate Division.

- Only one single family home would have a direct view of the proposed fence/wall since immediately south of the proposed fence/wall location is one single family home and Haydale Drive that runs north/south and ends at the subject site.
- The Board Administrator conducted a field visit of the site and surrounding area and noted one other fence above 4' in height that appeared to be located in a front yard setback. This approximately 6' high solid wall is located immediately east of the subject site on Candlenut Lane, and is located behind a large, high hedge. Several other board fences over 4' in height were noted in the immediate vicinity south of the

subject site along Haydale Drive, however, these fences appeared to be located in side yards where fences can reach 9' in height by right.

- The applicant 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
  - a copy of a printed power point show (that includes maps and photos of the site and surrounding area); and
  - 22 letters written by neighbors/owners in support of the request (which will be available for review at the briefing/public hearing).

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: R-10 (A) (Single family district 10,000 square feet)  
North: R-10 (A) (Single family district 10,000 square feet)  
South: R-10 (A) (Single family district 10,000 square feet)  
East: R-10 (A) (Single family district 10,000 square feet)  
West: R-10 (A) (Single family district 10,000 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 056-030, 4005 Flintridge Drive (the subject site)      On November 16, 2005, the Board of Adjustment Panel B denied a request for a special exception to the fence height regulations of 4' without prejudice. The case report stated that the request was made in conjunction with constructing and maintaining an 8' high solid "board over board" wall and open wrought iron fence in the 15' Candlenut Lane front yard setback on a site developed with a single family home

### **Timeline:**

- Feb. 28, 2006      The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- March 15, 2006:      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.”

- March 16, 2006: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the March 24<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board’s docket;
  - the April 10<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the April public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

March 20, 2006 The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).

April 4, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April 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 Board of Adjustment Senior Planner; the Chief Arborist, and the Assistant City Attorney to the Board.

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

**STAFF ANALYSIS:**

- The fence/wall proposed to exceed 4’ in height in a front yard setback on the subject site is limited to being located in one of its two front yard setbacks: Candlenut Lane. If the lots immediately west of the site (that are separated by an alley) did not front to Candlenut Lane, the proposed 8’ high fence could be built on the subject site by right since this frontage would be deemed a side yard where a fence could reach 9’ in height by right.

- A scaled site plan has been submitted that documents the location of the proposed fence/wall in the site's Candlenut Lane front yard setback. The site plan indicates the fence/wall location relative to the property line and pavement line, and shows the length of the proposed fence/wall relative to the entire lot (about 90' long generally parallel to Candlenut Lane and about 15' long perpendicular to Candlenut Lane).
- A scaled site plan/elevation plan has been submitted that documents the materials and height of the proposed board over board fence that will be oriented generally parallel to Candlenut Lane (8' maximum height) and proposed open wrought iron fence that will be oriented perpendicular to Candlenut Lane (8' maximum height).
- An elevation/landscape plan has been submitted that documents specific landscape materials to be added on the street-side of the proposed board over board which if in the public right-of-way, will require licensing from the City of Dallas's Development Services Real Estate Division.
- Only one single family home would have a direct view of the proposed fence/wall since immediately south of the proposed fence/wall location is one single family home and Haydale Drive that runs north/south and ends at the subject site.
- One other fence above 4' in height that appeared to be located in a front yard setback was noted in the immediate area. This fence is an approximately 6' high solid wall located immediately east of the subject site on Candlenut Lane, and is located behind a large, high hedge. Several other board fences over 4' in height were noted in the immediate vicinity south of the subject site along Haydale Drive, however, these fences appeared to be located in side yards where fences can reach 9' in height by right.
- As of April 10<sup>th</sup>, 35 letters written by neighbors/owner in support of the request had been submitted to staff, and no letters had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the fence/wall that is proposed to exceed 4' in height) will not adversely affect neighboring property.
- Granting this special exception of 4' with conditions imposed that the applicant complies with the submitted site plan, the submitted site plan/elevation, and the submitted elevation/landscape plan would provide assurance that the fence/wall is maintained on the site as shown on these documents.

**FILE NUMBER:** BDA 056-122(J)

**BUILDING OFFICIAL'S REPORT:**

Application of Will Hartnett for a special exception to the fence height regulations at 4722 Walnut Hill Lane. This property is more fully described as a tract of land in City Block 5543 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 an 8 foot 10 inch fence in the required front yard setback which would require a special exception of 4 feet 10 inches. Referred to the Board of Adjustment in accordance with Section 51A-4.602 (a) (6) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

**LOCATION:** 4722 Walnut Hill Lane

**APPLICANT:** Will Hartnett

**REQUEST:**

- A special exception to the fence height regulations of 4'10" is requested in conjunction with maintaining an 8'-high solid stucco fence with 8'10" stucco columns and 8' metal gates in the front yard setback on a site that is developed with a single family house.

**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 request site received a special exception to the fence height regulations on August 17, 2005. The fence was constructed. It was discovered by Code Compliance as not receiving a permit after the 180-day expiration of the special exception. The request and site plan has not changed from what was approved in August 2005.
- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
- A site plan has been submitted that documents the location of the fence relative to the proximity to the property line and pavement line. The site plan also shows the length of the fence relative to the lot, approximately 240 feet.

- Senior Planner Hiromoto conducted a field visit of the site and surrounding area and noted multiple fences that appeared to be located along Walnut Hill Lane. Most fences appeared to be larger than 4', some larger than 8'.
- The fence on this site is located where no single family homes would face the fence.

## **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 developed with single family residential. The areas to the north, south, east and west are developed with single family uses.

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

1. BDA 045-266 On August 17, 2005, Panel B of the Board of Adjustment granted a special exception to the fence height regulations of 4'10" subject to a site plan and elevation at 4722 Walnut Hill Lane (the request site).

### **Timeline:**

- March 3, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- March 15, 2006: 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 any preliminary action is required on a case, including but not limited to a fee waiver or waiver of the two year waiting period, the case must be returned to the panel taking the preliminary action."
- March 16, 2006: The Board Administrator contacted the applicant via letter and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;

- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the April 7<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the April public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

April 4, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Department Transportation Engineer, Senior Planner Hiromoto, Development Services Department Code Specialist, Chief Arborist, and the Assistant City Attorney to the Board.

No review comment sheets were received.

### **STAFF ANALYSIS:**

- Walnut Hill Lane is classified by the Thoroughfare Plan as a 6-lane divided principle arterial.
- The site plan shows two gates at the access points for the semi-circular driveway and meets the minimum visibility distance for vehicles entering and exiting the driveway. A pedestrian gate is also provided near the center of the north side of the motor court.
- The fence is constructed of durable material (stucco fence and columns, and metal gates).
- The site plan indicates landscaping adjacent to the fence.
- An elevation has been submitted that documents the height of the fence (8'), columns (8'10"), and gates (8').
- It was observed in surrounding area on Walnut Hill Lane that many homes were screened by fences or plant life, most exceeding 4' in height. The screening provided by plant life appeared to often exceed 8' in height. Homes nearby did not appear to be oriented towards Walnut Hill Lane.
- Granting the fence height special exception of 4'10" with conditions imposed that the applicant complies with the submitted site plan and fence elevation would assure that the fence is maintained as shown on these documents.

**FILE NUMBER:** BDA 056-C02

**BUILDING OFFICIAL'S REPORT:**

Application of True Lee Missionary Baptist Church and the Bertrand Neighborhood Association requesting a compliance date and discontinuance of a nonconforming motel use located at 4538 Scyene Road. This property is more fully described as Lots 7-9 in City Block A/4475 and is zoned PD-595 (CC Subdistrict) which requires a motel to have a specific use permit. Referred to the Board of Adjustment in accordance with Section 51A-4.704 of the Dallas Development Code, as amended, which states the power of the Board to bring about the discontinuance of a nonconforming use.

**LOCATION:** 4538 Scyene Road

**APPLICANT:** True Lee Missionary Baptist Church and the Bertrand Neighborhood Association

**REQUEST:**

- A request is made for the Board of Adjustment to establish a compliance date for a nonconforming motel use (The American Inn) on the subject site.

**COMPLIANCE REGULATIONS FOR NONCONFORMING USES:** SEC. 51A-4.704. NONCONFORMING USES AND STRUCTURES of the Dallas Development Code provides the following provisions:

(a) Compliance regulations for nonconforming uses. It is the declared purpose of this subsection that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.

(1) Amortization of nonconforming uses.

(A) Request to establish compliance date. The city council may request that the board of adjustment consider establishing a compliance date for a nonconforming use. In addition, any person who resides or owns real property in the city may request that the board consider establishing a compliance date for a nonconforming use. Upon receiving such a request, the board shall hold a public hearing to determine whether continued operation of the nonconforming use will have an adverse effect on nearby properties. If, based on the evidence presented at the public hearing, the board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for the nonconforming use; otherwise, it shall not.



- (B) Factors to be considered. The board shall consider the following factors when determining whether continued operation of the nonconforming use will have an adverse effect on nearby properties:
- (i) The character of the surrounding neighborhood.
  - (ii) The degree of incompatibility of the use with the zoning district in which it is located.
  - (iii) The manner in which the use is being conducted.
  - (iv) The hours of operation of the use.
  - (v) The extent to which continued operation of the use may threaten public health or safety.
  - (vi) The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust, and odor.
  - (vii) The extent to which public disturbances may be created or perpetuated by continued operation of the use.
  - (viii) The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use.
  - (ix) Any other factors relevant to the issue of whether continued operation of the use will adversely affect nearby properties.
- (C) Finality of decision. A decision by the board to grant a request to establish a compliance date is not a final decision and cannot be immediately appealed. A decision by the board to deny a request to establish a compliance date is final unless appealed to state court within 10 days in accordance with Chapter 211 of the Local Government Code.
- (D) Determination of amortization period.
- (i) If the board determines that continued operation of the nonconforming use will have an adverse effect on nearby properties, it shall, in accordance with the law, provide a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.
  - (ii) The following factors must be considered by the board in determining a reasonable amortization period:
    - (aa) The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.
    - (bb) Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
    - (cc) Any return on investment since inception of the use, including net income and depreciation.
    - (dd) The anticipated annual recovery of investment, including net income and depreciation.
- (E) Compliance requirement. If the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.

(F) For purposes of this paragraph, "owner" means the owner of the nonconforming use at the time of the board's determination of a compliance date for the nonconforming use.

### **GENERAL FACTS:**

- City records indicate that the motel use on the subject site became nonconforming on September 25, 2001 (Ordinance No. 24726).
- The Dallas Development Code states that "nonconforming use" means "a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time."
- The subject site is zoned PD No. 595 (CC Community Commercial Subdistrict) that permits a "hotel or motel" use with an SUP (Specific Use Permit).
- The Dallas Development Code establishes the following provisions for "hotel or motel" use in Section 51A-4.205 (1):
  - "Hotel or motel."
    - (A) Definition: A facility containing six or more guest rooms that are rented to occupants on a daily basis.
    - (B) Districts permitted:
      - (i) Except as otherwise provided in Subparagraphs (B)(iii) or (B)(iv), by right in MO(A), GO(A), RR, CS, LI, IR, IM, central area, MU-1, MU-1(SAH), MU-2, Mu-2(SAH), MU-3, MU-3(SAH) and multiple commercial districts.
      - (ii) By SUP only in the CR district.
      - (iii) By SUP only for a hotel or motel use that has 60 or fewer guest rooms.
      - (iv) If an SUP is not required, RAR required in MO(A), GO(A), RR, CS, LI, IR, IM, MU-1, MU-1(SAH), MU-2, MU-2(SAH), MU-3, MU-3(SAH), and multiple commercial districts.
- The owner of the site could eliminate the nonconforming use status of the existing motel use by obtaining an SUP (Specific Use Permit) from City Council.
- The owner of the site could transition the use of the site from motel use to any use that is permitted by right in the site's existing PD No. 595 (CC Community Commercial Subdistrict) zoning classification. Uses permitted by right in this zoning district include a number of commercial and business service uses, institutional and community service uses, office uses, recreation uses, retail and personal service uses, transportation uses, and utility and public service uses.
- The Board of Adjustment conducted a public hearing on this appeal on January 18, 2006 public hearing. The applicant was present at the hearing but the owner of the subject site was not. The board determined based on the evidence and testimony presented to them at the public hearing that continued operation of the nonconforming motel use would have an adverse effect on nearby properties, and set a hearing date of March 15, 2006 for the purpose of establishing a compliance date for this nonconforming use.
- Prior to the January 18, 2006 public hearing on this appeal, the applicant had submitted information beyond what was submitted with the original application which was entitled as "Attachment A". The Board of Adjustment conducted a public hearing

on this matter on January 18, 2006, where the applicant submitted additional evidence and letters regarding the appeal. (This and all other information submitted prior to or at the January 18<sup>th</sup> public hearing has been retained in the case file and is available for review upon request).

- On January 26, 2006, the Board Administrator and the Board of Adjustment Chief Planner hand-delivered a copy of the January 23<sup>rd</sup> “decision letter” that conveyed the Board’s January 18<sup>th</sup> action (written by the Board Administrator and sent to the applicant and copied to the owner of the site) to a woman in the office of the motel on the subject site (Rama Mistry). The woman in the motel office signed a prepared certification form stating that she would “agree to immediately notify the owner of 4538 Scyene Road of my receipt of these documents and also deliver the documents to the owner.”
- The Board of Adjustment conducted a public hearing on this appeal on March 15, 2006 public hearing. The applicant and the Assistant City Attorney who is instrumental in preparing a compliance date for the board’s consideration were present at the hearing but the owner of the subject site was not. Additional written documentation was submitted to the board at the March 15<sup>th</sup> public hearing from the Assistant City Attorney who is instrumental in preparing a compliance date for the board’s consideration. This information included a letter requesting that the board continue the matter at hand at least 30 days. The letter stated that “the property owner has failed to respond to the subpoena for documents issued by the Board on January 30, 2006. The property owner’s failure to comply with the subpoena has deprived the City of documents that would be helpful in making its recommendation of a reasonable compliance date to the Board.” The board delayed action on this matter until April 19, 2006.
- On March 22, 2006, the Assistant City Attorney who is instrumental in preparing a compliance date on this matter forwarded additional information to the Board Administrator (see Attachment B). This information included pleadings in a suit the City has filed against the record property owner of the subject site, Yosada Enterprises (American Inn).
- On April 10, 2006, the Assistant City Attorney who is instrumental in preparing a compliance date on this matter forwarded additional information to the Board Administrator (see Attachment C). This information included documents prepared by an accounting firm engaged to assist the City of Dallas on this matter, including an estimated date of full amortization for the nonconforming use on the subject site of March 2008.

## **BACKGROUND INFORMATION:**

### **Zoning:**

<u>Site:</u>	PD No. 595 (CC Subdistrict) (Planned Development District, Community Commercial)
<u>North:</u>	PD No. 595 (R-5 Subdistrict) (Planned Development District, Single family)
<u>South:</u>	PD No. 595 (CC & R-5 Sub.) (Planned Development Dist, Community comm. and Single Family)
<u>East:</u>	PD No. 595 (CC Subdistrict) (Planned Development District, Community Commercial)
<u>West:</u>	PD No. 595 (CC Subdistrict) (Planned Development District, Community Commercial)

### **Land Use:**



March 22, 2006: The Assistant City Attorney who is instrumental in preparing a compliance date on this matter forwarded additional information to the Board Administrator (see Attachment B).

April 4, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April 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 Board of Adjustment Senior Planner; the Chief Arborist, and the Assistant City Attorney to the Board.

April 10, 2006: The Assistant City Attorney who is instrumental in preparing a compliance date on this matter forwarded additional information to the Board Administrator (see Attachment C).

### **STAFF ANALYSIS:**

- The motel use on the subject site is a nonconforming use where city records indicate that the motel use on the subject site became nonconforming on September 25, 2001 (Ordinance No. 24726).
- The Dallas Development Code states that it is the declared purpose of this subsection (Sec. 51A-4.704. Nonconforming Uses and Structures) that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.
- On January 18, 2006, the Board of Adjustment determined at their public hearing that continued operation of the nonconforming motel use would have an adverse effect on nearby property, and set a hearing date of March 15, 2006 for the purpose of establishing a compliance date for this nonconforming use.
- The Board of Adjustment conducted a public hearing on this appeal on March 15, 2006 public hearing. The applicant and the Assistant City Attorney who is instrumental in preparing a compliance date for the board's consideration were present at the hearing but the owner of the subject site was not. Additional written documentation was submitted to the board at the March 15<sup>th</sup> public hearing from the Assistant City Attorney who is instrumental in preparing a compliance date for the board's consideration. This information included a letter requesting that the board continue the matter at hand at least 30 days. The letter stated that "the property owner has failed to respond to the subpoena for documents issued by the Board on January 30, 2006. The property owner's failure to comply with the subpoena has deprived the City of documents that would be helpful in making its recommendation of a reasonable compliance date to the Board." The board delayed action on this matter until April 19, 2006.
- The purpose of the Board of Adjustment's April 19<sup>th</sup> public hearing is to establish a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period. (The Dallas Development Code states that

for purposes of this paragraph, "owner" means the owner of the nonconforming use at the time of the board's determination of a compliance date for the nonconforming use).

- The Dallas Development Code states that following factors must be considered by the board in determining a reasonable amortization period:
  - The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.
  - Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
  - Any return on investment since inception of the use, including net income and depreciation.
  - The anticipated annual recovery of investment, including net income and depreciation.
- The Dallas Development Code additionally states that if the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.
- An accounting firm that is engaged to assist the City of Dallas on this matter has prepared an "estimated date of full amortization of building" of March 2008 (see Attachment C).

**BOARD OF ADJUSTMENT ACTION: JANUARY 18, 2006**

**APPEARING IN FAVOR:**

Dwaine Caraway, 1934 Argyle, Dallas, TX  
Michael Davis, 4347 McKinney, Dallas, TX  
Donald Parish, 302 Glen Oaks Blvd., Dallas, TX  
Willie Mae Coleman, 3802 York St., Dallas, TX  
Marilynn Mayse, 4306 York St., Dallas, TX  
Devin Felder, 8404 Capriola, Dallas, TX

**APPEARING IN OPPOSITION:**

No one

**MOTION: Brannon**

I move that the Board of Adjustment in Appeal No. **BDA 056-C02**, based on the evidence presented at the public hearing, find that continued operation of this nonconforming use **will** have an adverse effect on nearby properties, and set a hearing date of **March 15, 2006** for the purpose of establishing a compliance date for this nonconforming use.

**SECONDED: Beikman**

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

**NAYS:** 0 – None

**MOTION PASSED** 5 – 0 (Unanimously)

**BOARD OF ADJUSTMENT ACTION: MARCH 15, 2006**

**APPEARING IN FAVOR:**

Dwaine Caraway, 1934 Argyle, Dallas, TX

Michael Davis, 4347 McKinney, Dallas, TX  
Donald Parish, 302 Glen Oaks Blvd., Dallas, TX

APPEARING IN OPPOSITION: No one

APPEARING FOR THE CITY: Shereen El Domeiri, 1500 Marilla, 5DN, Dallas, TX

MOTION: **Brannon**

I move that the Board of Adjustment, in Appeal No. **BDA 056-C02**, hold this matter under advisement until **April 19, 2006**.

SECONDED: **Beikman**

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

NAYS: 0 –

MOTION PASSED: 5 – 0(Unanimously)