

NOTICE FOR POSTING
MEETING OF
BOARD OF ADJUSTMENT, PANEL B
WEDNESDAY, OCTOBER 18, 2006

Briefing:	10:30 A.M.	L1FN CONFERENCE CENTER AUDITORIUM
Public Hearing:	1:00 P.M.	L1FN CONFERENCE CENTER AUDITORIUM

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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10-18-2006

ZONING BOARD OF ADJUSTMENT, PANEL B
WEDNESDAY, OCTOBER 18, 2006
AGENDA

BRIEFING	L1FN CONFERENCE CENTER AUDITORIUM	10:30A.M.
PUBLIC HEARING	L1FN CONFERENCE CENTER AUDITORIUM	1:00 P.M.

Donnie Moore, Chief Planner
Steve Long, Board Administrator

MISCELLANEOUS ITEMS

	Approval of the Wednesday, September 20, 2006 Board of Adjustment Public Meeting Minutes	M1
BDA 056-198	9707 Meadowbrook Drive REQUEST: Application of Steve Aaron, represented by Roger Albright, to waive the two year time limitation on a special exception for an addition dwelling unit that was granted with conditions on August 16, 2006	M2

UNCONTESTED CASES

BDA 056-2238616	Turtle Creek Blvd REQUEST: Application of Guy E. Brignon for General Partner: GRI Preston Hollow, LLC for a variance to the urban form front yard setback regulations	1
BDA 056-226	6500 and 6522 Spring Valley Road REQUEST: Application of Peyman Horri for a special exception to the fence height regulations	2
BDA 056-230	12160 and 12170 Abrams Road REQUEST: Application of Landgem Office Limited, represented by Dallas Cothrum, for a special exception to the parking regulations	3
BDA 056-231	2502, 2504, 2510, 2514, & 2516 N Henderson Avenue REQUEST: Application of Henderson Avenue Condo L.L.C., represented by Roger Albright, for a special exception to the landscape regulations	4
BDA 056-233	829 N. St. Augustine Road REQUEST: Application of Living Gospel Church, represented by Zone System Inc., for a variance to the height regulations	5

BDA 056-242

9707 Meadowbrook Drive

6

REQUEST: Application of Steve and Carol Aaron represented by Roger Albright for a variance to the front yard setback regulations

HOLDOVER CASES

BDA 056-194

5207 Gaston Avenue

7

REQUEST: Application of Kim-Chi Hoang, represented by Marian J. Johnson, for a variance to the off-street parking regulations and a special exception to the landscape regulations

EXECUTIVE SESSION NOTICE

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

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

(Rev. 6-24-02)

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel B September 20, 2006 public hearing minutes.

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: BDA 056-198

REQUEST: To waive the two year limitation on a special exception for an additional dwelling unit that was granted (subject to conditions) by Board of Adjustment Panel B on August 16, 2006

LOCATION: 9707 Meadowbrook Drive

APPLICANT: Steve Aaron, represented by Roger Albright

STANDARD FOR WAIVING THE TWO YEAR TIME LIMITATION:

The Dallas Development Code states that the board may waive the two year time limitation on a final decision reached by the board if there are changed circumstances regarding the property sufficient to warrant a new hearing.

GENERAL FACTS:

- The Dallas Development Code states the following with regard to board action:
 - Except as provided below, after a final decision is reached by the board, no further request on the same or related issues may be considered for that property for two years from the date of the final decision.
 - If the board renders a final decision of denial without prejudice, the two year limitation is waived.
 - The applicant may apply for a waiver of the two year limitation in the following manner:
 - The applicant shall submit his request in writing to the director. The director shall inform the applicant of the date on which the board will consider the request and shall advise the applicant of his right to appear before the board.
 - The board may waive the two year time limitation if there are changed circumstances regarding the property sufficient to warrant a new hearing. A simple majority vote by the board is required to grant the waiver. If a rehearing is granted, the applicant shall follow the process outline in the code.
- The applicant's representative seeks a waiver of the two year time limitation on a special exception for an additional dwelling unit that was granted (subject to compliance with the submitted site plan and elevation, and that the property be deed-restricted to prohibit the additional dwelling unit on the site from being used as rental accommodations) by Panel B on August 16, 2006 in order for the Board of Adjustment Panel B to consider a request to the front yard setback regulations for the dwelling unit (which is the same or related matter) that is located in the site's Ravine Drive front yard setback (BDA056-242). The case report for BDA056-198 stated that the special exception was made in conjunction with constructing an

addition on an additional “dwelling unit” on a site developed with a single family home.

FILE NUMBER: BDA 056-223

BUILDING OFFICIAL'S REPORT:

Application of Guy E. Brignon for General Partner: GRI Preston Hollow, LLC for a variance to the front yard setback regulations at 8616 Turtle Creek Blvd. This property is more fully described as Lot 1 in City Block B/5464 and is zoned MF-3(A), which requires a front yard setback of 35 feet, for portions of the structure above 45 feet in height due to the urban form setback regulations. The applicant proposes to construct a building and provide a 21 foot urban form front yard setback, which would require a variance of 14 feet.

LOCATION: 8616 Turtle Creek Blvd.

APPLICANT: Guy E. Brignon for General Partner: GRI Preston Hollow, LLC

REQUEST:

- A variance to the front yard setback regulations of 14' is requested in conjunction with constructing and maintaining a 6-level, approximately 66' high multifamily structure on a site that is under development.

STAFF RECOMMENDATION:

Denial

Rationale:

- The 1.4 acre subject site appears to be flat, and generally rectangular in shape (252' x 243').
- The applicant has not substantiated how the site's restrictive area, shape and/or slope preclude its development (in this case, with a structure that could meet the applicable development standards including the additional 20' front yard setback provision for the portion of the structure that would exceed 45' in height) in a manner commensurate with other developments found on other similarly-zoned lots.

STANDARD FOR A VARIANCE:

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area ratios, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations that will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice

done. The variance must be necessary to permit development of a specific parcel of land which differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same zoning classification. A variance may not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land in districts with the same zoning classification.

GENERAL FACTS (related to the variances):

- The minimum front yard setback in MF-3(A) zoning is 15' with an additional 20' "urban form setback" for the portion of a structure over 45' in height. The applicant has submitted an elevation that indicates a 66' high, 6 level multifamily structure, and a site plan that indicates the provision of the minimum 15' front yard setback along Turtle Creek Boulevard for the portion of the proposed structure up to 45' in height but not the additional 20' setback required for the portion of the structure above 45' in height. The site plan and elevation indicate four chimneys that are proposed to be approximately 57' in height and located 21' from the Turtle Creek Boulevard front property line (or 14' into the 35' setback for the portion of the structure that exceeds 45' in height. The elevation also shows eaves and overhangs that encroach into the urban form setback.
- The additional 20' front yard setback for structures (or portions of structures) higher than 45' in height discourages a canyon effect that a structure may create once it exceeds a specific height. This front yard setback was enacted to ensure openness, light, and airflow between tower structures.
- The applicant has stated that the request for variance is for four chimneys to be allowed in the Urban Form Setback area, representing less than 1 percent of the area – structures that are 3' wide, 5' long, and approximately 9' tall. Building Inspection has also determined that the eaves and overhangs are encroaching into the urban form setback.
- The 1.4 acre subject site appears to be flat, generally rectangular in shape (252' x 243'), and is zoned MF-3(A). A restrictive slope was not observed at the site visit.
- The site plan shows the height is measured from an average grade, which is point from which Building Inspection measures height. It appears that stairs and stoops are encroaching into the 15' front yard setback, but the elevation shows that these structures are below the average grade.
- On October 6, 2006, the applicant's attorney submitted a letter further explaining the request (Attachment A).

BACKGROUND INFORMATION:

Zoning:

Site: MF-3(A) (Multiple Family)
North: MF-1(A) (Multiple Family)
South: CR (Community Retail)

East: CR (Community Retail)
West: PD No. 570 (Planned Development District)

Land Use:

The subject site is under development. The areas to the north, east, south, and west are developed with a mix of multifamily, office, and retail uses.

Zoning/BDA History:

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| 1. Z045-135, Turtle Creek Boulevard and Bandera Avenue, southeast corner (the subject site) | On April 27, 2005, the City Council recommended approval of an application for an MF-3(A) Multifamily District, subject to volunteered deed restrictions, on property that had been zoned CR (Community Retail). (Note that variance requested in this case does not appear to be in conflict with the deed restrictions placed on this site that pertain to maximum heights of structures and main uses allowed on the property). |
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Timeline:

- August 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.
- Sept. 20, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Sept. 25, 2006: The Board of Adjustment Senior Planner mailed the applicant a letter to convey 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 October 6th 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 October public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

October 2, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

October 6, 2006 The applicant's attorney submitted a letter to the Board further explaining the request.

STAFF ANALYSIS:

- The 1.4 acre subject site appears to be flat, and generally rectangular in shape (252' x 243').
- The applicant has submitted a site plan and elevation indicating that the 15' front yard setback will be provided for the portion of the proposed structure up to 45' in height. The plan and elevation indicate that the only structures to need varied are four chimneys that are 3' wide, 5' long, and approximately 9' tall to be located as close as 21' from the Turtle Creek Boulevard front property line (or 14' into the 35' front yard setback) for the portion of the structure over 45' in height.
- The applicant has the burden of proof in establishing the following related to the front yard variance requests:
 - That granting the variance to the front yard setback regulations of 14' requested to construct and maintain chimneys on a multifamily structure will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same MF-3(A) zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same MF-3(A) zoning classification.
- If the Board were to grant the front yard variance request of 14', imposing a condition whereby the applicant must comply with the submitted site plan and elevation, the structures above 45' in height in the front yard setback would be limited to what is shown on these submitted site plan and elevation – chimneys that

are located 21' from the Turtle Creek Boulevard front property line (or 14' into the 35' front yard setback for portions of a structure that exceeds 45' in height) and the eaves and overhangs.

FILE NUMBER: BDA 056-226

BUILDING OFFICIAL'S REPORT:

Application of Peyman Horri for a special exception to the fence height regulations at 6500 and 6522 Spring Valley Road. This property is more fully described as Lots 1-14 in City Block 8176 and is zoned R-1/2ac(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.

LOCATION: 6500 and 6522 Spring Valley Road.

APPLICANT: Peyman Horri

REQUEST:

- A special exception to the fence height regulations of 4' is requested in conjunction with constructing and maintaining an approximately 7' 9" high masonry screening wall (to be of stone, cast concrete, stucco, or a combination of the above) with 8' high columns in the site's 40' front yard setback along Spring Valley Road.

(The site is currently being developed as a shared access development/single family home subdivision).

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The application was originally submitted to include the property adjacent to the east. Because that property is no longer part of the proposed development, the applicant revised the application to remove that property from the request and provided the site plan that shows only the two properties of the proposed development. All references to the site plan reflect the two-lot proposal.

- 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 has submitted a site plan and elevation indicating a wall and columns that would exceed 4' in height reaching a maximum height of 8'.
- The site is under development as a shared access development/single family home subdivision. The entire property is considered a single lot for setback purposes because it is being developed as a shared access development, and, as a result, the frontage along Spring Valley Road is considered a front yard.
- The following additional information was gleaned from the submitted site plan:
 - The proposed wall located in the 40' front yard setback would be approximately 470' in length, linear in design with a recessed ingress/egress point, approximately 6' from the property line (or 16' from the pavement line).
 - 12, 4" Live Oak Trees @ 40' spacing and 22, 2" Crape Myrtle Trees @ 13' spacing will be planted on the street side of the proposed wall.
- Although an elevation has been submitted that notes an "8' tall masonry screening wall" the applicant's representative has informed the Board Administrator that the maximum height of the proposal will be 8' for the columns whereby the actual wall will be approximately 7' 9" in height.
- There are three single family homes (across a 6-lane divided thoroughfare) that would have direct frontage to the proposed wall, none of which have fences in their front yard setbacks.
- The Board of Adjustment Senior Planner conducted a field visit of the site and surrounding area along Spring Valley Road (about 500' to the east and west) and noted the following visible fences above four (4) feet high which appeared to be located in the front yard setback. (Note that these locations and dimensions are approximations):
 - An 8' high wall located immediately west of the subject site that may be permitted by right if it is construed to be a wall located in the side or rear yard setback or if the PD zoning specifically permits it.
 - An 8' high wall (with 8.5' high columns) located east of the subject site that is the result of an approved fence height special exception granted by the Board of Adjustment in May of 2005 (BDA 045-201).
 - An 8' high wall located immediately north of the subject site that may be permitted by right if it is construed to be a wall located in the side or rear yard setback.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	R-1/2 (A) (Single family district ½ acre)
<u>North:</u>	R-1/2 (A) (Single family district ½ acre)
<u>South:</u>	R-1/2 (A) (Single family district ½ acre)
<u>East:</u>	R-1/2 (A) (Single family district ½ acre)
<u>West:</u>	R-1/2 (A) (Single family district ½ acre)

Land Use:

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

Zoning/BDA History:

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| 1. Z056-207, south line of Spring Valley Road between Hillcrest Road and Preston Road (the subject site) | On June 1, 2006, the City Plan Commission recommended denial without prejudice of an application for a Planned Development District for single family uses on property zoned R-1/2 acre. |
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Timeline:

- August 25, 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.
- Sept. 20, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Sept. 25, 2006: The Board of Adjustment Senior Planner mailed the applicant a letter to convey 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 October 6th 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 October public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- October 2, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Development Services Senior Engineer, the Building Inspection Development Code

Specialist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

Transportation Engineer Nguyen submitted a review comment sheets stating that the fence must be outside of the 45' x 45' intersection visibility triangles.

STAFF ANALYSIS:

- The City Plan Commission denied the zoning change application because the applicant was able to revise his proposal and meet the requirements of the R-1/2ac(A) zoning. The property subsequently received preliminary plat approval for a shared access development.
- A scaled site plan has been submitted that documents the location of the proposed wall in the Spring Valley Road front yard setback relative to the front property line (about 6' off) and curb line (about 16' off).
- The scaled site plan shows that the proposed fence would have approximately 545 feet of fence and vehicular gate across the 500 foot frontage adjacent to Spring Valley Road. The vehicular gate is setback approximately 50 feet from the right-of way.
- An elevation has been submitted that denotes a partial view of the proposal specifying an "8' tall masonry screening wall" that the applicant's representative has stated will more specifically be an 8' high column with an approximately 7' 9" high wall.
- The site plan submitted in conjunction with this request that specifies landscape materials to be planted on the street side of the wall: 12, 4" Live Oak Trees @ 40' spacing and 22, 2" Crape Myrtle Trees @ 13' spacing.
- There are three single family homes (across a 6-lane divided thoroughfare) that would have direct frontage to the proposed wall, none of which have fences in their front yard setbacks.
- The Board of Adjustment Senior Planner conducted a field visit of the site and surrounding area along Spring Valley Road (about 500' to the east and west) and noted three visible fences above four (4) feet high which appeared to be located in the front yard setback.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' (whereby the proposed 7' 9" high masonry wall with 8' high columns) will not adversely affect neighboring property.
- Granting this special exception of 4' with a condition imposed that the applicant complies with the submitted site plan and elevation would assure that the proposed wall and columns that exceed 4' in height would be constructed and maintained as shown on these documents.

FILE NUMBER: BDA 056-230

BUILDING OFFICIAL'S REPORT:

Application of Landgem Office Limited, represented by Dallas Cothrum, for a special exception to the parking regulations at 12160 and 12170 Abrams Road. This property is more fully described as Lot 2A in City Block A/8417 and is zoned P.D. 238 which requires parking to be provided for a business school. The applicant proposes to convert an existing office use to a business school and provide 566 of the required 692 parking spaces, which would require a special exception of 126 parking spaces (or 18.2%).

LOCATION: 12160 and 12170 Abrams Road

APPLICANT: Landgem Office Limited
Represented by Dallas Cothrum

REQUEST:

- A special exception to the off-street parking regulations of 126 spaces (or 18% of the required off-street parking) is requested in conjunction with reallocating approximately 32,235 square feet of "office" use within an existing approximately 166,500 square foot office campus to "business school" use.

STAFF RECOMMENDATION:

Denial.

Rationale:

- The Development Services Senior Engineer cannot support the request based on the evaluation of the parking demand and trip generation as provided in the revised (October 5, 2006) parking study provided by the applicant.

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 existing and planned uses on the subject site:
 - 1 space is required per 333 square feet of floor area for "office" use.
 - 0.3 spaces for each fixed seat or if no fixed seat, 0.3 spaces per 7 square feet of classroom is required for "business school" use.

The applicant proposes to provide 566 (or 82%) of the total approximately 32,235 square feet of office use within the 2-story office on the site to "business school" use

with 6,570 square feet of classroom space on a site developed with two office buildings and an above-ground parking structure.

- The request site has a remote parking agreement filed with the City that designates 83 spaces to the property to the south, which is developed with office uses.
- The Dallas Development Code defines “business school” as a “business enterprise offering instruction and training in a service or the arts such as secretarial, barber, commercial artist, computer software, and similar training.”
- No enlargement or addition to the existing structure on the subject site is planned in conjunction with this request. This special exception request is triggered by the applicant’s intent to transition/convert a part of an existing office structure on the site from “office” use on the site (which that portion required 97 off-street parking spaces) to a “business school” use (which would require 289 off-street parking spaces for that portion).
- The applicant submitted additional information to Development Services Senior Engineer Nguyen, a floor plan of the building where the proposed business school would be located, and a revised narrative explaining the request.
- In the revised narrative, the applicant states the property is developed with a mid-rise tower consisting of 123,273 square feet and a second two story building consisting of 43,235 square feet. He states that the two-story building where the business school is proposed would leave 11,000 square feet of office space after the business school occupies the second floor and a portion of the first floor. From this information, the proposed business school would occupy approximately 32,235 square feet, of which 6,750 square feet would be allocated to classroom space.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	PD No. 238 (Planned Development District)
<u>North:</u>	MF-1 (A) (Multiple family)
<u>South:</u>	LO-1 (Limited Office)
<u>East:</u>	TH-2(A) (Town House)
<u>West:</u>	MU-1 (Mixed Use)

Land Use:

The subject site is developed with vacant structure previously occupied with “office” use, a structure occupied with an office use, and an above-ground parking structure. The areas to the north and northwest are developed with multifamily uses; the area to the east is developed with townhouse uses; south is developed with office uses; and the area to the west is developed with retail 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:

- August 25, 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.
- Sept. 20, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Sept. 25, 2006: The Board of Adjustment Senior Planner mailed the applicant a letter to convey 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 October 6th 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 October public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- October 2, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.
- October 5, 2006 The applicant submitted a revised parking study to Development Services Senior Engineer Nguyen.
- October 6, 2006 The applicant submitted a revised narrative, presentation materials that include color photos, and floor plans to the building where the proposed business school would be located.
- October 3, 2006 The Development Services Senior Engineer submitted a review comment sheet marked "recommends denial."
- October 9, 2006 The Engineer Nguyen emailed additional comments.

STAFF ANALYSIS:

- 82 percent of the required off-street parking spaces is proposed to be provided in conjunction with the transitioning the use of part of an existing structure from “office” use to a “business school” use.
- No enlargement or addition to the existing structure on the site is planned in conjunction with this request. This special exception request is triggered by the applicant’s intent to transition the use within part of an existing office structure to a business school use which has a higher parking requirement.
- Granting this request, subject to the condition that the special exception of 126 spaces automatically and immediately terminates if and when the proposed office and business school uses, limited to 6,750 square feet of classroom space, on the site is changed or discontinued, would allow the site to be developed with these uses.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the proposed combination of office and business school does not warrant the number of off-street parking spaces required, and
 - The special exception of 126 spaces (or 12% of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- The Development Services Senior Engineer has commented that he is not supportive of the request based on the information provided by the applicant with the application and from the information submitted to him on October 5, 2006.

FILE NUMBER: BDA 056-231

BUILDING OFFICIAL'S REPORT:

Application of Henderson Avenue Condo L.L.C., represented by Roger Albright, for a special exception to the landscape regulations at 2502, 2504, 2510, 2514, and 2516 N Henderson Avenue. This property is more fully described as Lot 2A in City Block 1/1974 and is zoned PD-462, which requires mandatory landscaping. The applicant proposes to construct a multi-family dwelling and provide an alternate landscape plan, which would require a special exception to the landscape regulations.

LOCATION: 2502, 2504, 2510, 2514, and 2516 N Henderson Avenue

APPLICANT: Henderson Avenue Condo L.L.C.
Represented by Roger Albright

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with constructing a multifamily complex on a site that is undeveloped.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan* is required.

Rationale:

- The City's Chief Arborist supports the request.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

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

1. strict compliance with the requirements of this article will unreasonably burden the use of the property;
2. the special exception will not adversely affect neighboring property; and
3. the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

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

- the extent to which there is residential adjacency;
- the topography of the site;

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

GENERAL FACTS:

- The Dallas Development Code requires full compliance with the Landscape Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet.
The applicant is proposing an alternate landscape plan that does not fully comply with the landscape regulations, specifically a landscape plan where, according to the City of Dallas Chief Arborist, the applicant is specifically requesting relief from the 10' wide residential landscape buffer strip.
- The request site is zoned PD 462, which requires compliance with the landscaping regulations of Article X of the Dallas Development Code.
- The requirements that the applicant is seeking the special exception from are not imposed by a site-specific landscape plan approved by the city plan commission or city council.
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner (see Attachment A). The memo stated the following:
 - The applicant is requesting relief from the landscape requirements of Article X (The Landscape Regulations), more specifically, relief from the 10' wide residential landscape buffer strip.
 - The special exception request is triggered by new construction.
 - Deficiencies:
 1. The applicant is required to provide a 10' wide residential landscape buffer strip along the north side of the property with (1) plant group for each 50': 5 plant groups.
The applicant is providing only a few feet of width between the proposed buildings and the property line and providing (0) plant groups.
 - Factors for consideration:
 - While they lack the 10' required buffer strip and they are not planting any plant materials that would satisfy the plant groups required, they are providing a row of timber bamboo that will provide a solid visual screen. They are maximizing the use of the reduced area for a buffer and have chosen the best plant materials for this location, given the limited space available. The Chief Arborist would recommend reducing the number of palm trees used on-site. The Chief Arborist is also reminding the applicant that only the live oaks and the lacebark elms specified on the plan will count towards their tree replacement requirements. The species of maple and the palms are not on the city's approved replacement tree list.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 462 (Planned Development District)
North: R-7.5 (A) (Single family 7,500 square feet)
South: MF-2 (A) (Multifamily)
East: PD No. 462 (Planned Development District)
West: PD No. 462 (Planned Development District)

Land Use:

The subject site is undeveloped. The surrounding area is developed with single family and multifamily residential uses.

Zoning/BDA History:

1. BDA056-115, 5130 Belmont Avenue (the lot directly south of the subject site) On April 24, 2006, the Board of Adjustment Panel A granted a special exception to the landscape regulations, subject to the following conditions: 30, 2-inch diameter site trees must be located anywhere within the development; 16, 3-inch diameter street trees must be located between 2 ½ and 10 feet from back of curb; and 20% of the shared access development must be designated as landscape site area (any permeable area or concrete for pedestrian use only). The case report stated that the request was made in conjunction with constructing and maintaining a shared access development.

Timeline:

- August 23, 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.
- Sept. 20, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Sept. 25, 2006: The Board of Adjustment Senior Planner mailed the applicant a letter to convey 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 October 6th 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 October public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

October 2, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

October 10, 2006 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the special exception to the landscape regulations (see Attachment A).

STAFF ANALYSIS:

- An alternate landscape plan has been submitted with this request that, according to the City of Dallas Chief Arborist, is deficient in meeting the 10' wide residential landscape buffer strip.
- The applicant has the burden of proof in establishing the following:
 - Strict compliance with the requirements of the landscape regulations (i.e. providing the required 10' wide residential buffer strip with 5 plant groups) will unreasonably burden the use of the property (in this case, if approved, with a new multifamily complex).
 - The special exception (whereby "a few" of the required 10' wide landscape buffer strip with none of the required 5 plant groups is proposed to be provided) will not adversely affect neighboring property.
- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted alternate landscape plan, the site could be developed with the proposed multifamily development, and would be "excepted" from complying with the 10' wide residential buffer strip of the landscape regulations.

FILE NUMBER: BDA 056-233

BUILDING OFFICIAL'S REPORT:

Application of Living Gospel Church, represented by Zone System Inc., for a variance to the height regulations at 829 N. St. Augustine Road. This property is more fully described as Lots 7 and 8 in City Block 6666 and is zoned R-7.5(A), which limits the height of a structure to 26 feet due to the residential proximity slope regulations. The applicant proposes to construct a cell tower with a height of 80 feet which would require a variance of 54 feet to the height regulations.

LOCATION: 829 N. St. Augustine Road

APPLICANT: Living Gospel Church
Represented by Zone System Inc.

REQUEST:

- A variance to the height regulations of 59' is requested in conjunction with constructing a cell tower 85' in height.

STAFF RECOMMENDATION:

Denial

Rationale:

- The 6.082 acre subject site flat and mostly rectangular in shape. The plat shows the property has a slight jog at the southwest corner.
- The applicant has not substantiated how the site's restrictive area, shape and/or slope preclude its development in a manner commensurate with other developments found on other similarly-zoned lots.

STANDARD FOR A VARIANCE:

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area ratios, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations that will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done. The variance must be necessary to permit development of a specific parcel of land which differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development

upon other parcels of land in districts with the same zoning classification. A variance may not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land in districts with the same zoning classification.

GENERAL FACTS:

- The request site is currently developed parking lot for a church.
- The property is zoned R-7.5(A) Single Family District. The property to the north, south, east, and west are zoned R-7.5(A), which requires any development on the request site to respect a 1-to-3 residential proximity slope that is over 26 feet in height. The location of the proposed cell tower provides sufficient RPS setback only to the properties north of the request site.
- Residential proximity slope requires a setback for development on properties adjacent to residential districts at a specified ratio or distance.
- A cell tower is a use allowed by Specific Use Permit in an R-7.5(A) District. The applicant has applied for the SUP and the City Plan Commission has had two public hearings for this case. It was last heard on October 5, 2006 and held under advisement until October 12, 2006.
- An SUP cannot be granted for a development that does not meet the requirements of the Dallas Development Code. In this case, the cell tower exceeds RPS and cannot be considered by City Council unless a variance for additional height is granted.
- The proposed cell tower is 85' in height.
- The elevation shows a "cross" tower design.
- The submitted site plan shows the location of the proposed cell tower. The cell tower is proposed approximately 25 feet from the south property line which is the closest R-7.5(A) zoned property.
- The proposed height of 85 feet requires a setback of 255 feet from the site of origination (the nearest property line of a residential district).
- At the proposed location, the cell tower would be allowed a maximum height of 26 feet. To construct an 85 foot cell tower in this location would require a variance of 59 feet to the height.
- The site appears flat, mostly rectangular in shape, and approximately 6.082 acres in area. The plat shows the property has a slight jog at the southwest corner.
- Typically, lots in the R-7.5(A) zoning have a minimum 7,500 square feet of area. R-7.5(A) does not require a minimum lot area for churches or cell towers.
- DCAD indicates that the request site is a church built in 1965.

BACKGROUND INFORMATION:

Zoning:

Request Site: R-7.5(A) (Single Family Residential 7,500 Square Feet)
North: R-7.5(A) (Single Family Residential 7,500 Square Feet)

South: R-7.5(A) (Single Family Residential 7,500 Square Feet)
East: R-7.5(A) (Single Family Residential 7,500 Square Feet)
West: R-7.5(A) (Single Family Residential 7,500 Square Feet)

Land Use:

The request site is developed with a church. The surrounding area is developed with single family uses. A few lots are undeveloped and a convenience store use is located to the southeast about two blocks south of the request site.

Zoning/BDA History:

1. Z056-2976 (request site) On October 5, 2006, the City Plan Commission held under advisement until October 12, 2006 an application Specific Use Permit for a tower/antenna for cellular communication.

Timeline:

- August 29, 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.
- Sept. 20, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Sept. 25, 2006: The Board of Adjustment Senior Planner mailed the applicant a letter to convey 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 October 6th 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 October public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

October 2, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The applicant has a pending SUP application which is scheduled to be heard on October 12, 2006. If the variance is denied, the City Council cannot consider the SUP application.
- A cell tower at a height of 85' would require a setback of 255' from the R-7.5(A) district property's boundary lines to the west, east, north, and south. The location of the proposed cell tower provides sufficient RPS setback only to the properties north of the request site.
- Granting this variance, subject to the submitted site plan and elevation, would allow the construction of a cell tower at a height that exceeds the Residential Proximity Slope by 59 feet if City Council approves the SUP.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance of 59' to the height regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The height variance of 59' is necessary to permit development of the subject site (that appears flat, mostly rectangular in shape, and approximately 6.082 acres in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.
 - The height variance of 59' 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.

FILE NUMBER: BDA 056-242

BUILDING OFFICIAL'S REPORT:

Application of Steve and Carol Aaron represented by Roger Albright for a variance to the front yard setback regulations at 9707 Meadowbrook Drive. This property is more fully described as Lot 1A in City Block 1/5589 and is zoned R-1ac(A), which requires a front yard setback of 40 feet. The applicant proposes to construct an addition and provide a 10 foot front yard setback which would require a variance of 30 feet to the front yard setback regulations.

LOCATION: 9707 Meadowbrook Drive

APPLICANT: Steve and Carol Aaron
Represented by Roger Albright

REQUEST:

- A variance to the front yard setback regulations of 30' is requested in conjunction with constructing an addition on an accessory structure and maintaining an accessory structure on a site that is currently developed with a single family use.

STAFF RECOMMENDATION:

Denial

Rationale:

- The subject site appears flat, mostly rectangular in shape (341' x 611'), and 5 acres in area. Although the site has two front yard setbacks, this characteristic is not of any distinction for any lot that has street frontage and that is not zoned single family, duplex, or agricultural. Due to the relatively large area of the request site, it appears that the property could be developed meeting the 40' front yard setback.
- The applicant has not substantiated how the site's area, shape or slope precludes its development in a way where the applicable development standards can not be met.

STANDARD FOR A VARIANCE:

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area ratios, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations that will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice

done. The variance must be necessary to permit development of a specific parcel of land which differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same zoning classification. A variance may not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land in districts with the same zoning classification.

GENERAL FACTS:

- The applicant received approval for a second dwelling unit special exception for the existing structure and the proposed addition to this structure. It was conveyed to the Board in that case that the additional dwelling unit appears to meet all of the height, setback, and accessory structure regulations from the site plan provided. The applicant was denied a building permit because the existing structure and the proposed addition of the second dwelling unit are located within the Ravine Drive front yard setback. The dimensions of the lot were provided on the site plan, but the right-of-way was not shown. After further review of the site plan submitted for the special exception and this variance application, the site plan was a reduction of a scaled site plan. Full-sized, scaled site plans have been received and it is clear the area of the existing and proposed addition located in the Ravine Drive front yard.
- “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 Board of Adjustment granted this special exception on August 16, 2006 subject to a site plan, elevations, and filing deed restrictions prohibiting the use of the structure as rental accommodations.
- The subject site is 5.1225 acres and developed with, according to DCAD records, a single family home that is in very good condition built in 1996 with 16,535 square feet of living area and a 1,132 square foot basement, a 1,593 square foot cabana, a 1,190 square foot barn and a 1,064 square foot detached garage.
- This site plan indicates that the additional “dwelling unit” structure currently has a building footprint of approximately 30’ x 38’ or is about 1,216 square feet in area. The proposed addition will add 632 square feet of floor area, which will make the total floor area 1,848 square feet.
- The site plan indicates that the entire existing second dwelling unit is located within the 40’ Ravine Drive front yard setback and approximately 5’ of the existing cabana structure.
- The subject site appears flat, mostly rectangular in shape (341’ x 611’), and 5 acres in area. The site has a slight job in the property line at the northwest corner.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA967-203 On March 18, 1997, Panel B of the Board of Adjustment granted a special exception to the fence height regulations and a special exception to the visibility obstruction regulations.
2. BDA056-198 On September 20, 2006, Panel B of the Board of Adjustment granted a special exception to the single family regulations for an additional dwelling unit subject to the submitted site plan and elevation.

Timeline:

- Sept. 12, 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.
- Sept. 20, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Sept. 25, 2006: The Board of Adjustment Senior Planner mailed the applicant a letter to convey 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 October 6th 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 October public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

October 2, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The site plan indicates that the entire existing second dwelling unit is located within the 40' Ravine Drive front yard setback and approximately 5' of the existing cabana structure.
- The subject site appears flat, mostly rectangular in shape (341' x 611'), and 5 acres in area. The site has a slight job in the property line at the northwest corner.
- The applicant has the burden of proof in establishing the following related to the front yard variance request:
 - That granting the variance to the Ravine Drive front yard setback regulations of 30' 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 is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-1ac(A) zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-1ac(A) zoning classification.
- If the Board were to grant the front yard variance request of 30', imposing a condition whereby the applicant must comply with the submitted site plan, the structures in the setback would be limited to that what is shown on the submitted plan (the existing accessory dwelling unit, a portion of the proposed addition to the accessory dwelling unit, and a portion of the existing cabana).
- If the Board denies the request, the applicant would be allowed to maintain the existing structures that are encroaching into the setback, but the addition to the second dwelling unit would not be permitted.

FILE NUMBER: BDA 056-194

ORIGINAL BUILDING OFFICIAL'S REPORT:

Application of Kim-Chi Hoang represented by Marian J. Johnson, for a variance to the off-street parking regulations at 5207 Gaston Avenue. This property is more fully described as Lots 1-3 in City Block 5/1858 and is zoned PD-99 which prohibits vehicular paving between the property line and front facade. The applicant proposes to install paving between the property line and front facade which would require a variance.

REVISED BUILDING OFFICIAL'S REPORT:

Application of Kim-Chi Hoang, represented by Marian J. Johnson, for a variance to the off-street parking regulations and a special exception to the landscape regulations at 5207 Gaston Avenue. This property is more fully described as Lots 1-3 in City Block 5/1858 and is zoned PD-99 which prohibits vehicular paving between the property line and front facade and requires landscaping with new paving. The applicant proposes to install paving between the property line and front facade which would require a variance to the off-street parking regulations, and to provide an alternate landscape plan which would require a special exception to the landscape regulations.

LOCATION: 5207 Gaston Avenue

APPLICANT: Kim-Chi Hoang
Represented by Marian J. Johnson

ORIGINAL REQUEST:

A variance to the off-street parking regulations is requested in conjunction with completing and maintaining vehicular paving between an existing apartment structure and Gaston Avenue.

REVISED/ADDITIONAL REQUEST:

In addition to the variance to the off-street parking regulations, a special exception to the landscape regulations is requested in conjunction with completing and maintaining vehicular paving between an existing apartment structure and Gaston Avenue.

STAFF RECOMMENDATION (related to the parking variance):

Denial

Rationale:

- The applicant has not substantiated how the site's restrictive area, shape and/or slope prevents the site being developed in a way that meets the applicable development standards, including off-street parking regulations, commensurate with other developments found on other similarly-zoned lots.

STAFF RECOMMENDATION (related to the landscape special exception):

Approval, subject to compliance with the submitted site and landscape plan

Rationale:

- The request is triggered by the applicant increasing the non-permeable coverage on a site developed with a decades-old multifamily complex in order to provide additional off-street parking.
- The parkway landscaping that is proposed to be provided will meet the spirit of the landscape regulations.
- The existing large canopy trees on the site preclude the property from being able to meet the parkway landscape requirements.
- The alternate plan includes the provision of new ornamental trees and shrubs, and new large canopy trees, and increasing the foundation planting along Gaston Avenue, Munger Avenue, and the east side of the existing complex.
- The City of Dallas Chief Arborist supports this request.

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 LANDSCAPE REGULATIONS:

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

4. strict compliance with the requirements of this article will unreasonably burden the use of the property;
5. the special exception will not adversely affect neighboring property; and

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

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

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

GENERAL FACTS (related to the parking variance):

- The request site is zoned PD No. 99 which prohibits circular driveways and vehicular paving (excluding driveways to off-street parking areas located behind the front façade) between the property line and the front façade. (Building Inspection has deemed that in this case, given that the existing apartment structure is located at the corner of Gaston Avenue and Munger Boulevard, the structure has a front facade along Gaston Avenue, Munger Boulevard is deemed to be a corner side yard).
- A site plan has been submitted that shows the vehicular paving located between the front façades of the existing apartment structure and the Gaston Avenue front property line and the Munger Boulevard front property line.
- DCAD records indicate that the site is developed with a 29,120 square foot apartment built in 1957.
- The site is flat, rectangular in shape (200' x 236'), and 1.13 acres in area.
- The Board of Adjustment held a public hearing on this matter on September 20, 2006. The applicant submitted additional information including a document that provided further details about the request (see Attachment B) and photos. A neighboring property owner submitted photo documentation as well. (These photos submitted by the applicant and the neighboring property owner will be available for review at the October 18th briefing/hearing). The board delayed action on this matter until October 18th to allow the applicant and the opposition to discuss the case and for the applicant to present a landscape plan to the board.
- Staff determined shortly after the September 20th hearing that the new paving on the site would trigger the applicant to fully comply with the landscape regulations or submit an application for a special exception to the landscape regulations.
- On October 9, 2006, the applicant submitted a letter that provided additional details about the request and a copy of a "site and landscape plan" (see Attachment C).

GENERAL FACTS (related to the landscape special exception):

- The Dallas Development Code requires full compliance with the Landscape Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet.
The applicant is proposing an alternate landscape plan that does not fully comply with the landscape regulations of PD No. 99, specifically a landscape plan where,

according to the City of Dallas Chief Arborist, the applicant is specifically requesting relief from the 10' wide residential landscape buffer strip, parkway landscaping, and foundation planting requirements of the PD No. 99 landscape regulations.

- The requirements that the applicant is seeking the special exception from are not imposed by a site-specific landscape plan approved by the city plan commission or city council.
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner (see Attachment D). The memo stated the following:
 - The applicant is requesting relief from the landscape requirements of PD No. 99, more specifically, relief from the 10' wide residential landscape buffer strip, parkway landscaping and foundation planting requirements of the landscape regulations.
 - The special exception request is triggered by increasing the non-permeable coverage on the lot by 2,000 square feet or more.
 - Deficiencies:
 1. The applicant is required to provide a 10' wide landscape buffer strip where there is residential adjacency and provide 1 plant group for each 50' of the buffer. (A total of 4 plant groups would be required for this site).
The applicant is proposing to leave this portion of the site as is, which does not include a buffer at all.
 2. The applicant is required to provide a 4' wide parkway landscape buffer with one 4" diameter large canopy tree planted 35' on center and located between the street curb and the property line. (A total of 13 trees would be required for this site).
The applicant is proposing to provide a total of 10 trees (5 new 4" diameter large canopy trees between the property line and the street curb and 5 existing large canopy trees just inside the property line).
 3. The applicant is required to provide a 5' wide foundation planting strip along the portion of the building that faces Gaston Avenue.
The applicant is proposing to provide a narrower foundation planting strip along roughly 65% of the portion of the building that faces Gaston Avenue.

Factors for consideration:

- The portion of the property (north end) where the residential landscape buffer strip should be is where the existing parking is located. The reason the non-permeable coverage on the property is increasing is to provide additional parking. The parkway landscaping will be met in spirit but the existing large canopy trees preclude the property from being able to meet the parkway landscaping requirements. The proposed alternate landscape plan includes ornamental trees and shrubs located in the parkway along with several new large canopy trees. It is not physically possible to provide a foundation planting strip along the entire length of the portion of the building facing Gaston Avenue. The alternate landscape plan does include increasing the foundation planting not only on Gaston Avenue side but also along Munger and along the east side of the complex.
- Recommendation: Approval.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 99 (Planned Development District)
North: PD No. 63, H-1 (Planned Development District, Historic)
South: PD No. 99 (Planned Development District)
East: PD No. 99 (Planned Development District)
West: PD No. 99 (Planned Development District)

Land Use:

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

Zoning/BDA History:

1. BDA 012-116, 5121 Gaston Avenue (the area immediately southwest of the subject site)
On December 11, 2001, the Board of Adjustment Panel A granted a request for a variance to the parking regulations. The board imposed the following condition: compliance with the submitted site plan is required. The case report stated that the request was made in conjunction with locating/maintaining 8 additional non-required off-street parking spaces in the 25' front yard setback on Gaston Avenue on a site developed with an apartment complex.
2. BDA 990-170, 5307 Gaston Avenue (the area immediately northeast of the subject site)
On December 16, 1999, the Board of Adjustment Panel C granted a request for a variance to the parking regulations (to locate 7 off-street parking spaces in the Gaston Road front yard setback), a variance to the rear yard setback regulations of 15', and a special exception to the landscape regulations. The board imposed the following conditions: compliance with the submitted revised site plan showing an enclosed dumpster and landscape plan and plant list is required, and compliance with Article X Tree Preservation Regulations is required. The case report stated that the requests were made in conjunction with renovating/maintaining an existing circa. 1960 apartment building.

Timeline:

- June 23, 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.
- July 11, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- July 13, 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 requests;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the July 24th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - the August 4th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- July 19, 2006: The applicant's representative requested to postpone this matter from Panel B's August 16th hearing to Panel B's September 20th hearing.
- August 30, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Chief Arborist, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.
- Sept. 20, 2006: The Board of Adjustment held a public hearing on this matter. The applicant's representative submitted additional information (see Attachment B). In addition, the applicant's representative and a

neighboring property owner submitted photos that will be available for review at the October 18th briefing/hearing.

- October 3, 2006: The Building Inspection Development Code Specialist forwarded a revised Building Official's Report that reflected an added appeal to the application: a special exception to the landscape regulations.
- Aug 30 & Oct. 2, 2006 Transportation Engineer Nguyen submitted a review comment sheet marked "Has no objections" to the variance request.
- October 9, 2006: The applicant's representative submitted additional information to staff (see Attachment C).
- October 9, 2006: The City of Dallas Chief Arborist submitted a memo to staff pertaining to the request for a special exception to the landscape regulations (see Attachment D).

STAFF ANALYSIS (related to the parking variance):

- The applicant submitted additional information beyond what was submitted with the original application to further explain the request (Attachments A, B, and C).
- Transportation Engineer Nguyen has no objection to the variance request as indicated on his comment sheet dated August 30 and October 2, 2006.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the off-street parking regulations 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 off-street parking variance is necessary to permit development of the subject site (that is flat, rectangular in shape (70' x 180'), and approximately 12,600 square feet in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD 99 zoning classification.
 - The off-street parking variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD 99 zoning classification.
- If the Board were to grant the request, imposing a condition whereby the applicant must comply with the submitted site and landscape plan, the surface parking and vehicular paving between the front façade and the right of way could be maintained.

STAFF ANALYSIS (related to the landscape special exception):

- This request is triggered by increasing the non-permeable coverage (with additional off-street parking) on a site that is developed with a decades-old apartment complex.

- A site and landscape plan has been submitted with this request that, according to the City of Dallas Chief Arborist, is deficient in meeting the 10' wide residential landscape buffer strip, parkway landscaping and foundation planting requirements of the landscape regulations.
- The applicant has the burden of proof in establishing the following:
 - Strict compliance with the requirements of the landscape regulations (i.e. providing the required 10' wide landscape buffer strip with 4 plant groups, 13 large canopy trees in a 4' wide parkway landscape buffer, and a 5' wide foundation planting strip along the portion of the building facing Gaston Avenue) will unreasonably burden the use of the property (in this case, an approximately 30,000 square foot apartment complex built in 1957 with additional off-street parking).
 - The special exception (whereby none of the required 10' wide landscape buffer strip with none of the required 4 plant groups, 10 of the required 13 trees, and a narrower foundation planting strip along roughly 65% of the portion of the building facing Gaston Avenue) will not adversely affect neighboring property.
- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted site and landscape plan, non-permeable coverage could be increased on the site, with the site being "excepted" from complying with the 10' wide landscape buffer strip, parkway landscaping and foundation planting requirements of the landscape regulations.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 20, 2006

APPEARING IN FAVOR: Brian Crommie, 5207 Gaston Ave, #112, Dallas, TX

APPEARING IN OPPOSITION: Virginia McAlester, 5703 Swiss Ave., Dallas, TX
 Larry Worisanen, 5105 Swiss Ave., Dallas, TX
 Ann Joseph, 5200 Swiss Ave., Dallas, TX

MOTION #1: Beikman

I move that the Board of Adjustment in Appeal No. **BDA 056-194**, suspend the rules and accept the evidence that is being presented to us today.

SECONDED: Brannon

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

MOTION #2: Chernock

I move that the Board of Adjustment in Appeal No. **BDA 056-194**, hold this matter under advisement until **October 18, 2006** so that the applicant and the opposition may meet to discuss the case and present a landscape plan to the board.

SECONDED: Brannon

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

NAYS: 0 –
MOTION PASSED 5 – 0 (unanimously)