

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
WEDNESDAY, MARCH 19, 2008**

MEMBERS PRESENT AT BRIEFING: Samuel Gillespie, Panel Vice Chair, Marla Beikman, regular member, Christian Chernock, regular member, H.B. Sorrells, regular member and Darlene Reynolds, regular member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Samuel Gillespie, Panel Vice Chair, Marla Beikman, regular member, Christian Chernock, regular member, H.B. Sorrells, regular member and Darlene Reynolds, regular member

MEMBERS ABSENT FROM HEARING: No one

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

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

10:37 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **March 19, 2008 docket.**

1:05 P.M.

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

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel B February 13, 2008 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: MARCH 19, 2008

MOTION: Beikman

I move approval of the Wednesday, **February 13, 2008** Board of Adjustment Public Hearing minutes.

SECONDED: Chernock

AYES: 5–Gillespie, Beikman, Chernock, Sorrells, Reynolds

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: BDA 067-072

REQUEST: To waive the two year limitation on requests for special exceptions to the fence height and visual obstruction regulations that were granted with conditions by Board of Adjustment Panel B on May 16, 2007

LOCATION: 4949 Calleja Way

APPLICANT: Richard and Trea Yip
Represented by Rob Baldwin

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 outlined in the code.
- On February 27, 2008, the applicant's representative submitted a letter (see Attachment A) requesting a waiver of the two year time limitation on a special exception to the fence height regulations that was granted (subject to compliance with the submitted revised site plan/elevation) by Board of Adjustment Panel B on May 16, 2007. (See Attachment B which is a copy of the decision letter sent to the applicant on this appeal). (The applicant's representative informed the Board Administrator that he additionally wanted the board to consider waiving the 2 year limitation on the visual obstruction special exception that was granted on the same day even though his February 27th letter did not make mention of this waiver request). The May 2007 case report stated that the special exception to the fence height regulations of 8' was requested in conjunction with constructing and maintaining a 7' 11" – 8' high iron picket fence with 10' high cast stone columns; and an 11' 6" iron picket entry gate with 12' high entry columns in the site's 40' front yard setback, and that a special exception to the visibility obstruction regulations was requested in conjunction with constructing and maintaining a portion of the fence and/or columns in the site's 20' visibility triangles at the drive approach into the site from Calleja Way.
- On February 28, 2008, the Board Administrator responded back to the applicant's request in an email. The email provided additional details about his request (see Attachment C).

BOARD OF ADJUSTMENT ACTION: MARCH 19, 2008

APPEARING IN FAVOR: Vicki Radar, 401 Exposition, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: **Beikman**

I move to **deny** the two year limitation on requests for special exceptions to the fence height and visual obstruction regulations that were granted with conditions by Board of Adjustment Panel B on May 16, 2007.

SECONDED: **Sorrells**

AYES: 2–Beikman, Sorrells
NAYS: 3 – Gillespie, Chernock, Reynolds
MOTION FAILED 2 – 3

MOTION #2: **Gillespie**

I move to **grant** the two year limitation on requests for special exceptions to the fence height and visual obstruction regulations that were granted with conditions by Board of Adjustment Panel B on May 16, 2007.

SECONDED: **Chernock**
AYES: 4– Gillespie, Chernock, Sorrells, Reynolds
NAYS: 1 – Beikman
MOTION PASSED 4 – 1

FILE NUMBER: BDA 078-030

BUILDING OFFICIAL'S REPORT:

Application of Marc Birnbaum for a special exception to the landscape regulations at 3824 Brown Street. This property is more fully described as Lot 17D in City Block 1/1337 and is zoned PD-193 (O-2) which requires mandatory landscaping. The applicant proposes to maintain a residential multifamily use and provide an alternate landscape plan which will require a special exception.

LOCATION: 3824 Brown Street.

APPLICANT: Marc Birnbaum

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with obtaining a final building permit and Certificate of Occupancy (CO) for a 3-unit apartment structure recently constructed on the subject site.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted City Arborist-revised alternate landscape plan is required.

Rationale:

- The applicant has substantiated how approval of this request (subject to the submitted City Arborist-revised alternate landscape plan) would not compromise the spirit and intent of the landscaping requirements of PD No. 193 since the only deficiency to the requirements is related to the sidewalk width and location –

sidewalks that are in locations and are of widths to protect the root structure integrity of existing large canopy trees on the site.

- The City's Chief Arborist recommends approval of this request.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS IN OAK LAWN:

Section 26(a)(4) of Ordinance No. 21859, which establishes PD No. 193, specifies that the board may grant a special exception to the landscaping requirements of this section if, in the opinion of the Board, the special exception will not compromise the spirit and intent of this section. When feasible, the Board shall require that the applicant submit and that the property comply with a landscape plan as a condition to granting the special exception.

GENERAL FACTS:

- PD No. 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind.

The applicant submitted an "amended landscape plan" (see Attachment A) that was slightly amended by the City of Dallas Chief Arborist (see Attachment B) where, according to the City of Dallas Chief Arborist, the applicant seeks relief from compliance with the PD No. 193's sidewalk standards.

- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner pertaining to the submitted revised landscape plan (see Attachment C). The memo stated the following:
 - The request is for relief from the sidewalk provisions of PD No. 193.
 - The special exception request is triggered by the construction of a multifamily development in PD 193 O-2 zoning.
 - Deficiencies:
 1. The proposed plan is deficient in sidewalk location (4)(B)(ii) and sidewalk width (4)(C)(ii) requirements. In O-2 districts, the sidewalk location must be "that area parallel to and between 5 and 12 feet from the back of the projected street curb. The sidewalk must have a "minimum width of six feet."
 - Factors for consideration:
 - The existing sidewalk adjacent to 3824 Brown Street along Brown Street is located between 6.5' and 10.5' from the back of curb and is 4' wide. The applicant proposes to maintain the existing alignment and width that is concurrent with the adjacent property. The sidewalk is 0.5' to 1.5' (depending on the placement of legal 6' wide sidewalk within 7' allowance) too far from the curb per ordinance and 2' too narrow. The sidewalk is entirely in the public domain.
 - The existing sidewalk along Shelby Avenue is located between 2.75' and 6.75' from the back of curb and is also 4' wide. The applicant proposes to

maintain the existing alignment and width as the adjacent sidewalk. The sidewalk is 2.25' too close to the curb per ordinance. The sidewalk is entirely in the public domain.

- The present sidewalk location would help protect the root structure integrity of existing large canopy trees the applicant has endeavored to protect throughout construction. Adjusting the sidewalks to their required locations and width would require the removal of the existing trees.
 - All other mandatory landscape requirements are met with the proposed plan.
- Recommendation:
- Approval.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (0-2 Subdistrict) (Planned Development, Office Subdistrict)
North: PD No. 193 (MF-3 Subdistrict) (Planned Development, Multifamily Subdistrict)
South: PD No. 193 (MF-3 Subdistrict) (Planned Development, Multifamily Subdistrict)
East: PD No. 193 (MF-3 Subdistrict) (Planned Development, Multifamily Subdistrict)
West: PD No. 193 (MF-3 Subdistrict) (Planned Development, Multifamily Subdistrict)

Land Use:

The subject site is developed with a three-unit multifamily structure. The areas to the north, east, south, and west are developed with residential uses.

Zoning/BDA History:

1. BDA 056-182, Property located at 3824 Brown Street (the subject site) On September 18, 2006, the Board of Adjustment Panel C denied requests for variances to the front yard setback regulations of 5' without prejudice. The case report stated that the requests were made to construct and maintain three, 3-story townhomes (each with an approximately 625 square foot building footprint) on a site that was undeveloped.

Timeline:

January 10, 2008: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

- Feb. 14, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Feb. 14, 2008: The Board Administrator contacted the applicant and shared the following information by phone and email:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the March 3rd deadline to submit additional evidence for staff to factor into their analysis;
 - the March 7th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- March 4, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.
- A Code Compliance Manager submitted a Review Comment Sheet marked "Has no objections."
- March 7, 2008 The applicant submitted additional information to the Board Administrator (see Attachment A).
- March 10, 2008 The City of Dallas Chief Arborist submitted an amended alternate landscape plan and memo that provided his comments regarding the request (see Attachments B and C).

STAFF ANALYSIS:

- The landscape special exception request is made in conjunction with obtaining a final building permit and Certificate of Occupancy (CO) for a 3-unit apartment structure recently constructed on the subject site.
- The City of Dallas Chief Arborist supports the request since the applicant proposes to fully meet all mandatory landscape requirements of PD No. 193 with one exception: sidewalk width/location.

- The applicant is proposing to retain the existing sidewalks in the locations and of widths that do not comply with ordinance provisions in order to protect the root structure integrity of existing large canopy trees on the site.
- The applicant has the burden of proof in establishing the following:
 - The special exception (where a City Arborist-revised alternate landscape plan has been submitted that meets all mandatory landscape provisions other than sidewalk location/width requirements) will not compromise the spirit and intent of the section of the ordinance (Section 26: Landscape, streetscape, screening, and fencing standards).
- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted City Arborist-revised alternate landscape plan, the final Certificate of Occupancy and building permit could be issued on the site, where the site would be “excepted” from full compliance to the requirements of the Oak Lawn PD landscape ordinance – a site that meets all landscape provisions except sidewalk location/width requirements.

BOARD OF ADJUSTMENT ACTION: MARCH 19, 2008

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Beikman

I move that the Board of Adjustment grant application **BDA 078-030** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted city arborist-revised alternate landscape plan is required.

SECONDED: Chernock

AYES: 5–Gillespie, Beikman, Chernock, Sorrells, Reynolds

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 078-036(K)

BUILDING OFFICIAL'S REPORT:

Application of Magdaleno Gonzalez for a special exception to the side yard setback regulations for a carport at 3845 Wemdon Drive. This property is more fully described as Lot 9 in City Block 5/5085 and is zoned R-7.5(A) which requires a side yard setback of 5 feet. The applicant proposes to construct and maintain a carport for a single family residential dwelling in a required side yard setback, which will require a special exception of 2 foot 6 inches.

LOCATION: 3845 Wemdon Drive

APPLICANT: Magdaleno Gonzalez

REQUEST:

- A special exception to the side yard setback regulations of 2 feet 6 inches is requested to construct and maintain a carport in the site's 5 foot side yard setback

STAFF RECOMMENDATION:

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

STANDARD FOR A VARIANCE:

The board may grant a special exception to the side yard requirements in this section for 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 this special exception, the board shall consider the following factors:

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

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

GENERAL FACTS:

- Structures on lots zoned R-7.5(A) are required to provide a minimum side yard setback of 5'. The site is located on the 3800 block of Wemdon Drive. A scaled site plan has been submitted that shows that the existing carport is 2' 6" from the property line.
- The site is flat, rectangular in shape (62' x 150) and 9,300 square feet in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- According to DCAD, the site was developed in 1949 with a single family home that is in "average" condition with 968 square feet of living space. DCAD states that there is a detached garage (220sq. ft) on the property.

- A 5' side yard setback is required in the R-7.5(A) zoning district. The applicant submitted a site plan indicating a "new carport" on the site that is located 2' 6" from the side yard property line (or 2' 6" into the 5' side yard setback).
- Two other carports were noted on the block. A carport was noted in what maybe a side yard setback to the south of the site. Archive maps in Development Services show a record of 3809 Webdon Dr. and 3822 Wembdon Dr. having been "special excepted" by the Board of Adjustment.
- The Dallas Development Code provides for the Board of Adjustment to consider special exceptions for carports in the side yard setback with a specific basis for this type of appeal.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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

Case 078-001 heard before Panel A received approval for a special exception to the front yard setback regulations of 25 feet.

Timeline:

January 24, 2008 The applicant submitted an "Application to the Board of Adjustment" and related documents which have been included as part of this case report.

February 13, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

February 14, 2008: The Board of Adjustment Senior Planner contacted the applicant and shared the following information by phone and letter:

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

- the criteria or standard that the board will use in their decision to approve or deny the request;
- the March 3rd deadline to submit additional evidence for staff to factor into their analysis;
- the March 7, 2008 deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the March public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.

February 20, 2008: Applicant submitted additional information for staff to review, including a petition in support of the applicant (see attachments).

February 29, 2008 Review Comment Sheet submitted by Code Inspection (see attachment).

March 4, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearing. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Chief Arborist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The submitted site plan indicates that about 20% of the proposed carport structure's 453 square foot footprint is to be located in the site's 5' side yard setback.
- The site is flat, rectangular in shape (62' x 150') and 9,300 square feet in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- The applicant has the burden of proof in establishing the following:
 - That granting the special exception to the side yard setback regulations of 5' requested to maintain an approximately 453 square foot wood-posted, shingle-roofed carport attached to a single family home that is 2' 6" from the side yard property line (or 2' 6" into the 5' side yard setback) will not have a detrimental impact on surrounding properties.

- Granting this special exception would allow the carport to remain in its current location 2' 6" away from the site's side yard property line (or 2' 6" into the required 5' side yard setback).
- Code Inspection submitted a review comment sheet with the following comments : "Recommends that this be denied. Need to keep sideyards intact—especially in these neighborhoods. They have a garage, park cars in garage."
- Typically, staff has suggested that the Board impose conditions with this type of appeal. The following conditions would restrict the location and size of the carport in the side yard setback; require the carport in the side yard setback to be retained in its current design, material, and configuration; and would require the applicant to mitigate any water drainage related issues that the carport may cause on the lot immediately adjacent:
 1. Compliance with the submitted site plan, elevation, and sectional view document.
 2. The carport structure must remain open at all times.
 3. There is no lot-to-lot drainage in conjunction with this proposal.
 4. All applicable building permits are obtained.
 5. No item (other than a motor vehicle) may be stored in the carport.

BOARD OF ADJUSTMENT ACTION: MARCH 19, 2008

APPEARING IN FAVOR: Magdaleno Ganzales, 3845 Wemdom, Dallas, TX

APPEARING IN OPPOSITION: Elizabeth Vail, 3852 Eaton Dr., Dallas, TX

MOTION: Chernock

I move that the Board of Adjustment, in Appeal No. **BDA 078-036**, on application of Magdaleno Gonzalez, **deny** the special exception requested by this applicant **without prejudice**, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that the carport will have a detrimental impact on surrounding properties.

SECONDED: Beikman

AYES: 5—Gillespie, Beikman, Chernock, Sorrells, Reynolds

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 078-014(K)

BUILDING OFFICIAL'S REPORT:

Application of Jeffrey Fine for a special exception to the side yard setback regulations at 5825 Williamstown Road. This property is more fully described as Lot 9 in City Block B/6991 and is zoned R-16(A), which requires a side yard setback of 10 feet. The applicant proposes to construct and maintain a single family residential structure and provide a 2 foot side yard setback which will require a special exception of 8 feet for tree preservation to the side yard setback regulations.

LOCATION: 5825 Williamstown Road

APPLICANT: Jeffrey Fine

REQUEST:

- A special exception to the side yard setback regulations of 8 feet is requested in conjunction with constructing and maintaining a single family accessory structure and provide a 2 foot side yard setback for the preservation of a tree in the side yard.

STAFF RECOMMENDATION:

Approval

Rationale:

- Although the trees are exempt from Article X, the Chief Arborist has examined the trees and determined the trees “are well maintained and are worthy of preservation (see attachment A).”

STANDARD FOR A VARIANCE:

The Dallas Development Code specifies that the board may grant a special exception to the minimum side yard requirements to preserve an existing tree.

In determining whether to grant this special exception, the board shall consider the following factors:

- (A) Whether the requested special exception is compatible with the character of the neighborhood.
- (B) Whether the value of surrounding properties will be adversely affected.
- (C) Whether the tree is worthy of preservation.

GENERAL FACTS:

- Structures on lots zoned R16 are required to provide minimum side yard setbacks of 10’.
- The site is rectangular in shape (115 ‘x 177’) and 17, 929 square feet in area where lots are required to have a minimum of 16,000 square feet in area.

- The proposed garage addition would encroach on the properties western side yard setback.
- DCAD states that the following improvements are on the subject site:
 - Room addition, 440 square feet
 - Pool

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

Zoning/BDA History:

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

Timeline:

- Dec. 19, 2007: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- January 17, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- January 18, 2008: The Board Senior Planner contacted the applicant and shared the following information by phone and letter:
- the public hearing date and panel that will consider the application;
 - the criteria and standards that the board will use in their decision to approve or deny the request;
 - the January 25th deadline to submit additional evidence for staff to factor into their analysis;
 - the February 1, 2008 deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to

“documentary evidence,” and may result in delay of action on the appeal or denial; and

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

January 29, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearing. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

January 30, 2008: The Chief Arborist submitted a memorandum to the Board’s Senior Planner (see attachment A)

February 13, 2008: The Board of Adjustment voted to hold the matter under advisement until March 19, 2008.

March 4, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearing. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The submitted site plan indicates that approximately 144 square feet (or 25% of the 576 square feet) of the proposed structure is located in the 10’ side yard setback.
- The site is flat, rectangular in shape (115’ x 177’) and 17,929 square feet in area. The site is zoned R-16 (A) where lots are a typically 16,000 square feet in area.
- In R-16(A) districts the side yard setback required is 10 feet. The applicant is proposing to construct a garage addition 8’ into the 10’ side yard setback and provide a 2’ side yard setback.
- The landscape plan submitted shows two clusters of live oak trees located on the property in close proximity to the proposed garage addition.
- A memo dated January 30, 2008 from the city’s chief arborist states the following:
 1. the two live oak cluster’s are located where stated on the landscape survey

2. the two clusters in question are maintained and worthy of preservation
 3. there is silver maple tree located on the adjacent property that may be affected by the proposed development
 4. the neighboring tree (silver maple) has limbs that overhang the property and pruning of lower limbs would occur due to elevation of the proposed structure in the setback
 5. good construction practices should be used to protect tree roots and minimize the damage to any trees.
- Article X (Landscape and Tree Preservation Regulations) of the Dallas Development Code does not apply to this case since single family uses are exempt from Article X tree protection status.
 - The applicant has the burden of proof in establishing the following:
 - That granting the special exception to the side yard setback regulations of 8' requested in conjunction with maintaining a single family accessory structure in the site's side yard setback is compatible with the character of the neighborhood.
 - The special exception to the side yard setback regulations of 8' will not adversely affect the value of surrounding properties.
 - The tree in question is worthy of preservation.
 - If the Board were to grant the side yard variance request of 8', imposing a condition whereby the applicant must comply with the submitted site plan, the structure in the side yard setback would be limited to that shown on this plan – which in this case is a single family accessory structure located 2' from the site's side property line (or 8' into the 15' side yard setback).

BOARD OF ADJUSTMENT ACTION: FEBRUARY 13, 2008

APPEARING IN FAVOR: Jeffrey Fine, 5825 Willamstown Rd., Dallas, TX

APPEARING IN OPPOSITION: Ted Byers, 5817 Williamstown Rd, Dallas, TX

MOTION: **Beikman**

I move that the Board of Adjustment in Appeal No. **BDA 078-014**, hold this matter under advisement until **March 19, 2008**.

SECONDED: **Chernock**

AYES: 4–Gillespie, Beikman, Chernock, Sorrells

NAYS: 0 –

MOTION PASSED 4– 0 (Unanimously)

BOARD OF ADJUSTMENT ACTION: MARCH 19, 2008

APPEARING IN FAVOR: Jeffrey Fine, 5825 Williamstown Rd., Dallas, TX
Pam Fine, 5825 Williamstown Rd., Dallas, TX

APPEARING IN OPPOSITION: Kent Bickwell, 5816 Williamstown Rd., Dallas, TX
Ted Byers, 5817 Williamstown, Rd., Dallas, TX
Nisha Byers, 5817 Williamstown Rd., Dallas, TX
Mary Beth Harrison, 7516 Villanova, Dallas, TX

MOTION: Chernock

I move that the Board of Adjustment, in Appeal No. **BDA 078-014**, on application of Jeffrey Fine, **deny** the special exception of eight feet to the side yard setback regulations to preserve an existing tree requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would not be compatible with the character of the surrounding neighborhood, or the value of surrounding properties would be adversely affected, or the tree is not worthy of preservation.

SECONDED: Beikman

AYES: 5–Gillespie, Beikman, Chernock, Sorrells, Reynolds

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

3:15 P.M.: Break

3:25 P.M.: Resumed

FILE NUMBER: BDA 078-010

BUILDING OFFICIAL'S REPORT:

Application of New Neighborhood Crime Watch Association, represented by Steven Sims and Tommy Brown, to require compliance of a nonconforming use at 3705 Bonnie View Road. This property is more fully described as Lot 5 in City Block 6079 and is zoned CR which limits the legal uses in a zoning district. The applicant requests that the Board establish a compliance date for a nonconforming hotel or motel use.

LOCATION: 3705 Bonnie View Road

APPLICANT: New Neighborhood Crime Watch Association
Represented by Steven Sims and Tommy Brown

REQUEST:

- A request is made for the Board of Adjustment to establish a compliance date for a nonconforming motel use (Motel 3) 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 the following:
 - On June 13, 1985, a motel certificate of occupancy was issued along with a building permit to construct a motel in an existing structure on property zoned LC with a hotel or motel use allowed by right.
 - On March 1, 1987, Ordinance No. 19455 was passed which created Chapter 51A and CR zoning which would allow a hotel or motel use with an SUP.
 - On September 30, 1987, Ordinance No. 19700 (see Exhibit A) was passed which required an SUP for a hotel or motel use in LC zoning with fewer than 50 rooms or fewer than 4 stories.
 - On July 18, 1989, Ordinance No. 20314 was passed which rezoned all property within the City of Dallas, including the subject site which was rezoned from LC (Light Commercial) to CR (Community Retail).
- 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 CR (Community Retail) that permits a "hotel or motel" use by SUP (Specific Use Permit) only.
- 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 CR (Community Retail) 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.
 - On January 4, 2008, the applicant submitted information to the Board Administrator on this application (see Attachment A). This information included the following:
 - Dallas Police Department report lists of arrests made in the 3700 block of Bonnie View Road from as early as January of 2002 to as recent as December of 2007; and
 - Multiple pages of individual Dallas Police Department reports at locations that appear to be at or near the subject site located at 3705 Bonnie View Road.
 - The Board of Adjustment conducted a public hearing on the matter on January 16, 2008 where the applicant submitted additional written information to the board at the public hearing (see Attachment B).
 - The board determined at their January 16th hearing, that based on the evidence and testimony presented to them, that continued operation of the nonconforming motel use would have an adverse effect on nearby properties, and set a hearing date March 19th for the purpose of establishing a compliance date for this nonconforming use.
 - All information submitted by the applicant (including but not limited to previous attachments entitled "Attachment A" and "Attachment B") related to whether continued operation of the nonconforming motel use would have an adverse effect on nearby properties has been retained in the case file and is available for review upon request.
 - On January 16, 2008, a subpoena duces tecum and interrogatories were sent to the owner of the nonconforming motel use.
 - On February 20, 2008, the owner of the nonconforming motel use submitted a response to the subpoena duces tecum and interrogatories (see Attachment C).
 - On March 5, 2008, a document was submitted to the Board Administrator entitled "Motel 3, BDA 078-010, As of January 31, 2008, Prepared March 5, 2008" (see Attachment D). The document was prepared by VALUE Incorporated, a company that the document describes as one that was retained by the City of Dallas to conduct an independent analysis to determine the extent to which the owner's capital investments in structures, fixed equipment and other assets at Motel 3 made prior to the use becoming nonconforming, have been amortized. This document

explains, among other things, its methodology for concluding that it is in their opinion that the income generated by the operation of Motel 3 has exceeded the maximum amount of costs required to bring the property into conformance, and therefore, no additional time is necessary for Motel 3 to operate for the owner to recover costs necessary to bring the property into conformance.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The site is currently developed with a motel use (Motel 3). The area to the north is developed with retail uses; the area to the east is developed with church and residential uses and vacant land; the area to the south is developed with a church use and vacant land; and the area to the west appears vacant/undeveloped.

Zoning/BDA History:

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

Timeline:

- Dec. 3, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Dec. 13, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Dec. 17, 2007: The Board Administrator wrote/sent the owner of the site (Leroy Watson et al) a letter (with a copy to the applicants) that informed them that a Board of Adjustment case had been filed against their property. The letter included the following enclosures:
- a copy of the Board of Adjustment application and related materials that had been submitted in conjunction with the application;
 - a copy of the section of the Dallas Development Code that described the Board of Adjustment (Section 51A-3.102);
 - a copy of the section of the Dallas Development Code that provides the definition of "nonconforming use" (Section 51A-2.102(90));

- a copy of the section of the Dallas Development Code that provides the definition and provisions set forth for “hotel or motel” use (Section 51A-4.205(1));
- a copy of the section of the Dallas Development Code that provides provisions for “nonconforming uses and structures” (Section 51A-4.704);
- a copy of the section of the Dallas Development Code that provides provisions regarding the Board of Adjustment hearing procedures (51A-4.703);
- a copy of the City of Dallas Board of Adjustment Working Rules of Procedure; and
- A copy of the hearing procedures for board of adjustment amortization of a nonconforming use.

The letter also informed the owner of the date, time, and location of the briefing/public hearing, and provided a deadline of January 4th to submit any information that would be incorporated into the board’s docket.

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

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

Jan. 4, 2008 The applicant submitted additional information on this application (see Attachment A).

Jan. 16, 2008: The Board of Adjustment conducted a public hearing on this appeal where the applicant submitted additional written documentation to the board (see Attachment B). 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 19, 2008 for the purpose of establishing a compliance date for this nonconforming use.

Jan. 16, 2008: A subpoena duces tecum and interrogatories were sent to the owner of nonconforming use on the subject site.

Feb. 20, 2008: The owner of the nonconforming use on the subject site submitted answers and responses to the subpoena duces tecum and interrogatories (see Attachment C).

March 4, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the

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

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

March 5, 2008: A document was submitted to the Board Administrator prepared by a company retained by the City of Dallas to conduct an independent analysis to determine the extent to which the owner's capital investments in structures, fixed equipment and other assets at Motel 3 made prior to the use becoming nonconforming, have been amortized (see Attachment D).

STAFF ANALYSIS:

- The motel use (Motel 3) on the subject site is a nonconforming use. According to city records, the motel use first became a nonconforming use on September 30, 1987 when the City Council passed Ordinance No. 19700, and again on July 18, 1989, when the City Council passed Ordinance No. 20314.
- 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.
- The owner of the site could eliminate the nonconforming use status of the existing motel use by obtaining an SUP 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 CR (Community Retail) 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.
- On January 16, 2008, 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 19, 2008 for the purpose of establishing a compliance date for this nonconforming use.
- The purpose of the Board of Adjustment's March 19th 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.
 - On February 20, 2008, the owner of the nonconforming motel use submitted a response to the subpoena duces tecum and interrogatories (see Attachment C).
 - On March 5, 2008, a document was submitted to the Board Administrator entitled "Motel 3, BDA 078-010, As of January 31, 2008, Prepared March 5, 2008" (see Attachment D). The document was prepared by VALUE Incorporated, a company that the document describes as one that was retained by the City of Dallas to conduct an independent analysis to determine the extent to which the owner's capital investments in structures, fixed equipment and other assets at Motel 3 made prior to the use becoming nonconforming, have been amortized. This document explains, among other things, its methodology for concluding that it is in their opinion that the income generated by the operation of Motel 3 has exceeded the maximum amount of costs required to bring the property into conformance, and therefore, no additional time is necessary for Motel 3 to operate for the owner to recover costs necessary to bring the property into conformance.

BOARD OF ADJUSTMENT ACTION: JANAUARY 16, 2008

APPEARING IN FAVOR: Steven Sims, 3610 Bonnieview Rd., Dallas, TX
Tommy Brown, 611 Blue Chalk Dr., Cedar Hill, TX

APPEARING IN OPPOSITION: Leroy Watson, 3944 Kiest Meadow, Dallas, TX

MOTION: **Chernock**

I move that the Board of Adjustment in Appeal No. **BDA 078-010**, 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, based on the following factors:

- The character of the surrounding neighborhood.
- The manner in which the use is being conducted.
- The extent to which continued operation of the use may threaten public health or safety.
- The extent to which public disturbances may be created or perpetuated by continued operation of the use.
- With the finding of fact of testimony and evidence, including Dallas Police Department reports presented by Steven Sims and Tommy Brown, a hearing date of **March 19, 2008** is set for the purpose of establishing a compliance date for this nonconforming use.

SECONDED: **Beikman**

AYES: 5–Cox, Gillespie, Beikman, Chernock, Sorrells
NAYS: 0 –
MOTION PASSED 5 – 0 (Unanimously)

BOARD OF ADJUSTMENT ACTION: MARCH 19, 2008

APPEARING IN FAVOR: Steven Sims, 3610 Bonnieview Rd., Dallas, TX

APPEARING IN OPPOSITION: Leroy Watson, 3944 Kiest Meadow, Dallas, TX

APPEARING FOR THE CITY: Shereen El Domeiri, 1500 Marilla, 7DN, Dallas, TX
Bob Bridges, 4532 Postbridge Dr., Dallas, TX

MOTION: **Sorrells**

I move that the Board of Adjustment, in Appeal No. **BDA 078-010**, provide a compliance date of **April 18, 2008** for the nonconforming hotel or motel use currently being operated on the property located at 3705 Bonnie View Road, because the facts and testimony show that the owner’s actual investment in the use, before the time that the use became nonconforming, can be amortized within this time period. I further move that the owner’s certificate of occupancy for the hotel or motel use be revoked on **April 18, 2008**, unless the hotel or motel use becomes a conforming use.

SECONDED: **Beikman**

AYES: 4–Cox, Beikman, Chernock, Sorrells

NAYS: 1 – Gillespie

MOTION PASSED 4 – 1

MOTION: Beikman

I move to adjourn this meeting.

SECONDED: Chernock

AYES: 5–Gillespie, Beikman, Chernock, Sorrells, Reynolds

NAYS: 0 -

MOTION PASSED 5 – 0 (unanimously)

4:04 P.M. - Board Meeting adjourned for **March 19, 2008.**

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

Note: For detailed information on testimony, refer to the tape retained on file in the Department of Planning and Development.