

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM
WEDNESDAY, MAY 17, 2006**

MEMBERS PRESENT AT BRIEFING: Alice Cox, Vice-Chair, Taylor Brannon, Panel Vice-Chair, Marla Beikman, regular member, Christian Chernock, regular member and Maria Gomez, alternate member

MEMBERS ABSENT FROM BRIEFING: Samuel Gillespie, regular member

MEMBERS PRESENT AT HEARING: Alice Cox, Vice-Chair, Taylor Brannon, Panel Vice-Chair, Marla Beikman, regular member, Christian Chernock, regular member and Maria Gomez, alternate member

MEMBERS ABSENT FROM HEARING: Samuel Gillespie, regular member

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

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

10:15 AM. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's May 17, 2006 docket.

10:26 A.M. Executive Session Begins

10:35 A.M. Executive Session Ends

1:15 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 April 19, 2006 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: MAY 17, 2006

MOTION: Gomez

I move approval of the Wednesday, April 19, 2006 Board of Adjustment Public Hearing minutes.

SECONDED: Beikman

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

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

MISCELLANEOUS ITEM NO. 2

An executive session will be conducted by an assistant city attorney to brief the board pursuant to Texas Open Meetings Act Section 551.071, on a matter regarding - Pedro A. Lopez, Lela Sims, Robert Sims, Luis Alfredo Sierra T., Yolanda C. Sierra, Homer Hinojsa, Lucinda Hinojosa, and Ilda Cisneros v. The City of Dallas, Texas; Cause No. 3:03-CV-2223-M and BDA 056-149.

***This was not an action item.**

FILE NUMBER: BDA 056-128(J)

BUILDING OFFICIAL'S REPORT:

Application of Jerry Stark represented by Ryan Finan for a special exception to the single family regulations at 9114 Lake Highlands Place. This property is more fully described as Lot 15 in City Block 2/5382 and is zoned R-7.5(A) which limits the number of dwelling units to one. The applicant proposes to construct an accessory building that will include a second dwelling unit which will require a special exception to allow an additional dwelling unit. Referred to the Board of Adjustment in accordance with Section 51A-4.209 (b) (6) (E) (i) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 9114 Lake Highlands Place

APPLICANT: Jerry Stark
Represented by Ryan Finan

REQUEST:

1. A special exception to the single family use regulations is requested in conjunction with constructing an additional “dwelling unit” on a site developed with a single family home. The proposed additional “dwelling unit” in this appeal is a 2-story garage/dwelling unit structure.

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

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

GENERAL FACTS:

2. “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.
3. The subject site is 9,940 square feet in area and developed with, according to DCAD records, a single family home that is in average condition built in 1959 with 1,463 square feet of living area, and a detached garage.
4. The submitted site plan indicates, and the building inspection staff confirms, that a building permit has been issued for an addition to, and the remodeling of, the existing main structure on the site. Those plans include, as part of the total project, a proposed second floor quarters / garage to be considered as an additional dwelling unit.
 - This site plan indicates that the additional “dwelling unit” structure has a building footprint of approximately 31’4” x 30’ or is about 909 square feet in area.
 - The floor plan shows a garage area of about 638 square feet or 22’ x 29’. The “dwelling unit” area on the second floor is about 782 square feet.
 - The site plan indicates that the additional “dwelling unit” structure will be located 5’ from the nearest property line which in this case is the side property line on the east.
 - The setback of the structure to the rear property line to the north is shown as approximately 9’. The site plan shows the garage will have a front and rear garage door and the rear garage door provides the required 20’ setback for an enclosed parking space.

- The submitted elevation indicates that the 2-story additional “dwelling unit” structure will be approximately 18’5” in height.
- The floor plan indicates space for a 2-car garage, workspace, storage closet, stairs, living area, two closets, kitchen, and bath.
- If this request is granted, a completed deed restriction stating that the additional dwelling unit on the site will not be used for rental accommodations must be submitted to the Board Administrator, approved by the City Attorney’s Office as to form, and filed in the deed records of the applicable county (in this case, Dallas County) before the applicable permits for this additional dwelling unit can be issued by the City.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5(A) (Single family residential 7,500 square feet)
North: R-7.5(A) (Single family residential 7,500 square feet)
South: R-1AC(A) (Single family residential 1 acre)
East: R-7.5(A) (Single family residential 7,500 square feet)
West: R-7.5(A) (Single family residential 7,500 square feet)

Land Use:

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

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:

- March 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.
- April 20, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- April 21, 2006: The Board Administrator contacted the applicant via letter and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the

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

- the May 5th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the May public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 1, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Department Transportation Engineer, Senior Planner Hiromoto, Development Services Department Code Specialist, and the Assistant City Attorney to the Board.

No review comment sheets were received on this case.

STAFF ANALYSIS:

- The proposed structure will have a garage that is accessed internally through the lot and the alley.
- The submitted site plan shows a 5' setback to the east side as required for accessory structures exceeding 15' in height.
- The applicant has the burden of proof in establishing that the additional dwelling unit will not be used as rental accommodations and that will not adversely affect neighboring properties.
- The Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.
- If the Board were to approve the special exception request, subject to imposing a condition that the applicant comply with the submitted elevation and site plan, the proposed "dwelling unit" structure would be restricted to the specific location, size, and height shown on the plans, which in this case is a 2-story garage/dwelling unit structure.

BOARD OF ADJUSTMENT ACTION: MAY 17, 2006

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Chernock

I move that the Board of Adjustment **grant** the following application listed on the uncontested docket because it appears, from our evaluation of the properties and all relevant evidence that the application satisfies all the requirements of the Dallas Development Code and are consistent with the general purpose and intent of the Code. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan and elevation is required.
- The property must be deed-restricted to prohibit the additional dwelling unit on the site from being used as rental accommodations.

SECONDED: Brannon

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

NAYS: 0 –,

MOTION PASSED: 5 – 0(Unanimously)

FILE NUMBER: BDA 056-141

BUILDING OFFICIAL'S REPORT:

Application of Laws Street Development, LP, represented by Masterplan, for a special exception to the landscape regulations at 2200 N. Lamar Street. This property is more fully described as a tract of land in City Block 390 and is zoned PD 193 CA2, which requires mandatory landscaping for additions. The applicant proposes to construct an addition and provide an alternate landscape plan which would require a special exception to the landscape regulations. Referred to the Board of Adjustment in accordance with Section 51A-10.110 of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 2200 N. Lamar Street

APPLICANT: Laws Street Development, LP
Represented by Masterplan,

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with constructing and maintaining an approximately 13,000 square foot addition within an existing building on the subject site.

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:

- 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 width and location of required sidewalks.

- The applicant's representative has informed the Board Administrator that this request is triggered by a 13,000 square foot mezzanine structure to be added within the existing structure on the site. (The site, according to DCAD records, is an "office building" structure with 41,738 square feet constructed in 1913).
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner (see Attachment B). The memo stated the following:
 - The applicant is requesting relief from the landscape requirements of PD 193, more specifically, relief from the width and the location of the required sidewalk.
 - The special exception request is triggered by increasing the number of stories on the lot/ increasing floor area.
 - Deficiencies:
 1. The applicant is required to provide a 6' wide sidewalk located between 5' and 12' from back of the street curb.
The applicant is proposing to provide the following:
 - Broom: 10'-14' wide sidewalk with 8' unobstructed where have tree grates located at back of curb.
 - N. Lamar: 4' wide sidewalk located at back of curb; and
 - Houston: 9' wide sidewalk with 4' unobstructed where have tree grates located back of curb

Factors for consideration:

- The ground level of the existing structure is not changing. The sidewalk along portions of the street frontage for this lot where N. Lamar and Houston intersect does comply. They are still providing street trees along Broom and Houston. Physically, doesn't appear to be room for attempting to comply with sidewalk requirements of Section 26 in PD 193.
- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included a letter that provided additional details about the request, and a copy of a power point show.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (CA-2 Subdistrict) (Planned Development District, Central Area)
North: PD No. 193 (CA-2 Subdistrict) (Planned Development District, Central Area)
South: PD No. 193 (I-2 Subdistrict) (Planned Development District, Industrial))
East: PD No. 193 (CA-2 Subdistrict) (Planned Development District, Central Area)
West: PD No. 582 (Planned Development District)

Land Use:

The subject site is developed with an office structure (The White Swann Building). The area to the north is under development; the area to the east is developed with surface parking; and the areas to the south and west are developed with office and retail uses.

Zoning/BDA History:

1. BDA 045-218, 2211 N. Lamar Street (the lot immediately west of the subject site) On May 17, 2005, the Board of Adjustment Panel A granted a request for a special exception to the landscape regulations. The board imposed the following condition in conjunction with this request: Compliance with the submitted landscape plan is required. The case report states that this request was made in conjunction with adding a new deck with metal canopy onto an existing 4-story office structure.

Timeline:

- March 30, 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.
- April 19, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- April 20, 2006: The Board Administrator met with the applicant’s representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;

- the April 28th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the May 8th 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 May public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 2, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Current Planning Chief Planner, 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.

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

May 8, 2006 The applicant's representative submitted additional information to the Board Administrator (see Attachment A).

May 8, 2006 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the special exception to the landscape regulations (see Attachment B).

STAFF ANALYSIS:

- An alternate landscape plan has been submitted with this request that, according to the City of Dallas Chief Arborist, is not fully complying with the sidewalk width and location requirements of the PD No 193 landscape regulations.
- The applicant has the burden of proof in establishing the following:
 - The special exception (where an alternate landscape plan has been submitted that, according to the Chief Arborist, is providing sidewalks that do not fully comply with the 6' width requirement nor the 5'-12' from back of curb location requirement) 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 alternate landscape plan, an approximately 13,000 square foot addition could be added within the existing approximately 42,000 square foot structure on the site (that, according to DCAD records, was constructed in

1913), where the site would be “excepted” from full complying with the sidewalk requirements of the Oak Lawn PD 193 landscape regulations.

BOARD OF ADJUSTMENT ACTION: MAY 17, 2006

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Chernock

I move that the Board of Adjustment **grant** the following application listed on the uncontested docket because it appears, from our evaluation of the properties and all relevant evidence that the application satisfies all the requirements of the Dallas Development Code and are consistent with the general purpose and intent of the Code. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted alternate landscape plan is required.

SECONDED: Brannon

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

NAYS: 0 –,

MOTION PASSED: 5 – 0(Unanimously)

FILE NUMBER: BDA 056-127(J)

BUILDING OFFICIAL'S REPORT:

Application of Fibertower, represented by Lisa Schmidt to enlarge a non-conforming use at 1810 Cockrell Avenue. This property is more fully described as Lot 11 in City Block 1094 and is zoned PD-317 which requires a Specific Use Permit for cell towers. The applicant proposes to add an antenna to an existing non-conforming cell tower which would require board approval to enlarge a non-conforming use. Referred to the Board of Adjustment in accordance with Section 51A-3.102 (d) (6) of the Dallas Development Code, as amended, which states the power of the Board to hear and decide requests for the enlargement of non-conforming uses.

LOCATION: 1810 Cockrell Avenue

APPLICANT: Fibertower
Represented by Lisa Schmidt

REQUEST:

- A request is made to enlarge a nonconforming use (cell tower).

GENERAL STANDARD FOR THE BOARD OF ADJUSTMENT:

In general. The regulations in this chapter have been established in accordance with a comprehensive plan for the purpose of promoting the health, safety, morals, and general welfare of the city in order to:

- (A) lessen the congestion in the streets;
- (B) secure safety from fire, flooding, and other dangers;
- (C) provide adequate light and air;
- (D) prevent the overcrowding of land;
- (E) avoid undue concentration of population;
- (F) facilitate the adequate provision of transportation, water, sewage, schools, parks, and other public requirements;
- (G) promote the character of areas of the city;
- (H) limit the uses in areas of the city that are peculiarly suitable for particular uses;
- (I) conserve the value of buildings; and
- (J) encourage the most appropriate use of land throughout the city.

GENERAL FACTS:

- An elevation has been submitted indicating that the use will be enlarged by adding additional antenna 63 feet in height and an equipment cabinet on an existing tower that has a total height of 70 feet.
- A site plan has been submitted indicating the location of the existing tower and cabinets.
- The cell tower use on the site could only become a conforming use once it has obtained a zoning classification from City Council that makes it a conforming use.
- This cell tower use is a nonconforming use in PD 317 Subdistrict 3A. PD 317 Subdistrict 3A zoning requires a Specific Use Permit for cell towers.
- The structure on the site is a conforming structure.
- The Dallas Development Code states that the board has the power “to hear and decide requests for the enlargement of a nonconforming use.”
- The Dallas Development Code defines a nonconforming use as “a use that does not conform to the use regulations of this chapter, but was lawfully established under regulations in force at the beginning of operation and has been in regular use since that time.”
- The Dallas Development Code defines a nonconforming structure as “a structure that does not conform to the regulations (other than use regulations) of this chapter, but which was lawfully constructed under the regulations in force at the time of construction.”
- The applicant was provided by mail a copy of the section of the Dallas Development Code pertaining to “Nonconforming Uses and Structures” which fully explains the purpose of how the purpose of this section of the code “that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code; and how nonconforming uses can be brought to the Board of Adjustment for amortization where if 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 that nonconforming use - a compliance date that is provided 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 request to the board is to enlarge a nonconforming *use*. The request is not to enlarge a nonconforming *structure*. The expanded cell tower use would be in compliance with development code standards such as setbacks, coverage requirements, height requirements, and parking requirements.
- According to DCAD, the request site is undeveloped.
- The ordinance for PD 317 indicates that City Council approved the original PD 317 zoning on July 26, 1989. PD 317 has been amended as recently as 2001. The zoning on the request site before PD 317 was *CR Community Retail*, which allows a cell tower by Specific Use Permit.

BACKGROUND INFORMATION:

Zoning:

Site: PD 317 Subdistrict 3A (Cedars Special Purpose District-Mixed Use)
North: PD 317 Subdistrict 3A (Cedars Special Purpose District-Mixed Use)
South: PD 317 Subdistrict 3A (Cedars Special Purpose District-Mixed Use)
East: PD 317 Subdistrict 3A (Cedars Special Purpose District-Mixed Use)
West: PD 317 Subdistrict 3A (Cedars Special Purpose District-Mixed Use)

Land Use:

The subject site is developed with a cell tower use. The areas to the north, east and west are developed with industrial uses and the area to the south is undeveloped.

Zoning/BDA History:

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

Timeline:

- March 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.
- April 20, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- April 21, 2006: The Board Administrator contacted the applicant via letter and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the

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

- the May 5th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the May public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 1, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Department Transportation Engineer, Senior Planner Hiromoto, Development Services Department Code Specialist, and the Assistant City Attorney to the Board.

No review comment sheets were received on this case.

STAFF ANALYSIS:

- An elevation has been submitted indicating that the use will be enlarged by adding additional antenna 63 feet in height and an equipment cabinet on an existing tower that has a total height of 70 feet.
- A site plan has been submitted indicating the location of the existing tower and cabinets.
- Granting this request would allow the existing cell tower use to be expanded with an additional antenna.
- It is the applicant's burden of proof to establish that the expansion of the non-conforming use is in accordance with the general purpose of the Dallas Development Code.

BOARD OF ADJUSTMENT ACTION: MAY 17, 2006

APPEARING IN FAVOR: Lisa Schmidt, 12 Aarrowhead Cr, Hickory Creek, TX

APPEARING IN OPPOSITION: Wilson Roe, 6814 Hammond Ave., Dallas, TX

MOTION: Beikman

I move that the Board of Adjustment in Appeal No. **BDA 056-127**, on application of Fibertower, represented by Lisa Schmidt, **deny** the request for the enlargement of the nonconforming use 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 enlargement is inconsistent with the general purposes of the Dallas Development Code, as amended.

SECONDED: Chernock

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

NAYS: 0 –,

MOTION PASSED: 5 – 0(Unanimously)

FILE NUMBER: BDA 056-129

BUILDING OFFICIAL'S REPORT:

Application of Terrance J. Wright/ Wright Group Architects, represented by Terry Wright, for a variance to the front yard setback regulations at 3614 Brown Street. This property is more fully described as part of Lot 10 in City Block 1022 and is zoned PD-193 which requires a front yard setback of 20 feet. The applicant proposes to construct a single family dwelling and provide a front yard setback of 9 feet (for steps) which would require a variance of 11 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

LOCATION: 3614 Brown Street

**APPLICANT: Terrance J. Wright/ Wright Group Architects
Represented by Terry Wright**

May 17, 2006 Public Hearing Notes:

- The applicant’s representative submitted additional documentation at the public hearing. This documentation included photos of the site and surrounding area, and letters in support of the application.

REQUEST:

- A variance to the front yard setback regulations of 11’ is requested in conjunction with constructing and maintaining entry stairs that would attach to a 3-story single family home (with an approximately 1,500 square foot building footprint) on a site that is currently undeveloped.

STANDARD FOR A VARIANCE:

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

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

GENERAL FACTS:

- A 20' front yard setback is required in the PD No. 193 (MF-3 Subdistrict) zoning district.
The applicant proposes to construct and maintain entry stairs that would attach to a single family home that would be located 9' from the front property line (or 11' into the 20' front yard setback).
- The submitted site plan denotes that the area of the proposed single family structure (entry stairs) located in the 20' front yard setback is approximately 66 square feet (or 11' x 6') in area.
- The site is undeveloped, somewhat sloped, rectangular in shape (72.6' x 50'), and 3,630 square feet in area.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (MF-3 Subdistrict) (Planned Development, Multifamily 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 undeveloped. The areas to the north, east, south, and west are developed with residential uses.

Zoning/BDA History:

1. BDA 989-169, 3614 Brown Street (the subject site)
On June 15, 1999, the Board of Adjustment Panel B granted requests for variances to the front, side, and rear yard setback regulations and to the height regulations. The board imposed the following condition in conjunction with these requests: Compliance with the submitted site plan and elevation is required. The case report states that requests were

2. BDA 990-222, 2704 Welborn Street (the lot northwest of the subject site)

made in conjunction with constructing/maintaining a 5-story, 60' high, approximately 10,000 square foot single family home.

On February 22, 2000, the Board of Adjustment Panel A granted requests for special exceptions to the fence height regulations of 8' and the visibility obstruction regulations. The board imposed the following condition in conjunction with the fence special exception request: Compliance with the revised site plan (submitted at the public hearing which replaces the wood wall with an open metal fence) is required, and the area inside the open metal fence be landscaped with evergreen shrubs or vines as required by Section 26. Landscape, streetscape, screening, and fencing standards. (f)(6) of PD No. 193. The board imposed the following condition in conjunction with the visibility obstruction special exception request: The only elements allowed in the intersection visibility triangle is a maximum 6' high open metal fence atop a 4' high retaining wall; and, and the area inside the open metal fence be landscaped with evergreen shrubs or vines as required by Section 26. Landscape, streetscape, screening, and fencing standards. (f)(6) of PD No. 193. The case report states the requests were made to retain a 6' high open metal fence along Welborn Street, a 6' high open metal fence along Welborn and Brown Streets atop a 4' high stone retaining wall, and a 6' high open metal fence and an 8' high solid wood wall atop a 4' high retaining wall along Brown Street.

Timeline:

- March 28, 2006 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- April 19, 2006: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the

same request, that case must be returned to the panel hearing the previously filed case.”

- April 20, 2006: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the April 28th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board’s docket;
 - the May 8th 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 May public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 2, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Current Planning Chief Planner, 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.

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

STAFF ANALYSIS:

- The site is undeveloped, somewhat sloped, rectangular in shape (72.6’ x 50’), and 3,630 square feet in area.
- The site is zoned PD No. 193 (MF-3 Subdistrict).
- According to calculations taken from the submitted site plan, the area of the proposed single family structure (entry stairs) located in the 20’ front yard setback is approximately 66 square feet (or 11’ x 6’) in area.
- The applicant has the burden of proof in establishing the following related to the front yard variance request:

- That granting the variance to the front yard setback regulations of 11' requested to construct and maintain entry stairs that would attach to a proposed single family home will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
- The variance to the front yard setback regulations of 11' requested to construct and maintain entry stairs that would attach to a single family home is necessary to permit development of the subject site (a site that is undeveloped, and a site that is somewhat sloped, rectangular in shape (72.6' x 50'), and 3,630 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 No. 193 (MF-3 Subdistrict) zoning classification.
- The variance to the front yard setback regulations of 11' requested to construct and maintain entry stairs that would attach to a single family home 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 No. 193 (MF-3 Subdistrict) zoning classification.
- If the Board were to grant the front yard variance request of 11', imposing a condition whereby the applicant must comply with the submitted site plan, the only structure that would be permitted to encroach into the front yard setback would be a entry stairs (that would attach to single family home) that would be located 9' from the site's front property line (or 11' into the 20' front yard setback).

BOARD OF ADJUSTMENT ACTION: MAY 17, 2006

APPEARING IN FAVOR: Terry Wright, 1110 S. Elm St., Carrollton, TX

APPEARING IN OPPOSITION: No one

MOTION: **Gomez**

I move that the Board of Adjustment, in Appeal No. **BDA 056-129**, on application of Terrance J. Wright/Wright Group Architects, represented by Terry Wright, **grant** the 11 foot variance to the front yard setback regulations, because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: **Brannon**

AYES: 3—Cox, Brannon, Gomez

NAYS: 2 – Chernock, Beikman

MOTION FAILED 3 –2

***Since the motion to grant did not get four concurring votes, the motion failed and is therefore deemed denied with prejudice.**

FILE NUMBER: BDA 056-132

BUILDING OFFICIAL'S REPORT:

Application of Nick Rizos for a special exception to the landscape regulations at 2828 W. Northwest Highway. This property is more fully described as Lot 1A in City Block A/5780 and is zoned CR which requires mandatory landscaping. The applicant proposes to construct a commercial building and provide an alternate landscape plan which would require a special exception to the landscape regulations. Referred to the Board of Adjustment in accordance with Section 51A-10.110 of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 2828 W. Northwest Highway

APPLICANT: Nick Rizos

May 17, 2006 Public Hearing Notes:

- The applicant's representative submitted additional documentation at the public hearing. This documentation included photos of the site and surrounding area.

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with obtaining a final CO (Certificate of Occupancy) and building permit on a site developed with a commercial/retail center (La Plaza de Guadalupe).

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 design standard, and street tree requirements of the 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 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 two design standard, and the street tree requirements of the landscape regulations.

- The special exception request is triggered by new construction.

- Deficiencies:

1. The applicant is required to provide a 10' wide landscape buffer strip where there is residential adjacency (which in this case is the entire length of the property adjacent to Starlight) which must include one plant group for each 50 linear feet of adjacency. (A total of 15 plant groups would be required for this site).

The applicant is proposing to provide 5.5' of permeable surface within the first 10' of the property line and 5 plant groups (at best) for Lot 1A.

2. The applicant is required to provide one, 3' diameter "large" street tree for each 50 linear feet of street frontage and be located within 30' of the projected street curb. (Lot 1A requires 17 street trees).

The applicant is proposing to provide only 6 "large" trees within 30' of the projected street curb for Lot 1A.

3. The applicant is required to provide 2 design standards (Lot 1A and 3A).

The applicant is proposing to provide 0 design standards (Lot 1A and Lot 3A).

Factors for consideration:

- The sidewalk that is causing the conflict was not identified on the landscape plan submitted and reviewed in association with the building permit. With the sidewalk in its current location, the site physically can not comply with the requirements of having residential adjacency. There is room to meet the street tree requirements, but the owner would have to change the species of some of the trees proposed. There also is room to provide two design standards but the owner would have to add plant materials and possibly

explore the idea of selecting one of the hardship options to meet the second design standard.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Deed Restricted) (Community Retail)
North: CR (Community Retail)
South: MF-2 (A) (Multifamily residential)
East: CR (Community Retail)
West: CR (Community Retail)

Land Use:

The subject site is developed as a retail center (La Plaza de Guadalupe). The areas to the north, east, and west are developed with retail/commercial uses; and the area to the south is developed with multifamily uses.

Zoning/BDA History:

1. Z945-287, northeast side of Starlight Road, northwest of Webb Chapel Extension (the subject site) On October 25, 1995, the City Council granted an application for a CR Community Retail District on property zoned an MF-2 District, and granted a resolution authorizing acceptance of a deed restriction instrument in conjunction with the change in zoning. (The deed restrictions provided that the following uses are not permitted on the property: alcoholic beverage establishments, pawn shops, sexually oriented businesses, and dance halls).

Timeline:

- March 30, 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.
- April 19, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- April 20, 2006: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;

- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the March 24th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the April 10th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the April public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 2, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Current Planning Chief Planner, 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

The District Manager in Code Compliance submitted a Review Comment Sheets marked "Has no objections."

May 8, 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 design standard, and street tree 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 15 plant groups, 17 street trees, and 2 design standards) will unreasonably burden the use of the property (in this case, if approved, with commercial/retail center).
 - The special exception (whereby 5.5' of "permeable surface" of the required 10' wide landscape buffer strip with 5 (at best) plant groups, 6 of 17 street trees, and

0 of 2 design standards are 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 “CO’ed” and “finalized” for a commercial/retail strip, and would be “excepted” from complying with the 10’ wide landscape buffer strip, street tree, and design standard requirements of the landscape regulations.

BOARD OF ADJUSTMENT ACTION: MAY 17, 2006

APPEARING IN FAVOR: Tom Vergos, 2129 Pueblo, Carrollton, TX

APPEARING IN OPPOSITION: No one

MOTION: Brannon

I move that the Board of Adjustment in Appeal No. **BDA 056-132**, on application of Nick Rizos, **grant** the request of this applicant to provide an alternate landscape plan as a special exception to the landscape requirements in the Dallas Development Code, because our evaluation of the property and the testimony shows that strict compliance with the requirements will unreasonably burden the use of the property; the special exception will not adversely affect neighboring property; and the requirements are not imposed by a site specific landscape plan approved by the city plan commission or city council. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted alternate landscape plan is required.

SECONDED: Gomez

AYES: 4–Cox, Brannon, Chernock, Gomez

NAYS: 1 –Beikman,

MOTION PASSED: 4 –1

FILE NUMBER: BDA 056-144

BUILDING OFFICIAL'S REPORT:

Application of Ted Murday-Adams Engineering for a variance to the parking regulations at 3515 Swiss Avenue. This property is more fully described as a tract of land in City Block 2/749 and is zoned PD-298 which requires parking to be provided. The applicant proposes to change the use of a building to a medical clinic and office use and provide 25 of the required 46 parking spaces which would require a variance of 21 spaces. Referred to the Board of Adjustment in accordance with Section 1A-3.102(d)(10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

LOCATION: 3515 Swiss Avenue

APPLICANT: Ted Murday-Adams Engineering

REQUEST:

- A variance to the off-street parking regulations of 21 spaces (or 46% of the required off-street parking) is requested in conjunction with leasing an existing 11,480 square foot structure with a combination of “medical clinic” and “office” uses.

The applicant had originally requested a special exception to the off-street parking regulations of 5 spaces on what had thought to have been a scenario where the reduction to the parking requirement was 11% of the total parking requirement. (The original Building Official’s Report had conveyed that the applicant was providing 42 of 47 required spaces). However, on May 4, 2006 a reassessment of the proposal was made whereby the City determined that the applicant was only providing 25 of 46 required spaces for the “medical clinic” and “office’ uses proposed on the site.

STANDARD FOR A VARIANCE:

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

GENERAL FACTS:

- The site is flat, rectangular in shape (192’ x 100’), and 19,200 square feet in area.
- The site is zoned PD No. 298.
- The Dallas Development Code requires the following parking requirements for the proposed use on the subject site:
 - 1 space is required for every 200 square feet of floor area for “medical clinic or ambulatory surgical center” use.
 - 1 space is required for every 333 square feet of floor area for “office” use.The applicant proposes to provide 25 (or 54%) of the total required 46 off-street parking spaces on the site.
- No enlargements or additions to the existing structure are planned in conjunction with this request. The site plan that was originally submitted with the application denoted following:
 - Area of 1st floor: 5,740 square feet at 1 space per 200 (29 spaces)
 - Area of 2nd floor: 5,740 square feet at 1 space per 333 (18 spaces)
 - Total spaces required: 47

- Total spaces provided: 42
- Parking short: 5
- A revised site plan was submitted on May 5, 2006 (see Attachment A). This revised site plan denoted that the proposed uses for the building are as follows:
 - Area of Dialysis Clinic (First floor): 5,740 S.F. / 200 = 28.7 spaces
 - Area of Regional Offices (Second floor): 5,740 S.F. / 333 = 17.2 spaces
 - Total parking spaces required: 46 spaces
 - Total compliant parks provided: 25 spaces
 - Total parking spaces requested: 21 spaces
- According to DCAD records, the subject site is developed with a 12,720 square foot “office building” built in 1960.
- On May 5, 2006, the applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a document that explained additional details about the request; and
 - a revised site plan denoting the amount of parking spaces required, provided, and requested on the site.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 298 (Planned Development District)
North: PD No. 298 (Planned Development District)
South: PD No. 298 (Planned Development District)
East: PD No. 298 (Planned Development District)
West: PD No. 298 (Planned Development District)

Land Use:

The subject site is developed with an office building. The areas to the north, east, and west are developed with surface parking use; and the area to the south is developed with medical office uses.

Zoning/BDA History:

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

Timeline:

March 31, 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.

April 19, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

- April 20, 2006: The Board Administrator contacted with the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the April 28th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - the May 8th 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 May public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- May 2, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Current Planning Chief Planner, 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.
- May 4, 2006 The Development Services Senior Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments:
- "Req'd: 46 parking spaces. Prov'd 25 or 54% of requirmt. The applicant stated that he would provide a write-up to show limited number of patients at any point in time, limited number of patient capable of driving, availability of on-street metered parking, etc."
- May 4, 2006: The Building Inspection Development Code Specialist forwarded a revised Building Official's Report to the Board Administrator that amended the original request for a parking special exception of 5 spaces (where 42 of 47 required spaces were to be provided) to a parking *variance* request of 21 spaces (where 25 of 46 required spaces are to be provided).
- May 4, 2006: The Board Administrator contacted with the applicant and shared the following information:

- the criteria/standard that the board will use in their decision to approve or deny the *variance* 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 May 8th 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 May public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 8, 2006

The applicant submitted information beyond what was submitted with the original application (see Attachment A).

STAFF ANALYSIS:

- The site is flat, rectangular in shape (192' x 100'), and 19,200 square feet in area.
- The site is zoned PD No. 298.
- 54 percent of the required off-street parking spaces are proposed to be provided in conjunction with leasing an existing approximately 11,500 square foot structure built in 1960 with a combination of "medical clinic" and "office" uses.
- The Development Services Senior Engineer has submitted a Review Comment Sheet marked "Has no objections if certain conditions are met" commenting:
 - "Req'd: 46 parking spaces. Prov'd 25 or 54% of requirmt. The applicant stated that he would provide a write-up to show limited number of patients at any point in time, limited number of patient capable of driving, availability of on-street metered parking, etc."
- The applicant has the burden of proof in establishing the following related to the variance request:
 - That granting the variance to the parking regulations of 21 spaces requested to lease an approximately 11,500 square foot structure with a combination of "medical clinic" and "office" uses will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance to the parking regulations of 21 spaces requested to lease an approximately 11,500 square foot structure with a combination of "medical clinic" and "office" uses is necessary to permit development of the subject site (a site that is developed with, according to DCAD, a 12,720 square foot office building built in 1960, and a site that is flat, rectangular in shape (192' x 100'), and 19,200 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 No. 298 zoning classification.

- The variance to the parking regulations of 21 spaces requested to lease an approximately 11,500 square foot structure with a combination of “medical clinic” and “office” uses 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 No. 298 zoning classification.
- If the Board were to grant the parking variance request of 21 spaces, imposing a condition whereby the applicant must comply with the submitted revised site plan, the structure could be leased with a combination of “medical clinic” and “office” uses and be required to provide only 25 of the required 46 parking spaces.

BOARD OF ADJUSTMENT ACTION: MAY 17, 2006

APPEARING IN FAVOR: Ted Murday, 5511 Vicksburg, Arlington, TX
Gary Hamilton, 695 E. Orchid Ln, Gilbert, AZ 85296

APPEARING IN OPPOSITION: No one

MOTION: Chernock

I move that the Board of Adjustment, in Appeal No. **BDA 056-144**, on application of Ted Murday, **grant** the variance to the off-street parking regulations of 21 spaces, because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan is required.

SECONDED: Brannon

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

NAYS: 0 –,

MOTION PASSED: 5 – 0(Unanimously)

FILE NUMBER: BDA 056-148

BUILDING OFFICIAL'S REPORT:

Application of Robert J. Colburn for a variance to the height regulations at 3737 McMillan Avenue aka 3736 Glencoe Street. This property is more fully described as Lot 1 in City Block 2923 and Lot 5 in City Block T/2922 and is zoned MF-2(A) which limits the height of a building to 26 feet due to the R.P.S. regulations. The applicant proposes to construct a residential development and provide a building height of 36 feet which would require a variance of 10 feet to the height regulations. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

LOCATION: 3737 McMillan Avenue aka 3736 Glencoe Street

APPLICANT: Robert J. Colburn

May 17, 2006 Public Hearing Notes:

- The applicant submitted additional documentation at the public hearing. This documentation included a revised site plan of the site and a “Table of Comparisons” of the RPS on the subject site.

REQUEST:

- A variance to the height regulations (specifically to the residential proximity slope or RPS) of 10’ is requested in conjunction with constructing and maintaining a 58-unit townhome development where 2-3 story structures would reach 36’ in height on a site that is currently developed with two multifamily complexes (The Leeward and The Shenandoah) that have a total of 94 multifamily units.

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 Dallas Development Code establishes a residential proximity slope that limits height to 1 foot in height for every 3 feet away from private property in a residential zoning district (or a portion of a PD district which is restricted to residential uses). The submitted site plan and elevation denotes 3-story structures that will reach 36’ in height in locations adjacent to D (Duplex) zoned property to the east and north of the subject site.
- The site is zoned MF-2(A) where the maximum height is 36 feet (unless further restrictions are specified). In this case, the Dallas Development Code states that in MF-2 (A) zoning, if any portion of a structure is over 26 feet in height, that portion

may not be located above a residential proximity slope originating in an R, R(A), D, D(A), TH, or TH(A) zoning district (with exceptions for chimneys).

- Some of the proposed 2-3 story, 36' high structures on the site will encroach above the vertical plane extending from the boundary lines of private property in a D(A) residential zoning district to the east and north of the subject site. (The proposed 36' high structures are at the maximum permitted height allowed in the MF-2(A) zoning district for structures on a lot without residential adjacency and not encumbered by the RPS).
- The originally submitted elevation denoted the provision of a 45 degree slope line where the structures are 1' in height for every 1' away from the boundary lines of private property in the adjacent D (A) zoning. A revised elevation was submitted that denoted both 45 degree slope that is proposed to be provided on the site, and the 18.4 degree slope that is required on the site (see Attachment A).
- The site is zoned MF-2(A), is flat, irregular in shape, and, according to the application, about 3.7 acres in area.
- DCAD states that the part of the subject site located at 3737 McMillan is developed with a 62,991 square foot "apartment" built in 1958.
- DCAD states that the part of the subject site located at 3736 Glencoe is developed with a 32,946 square foot "apartment" built in 1960.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a letter that provided additional information about the requests;
 - elevations that indicates the amount of the proposed structures that encroaches above the required RPS line;
 - a site plan that indicated the portions of the townhomes that would be affected by the required 1:3 RPS line.

BACKGROUND INFORMATION:

Zoning:

Site: MF-2 (A) (Multifamily)
North: MF-2 (A) (Multifamily) & D (A) (Duplex)
South: MF-2 (A) (Multifamily)
East: D (A) (Duplex)
West: MF-2(A) (Multifamily)

Land Use:

The subject site is developed with two apartment complexes (The Leeward and The Shenandoah). The areas to the north and east are developed with duplex and church uses (The Ridgecrest Baptist Church); the area to the south is developed with duplex uses; and the area to the west is developed as a park (Glencoe Park).

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:

March 31, 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.

April 19, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

April 20, 2006: The Board Administrator contacted the applicant and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the April 28th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board’s docket;
- the May 8th 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 May public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 2, 2006 The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).

May 2, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Current Planning Chief Planner, 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.

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

STAFF ANALYSIS:

- The site is zoned MF-2(A), is flat, irregular in shape, and, according to the application, about 3.7 acres in area.
- There is only one property owner in the adjacent D(A) zoning from which the RPS originates from towards the subject site: this property owner is the Ridgeview Baptist Church.
- According to information submitted by the applicant, the closest structure to the subject site in D(A) zoning from which the RPS originates from towards the subject site is the Ridgeview Baptist Church which is located 220' and 95' from the east and north property lines, respectively.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the height regulations (specifically to the residential proximity slope) of 10' to construct and maintain a 36' high, 2-3 story, 58-unit townhome development will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance to the height regulations (specifically to the residential proximity slope) of 10' to construct and maintain a 36' high, 2-3 story, 58-unit townhome development is necessary to permit development of the subject site (a site that is flat, irregular in shape, and, according to the application, about 3.7 acres in area, and a site that is developed with two multifamily developments with a total of 94 units) 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-2(A) zoning classification.
 - The variance to the height regulations (specifically to the residential proximity slope) of 10' to construct and maintain a 36' high, 2-3 story, 58-unit townhome development 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 MF-2(A) zoning classification.
- If the Board were to grant the height variance request, imposing a condition whereby the applicant must comply with the submitted revised site plan and revised elevation, a 58-unit, 2-3 story, 36' high townhome development could be developed on the subject site that would encroach 10' above the imaginary RPS line from a point of origin east and north of the subject site.
- If the Board were to grant the height variance request of 10', imposing a condition whereby the applicant must comply with the submitted revised site plan and elevation, the encroachment would be restricted to the specific location, size, and heights of the townhomes shown on these documents.

BOARD OF ADJUSTMENT ACTION: MAY 17, 2006

APPEARING IN FAVOR: Rob Colburn, 6930 Gayridge, Dallas, TX

APPEARING IN OPPOSITION: Sally Garcia, 5623 Anita, Dallas, TX
 Leslie Zeiss, 5504 Ellsworth, Dallas, TX

MOTION: Beikman

I move that the Board of Adjustment in Appeal No. **BDA 056-148**, on application of Robert J. Colburn, **deny** the variance requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: Brannon

AYES: 4–Cox, Brannon, Beikman, Gomez

NAYS: 1 – Chernock,

MOTION PASSED: 4 – 0

FILE NUMBER: BDA 056-149(J)

BUILDING OFFICIAL'S REPORT:

Application of Tom Molini to enlarge a non-conforming use at 1240 Sargent Road. This property is more fully described as Lot 1 in City Block A/7721 and is zoned IM which requires board approval to enlarge a non-conforming use. The applicant proposes to construct an addition to an existing non-conforming use which would require board approval to enlarge a non-conforming use. Referred to the Board of Adjustment in accordance with Section 51A-3.102 (d) (6) of the Dallas Development Code, as amended, which states the power of the Board to hear and decide requests for the enlargement of a non-conforming use.

LOCATION: 1240 Sargent Road

APPLICANT: Tom Molini

REQUEST:

- A request is made to enlarge a nonconforming use (fat rendering).

GENERAL STANDARD FOR THE BOARD OF ADJUSTMENT:

In general. The regulations in this chapter have been established in accordance with a comprehensive plan for the purpose of promoting the health, safety, morals, and general welfare of the city in order to:

- (A) lessen the congestion in the streets;
- (B) secure safety from fire, flooding, and other dangers;
- (C) provide adequate light and air;
- (D) prevent the overcrowding of land;
- (E) avoid undue concentration of population;

- (F) facilitate the adequate provision of transportation, water, sewage, schools, parks, and other public requirements;
- (G) promote the character of areas of the city;
- (H) limit the uses in areas of the city that are peculiarly suitable for particular uses;
- (I) conserve the value of buildings; and
- (J) encourage the most appropriate use of land throughout the city.

GENERAL FACTS:

- The request site is developed with a fat rendering facility. A fat rendering facility is considered a potentially incompatible industrial use which is permitted only by Specific Use Permit (SUP) in an IM Industrial Manufacturing zoning district.
- The request site is located within a flood plain overlay district.
- The fat rendering use on the site could only become a conforming use once it has obtained a zoning classification from the City Council that makes it a conforming use.
- According to DCAD, the request site is developed with a 1,848 square foot office building constructed in 1942, a 1,500 square foot automotive service building constructed in 1950, three storage warehouse buildings (2,025 square feet and 2,600 square feet constructed in 1978 and 2,800 square feet constructed in 1981), and a 3,942 square foot heavy industrial building constructed in 1976.
- A site plan has been submitted indicating the location of the proposed additional building for housing electrical equipment.
- An elevation has been submitted indicating that the addition will be approximately 14' in height. A submitted layout drawing indicates the addition will be 17' x 26' or 442 square feet in area.
- The site plan shows 11 buildings that are on the two tracts that the fat rendering facility occupies. According to the site plan, the 11 buildings on the two tracts total approximately 51,328 square feet of metal and concrete buildings. The site plan notes that the square footage listed is calculated from outside building dimensions. Additional floor area may exist on site.
- The Dallas Development Code states that the board has the power "to hear and decide requests for the enlargement of a nonconforming use."
- The Dallas Development Code defines a nonconforming use as "a use that does not conform to the use regulations of this chapter, but was lawfully established under regulations in force at the beginning of operation and has been in regular use since that time."
- The applicant was provided by mail a copy of the section of the Dallas Development Code pertaining to "Nonconforming Uses and Structures" which fully explains the purpose of how the purpose of this section of the code "that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code; and how nonconforming uses can be brought to the Board of Adjustment for amortization where if 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 that nonconforming use - a compliance date that is provided

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 request to the board is to enlarge a nonconforming *use*. The request is not to enlarge a nonconforming *structure*. The fat rendering use would be in compliance with development code standards such as setbacks, coverage requirements, and height requirements.
- The site plan indicates 11 parking spaces are provided. Industrial (inside) uses require one space per 600 square feet of floor area. Assuming 51,328 square feet of floor area per the site plan, the use requires at least 85 spaces. The applicant is not seeking relief from the parking regulations with this application.

BACKGROUND INFORMATION:

Zoning:

Site: IM (Industrial Manufacturing)
North: IM (Industrial Manufacturing)
South: IM (Industrial Manufacturing) and IR (Industrial Research)
East: IM (Industrial Manufacturing)
West: IM (Industrial Manufacturing)

Land Use:

The subject site is developed with a fat rendering use. The area to the north is developed with an industrial use, the areas to the east and west are undeveloped and the area to the south is developed with a waste water treatment use (Dallas Water Utilities). The area located approximately 500 feet to the southwest of the request site is developed with single family residential.

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:

- April 7, 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.
- April 20, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- April 21, 2006: The Board Administrator contacted the applicant via letter and shared the following information:
- the public hearing date and panel that will consider the application;

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

May 1, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Department Transportation Engineer, Senior Planner Hiromoto, Development Services Department Code Specialist, and the Assistant City Attorney to the Board.

No review comment sheets were received on this case.

STAFF ANALYSIS:

- The request site is zoned IM with a flood plain overlay.
- The fat rendering use is considered a potentially incompatible use which requires an SUP in the IM zoning district.
- An elevation has been submitted indicating that the addition will be approximately 14' in height.
- A submitted layout drawing indicates the addition will be 17' x 26' or 442 square feet in area.
- A site plan has been submitted indicating the location of the existing buildings for the fat rendering use and the proposed addition.
- It appears that the development meets the development code standards for an inside industrial use except for the parking requirement.
- Granting this request would allow the existing fat rendering use to be expanded with an additional building for electrical equipment.
- It is the applicant's burden of proof to establish that the expansion of the non-conforming use is in accordance with the general purpose of the Dallas Development Code.

BOARD OF ADJUSTMENT ACTION: MAY 17, 2006

APPEARING IN FAVOR: Tom Molini, 1913 Wood Creek Dr., Grapevine, TX

APPEARING IN OPPOSITION: Brady R. Baxter, 11615 Forest Central Dr., #209, Dallas, TX

MOTION: **Brannon**

I move that the Board of Adjustment, in Appeal No. **BDA 056-149**, hold this matter under advisement until **June 21, 2006** with the directive to staff that the city provide mailed notices for the next hearing and that the area of notification be expanded to 750 feet.

SECONDED: **Gomez**

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

NAYS: 0 –,

MOTION PASSED: 5 – 0(Unanimously)

MOTION: **Brannon**

I move to adjourn this meeting.

SECONDED: **Beikman**

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

NAYS: 0 -

MOTION PASSED 5 – 0 (unanimously)

3:30 P.M. - Board Meeting adjourned for May 17, 2006.

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.