

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM
WEDNESDAY, AUGUST 15, 2007**

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

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Alice Cox, Vice-Chair, Taylor Brannon, Panel Vice-Chair, Samuel Gillespie, regular member, Marla Beikman, regular member and Christian Chernock, 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, Jennifer Hiromoto, Senior Planner, Chau Nguyen, Traffic Engineer, Phil Erwin, Interim 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, Jennifer Hiromoto, Senior Planner, Chau Nguyen, Traffic Engineer, Phil Erwin, Interim Chief Arborist and Trena Law, Board Secretary

9:44 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **August 15, 2007 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 June 13, 2007 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: AUGUST 15, 2007

MOTION: Gillespie

I move approval of the Wednesday, **June 13, 2007** Board of Adjustment Public Hearing minutes.

SECONDED: Taylor

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

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 067-099

BUILDING OFFICIAL'S REPORT:

Application of Alfredo Navarro, represented by Gabriela Rosales, for a variance to the off-street parking regulations at 5102 Ridgedale Avenue. This property is more fully described as Lot 1 in City Block V/2190 and is zoned CD No. 9 which requires a parking space to be located at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley. The applicant proposes to maintain a structure and provide enclosed parking spaces with a setback of 6 feet 9 inches which will require a 13 foot 3 inch variance to the off-street parking regulations.

LOCATION: 5102 Ridgedale Avenue

**APPLICANT: Alfredo Navarro
Represented by Gabriela Rosales**

REQUEST:

- A variance to the off-street parking regulations of 13' 3" is requested in conjunction with maintaining enclosed parking spaces in an existing single family structure* that are located less than the required 20' from the alley right-of-way line.

- * The existing single family structure on the site received variances to the side yard and front yard regulations in 2002 (BDA012-146).

STAFF RECOMMENDATION:

- Approval, subject to the following conditions:
 1. Compliance with the submitted site plan is required.
 2. An automatic garage door must be installed and maintained in working order at all times.
 3. At no time may the area in front of the garage be utilized for parking of vehicles.
 4. All applicable permits must be obtained.

Rationale:

- The irregular shape and restrictive size of the subject site preclude it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same CD No. 9 zoning classification. The lot is triangular in shape in a zoning district where lots are typically rectangular in shape. In addition, the lot size appears to be approximately 1,800 square feet in area in a zoning district where lots are typically 7,500 square feet in area.

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 requires that a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley.
The applicant has submitted a site plan that denotes a “proposed garage door at carport” that is located 6’ 9” from the alley right of way line or 13’ 3” into the 20’ setback for an enclosed parking space. (According to observations by the Board

Administrator on his field visit, the “proposed” garage door has already been installed).

- The site is flat, triangular in shape (according to the submitted plat, approximately 0’ on the north, 30.56’ on the south, 113.75’ on the east, and 119.75’ on the west). Although the application states that the site is 5,220 square feet (36’ x 145’) in area, calculations taken from the dimensions on the submitted plat result in a lot that is approximately 1,800 square feet in area. The site is currently zoned CD No. 9 but had been zoned R-7.5(A) where lots were typically 7,500 square feet in area prior to the creation of CD No. 9 in 2002.
- According to DCAD records, the property is developed with the following:
 - a single family home in “excellent” condition built in 2001 with 2,041 square feet of living area;
 - a 410 square foot attached garage; and
 - a 357 square foot attached carport.

BACKGROUND INFORMATION:

Zoning:

Site: CD No. 9 (Conservation District)
North: CD No. 9 (Conservation District)
South: CD No. 9 (Conservation District)
East: CD No. 9 (Conservation District)
West: CD No. 9 (Conservation District)

Land Use:

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

Zoning/BDA History:

1. BDA 012-146, 5102 Ridgedale Avenue (the subject site)

On February 12, 2002, the Board of Adjustment Panel B granted requests for a variance to the side yard setback regulations of 1’ and to the front yard setback regulations of 21’ imposing the following condition to the requests: compliance with the submitted building foot plan/print and elevations is required. The case report stated that the requests were complete a 3-story house on the site that was 90% framed. (The report states that the Building Official had determined that the triangular-shaped lot had one front yard setback on the west and two side yard setbacks- one on the south, another on the east; and no rear yard

setback).

Timeline:

May 8, 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.

July 17, 2007: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, “If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case.”

July 20, 2007: 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 July 27th deadline to submit additional evidence for staff to factor into their analysis;
- the August 3rd deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

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

August 1, 2007 The Development Services Senior Engineer forwarded a review comment sheet marked “No comments.”

STAFF ANALYSIS:

- The site is flat, triangular in shape (according to the submitted plat, approximately 0' on the north, 30.56' on the south, 113.75' on the east, and 119.75' on the west). Although the application states that the site is 5,220 square feet (36' x 145') in area, calculations taken from the dimensions on the submitted plat result in a lot that is approximately 1,800 square feet in area. The site is currently zoned CD No. 9 but had been zoned R-7.5(A) where lots were typically 7,500 square feet in area prior to the creation of CD No. 9 in 2002.
- The site plan denotes a "proposed garage door at carport" that is located 6' 9" from the alley right of way line or 13' 3" into the 20' setback for an enclosed parking space. (According to observations by the Board Administrator on his field visit, the "proposed" garage door has already been installed).
- The applicant can retain the garage structure that is incorporated into the single family home by removing the existing garage door (or leaving parking spaces in the structure open) if the board were to deny the variance request since the structure appears to comply with the 5' side yard setback required for lots zoned CD. No. 9. The need for the parking variance is merely to allow the parking spaces in the single family structure to be enclosed with a garage door.
- The Development Services Senior Engineer has submitted a review comment sheet marked "No comments."
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the parking regulations of 13' 3" to maintain enclosed parking spaces in a single family structure will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance to the parking regulations of 13' 3" requested to maintain enclosed parking spaces in a single family structure is necessary to permit development of the subject site (that is flat, irregular in shape, and, approximately 1,800 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 CD No. 9 zoning classification.
 - The variance to the parking regulations of 13' 3" requested to maintain enclosed parking spaces in a new detached accessory structure 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 CD No. 9 zoning classification.
- Typically, when the Board has found that this type of variance request is warranted, they have imposed the following conditions:
 1. Compliance with the submitted site plan is required.
 2. An automatic garage door must be installed and maintained in working order at all times.
 3. At no time may the area in front of the garages be utilized for parking of vehicles.
 4. All applicable permits must be obtained.

These conditions are imposed to help assure that the variance will not be contrary to public interest.

- If the Board were to grant the variance request of 13' 3", imposing a condition whereby the applicant must comply with the submitted site plan, the structure can be maintained as shown on the site plan with a garage door or enclosed parking spaces that are 6' 9" away from the alley right of way line (or 13' 3" into the 20' setback).

BOARD OF ADJUSTMENT ACTION: AUGUST 15, 2007

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Beikman**

I move that the Board of Adjustment grant application **BDA 067-099** 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 site plan is required.
- An automatic garage door must be installed and maintained in working order at all times.
- At no time may the area in front of the garage be utilized for parking of vehicles.
- All applicable permits must be obtained.

SECONDED: **Brannon**

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

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 067-113(J)

BUILDING OFFICIAL'S REPORT:

Application of Southwest Airlines, represented by Thiel Harryman of Underground Construction, for a special exception to the fence height regulations and for a special exception to the visibility obstruction regulations at 2734 Brookfield Avenue. This property is more fully described as part of Lots 5 and 6 in City Block 29/2381 and is zoned IR, which limits the height of a fence in a required front yard to 9 feet and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct an 11 foot 3 inch fence in a required nonresidential front yard setback which will require a 2 foot 3 inch special exception to the fence height regulations and to construct a fence in a visibility obstruction triangle which will require a special exception to the visibility obstruction regulations.

LOCATION: 2734 Brookfield Avenue

APPLICANT: Southwest Airlines
Represented by Thiel Harryman of Underground Construction

REQUEST:

- A special exception to the fence height regulations of 2'3" and a special exception to the visibility obstruction regulations are requested in conjunction with constructing and maintaining an 11'3" chain link fence and gates in the site's 15' front yard setback and within the 20' x 20' street/driveway visibility triangles:

STAFF RECOMMENDATION (fence):

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STAFF RECOMMENDATION (visibility obstruction):

Denial

Rationale:

- The Development Services Senior Engineer submitted a comment sheet stating that he recommends that this request be denied.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISIBILITY OBSTRUCTION REGULATIONS:

The Board shall grant a special exception to the requirements of the visibility obstruction regulations when, in the opinion of the Board, the item will not constitute a traffic hazard.

GENERAL FACTS:

- The Dallas Development Code states that a fence may not exceed 9' above grade when located in the required yard.
- The applicant has submitted a fence elevation that denotes the fence and a gate as described above. The elevation shows the chain link fence is 7'6" in height with an additional 1'6" of posts and barbed wire (which totals 9'), and three posts at 11'3" in height.

- The existing fence is located approximately 0' from the front and side property lines and appears to be approximately 9' in height.
- The amount of the proposed fence that is the subject of the special exception request is approximately 252' parallel to Brookfield Avenue, inclusive of the gate, and 240' perpendicular to Brookfield Avenue on the southwest property line. The total linear feet of proposed fence is approximately 492'.
- The request site is a lot within Specific Use Permit No. 14, which is the SUP for Love Field Airport.
- There is one fence at the northeast corner of Brookfield Avenue and Denton Drive that appears to be less than 9' in height. The only other fencing observed on Brookfield Avenue belonged to the airport property outside of the request site.
- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at intersections and 20-foot visibility triangles at drive approaches); and
 - between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- The applicant has submitted a site plan and an elevation denoting an 11'3" chain link fence in the 20' visibility triangle at the intersection Brookfield Avenue and the request site's driveway. The amount of the fence located in the visibility triangles is approximately 11' on each side of the driveway.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	IR (Industrial Manufacturing) and SUP 14 (Airport)
<u>North:</u>	IR (Industrial Manufacturing) and SUP 14 (Airport)
<u>South:</u>	IR (Industrial Manufacturing) and SUP 14 (Airport)
<u>East:</u>	IR (Industrial Manufacturing) and SUP 14 (Airport)
<u>West:</u>	IR (Industrial Manufacturing)

Land Use:

The subject site is developed with an airport. The areas to the north, east, south, and west are developed with light industrial and auto related 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:

June 27, 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.

- July 17, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- July 23, 2007: The Board Senior Planner contacted the applicant's representative and discussed 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 July 27th deadline to submit additional evidence for staff to factor into their analysis;
 - the August 3rd 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 August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- July 26, 2007: The applicant submitted additional information regarding his application.
- July 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Acting Chief Arborist, and the Assistant City Attorney to the Board.
- August 1, 2007: The Development Services Senior Engineer submitted a review comment sheet showing he objects to the request.
- August 2, 2007: The applicant submitted additional information regarding his application.

STAFF ANALYSIS:

- Scaled site plans and an elevation have been submitted that document the location and materials of the proposal that exceeds 9' in height and is located in the yard.

- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 2'3" (whereby the proposal that would exceed 4' in height) will not adversely affect neighboring property.
- Granting this special exception of 2'3" with conditions imposed that the applicant complies with the submitted site plans and elevation would assure that the existing fence, columns and gate would be maintained of the materials and locations shown on these documents.
- The applicant has the burden of proof in establishing the following:
 - Granting the special exception to the visibility obstruction regulations (whereby, according to the submitted site plan and elevation, an 11'3" chain link fence) does not constitute a traffic hazard.
- If this request is granted, subject to compliance with the submitted site plan and elevation, about 22' of the fence would be "excepted" into the 20' visibility triangle at the intersection Brookfield Avenue and the request site's driveway.

BOARD OF ADJUSTMENT ACTION: AUGUST 15, 2007

APPEARING IN FAVOR: Thiel Harmman, 5145 Industrial Way, Dallas, TX
Jim Stevenson, 6744 Burr Oak Drive, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Gillespie

I move that the Board of Adjustment, in Appeal No. **BDA 067-113**, on application of Southwest Airlines, represented by Thiel Harryman of Underground Construction, **grant** the request of this applicant to construct and maintain an 11-foot-three-inch-tall fence on the property as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. 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 plans and elevation is required.

SECONDED: Brannon

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

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

MOTION #2: Gillespie

I move that the Board of Adjustment, in Appeal No. **BDA 067-113**, on application of Southwest Airlines, represented by Thiel Harryman of Underground Construction, **grant** the request of this applicant to construct portions of a fence in a visibility triangle as a special exception to the visibility obstruction regulation contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard. 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 plans and elevation is required.

SECONDED: Brannon

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

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 067-116(J)

BUILDING OFFICIAL'S REPORT:

Application of Michael Stefanek for a special exception to the landscaping regulations at 5612 Richmond Avenue. This property is more fully described as Lot 3 in City Block 7/2071 and is zoned NO(A), which requires mandatory landscaping. The applicant proposes to construct an addition to a nonresidential structure and provide an alternate landscape plan which will require a special exception.

LOCATION: 5612 Richmond Avenue.

APPLICANT: Michael Stefanek

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with constructing an addition to a nonresidential structure that is developed with an office use.

STAFF RECOMMENDATION:

Denial

Rationale:

- The applicant has not substantiated how strict compliance with the requirements of this article (which in this case is a request to deviate from fulfilling the residential buffer, site trees, street trees, and two design standards requirements) will unreasonably burden the use of the property or how the special exception will not adversely affect neighboring property.
- The City’s Interim Chief Arborist recommends denial of the request.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

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

1. strict compliance with the requirements of this article will unreasonably burden the use of the property;

2. the special exception will not adversely affect neighboring property; and
3. the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

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

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

GENERAL FACTS:

- The Dallas Development Code requires full compliance with the Landscape Regulations when non-permeable coverage on a lot is increased by more than 2,000 square feet within a 24-month period, or when an application is made for a building permit for new construction that increases the number of stories in a building on a lot, increases the combined floor areas of all buildings on a lot within a 24-month period by more than 35 percent or 10,000 square feet (whichever is less).
- 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 Interim Chief Arborist, the applicant is specifically requesting relief from the residential buffer, site trees, street trees, and two design standards requirements.
- The City of Dallas Interim Chief Arborist submitted a memo to the Board Senior Planner and the Board of Adjustment Chief Planner. The memo stated the following:
 - The applicant is requesting a special exception to the landscape requirements of Article X (The Landscape Regulations), more specifically, relief from the residential buffer, site trees, street trees, and two design standards requirements.
 - The special exception request is triggered by new construction on the site.
 - Deficiency:
 - the residential buffer, site trees, street trees, and two design standards requirements
 - Factors for consideration:
 -
 - The arborist recommends denial.
- The existing structure was constructed in 1970 and appears to be non-conforming for the side yard setback.
- The alternate landscape plan shows the request site is 60' x 171'.

BACKGROUND INFORMATION:

Zoning:

Site: NO(A) (Neighborhood Office)
North: R-7.5(A) (Single Family Residential 7,500 square feet) and CR (Community Retail)

South: CR (Community Retail)
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 an office use according to the current Certificate of Occupancy. The areas to the north, east, and west are developed with residential uses. The area to the northwest is developed with a medical office use and the area to the south is developed with parking and commercial 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:

- June 29, 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.
- July 17, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- July 26, 2007: The Board Senior Planner contacted the applicant to discuss 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 July 27th deadline to submit additional evidence for staff to factor into their analysis;
 - the August 3rd 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 August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

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

August 8, 2007: The City of Dallas Interim Chief Arborist submitted a memo that provided his comments regarding the special exception to the landscape regulations.

STAFF ANALYSIS:

- An alternate landscape plan has been submitted that, according to the City of Dallas Interim Chief Arborist, is not fully complying with the residential buffer, site trees, street trees, and two design standards requirements.
- The landscape requirements on this site are not imposed by a site-specific landscape plan approved by the city plan commission or city council.
- The request site has residential adjacency on the north, east, and west sides and appears to be generally flat.
- The site plan submitted with the landscape plan shows the rear addition proposed. The site plan shows that the site would provide 12 parking spaces, meeting the requirement for the proposed floor area for an office use. The site plan shows the proposed addition is deficient in side yard setback by 11" on the west side. The west side also shows a metal grate deck, but the height was not provided. If the height of the deck exceeds 6", it must provide the required 20' side yard setback. The site plan and landscape plan do not show required screening for parking from adjacent residential and for loading and service areas. It appears that the site plan complies with lot coverage and other setbacks.
- The proposed alternate landscape plan does not meet the visibility obstruction regulations and parking screening requirements, which are separate requirements from Article X.
- The City's Interim Chief Arborist has commented that the proposed live oak trees are not recommended when located within 5' of a building and within the parkway.
- The applicant has the burden of proof in establishing the following:
 - The special exception (where an alternate landscape plan has been submitted that does not meet the residential buffer, site trees, street trees, and two design standards requirements) will unreasonably burden the use of the property; and the special exception 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 final building permit and Certificate of Occupancy could be issued on the site, where the site would be "excepted" from full compliance to the requirements of Article X.
- A landscape special exception cannot relieve the proposed and existing structures from other code requirements.

BOARD OF ADJUSTMENT ACTION: AUGUST 15, 2007

APPEARING IN FAVOR: Mike Stefanek, 1181 Greenville, Dallas, TX

APPEARING IN OPPOSITION: Bruce Richardson, 5607 Richmond Ave., Dallas, TX
John Glendenning, 5602 Richmond Ave., Dallas, TX

MOTION: **Chernock**

I move that the Board of Adjustment, in Appeal No. **BDA 067-116**, on application of Michael Stefanek, **deny** the special exception to the landscape requirements requested by this applicant **without** prejudice, because our evaluation of the property and testimony shows that strict compliance with the requirements will not unreasonably burden the use of the property; and the special exception will adversely affect neighboring property.

SECONDED: **Brannon**

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

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 067-117(J)

BUILDING OFFICIAL'S REPORT:

Application of Zone Systems, Inc., represented by Peter Kavanagh, for a special exception to the landscaping regulations at 41000 Lyndon Baines Johnson Freeway. This property is more fully described as a 4.867 acre tract in City Block 8598 and is zoned A(A), which requires mandatory landscaping. The applicant proposes to construct a nonresidential structure and provide an alternate landscape plan which will require a special exception.

LOCATION: 41000 Lyndon Baines Johnson Freeway

APPLICANT: Zone Systems, Inc.,
Represented by Peter Kavanagh

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with constructing a 10' x 12' equipment shelter for a tower/antenna use that is mounted to a public utility use.

STAFF RECOMMENDATION:

Denial

Rationale:

- The applicant has not substantiated how strict compliance with the requirements of this article (which in this case is a request to waiver from all landscaping requirements) will unreasonably burden the use of the property or how the special exception (with no landscaping proposed) will not adversely affect neighboring property.
- The City's Interim Chief Arborist recommends denial of the request.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

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

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

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

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

GENERAL FACTS:

- The Dallas Development Code requires full compliance with the Landscape Regulations when non-permeable coverage on a lot is increased by more than 2,000 square feet within a 24-month period, or when an application is made for a building permit for new construction that increases the number of stories in a building on a lot, increases the combined floor areas of all buildings on a lot within a 24-month period by more than 35 percent or 10,000 square feet (whichever is less).
- The applicant is proposing to provide no landscaping in conjunction with constructing 200 square feet of equipment shelters on property.
- The applicant has not provided a site plan showing any existing structures.
- While Article X would not require landscaping for TXU electrical towers because there is no floor area, there is no provision to preclude tower/antenna uses or public utility use from providing landscaping.
- The City of Dallas Interim Chief Arborist submitted a memo to the Board Senior Planner and the Board of Adjustment Chief Planner. The memo stated the following:
 - The applicant is requesting a special exception to the landscape requirements of all of the requirements in Article X (The Landscape Regulations).
 - The special exception request is triggered by new construction on the site.
 - The arborist recommends denial.

BACKGROUND INFORMATION:

Zoning:

Site: A(A) (Agricultural)
North: A(A) (Agricultural)
South: A(A) (Agricultural) and R-7.5(A) (Single Family Residential 7,500 square feet)
East: A(A) (Agricultural) and PD 599 (Single Family Residential)
West: MF-1(A) (Multifamily)

Land Use:

The subject site is developed with TXU utility lines. The area to the north is a freeway; east is single family residential; south is multifamily, single family, and undeveloped; and west is 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:

- June 29, 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.
- July 17, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- July 23, 2007: The Board Senior Planner contacted the applicant's representative and discussed 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 July 27th deadline to submit additional evidence for staff to factor into their analysis;
 - the August 3rd 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 August public hearing after considering the information/evidence and

testimony presented to them by the applicant and all other interested parties.

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

August 6, 2007: The applicant's representative submitted a letter regarding his request.

August 8, 2007: The City of Dallas Interim Chief Arborist submitted a memo that provided his comments regarding the special exception to the landscape regulations.

STAFF ANALYSIS:

- The applicant submitted a site plan that shows a location for the proposed shelter without any landscaping. The site plan does not show the entire property of the request site to show the location of the proposed shelter relative to the whole property. No other alternate landscape plan has been submitted.
- The landscape requirements on this site are not imposed by a site-specific landscape plan approved by the city plan commission or city council.
- The applicant has the burden of proof in establishing the following:
 - Strict compliance with Article X and providing any landscaping will unreasonably burden the use of the property; and
 - the special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose a condition that no landscaping is required for 200 square feet of floor area, the site would be "excepted" from full compliance to any of the requirements of Article X: The Landscape Regulations.

BOARD OF ADJUSTMENT ACTION: AUGUST 15, 2007

APPEARING IN FAVOR: Peter Kavanagh, 1620 Handley, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Brannon

I move that the Board of Adjustment, in Appeal No. **BDA 067-117**, on application of Zone Systems, Inc., represented by Peter Kavanagh, **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:

- No landscaping is required for 200 square feet of floor area.
- This special exception immediately terminates if and when properties adjacent to the equipment shelters are developed for residential uses.

SECONDED: Chernock

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

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 067-118(J)

BUILDING OFFICIAL'S REPORT:

Application of Zone Systems, Inc., represented by Peter Kavanagh, for a special exception to the landscaping regulations at 11001 N. Stemmons Freeway. This property is more fully described as a tract of land in City Block 6512 and is zoned IR and MC-4, which requires mandatory landscaping. The applicant proposes to construct a nonresidential structure and provide an alternate landscape plan which will require a special exception.

LOCATION: 11001 N. Stemmons Freeway

APPLICANT: Zone Systems, Inc.
Represented by Peter Kavanagh

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with constructing an 11'8" x 16' equipment shelter for a tower/antenna that is mounted to a public utility use.

STAFF RECOMMENDATION:

Denial

Rationale:

- The applicant has not substantiated how strict compliance with the requirements of this article (which in this case is a request to waiver from all landscaping requirements) will unreasonably burden the use of the property or how the special exception (with no landscaping proposed) will not adversely affect neighboring property.
- The City's Interim Chief Arborist recommends denial of the request.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

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

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

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

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

GENERAL FACTS:

- The Dallas Development Code requires full compliance with the Landscape Regulations when non-permeable coverage on a lot is increased by more than 2,000 square feet within a 24-month period, or when an application is made for a building permit for new construction that increases the number of stories in a building on a lot, increases the combined floor areas of all buildings on a lot within a 24-month period by more than 35 percent or 10,000 square feet (whichever is less).
- The applicant is proposing to provide no landscaping in conjunction with constructing equipment shelters on TXU property developed with transmission towers.
- The applicant has provided a site plan showing the location of the proposed shelter and the nearest TXU transmission tower.
- While Article X would not require landscaping for TXU electrical towers because there is no floor area, there is no provision to preclude tower/antenna uses or public utility use from providing landscaping.
- The City of Dallas Interim Chief Arborist submitted a memo to the Board Senior Planner and the Board of Adjustment Chief Planner. The memo stated the following:
 - The applicant is requesting a special exception to the landscape requirements of all of the requirements in Article X (The Landscape Regulations).
 - The special exception request is triggered by new construction on the site.
 - The arborist recommends denial.

BACKGROUND INFORMATION:

Zoning:

Site: IR (Industrial Research) and MC-4 (Multiple Commercial)
North: IR (Industrial Research)
South: MC-4 (Multiple Commercial)

East: IR (Industrial Research) and SUP 82
West: IR (Industrial Research)

Land Use:

The subject site is developed with TXU utility lines. The areas to the north, east, south, and west are developed with commercial/warehouse 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:

- June 29, 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.
- July 17, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- July 23, 2007: The Board Senior Planner contacted the applicant's representative and discussed 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 July 27th deadline to submit additional evidence for staff to factor into their analysis;
 - the August 3rd 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 August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- July 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the

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

August 6, 2007: The applicant's representative submitted a letter regarding his request.

August 8, 2007: The City of Dallas Interim Chief Arborist submitted a memo that provided his comments regarding the special exception to the landscape regulations.

STAFF ANALYSIS:

- The applicant submitted a site plan that shows a location for the proposed shelter without any landscaping. No other alternate landscape plan has been submitted.
- The site plan shows the entire property of the request site to show the location of the proposed shelter relative to the whole property in the unscaled survey drawing.
- The landscape requirements on this site are not imposed by a site-specific landscape plan approved by the city plan commission or city council.
- The applicant has the burden of proof in establishing the following:
 - Strict compliance with Article X and providing any landscaping will unreasonably burden the use of the property; and
 - the special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose a condition that no landscaping is required for 188 square feet of floor area, the site would be "excepted" from full compliance to any of the requirements of Article X: The Landscape Regulations.

BOARD OF ADJUSTMENT ACTION: AUGUST 15, 2007

APPEARING IN FAVOR: Peter Kavanagh, 1620 Handley, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Brannon

I move that the Board of Adjustment, in Appeal No. **BDA 067-118**, on application of Zone Systems, Inc., represented by Peter Kavanagh, **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:

- No landscaping is required for 200 square feet of floor area.

- This special exception immediately terminates if and when properties adjacent to the equipment shelters are developed for residential uses.

SECONDED: Chernock

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

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 067-119(J)

BUILDING OFFICIAL'S REPORT:

Application of Zone Systems, Inc., represented by Peter Kavanagh, for a special exception to the landscaping regulations at 2327 Cartwright Street. This property is more fully described as Lot 6 in City Block O/7171 and is zoned PD-406 which requires mandatory landscaping. The applicant proposes to construct a nonresidential structure and provide an alternate landscape plan which will require a special exception.

LOCATION: 2327 Cartwright Street

**APPLICANT: Zone Systems, Inc.
Peter Kavanagh**

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with constructing a 10' x 12' equipment shelter for a tower/antenna that is mounted to a public utility use.

STAFF RECOMMENDATION:

Denial

Rationale:

- The applicant has not substantiated how strict compliance with the requirements of this article (which in this case is a request to waiver from all landscaping requirements) will unreasonably burden the use of the property or how the special exception (with no landscaping proposed) will not adversely affect neighboring property.
- The City's Interim Chief Arborist recommends denial of the request.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

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

1. strict compliance with the requirements of this article will unreasonably burden the use of the property;

2. the special exception will not adversely affect neighboring property; and
3. the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

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

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

GENERAL FACTS:

- The Dallas Development Code requires full compliance with the Landscape Regulations when non-permeable coverage on a lot is increased by more than 2,000 square feet within a 24-month period, or when an application is made for a building permit for new construction that increases the number of stories in a building on a lot, increases the combined floor areas of all buildings on a lot within a 24-month period by more than 35 percent or 10,000 square feet (whichever is less).
- The applicant is proposing to provide no landscaping in conjunction with constructing an equipment shelter on property that has an existing shelter. The site plan shows the existing shelter is proposed to be removed after the new shelter is constructed. The existing shelter is approximately 7’x7’, but the site plan is not drawn to the scale shown.
- PD 406 requires development to comply with Article X regulations.
- While Article X would not require landscaping for TXU electrical towers because there is no floor area, there is no provision to preclude tower/antenna uses or public utility use from providing landscaping.
- The City of Dallas Interim Chief Arborist submitted a memo to the Board Senior Planner and the Board of Adjustment Chief Planner. The memo stated the following:
 - The applicant is requesting a special exception to the landscape requirements of all of the requirements in Article X (The Landscape Regulations).
 - The special exception request is triggered by new construction on the site.
 - The arborist recommends denial.

BACKGROUND INFORMATION:

Zoning:

Site: PD 406 (Commercial, Industrial, and existing Residential)
North: PD 406 (Commercial, Industrial, and existing Residential)
South: PD 406 (Commercial, Industrial, and existing Residential)
East: PD 406 (Commercial, Industrial, and existing Residential)
West: IR (Industrial Research)

Land Use:

The subject site is developed TXU utility lines. The areas to the north, east, south, and west are developed with commercial/warehouse uses and 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:

- June 29, 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.
- July 17, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- July 23, 2007: The Board Senior Planner contacted the applicant's representative and discussed 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 July 27th deadline to submit additional evidence for staff to factor into their analysis;
 - the August 3rd 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 August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- July 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Acting Chief Arborist, and the Assistant City Attorney to the Board.

August 6, 2007: The applicant's representative submitted a letter regarding his request.

August 8, 2007: The City of Dallas Interim Chief Arborist submitted a memo that provided his comments regarding the special exception to the landscape regulations.

STAFF ANALYSIS:

- The applicant submitted a site plan that shows a location for the proposed shelter without any landscaping. No other alternate landscape plan has been submitted.
- A survey drawing was submitted showing the location of the new shelter in relation to the entire property.
- The landscape requirements on this site are not imposed by a site-specific landscape plan approved by the city plan commission or city council.
- The applicant has the burden of proof in establishing the following:
 - Strict compliance with Article X and providing any landscaping will unreasonably burden the use of the property; and
 - the special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose a condition that no landscaping is required for 200 square feet of floor area, the site would be "excepted" from full compliance to any of the requirements of Article X: The Landscape Regulations.

BOARD OF ADJUSTMENT ACTION: AUGUST 15, 2007

APPEARING IN FAVOR: Peter Kavanagh, 1620 Handley, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Brannon

I move that the Board of Adjustment, in Appeal No. **BDA 067-119**, on application of Zone Systems, Inc., represented by Peter Kavanagh, **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:

- No landscaping is required for 200 square feet of floor area.
- This special exception immediately terminates if and when properties adjacent to the equipment shelters are developed for residential uses.

SECONDED: Chernock

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

NAYS: 0 – None
MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 067-125(J)

BUILDING OFFICIAL'S REPORT:

Application of Zone Systems, Inc., represented by Peter Kavanagh, for a special exception to the landscaping regulation at 3532 S. Ledbetter Drive. This property is more fully described as Lot 6 in City Block 5836 and is zoned MF-2(A) and R-7.5(A), which requires mandatory landscaping. The applicant proposes to construct a nonresidential structure and provide an alternate landscape plan which will require a special exception.

LOCATION: 3532 S. Ledbetter Drive

APPLICANT: Zone Systems, Inc.
Represented by Peter Kavanagh

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with constructing a 10' x 12' equipment shelter for a tower/antenna that is mounted to a public utility use.

STAFF RECOMMENDATION:

Denial

Rationale:

- The applicant has not substantiated how strict compliance with the requirements of this article (which in this case is a request to waiver from all landscaping requirements) will unreasonably burden the use of the property or how the special exception (with no landscaping proposed) will not adversely affect neighboring property.
- The City's Interim Chief Arborist recommends denial of the request.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

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

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

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

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

GENERAL FACTS:

- The Dallas Development Code requires full compliance with the Landscape Regulations when non-permeable coverage on a lot is increased by more than 2,000 square feet within a 24-month period, or when an application is made for a building permit for new construction that increases the number of stories in a building on a lot, increases the combined floor areas of all buildings on a lot within a 24-month period by more than 35 percent or 10,000 square feet (whichever is less).
- The applicant is proposing to provide no landscaping in conjunction with constructing an equipment shelter on property with no floor area.
- The site plan has a note stating the shelter will change to a 10' x 12' shelter. The site plan is not drawn exactly to the scale shown.
- While Article X would not require landscaping for TXU electrical towers because there is no floor area, there is no provision to preclude tower/antenna uses or public utility use from providing landscaping.
- The City of Dallas Interim Chief Arborist submitted a memo to the Board Senior Planner and the Board of Adjustment Chief Planner. The memo stated the following:
 - The applicant is requesting a special exception to the landscape requirements of all of the requirements in Article X (The Landscape Regulations).
 - The special exception request is triggered by new construction on the site.
 - The arborist recommends denial.

BACKGROUND INFORMATION:

Zoning:

Site: MF-2(A) (Multifamily Residential), R-7.5(A) (Single Family Residential) and SUP 232 (Lodging)
North: MF-2(A) (Multifamily Residential)
South: R-7.5(A) (Single Family Residential)
East: MF-2(A) (Multifamily Residential)
West: R-10(A) (Single Family Residential)

Land Use:

The subject site is developed TXU utility lines. The areas to the north, east, south, and west are developed with residential uses and undeveloped land.

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:

- June 29, 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.
- July 17, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- July 23, 2007: The Board Senior Planner contacted the applicant’s representative and discussed 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 July 27th deadline to submit additional evidence for staff to factor into their analysis;
 - the August 3rd 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 August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- July 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Acting Chief Arborist, and the Assistant City Attorney to the Board.
- August 6, 2007: The applicant’s representative submitted a letter regarding his request.

August 8, 2007: The City of Dallas Interim Chief Arborist submitted a memo that provided his comments regarding the special exception to the landscape regulations.

STAFF ANALYSIS:

- The applicant submitted a site plan that shows a location for the proposed shelter without any landscaping. No other alternate landscape plan has been submitted.
- The site plan shows the entire property of the request site to show the location of the proposed shelter relative to the whole property.
- The landscape requirements on this site are not imposed by a site-specific landscape plan approved by the city plan commission or city council.
- The applicant has the burden of proof in establishing the following:
 - Strict compliance with Article X and providing any landscaping will unreasonably burden the use of the property; and
 - the special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose a condition that no landscaping is required for 200 square feet of floor area, the site would be “excepted” from full compliance to any of the requirements of Article X: The Landscape Regulations.

BOARD OF ADJUSTMENT ACTION: AUGUST 15, 2007

APPEARING IN FAVOR: Peter Kavanagh, 1620 Handley, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Brannon**

I move that the Board of Adjustment, in Appeal No. **BDA 067-125**, on application of Zone Systems, Inc., represented by Peter Kavanagh, **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:

- No landscaping is required for 200 square feet of floor area.
- This special exception immediately terminates if and when properties adjacent to the equipment shelters are developed for residential uses.

SECONDED: **Chernock**

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

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 067-078

BUILDING OFFICIAL'S REPORT:

Application of Felix Limited, represented by Masterplan, for a special exception to the landscape regulations and a special exception to the visibility obstruction regulations at 2701 Harry Hines Blvd. This property is more fully described as Lot 24 in City Block 927 and is zoned PD-193 (I-2) which requires mandatory landscaping and visibility triangles at street intersections and drive approaches. The applicant proposes to construct a nonresidential structure and provide an alternate landscape plan which would require a special exception to the landscape regulations, and to construct and maintain items within required visibility triangles which will require special exceptions to the visibility obstruction regulations.

LOCATION: 2701 Harry Hines Boulevard

APPLICANT: Felix Limited, represented by Masterplan

August 15, 2007 Public Hearing Notes:

- The applicant’s representative submitted a revised landscape plan at the public hearing that noted that screening shrubs would be 3.5’ in height at time of installation.

REQUESTS:

- The following appeals have been made in this application:
 1. a special exception to the landscape regulations is requested in conjunction with obtaining a final Certificate of Occupancy on a lot developed with a surface parking lot; and
 2. special exceptions to the to the visibility obstruction regulations are requested in conjunction with, according to a revised landscape plan dated 7/24/2007, locating a parked vehicle in one of the site’s two 20’ visibility triangles at the drive approach into the site from Harry Hines Boulevard, and locating a parked vehicle in the 45’ visibility triangle at the intersection of Harry Hines Boulevard and Payne Street.

STAFF RECOMMENDATION (related to the landscape special exception):

Approval, subject to the following conditions:

1. Compliance with the submitted revised landscape plan dated 7/24/2007 is required.
2. Screening shrubs noted on the revised landscape plan dated 7/24/2007 should be 3.5’ in height at time of installation.

Rationale:

- The City's Acting Chief Arborist recommends approval of this request whereby if the conditions mentioned above are imposed, the special exception would not compromise the spirit and intent of the landscaping requirements of PD No. 193.

STAFF RECOMMENDATION (related to visibility obstruction special exceptions):

Approval, subject to the following condition:

- Compliance with the submitted revised landscape plan dated 7/24/2007 is required.

Rationale:

- The City's Development Services Senior Engineer has indicated that he has no objections to the requests (concluding that the two parked vehicles in the visibility triangles will not constitute a traffic hazard).

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.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISIBILITY OBSTRUCTION REGULATIONS:

The Board shall grant a special exception to the requirements of the visibility obstruction regulations when, in the opinion of the Board, the item will not constitute a traffic hazard.

GENERAL FACTS (related to the landscape special exception):

- 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 is performed 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's representative has submitted a revised alternate landscape plan dated 7/24/2007 that, according to the Acting City of Dallas Chief Arborist, is deficient in meeting the street tree, sidewalk location, and off-street parking screen requirements of the PD No. 193 landscape regulations.

- Prior to the June 13th public hearing, the Acting City of Dallas Chief Arborist had submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner pertaining to the *originally* submitted landscape plan (see Attachment D). The memo had stated the following:
 - The special exception request is triggered by new construction.

- Deficiencies:
 1. The applicant is required to provide 5 street trees and a 6' wide sidewalk between 5' – 12' from the back of curb.
The applicant is proposing to provide 2 street trees and up to a 4' wide sidewalk between 13' -15' from the back of curb.
 2. The applicant is required to provide a 3.5' high off-street parking screen.
The applicant is proposing to provide no screening of off-street parking.
- Factors for consideration:
 - The owner is proposing to install two planting beds for a total of 624 square feet and an additional 82 square foot grass area in the parkway.
 - The owner proposes two 3" caliper crape myrtle trees and Asian jasmine ground cover for the planting beds within the lot.
 - The owner proposes to replace the corner sidewalk at the street intersection with 124 square feet of new sidewalk.
 - The north parking spaces cross the lot line and face into a rock and soil ledge that rises up to an adjacent car lot. This screens the parking lot from the parking lot to the north.
 - Overhead utility lines run along the property in the parkway on Payne Street and Harry Hines Boulevard. Small trees can be planted in the tree planting zone beneath the utilities but their growth habits may create pedestrian obstructions along the sidewalks as they grow out and could become a public safety concern with vehicle-to-pedestrian visual interaction at the busy intersection during heavy traffic times.
- Recommendation:
 - Denial:
 - PD No. 193 requires significant landscaping throughout the district along street frontages to buffer the uses on the property. Only the minimum requirements within PD No. 193 area expected for the I-2 zoning subdistrict which are the planting zone, the sidewalk widths, and the screening of off-street parking.
 - Although the reduction and relocation of street trees seems justified (given their proximity to overhead utility lines), the screening of off-street parking should be required for all parking facing Payne Street and Harry Hines Boulevard.
 - The Board of Adjustment conducted a public hearing on the requests on June 13, 2007 where the board delayed action on the application until August 15, 2007. The board delayed action in response to the request of the applicant's representative.
 - The applicant's representative submitted information beyond what was submitted with the original application and beyond what was submitted at the June public hearing (see Attachment E). This information included a revised landscape plan dated 7/24/2007.
 - The Acting City of Dallas Chief Arborist has submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner pertaining to the *revised* submitted landscape plan dated 7/24/2007 (see Attachment F). The memo had stated the following:
 - The special exception request is triggered by new construction.
 - Deficiencies:

1. The applicant is required to provide 5 street trees and a 6' wide sidewalk between 5' – 12' from the back of curb.
The applicant is proposing to provide 3 street trees and up to a 4' wide sidewalk between 13' -15' from the back of curb.
 2. The applicant is required to provide a 3.5' high off-street parking screen.
The applicant is proposing to provide partial screening of off-street parking. This partial screening includes large evergreen shrubs within two landscape areas for the property.
- Factors for consideration:
 - The owner is proposing to install two planting beds for a total of 624 square feet (being 15.6% of the 4,000 square foot lot) and an additional 82 square foot grass area in the parkway.
 - The owner proposes one 3.5" caliper bald cypress, two 3" caliper crape myrtle trees and Asian jasmine ground cover for the planting beds within the lot.
 - The owner is proposing to install 24 large evergreen shrubs to provide a partial screening of the parking lot from the street frontages.
 - Automatic irrigation will be provided for all planting materials.
 - The owner proposes to install a 3' high wrought iron fence along the property line along Payne Street.
 - The owner proposes to replace the corner sidewalk at the street intersection with 124 square feet of new 4' sidewalk.
 - The north parking spaces cross the lot line and face into a rock and soil ledge that rises up to an adjacent car lot. This screens the parking lot from the parking lot to the north.
 - Additional screening along Harry Hines Boulevard is not allowable on the current plan due to visibility triangle restrictions.
 - Overhead utility lines run along the property in the parkway on Payne Street and Harry Hines Boulevard. Small trees can be planted in the tree planting zone beneath the utilities but their growth habits may create pedestrian obstructions along the sidewalks as they grow out and could become a public safety concern with vehicle-to-pedestrian visual interaction at the busy intersection during heavy traffic times.
 - Recommendation:
 - Approval:
 - Subject to the proposed screening shrubs being 3.5' in height at time of installation.

GENERAL FACTS (related to the visibility obstruction special exceptions):

- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at intersections and 20-foot visibility triangles at drive approaches); and
 - between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).

A revised site/landscape plan dated 05-31-07 indicates that a parked vehicle is located in one of the site's two 20' visibility triangles at the drive approach into the site from Harry Hines Boulevard, and another parked vehicle is located in the 45' visibility triangle at the intersection of Harry Hines Boulevard and Payne Street.

- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachments A and B). This information included the following:
 - a letter that provided additional details about the request; and
 - a revised site/landscape plan.
- The Board of Adjustment conducted a public hearing on the requests on June 13, 2007 where the board delayed action on the application until August 15, 2007. The board delayed action in response to applicant's representative's request.
- The applicant's representative submitted information beyond what was submitted with the original application and June public hearing (see Attachment E). This information included a revised landscape plan dated 7/24/2007.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is developed as a parking lot. The areas to the north, south, and west are developed with parking lots; and the area to the east is developed with office uses.

Zoning/BDA History:

1. BDA 012-144, 2635 Harry Hines Boulevard (the lot immediately southeast of the subject site) On May 20, 2002, the Board of Adjustment Panel C denied a request for a variance to the landscape regulations without prejudice and granted a request for a special exception to the landscape regulations imposing the following condition to the request: Compliance with the submitted revised landscape plan is required. The case report stated that the requests were made to maintain a surface parking lot.
2. BDA 012-143, 2722-2728 Akard Street, 2721-2727 Harry Hines Boulevard (the lot immediately northwest of the subject site) On August 27, 2002, the Board of Adjustment Panel A granted a request for a variance to the landscape regulations imposing the following condition to the request: Compliance with the submitted

revised landscape plan is required. The case report stated that the requests were made to construct and maintain a surface parking lot on a site that was undeveloped.

Timeline:

April 10, 2007: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

May 17, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

May 17, 2007: 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 May 25th deadline to submit additional evidence for staff to factor into their analysis and discuss at the staff review team meeting;
- the June 1st 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 June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 29 & June 4, 2007 The applicant’s representative submitted additional information to the Board Administrator (see Attachments A and B).

May 29, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Acting Building Official, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Acting Chief Arborist, and the Assistant City Attorney to the Board.

- May 31, 2007 The Development Services Senior Engineer submitted a Review Comment Sheet marked “Has no objections if certain conditions are met” commenting:
- 1) The current traffic management plan must be used. (Ref. letter dated 5/17/07 from applicant).
 - 2) The 2 drive approaches on Payne Street must be removed and curb installed.
- (A copy of the traffic management plan that the senior engineer references above was obtained from the applicant’s representative – see Attachment C).
- June 5, 2007 The Acting City of Dallas Chief Arborist submitted a memo that provided his comments regarding the special exception to the landscape regulations (see Attachment D).
- June 13, 2007: The Board of Adjustment conducted a public hearing on this appeal. The board delayed action on the requests until August 15, 2007, per the request of the applicant’s representative.
- June 18, 2007: The Board Administrator wrote the applicant’s representative a letter that conveyed the following information:
- the public hearing date and panel that will consider the application;
 - the July 27th deadline to submit additional evidence for staff to factor into their analysis and discuss at the staff review team meeting; and
 - the August 3rd deadline to submit additional evidence to be incorporated into the Board’s docket materials.
- July 26, 2007: The applicant’s representative submitted information beyond what was submitted with the original application and beyond what was submitted at the June public hearing (see Attachment E).
- July 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Acting Chief Arborist, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- August 2, 2007 The Acting City of Dallas Chief Arborist submitted a memo that provided his revised comments regarding the special exception to the landscape regulations (see Attachment F).

August 3, 2007 The City's Development Services Senior Engineer forwarded an email to the Board Administrator stating that he had no objections to the requests for special exceptions to the visibility obstruction regulations.

STAFF ANALYSIS (related to landscape special exception):

- A revised alternate landscape plan dated 7/24/2007 has been submitted that, according to the Acting City of Dallas Chief Arborist, is deficient in meeting the street tree, sidewalk location, and parking screen requirements of the PD No. 193 landscape regulations.
- The applicant has the burden of proof in establishing the following:
 - The special exception (where a revised alternate landscape plan dated 7/24/2007 has been submitted that, according to the Chief Arborist, provides 3 of 5 required street trees, a 4' wide sidewalk located between 13' – 15" from the back of the curb as opposed to a 6' wide sidewalk located between 5' – 12' from the back of the curb, and a portion of the required 3.5' high required parking lot screen) 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 revised alternate landscape plan dated 7/24/2007, the final Certificate of Occupancy could be issued on the site, where the site would be "excepted" from full compliance to the street tree, sidewalk location, and off-street parking screen requirements of the Oak Lawn PD landscape ordinance.

STAFF ANALYSIS (related to the visibility obstruction special exception):

- The Development Services Senior Engineer has commented that he has no objections to the requests for special exceptions to the visibility obstruction regulations upon the board imposing 2 conditions: 1) that the current traffic management plan submitted by the applicant be used; and 2) that the 2 drive approaches on Payne Street be removed and curb installed.
- The applicant has the burden of proof in establishing the following:
 - Granting the special exceptions to the visibility obstruction regulations (whereby, according to the submitted revised landscape plan dated 7/24/2007, a parked vehicle would be located in the one of the site's two 20' visibility triangles at the drive approach into the site from Harry Hines Boulevard, and another parked vehicle would be located in the 45' visibility triangle at the intersection of Harry Hines Boulevard and Payne Street) will not constitute a traffic hazard.
- If these requests are granted, subject to compliance with the submitted revised site/landscape plan dated 7/24/2007 (as it relates to allowing deviations to the City visibility obstruction regulations) then a parked vehicle would be "excepted" into one of the two, 20' drive approach visibility triangles into the site from Harry Hines Boulevard, and into the 45' intersection visibility triangle at Payne Street and Harry Hines Boulevard.

BOARD OF ADJUSTMENT ACTION: JUNE 13, 2007

APPEARING IN FAVOR: Santos Martinez, 900 Jackson St, #640, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Chernock**

I move that the Board of Adjustment in Appeal No. **BDA 067-078**, hold this matter under advisement until **August 15, 2007**.

SECONDED: **Beikman**

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

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

BOARD OF ADJUSTMENT ACTION: AUGUST 15, 2007

APPEARING IN FAVOR: Santos Martinez, 900 Jackson St, #640, Dallas, TX
William Cothrum, 900 Jackson St, #640, Dallas, TX

APPEARING IN OPPOSITION: Terry Thornton, 2963 Magnolia Hill Ct., Dallas, TX
Kyle Anderson, 6301 Stonewood Dr., #1423, Plano, TX

MOTION #1: **Beikman**

I move that the Board of Adjustment, in Appeal No. **BDA 067-078**, on application of Felix Limited, represented by Masterplan, **grant** the request of this applicant to provide an alternate landscape plan as a special exception to the landscaping requirements contained in PD 193, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that this special exception will not compromise the spirit and intent of Section 51P-193.126 of the Dallas Development Code. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the revised landscape/site plan dated 8/14/07 is required.
- All plantings must be kept in a healthy, live condition.

SECONDED: **Brannon**

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

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

MOTION #2: **Beikman**

I move that the Board of Adjustment, in Appeal No. **BDA 067-078**, on application of Felix Limited, represented by Masterplan, **grant** the request of this applicant to park a vehicle in a visibility triangles as a special exception to the visibility obstruction

regulation contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the revised landscape/site plan dated 8/14/07 is required.

SECONDED: Brannon

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

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 067-098

BUILDING OFFICIAL'S REPORT:

Application of Dick P. Wood, Jr. represented by Baldwin Associates for a variance to the height regulations at 8623 Hillcrest Road. This property is more fully described as a 2.2 acre tract in City Block 5464 and is zoned CR and MC-1, which limits the height of a structure to 47 feet 3 1/2 inches due to the residential proximity slope regulations. The applicant proposes to construct a nonresidential structure with a height of 63 feet which would require a variance of 15 feet 8 1/2 inches.

LOCATION: 8623 Hillcrest Road

APPLICANT: Dick P. Wood, Jr.
Represented by Baldwin Associates

REQUEST:

A variance to the height regulations (specifically to the residential proximity slope or RPS) of 15' 8.5" is requested for the entire site where structures are proposed to reach 63' in height is requested in conjunction with constructing a retail/office development on a site that is undeveloped.

STAFF RECOMMENDATION:

Denial without prejudice

Rationale:

- The applicant's representative submitted a written request for denial without prejudice. The applicant has applied for a zoning change. Staff does not object to this request.

STANDARD FOR A VARIANCE:

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor

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

GENERAL FACTS:

- The subject site is zoned CR (Community Retail) and MC-1 (Multiple Commercial).
- CR zoning establishes that the maximum structure height is 54 feet; and MC-1 zoning establishes that the maximum structure height is 70 feet. Both zoning districts provide further height restrictions related to the residential proximity slope, specifically that if any portion of a structure is over 26 feet in height, that portion may not be located above a residential proximity slope. Exception: Except for chimneys, structures listed in Section 51A-4.408(a)(2) may project through the slope to a height not to exceed the maximum structure height, or 12' above the slope, whichever is less. Note that this exception applies in districts in which building height is limited to 36 feet in height or less, which is neither the case on the site's CR and MC-1 zoned areas.
- The applicant's representative has verbally indicated the purpose of the additional height will allow for screening area for mechanical equipment.
- Both the CR and MC-1 zoning district establish provisions related to residential proximity slope, specifically that if any portion of a structure is over 26 feet in height, that portion may not be located above a residential proximity slope.
- The Dallas Development Code establishes a residential proximity slope (RPS) 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 residentially zoned property that the RPS is originating from is located east of the request site across Hillcrest Road and is developed with a religious institution. The plat map and the site plan show the distance from the request site's eastern property line to the originating property line of the religious institution site is 90 feet. The site plan shows the distance from the eastern property line to the eastern side of the proposed building is approximately 52 feet.
- The Building Official's Report states that the applicant proposes to construct structures that would reach 63' in height which is 15' 8.5" above the maximum height allowed due to the residential proximity slope of 47' 3.5".
- Staff has interpreted that the residential proximity slope was created to discourage incompatibility/privacy disruptions that may be caused by high office towers overlooking into single family lots.

- The request site is flat, generally rectangular in shape site (approximately 130' on the north, 127' on the south, approximately 740' on the east, and approximately 743' on the west) and, according to the application is 2.2 acres in area. The site is zoned both CR and MC-1.
- DCAD records indicate that property located at 8623 Hillcrest Road is developed with a "converted service station" built in 1966 that is 1,554 square feet in area.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail) and MC-1 (Multiple Commercial)
North: LO-1, SUP 307 (Limited Office, Specific Use Permit for telephone center)
South: City of University Park
East: R-7.5 (A) (Single family residential 7,500 square feet)
West: CR (Community Retail)

Land Use:

The subject site is undeveloped. The area to the north is developed with office uses; the area to the west is developed with a religious institution use (Temple Emanu-el); the area to the south is developed with residential uses; and the area to the west is developed with office and retail uses.

Zoning/BDA History:

BDA067-054 On April 18, 2007, the Board of Adjustment Panel B on took the following actions at 8623 Hillcrest Road (the request site): Denied a variance to the floor area ratio without prejudice; Denied a variance to the height regulations of 15 feet, eight-and-a-half inches without prejudice; and Granted an alternate landscape plan as a special exception to the landscape requirements, subject to the following conditions: compliance with the submitted alternate landscape plan is required and the applicant/owner must meet all private licensing and permit requirements for planting in the parkway.

Timeline:

April 27, 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.

May 17, 2007: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B according to the rules of procedure.

- May 22, 2007: The Board Administrator called and gave the applicant's representative 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 25th deadline to submit additional evidence for staff to factor into their analysis and discuss at the staff review team meeting;
 - the June 1st 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 June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 29, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Acting Building Official, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Acting 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 site is flat, generally rectangular in shape (approximately 130' on the north, 127' on the south, approximately 740' on the east, and approximately 743' on the west) and, according to the application is 2.2 acres in area. The site is zoned both CR and MC-1.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the height regulations due to the residential proximity slope requested to construct and maintain a 63' high, retail/office 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 is necessary to permit development of the subject site (an undeveloped site that is flat, generally rectangular in shape, and 2.2 acres in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same CR and MC-1 zoning classifications.
- The variances 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 CR and MC-1 zoning classifications.

If the Board were to grant the height variance of 15' 8.5", imposing a condition whereby the applicant must comply with the submitted site plan and section elevations, the structures would be limited to that shown on these submitted plans – structures in both zoning districts on the site that would be 15' 8.5" above the residential proximity slope line.

BOARD OF ADJUSTMENT ACTION: AUGUST 15, 2007

APPEARING IN FAVOR: Rob Baldwin, 401 Exposition, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Brannon

I move that the Board of Adjustment, in Appeal No. **BDA 067-098**, on application of Dick P. Wood, Jr., represented by Robert Baldwin, **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: Chernock

AYES: 4 –Cox, Brannon, Gillespie, Chernock

NAYS: 1 – Beikman

MOTION PASSED 4 – 1

MOTION: **Brannon**

I move to adjourn this meeting.

SECONDED: **Gillespie**

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

NAYS: 0 -

MOTION PASSED 5 – 0 (unanimously)

2:55 P.M. - Board Meeting adjourned for **August 15, 2007.**

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.