BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM
WEDNESDAY, AUGUST 17, 2005

MEMBERS PRESENT AT BRIEFING:	Alice Cox, Vice-Chair, Taylor Brannon, Panel Vice-Chair, Linda Wise, alternate member and Dovie Jaffe, alternate member
MEMBERS ABSENT FROM BRIEFING:	Samuel Gillespie, regular member
MEMBERS PRESENT AT HEARING:	Alice Cox, Vice-Chair, Taylor Brannon, Panel Vice-Chair, Linda Wise, alternate member and Dovie Jaffe, alternate member
MEMBERS ABSENT FROM HEARING:	Samuel Gillespie, regular member
STAFF PRESENT AT BRIEFING:	Ileana Fernandez, Asst. City Attorney, Claire Swann, Asst. City Attorney, Donnie Moore, Chief Planner, Steve Long, Board Administrator, Danny Sipes, Development Code Specialist, Jennifer Pitner, Senior Planner, Chau Nguyen, Traffic Engineer, Michael Sultan, Chief Arborist and Trena Law, Board Secretary
STAFF PRESENT AT HEARING:	Ileana Fernandez, Asst. City Attorney, Claire Swann, Asst. City Attorney, Donnie Moore, Chief Planner, Steve Long, Board Administrator, Danny Sipes, Development Code Specialist, Jennifer Pitner, Senior Planner, Chau Nguyen, Traffic Engineer, Michael Sultan, Chief Arborist and Trena Law, Board Secretary

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9:15 AM. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's August 17, 2005 docket.

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1:10 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.

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MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel B June 15, 2005 hearing minutes.

BOARD OF ADJUSTMENT ACTION: August 17, 2005

MOTION: **Wise**

I move **approval** of the **Wednesday, June 15, 2005** Board of Adjustment Public Hearing minutes.

SECONDED: **Brannon**
AYES: 4–Cox, Brannon, Wise, Jaffe
NAYS: 0 - None
MOTION PASSED 4 – 0 (Unanimously)

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MISCELLANEOUS ITEM NO. 2

FILE NUMBER: Unassigned

REQUEST: To waive the $900.00 filing fee to be submitted in conjunction with a potential Board of Adjustment application

LOCATION: 6010 Velasco Avenue

APPLICANT: Chris Hewett

August 17, 2005 Public Hearing Notes:

- The Board Administrator forwarded a copy of an email written by the applicant stating his potential conflict of being able to attend the August 17th public hearing due to “having to go out of town for business.”

STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:

The Dallas Development Code states that the board may waive the filing fee for a board of adjustment application if the board finds that payment of the fee would result in substantial financial hardship to the applicant.

GENERAL FACTS:

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waiver/s reimbursements:
  - The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.
  - The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board's miscellaneous docket for predetermination.
  - If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.
  - In making this determination, the board may require the production of financial documents.
- The applicant submitted a letter to staff requesting a waiver of the $900.00 filing fee to be submitted in conjunction with a possible Board of Adjustment issue (see Attachment A).

Timeline:

July 22, 2005 The applicant submitted a letter requesting a fee waiver for a Board of Adjustment application that may be requested at the address referenced above (see Attachment A).

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

July 28, 2005: The Board Administrator wrote the applicant a letter that conveyed the following information:

- the public hearing date and panel that will consider the request (where his attendance is strongly encouraged);
- the criteria/standard that the Board will use in their decision to approve or deny the request; and
- 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.

BOARD OF ADJUSTMENT ACTION: August 17, 2005

APPEARED IN FAVOR: No one

APPEARED IN OPPOSITION: No one

MOTION: **Jaffe**

I move that the Board of Adjustment Public hold this matter under advisement until **September 21, 2005.**

SECONDED: Brannon
AYES: 4–Cox, Brannon, Wise, Jaffe
NAYS: 0 - None
MOTION PASSED 4 – 0 (Unanimously)

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MISCELLANEOUS ITEM NO. 3

FILE NUMBER: BDA045-279

REQUEST: To reimburse the $1,250.00 filing fee submitted in conjunction with a potential Board of Adjustment application

LOCATION: 3338 N. Winnetka Avenue

APPLICANT: Edgar Carranza, represented by Oscar Ordonez

STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:

The Dallas Development Code states that the board may waive the filing fee for a board of adjustment application if the board finds that payment of the fee would result in substantial financial hardship to the applicant.

GENERAL FACTS:

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waiver/s reimbursements:
  - The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.
  - The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board's miscellaneous docket for predetermination.
  - If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.
  - In making this determination, the board may require the production of financial documents.
- The applicant submitted a email to the Board Administrator requesting reimbursement of the $1,250.00 filing fee submitted in conjunction with BDA045-279 (see Attachment A).

Timeline:

June 24, 2005 The applicant submitted an application to the Board of Adjustment for a special exception to the landscape regulations.

July 15, 2005: The Board of Adjustment Secretary randomly assigned the request to Board of Adjustment Panel B.

August 5, 2005 The applicant's representative submitted an email to the Board Administrator requesting that the $1,250.00 filing fee submitted in conjunction with the landscape special exception appeal be reimbursed (see Attachment A).

August 9, 2005 The Board Administrator emailed the applicant's representative and informed him that this request would be placed on the August 17th Miscellaneous Docket Agenda, and that the board would reimburse the filing fee if the applicant were able to convince the board that payment of the filing fee results in substantial financial hardship to the applicant.

BOARD OF ADJUSTMENT ACTION: August 17, 2005

APPEARED IN FAVOR: Oscar Ordonez, 706 Lowe Dr, Cedar Hill, TX

APPEARED IN OPPOSITION: No one

MOTION: **Brannon**

I move that the Board of Adjustment Public hold this matter under advisement until **September 21, 2005.**

SECONDED: **Wise**
AYES: 4–Cox, Brannon, Wise, Jaffe
NAYS: 0 - None
MOTION PASSED 4 – 0 (Unanimously)

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FILE NUMBER: BDA 045-279

BUILDING OFFICIAL'S REPORT:

Application of Edgar Carranza for a special exception to the landscape regulations at 3338 N. Winnetka Avenue. This property is more fully described as Lot 5 in City Block A/7103 and is zoned R-5 (A) which requires landscaping to be provided with new construction. The applicant proposes to construct an addition and provide an alternate landscape plan which would require a special exception. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 3338 N. Winnetka Avenue

APPLICANT: Edgar Carranza

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with an addition made on an existing church (Iglesia Cristiana Canaan).

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

The board may grant a special exception to the landscape regulations of this article upon making a special finding from the evidence presented that:
(1) strict compliance with the requirements of this article will unreasonably burden the use of the property;
(2) the special exception will not adversely affect neighboring property; and
(3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

In determining whether to grant a special exception, the Board shall consider the following factors:
- the extent to which there is residential adjacency;
- the topography of the site;
- the extent to which landscaping exists for which no credit is given under this article; and
- the extent to which other existing or proposed amenities will compensate for the reduction of landscaping.

GENERAL FACTS:

- The Dallas Development Code requires full compliance with the Landscape Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet.
- The "landscape plan" submitted in conjunction with this request identifies a building footprint labeled with the following notations:
  - "Existing building to remain undisturbed;" and
  - "Existing building to be remodeled."
- The applicant submitted a letter (see Attachment A) stating the following:
  - "We as a church can not comply with the City 2005 Landscape Regulations."
  - "We applied for a permit to make an addition to the church building without knowing that this will cause a problem to get our inspection approval." (The size and location of this addition is not shown on the submitted landscape plan).
  - "We had been helping our community at this location for about 10 years."
  - "This will not affect our neightboring (sic) because besides the church we have recreational parking areas that belong to the City of Dallas."
- The requirements that the applicant is seeking the special exception from are not imposed by a site-specific landscape plan approved by the city plan commission or city council.
- On August 5, 2005, the City of Dallas Chief Arborist submitted a memo to staff (see Attachment B). According to the City of Dallas Chief Arborist, the request is triggered

by an addition, and the applicant is requesting relief from the residential landscape buffer strip, street trees, site trees, and design standards.

The memo identified the following ways in which the alternate landscape plan does not comply with the landscape regulations:

- The applicant is required to provide a 10'-wide residential landscape buffer strip with one plant group for each 50' which on this site is a total of 10 plant groups (1 plant group along N. Winnetka and the east side of the property, and 4 plant groups along each side of the property).
  The applicant is *proposing* no buffer strip and no plant groups.
- The applicant is required to provide 1 street tree for each 50' of street frontage with a minimum of 2 required street trees which on this site is 2 street trees
  The applicant is *proposing* no street trees.
- The applicant is required to provide 1 site tree for each 4,000 square feet of lot area with a minimum of 4 required street trees which on this site is 4 site trees.
  The applicant is *proposing* one existing site tree although it may not meet the minimum planting requirements for either the dimensions of the cutout or soil depth.
- The applicant is required to provide 2 design standards.
  The applicant is *proposing* no design standards.

The City of Dallas Chief Arborist's August 5th memo identified the following "Factors for Consideration:"

- This is a very small site for anything other than a single family home or a duplex.

- According to DCAD, the site is developed with the following:
  - a "church building" with 1,344 square feet built in 1956; and
  - a "church building" with 1,568 square feet built in 2004.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included a letter that provides further details about the request and why it should be granted

BACKGROUND INFORMATION:

Zoning:

Site:	R-5 (A) (Single family district 5,000 square feet)
North:	R-5 (A) (Single family district 5,000 square feet)
South:	R-5 (A) (Single family district 5,000 square feet)
East:	R-5 (A) (Single family district 5,000 square feet)
West:	R-5 (A) (Single family district 5,000 square feet)

Land Use:

The subject site is developed with a church (Iglesia Cristiana Canaan). The area to the north, east, and south are undeveloped; and the area to the 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. The applicant's representative has requested a reimbursement of the filing fee submitted in conjunction with this landscape special exception request which is on the August 17th Miscellaneous Item Docket.

Timeline:

June 24, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report. (Loose photos were submitted with the application that will be available for review upon request at the briefing/public hearing).

July 15, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

July 19, 2005: 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 criteria/standard that the board will use in their decision to approve or deny the requests;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the August 5th 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 27, 2005: 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 Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

Although no review comments sheets (with comments) were submitted in conjunction with this application, the City of Dallas

Chief Arborist submitted a memo regarding this appeal (see Attachment B).

August 5, 2005 The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information was submitted after the July 27th staff review team meeting. Therefore staff did not have an opportunity to review and analyze this information.

STAFF ANALYSIS:

- The applicant has submitted a landscape plan that seeks relief from the residential buffer strip, street tree, site tree, and design standard requirements of the landscape regulations.
- The information submitted by the applicant's representative (a landscape plan and a letter) does not clearly document the size, location or date of the addition made to the existing church on the site (the new construction on the site that has triggered the applicant to fully comply with the current landscape regulations or to seek special exception from the board).
- If the request is granted, subject to compliance with the submitted landscape plan, the following exceptions would be made to the landscape regulations on this site:
  1. No required buffer strip or plant group would be provided on the site.
  2. None of the required 2 street trees would be provided on the site.
  3. At best, only 1 of the required 4 site trees would be provided on the site.

None of the required 2 design standards would be provided on the site.

BOARD OF ADJUSTMENT ACTION: August 17, 2005

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Wise**

I move that the Board of Adjustment **grant** application **BDA 045-279** 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 landscape plan is required.

SECONDED: **Brannon**
AYES: 4–Cox, Brannon, Wise, Jaffe
NAYS: 0 - None
MOTION PASSED 4 – 0 (Unanimously)

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FILE NUMBER: BDA 045-264

BUILDING OFFICIAL'S REPORT:

Application of Plaza at Turtle Creek Residents Association, Inc. represented by Roger Albright, for a special exception to the front yard setback regulations at 2828 Hood Street. This property is more fully described as Lot 1H in City Block 11/1017 is zoned Planned Development 193 (MF-3 D) which requires a 25 foot front yard setback. The applicant proposes to maintain a porte-cochere in the required front yard and provide a 1 foot setback which would require a special exception of 24 feet. Referred to the Board of Adjustment in accordance with Section 51-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions

LOCATION: 2828 Hood Street

APPLICANT: Plaza at Turtle Creek Residents Association, Inc.
Represented by Roger Albright

August 17, 2005 Public Hearing Notes:

- The Board Administrator forwarded a letter to the Board of Adjustment written by the applicant's representative (Attachment A). The letter requested that the board delay action on this matter so the applicant could meet with the interested neighbors in an attempt to address all of their concern and obtain their support.

REQUEST:

- A special exception to the front yard setback regulations of 24' is requested to maintain an approximately 950 square foot porte cochere that is attached to a multi-story residential building (The Plaza at Turtle Creek).

STANDARD FOR A SPECIAL EXCEPTION TO THE FRONT YARD REQUIREMENTS FOR A PORTE-COCHERE, COVERED WALKWAY, OR CANOPY:

The board of adjustment may allow a special exception to the front yard requirements of Section 51P-193.125 to permit the erection of a permanently constructed porte-cochere, covered walkway, or canopy in the multiple-family, MH, A, office, commercial, central area, and industrial subdistricts if the structure is rectilinear in shape and does not exceed 25 feet in width at the building line, and if the board finds that the structure will not adversely affect neighboring property.

GENERAL FACTS:

- A 25'-front yard setback is required in the PD No. 193 (MF-3 Subdistrict) zoning district.

- The porte cochere is located 1' from the front property line when a 25'-front yard setback is required.
- For purposes of this request, Building Inspection has stated that the 25'-front yard setback line (dictated by the underlying zoning district) is also the site's building line.
- The submitted site plan indicates that the existing porte cochere is in compliance with two characteristics that are specified in the applicable special exception provision of PD No. 193:
  1. The existing porte cochere is rectilinear in shape; and
  2. The existing porte cochere does not exceed 25 feet in width at the building line. (The structure is 21' 1"-wide at the building line, and 33'-wide in the area between the building/setback line and the front property line).

BACKGROUND INFORMATION:

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

Land Use:

The approximately 1.5-acre subject site is developed as a multi-story residential structure (The Plaza at Turtle Creek). The areas to the north, east, and west are developed with residential uses; and the area to the south is undeveloped.

Zoning/BDA History:

1. BDA 989-147, 2828 Hood Street (the subject site)	On January 19, 1999, the Board of Adjustment Panel B granted a request for a variance to side yard setback regulations of 30', and a variance to the rear yard setback regulations of 12' 4", subject to the following conditions: Compliance with the submitted site plan and elevation is required. The case report states the requests were made in conjunction with constructing an 18-story multifamily structure.
2. BDA 978-213, 3535 Gillespie (a tract of land including the subject site)	On August 18, 1998, the Board of Adjustment Panel B granted a request for a variance to side yard setback regulations of 45', subject to the following conditions: Compliance with the submitted site plan is required. The case report states the request was made in conjunction with constructing a 9-story multifamily structure. The report additionally noted that the request was made due to a recent subdivision of the site

	and the lot to the east that resulted in the placement of a property line running diagonally through what had been a rectangular shaped lot, and the applicant's inability to obtain all required permits for a tower in conjunction with the approval of BDA 967-178 in 1997 within 180 days from the board's favorable action on February 25, 1997.
3. BDA 967-178, 3535 Gillespie (a tract of land including the subject site and the lot immediately to the east)	On February 27, 1997, the Board of Adjustment Panel B granted a request for a variance to the side yard variance of 45 requested in conjunction with constructing 2 high-rise multifamily buildings.

Timeline:

June 23, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

July 15, 2005 The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

July 15, 2005: The Board Administrator contacted the applicant's representative and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the requests;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the July 25th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the August 5th 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 27, 2005: 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 Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The existing porte cochere is rectilinear in shape and does not exceed 25 feet in width at the building line. (The structure is 21' 1"-wide at the building line, and 33'-wide in the area between the building/setback line and the Hood Street property line).
- As of August 5th, no letters of support and one letter of opposition (from the Oak Lawn Committee) have been submitted in conjunction with this application.
- If the Board were to grant the front yard special exception request, subject to the submitted site plan and elevation, the encroachment into the site's front yard setback would be limited to a porte cochere structure that is about 950 square feet in area located 1' away from the Hood Street front property line. In addition, if the Board were to condition the request to the submitted site plan and elevation, the structure in the setback would be restricted to that what is shown on this document – a structure that is comprised of a "low masonry wall and columns @ posts" and "existing canopy."
- The Board Administrator conducted a field visit of the site and noted a number of landscape materials adjacent to the existing porte cochere. The existing landscape materials (trees and shrubs) significantly screen the existing porte cochere structure to a level where the structure is barely visible from certain areas on Hood Street and from some neighboring properties. Although the site plan indicates the location of landscape materials adjacent to the existing porte cochere in conceptual form, specifications regarding the sizes and species of these materials have not provided on the submitted site plan. If the Board feels that the retention of the existing materials is related to whether or not the porte cochere will not adversely affect neighboring property, they should request that the applicant specify the existing materials to be retained adjacent to the porte cochere on a site plan.

BOARD OF ADJUSTMENT ACTION: August 17, 2005

APPEARING IN FAVOR: No one
No one

APPEARING IN OPPOSITION:

MOTION: **Brannon**

I move that the Board of adjustment in **BDA 045-264**, hold this matter under advisement until **September 21, 2005**.

SECONDED: **Wise**
AYES: 4–Cox, Brannon, Wise, Jaffe
NAYS: 0 - None
MOTION PASSED 4 – 0 (Unanimously)

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FILE NUMBER: BDA 045-247

BUILDING OFFICIAL'S REPORT:

Application of Lisa Ellis, represented by CEI Engineering Associates, Inc., for a special exception to the parking regulations at 9440 Marsh Lane. This property more fully described as Lot 1 in City Block 1/5087 and is zoned CR which requires parking to be provided for retail uses. The applicant proposes to construct an addition and provide 524 spaces of the required 612 spaces which would require a special exception of 88 parking spaces. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 9440 Marsh Lane

APPLICANT: Lisa Ellis
Represented by CEI Engineering Associates, Inc.,

REQUEST:

- A special exception to the off-street parking regulations of 88 spaces is requested in conjunction with expanding an existing retail use (Target) and providing 524 (or 86%) of the total required 612 off-street parking spaces.

STANDARD FOR A SPECIAL EXCEPTION TO THE OFF-STREET PARKING REGULATIONS:

1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
2) In determining whether to grant a special exception, the board shall consider the following factors:
   (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
   (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
   (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.

(D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
(E) The availability of public transit and the likelihood of its use.
(F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.

3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
4) In granting a special exception, the board may:
(A) establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
(B) impose restrictions on access to or from the subject property; or
(C) impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
(A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
(B) the regulations governing that specific district expressly authorize the board to grant the special exception.

GENERAL FACTS:

- The Dallas Development Code requires that 1 space is provided for every 200 square feet of retail floor area.
- The applicant is proposing to provide 524 (or 86%) of the total 612 required off-street parking spaces.
- The site plan submitted with the application makes the following notations:
  - Pre-model/expansion: ±116,167 building square feet, parking required: 581
  - Post-remodel/expansion: ±122,439 building square feet, parking required: 612

  As a result, the expansion appears to be about 6,270 square feet.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information (submitted after the July 27th staff review team meeting) was a parking study/assessment made in July of 2005.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail, deed restricted)
North: R-7.5(A) and MF-1(A) (Single family and Multifamily)

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

Land Use:

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

Zoning/BDA History:

1. Z934-120, property at the northwest corner of Northwest Highway and Mixon Drive (the subject site)	On January 12, 1994, the City Council accepted deed restrictions offered in conjunction with a request for a CR zoning district on property that had been zoned LO-1 and P. The deed restrictions generally imposed the following: so long as the predominant use is for a general merchandise store, the owner must install a 6' high solid screening fence along the eastern side of the site, provide a 10'-wide buffer strip in this area; limit the truck deliveries to this use between the hours of 7 am and 6 pm; and install and maintain traffic control signs at the Mixon Drive ingress and egress points. The applicant has been given a copy of these deed restrictions and has not provided staff any indication that the proposed addition (or parking special exception) would deviate from any provision of these restrictions.

Timeline:

April 28, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

May 19, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

May 19, 2005: The Board Administrator contacted the applicant's representative and shared the following information:

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

- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the June 1st deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 31, 2005 The applicant's representative emailed the Board Administrator requesting that the case be postponed from Panel B's June 15th hearing to Panel B's August 17th hearing.

July 12, 2005: The Board Administrator emailed the applicant's representative and shared the following information:

- the July 25th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the August 5th 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 27, 2005: 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 Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

A review comment sheet was submitted on July 29th by the Development Services Transportation Engineer in conjunction with this application. The engineer stated that he had no comments due to lack of requested information and parking study analysis.

August 2, 2005 The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information/parking study was submitted after the July 27th staff review team meeting. Therefore staff did not have an opportunity to review and analyze this information.

STAFF ANALYSIS:

- 86 percent of the required off-street parking spaces are proposed to be provided in conjunction with the proposed expansion of the existing retail store on the site.
- Granting this request, subject to the condition that the special exception automatically and special exception automatically and immediately terminates if and when the retail use on the site is changed or discontinued, would allow, an approximately 6,300 square foot expansion on an existing approximately 116,000 square foot retail use.
- The Development Services Transportation Engineer has indicated with "no comments" on the request due to lack of requested information and parking study analysis from the applicant.
- In addition to obtaining a parking special exception from the Board of Adjustment, the expansion triggers the applicant to obtain a Specific Use Permit (SUP) from the City Plan Commission and City Council. An SUP is required in the CR zoning district for the "general merchandise or food store greater than 3,500 square feet" retail use on the site.

BOARD OF ADJUSTMENT ACTION: August 17, 2005

APPEARING IN FAVOR: Joshua Knott, 2611 SW 17th St., Apt 1, Bentonville, AR 72712

APPEARING IN OPPOSITION: David Harmon, 3733 Haywood Ln., Dallas, TX

MOTION: **Wise**

I move that the Board of Adjustment in Appeal No. **BDA 045-247** on application of the Target Corporation, **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development Code by 88 parking spaces, because our evaluation of the property and the testimony shows that the parking demand generated by the proposed uses on the site does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard nor increase traffic congestion on adjacent and nearby streets. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception shall automatically and immediately terminate if and when the retail use of the site is changed or discontinued.

SECONDED: **Brannon**
AYES: 4–Cox, Brannon, Wise, Jaffe

NAYS: 0 - None
MOTION PASSED 4 – 0 (Unanimously)

****

FILE NUMBER: BDA 045-253

BUILDING OFFICIAL'S REPORT:

Application of Rhonda D'Ambrogi for a special exception to the fence regulations at 5131 Southbrook Drive. This property is more fully described as Lot 1A in City Block 5/5578 and is zoned R-1Ac (A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 12 foot 8 inch fence in the required front yard setback which would require a special exception of 8 feet 8 inches. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 5131 Southbrook Drive

APPLICANT: Rhonda D'Ambrogi

REQUEST:

- A special exception to the fence height regulations of 8' 8" is requested in conjunction with constructing a 12' 8"-high solid fence in the Northwest Highway front yard setback on a site that is developed with a single family house.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
- The request was determined by the Building Official to be in a front yard due to the lot being a "through-lot" with double frontage, Southbrook Drive and Northwest Highway.
- A site plan has been submitted that documents the location of the proposed fence relative to the proximity to the property line and pavement line. The site plan also shows the length of the proposed fence relative to the lot.
- An elevation has been submitted that documents the height of the proposed fence (12'8"). The fence is proposed to be constructed of pre-cast concrete.

- Senior Planner Pitner conducted a field visit of the site and surrounding area and noted multiple fences that appeared to be higher than 4' located along Northwest Highway in similar lots with double street frontage.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

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 sites.

Timeline:

May 31, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

July 12, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

July 21, 2005: The Board Administrator contacted the applicant's representative and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the August 5th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- that additional evidence submitted past this date should be brought to the public hearing, 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 27, 2005: 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 Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Department Transportation Engineer; the Chief Arborist, Senior Planner Pitner and the Assistant City Attorney to the Board.

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

August 4, 2005 The applicant submitted information beyond what was submitted with the original application, a petition of support with 10 signatures (see Attachment A).

August 8, 2005 The applicant submitted information beyond what was submitted with the original application, an email with observations of fences on Northwest Highway and a list of building permits for some of those fences. (see Attachment B).

STAFF ANALYSIS:

- The building official determined this lot is a through-lot due to the double frontage on two streets. Access would need to be prohibited by either the City or by plat in order for the request to be deemed in a rear yard.
- Northwest Highway is classified by the Thoroughfare Plan as a 6-lane divided principle arterial. It appears unlikely that access would be granted by TxDOT onto Northwest Highway.
- There are topographical barriers to access through the request site that include a creek that runs parallel to Northwest Highway in this area. In order to access Northwest Highway from the request site would require a bridge across the creek.
- The yard where the fence is being requested has been deemed a front yard; however, the yard functions as a rear yard and access from this lot to Northwest Highway does not appear feasible.
- The proposed fence is to be constructed of durable material (pre-cast concrete).
- Granting the fence height special exception of 8'8" with conditions imposed that the applicant complies with the submitted site plan and fence elevation would assure that the proposed fence is maintained as shown on these documents.

BOARD OF ADJUSTMENT ACTION: August 17, 2005

APPEARING IN FAVOR: Mark Yelderman, 5121 Southbrook Dr., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Jaffe**

I move that the Board of Adjustment in Appeal No. **BDA 045-253**, hold this matter under advisement until **September 21, 2005**.

SECONDED: **Brannon**
AYES: 4–Cox, Brannon, Wise, Jaffe
NAYS: 0 - None
MOTION PASSED 4 – 0 (Unanimously)

****

FILE NUMBER: BDA 045-254

BUILDING OFFICIAL'S REPORT:

Application of Mark and Susan Yelderman for a special exception to the fence regulations at 5121 Southbrook Drive. This property is more fully described as Lot 1B in City Block 5/5578 and is zoned R-1Ac (A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 12 foot 8-inch fence in the required front yard setback which would require a special exception. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 5121 Southbrook Drive

APPLICANT: Mark and Susan Yelderman

REQUEST:

- A special exception to the fence height regulations of 8' 8" is requested in conjunction with constructing a 12' 8"-high solid fence in the Northwest Highway front yard setback on a site that is developed with a single family house.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
- The request was determined by the Building Official to be in a front yard due to the lot being a "through-lot" with double frontage, Southbrook Drive and Northwest Highway.
- A site plan has been submitted that documents the location of the proposed fence relative to the proximity to the property line and pavement line. The site plan also shows the length of the proposed fence relative to the lot.
- An elevation has been submitted that documents the height of the proposed fence (12'8"). The fence is proposed to be constructed of pre-cast concrete.
- Senior Planner Pitner conducted a field visit of the site and surrounding area and noted multiple fences that appeared to be higher than 4' located along Northwest Highway in similar lots with double street frontage.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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

Timeline:

May 31, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

July 12, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

July 21, 2005: The Board Administrator contacted the applicant's representative and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the August 5th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- that additional evidence submitted past this date should be brought to the public hearing, 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 27, 2005: 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 Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Department Transportation Engineer; the Chief Arborist, Senior Planner Pitner and the Assistant City Attorney to the Board.

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

August 4, 2005 The applicant submitted information beyond what was submitted with the original application, a petition of support with 10 signatures (see Attachment A).

August 8, 2005 The applicant submitted information beyond what was submitted with the original application, an email with observations of fences on Northwest Highway and a list of building permits for some of those fences. (see Attachment B).

STAFF ANALYSIS:

- The building official determined this lot is a through-lot due to the double frontage on two streets. Access would need to be prohibited by either the City or by plat in order for the request to be deemed in a rear yard.
- Northwest Highway is classified by the Thoroughfare Plan as a 6-lane divided principle arterial. It appears unlikely that access would be granted by TxDOT onto Northwest Highway.

- There are topographical barriers to access through the request site that include a creek that runs parallel to Northwest Highway in this area. In order to access Northwest Highway from the request site would require a bridge across the creek.
- The yard where the fence is being requested has been deemed a front yard; however, the yard functions as a rear yard and access from this lot to Northwest Highway does not appear feasible.
- The proposed fence is to be constructed of durable material (pre-cast concrete).
- Granting the fence height special exception of 8'8" with conditions imposed that the applicant complies with the submitted site plan and fence elevation would assure that the proposed fence is maintained as shown on these documents.

BOARD OF ADJUSTMENT ACTION: August 17, 2005

APPEARING IN FAVOR: Mark Yelderman, 5121 Southbrook Dr., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Jaffe**

I move that the Board of Adjustment in Appeal No. **BDA 045-254**, hold this matter under advisement until **September 21, 2005**.

SECONDED: **Brannon**
AYES: 4–Cox, Brannon, Wise, Jaffe
NAYS: 0 - None
MOTION PASSED 4 – 0 (Unanimously)

****

FILE NUMBER: BDA 045-258

BUILDING OFFICIAL'S REPORT:

Application of Benjamin and Estela Magana for a special exception to the fence regulations and to the visibility obstruction regulations at 2624 Lolita Drive. This property is more fully described as part of Lot 2 in City Block D/6193 and is zoned R-7.5 (A) which limits the height of a fence in the front yard to 4 feet and requires that no structure be located in a visibility corner clip. The applicant proposes to maintain a 5 foot 10 inch fence in the required front yard setback and be located in a visibility corner clip. This would require a special exception of 1 foot 10 inches to the fence regulations and a special exception to the visibility obstruction regulations. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 2624 Lolita Drive

APPLICANT: Benjamin and Estela Magana

August 15, 2005 Public Hearing Notes:

- The Board Administrator made the Board of Adjustment aware of the fact that the applicant had informed him at lunch that the existing fence on the site was approximately 4' 2" in height (rather than 3' 9" in height as shown on the submitted elevation). In addition, the administrator informed the board that the applicant had authorized him to amend the elevation accordingly.

REQUESTS:

The following appeals have been made in this application:

1. A special exception to the fence height regulations of 1' 10" is requested to maintain a 4' 9"-high open metal pedestrian gate, a 5' 2"-high open metal vehicular gate, and a 5' 10" high metal gate post/column in the site's 25' front yard setback.
2. A special exception to the visibility obstruction regulations is requested to maintain the open metal vehicular gate (and gate post) mentioned above, and an approximately 3' 10"-high open metal fence in the two, 20'-visibility triangles at the drive approach on a site developed with a single family home.

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.

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 fence height special exception):

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
- The submitted elevation indicates that the fence on the site is 3' 10" in height. As a result, this fence is permitted by right given that a fence can be 4' in height in the front yard setback on R-7.5 (A)-zoned property.
- Building Inspection states that no permit was issued by the City for the existing fence on this site.
- The existing vehicular gate and metal gate post in the 25'-front yard setback have the following additional characteristics:
  - arched in design, ranging in height from 4' 2" to 5' 2" (with a 5' 10"-high metal post);
  - approximately 20' in length along Lolita Drive; and

- located on a site where no single family home has direct/indirect frontage to the existing gate.

- The existing pedestrian gate in the 25'-front yard setback has the following additional characteristics:
  - arched in design, ranging in height from 4' 2" to 4' 9";
  - approximately 4' in length along Lolita Drive;
  - located on a site where no single family home has direct/indirect frontage to the existing gate.
- The Board Administrator conducted a field visit of the site and surrounding area and noted one other fence that appeared to be above 4' in height in the front yard setback. The approximately 4.5'-high open metal fence with an approximately 5'-high open metal gate is located about three lots south of the site.

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

- 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 requests to maintain an open metal fence and open metal vehicular gate (and post) in the site's two 20'-visibility triangles at the Lolita Drive drive approach.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. Unassigned, 2624 Lolita Drive (the subject site)	On May 18, 2005, the Board of Adjustment Panel B waived the $1,200.00 filing fee to be submitted in conjunction with an application for special exceptions to the

fence height and visibility obstruction regulations.

Timeline:

June 28, 2005 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

July 14, 2005: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If any preliminary action is required on a case, including but not limited to a fee waiver or waiver of the two year waiting period, the case must be returned to the panel taking the preliminary action."

July 15, 2005: 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 25th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the August 5th 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 27, 2005: 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 Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

A review comment sheet was submitted by the Development Services Transportation Engineer in conjunction with this application on July 29, 2005. The engineer commented that he has no objections to the request.

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

- A scaled site plan has been submitted that documents the location of the existing gates over 4' in height relative to its proximity to the property line and pavement line. The site plan also clearly shows the length of the existing gates relative to the entire lot.
- A scaled elevation has been submitted that documents the height of the existing fence (3' 10"), vehicular gate (5' 2") and entry gate post (5' 10"), pedestrian gate (4' 9"), and the building materials (open iron fence and gate).
- The existing fence and gates are constructed of durable material.
- The applicant has submitted a petition of 15 neighbors who support the existing fence.
- Granting this special exception of 1' 10" with conditions imposed that the applicant complies with the submitted site plan and elevation would assure that the existing gates and gate post over 4' in height are maintained as they currently exist on the site and as shown on this document.

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

- The Development Services Transportation Engineer has indicated that he has no objections to this request.
- If the request is granted, subject to compliance with the submitted site plan and elevation, the existing open iron fence, open iron vehicular gate, and gate post would be "excepted" into the two Lolita Drive 20' visibility triangles.

BOARD OF ADJUSTMENT ACTION: August 17, 2005

APPEARING IN FAVOR:	Antonio Cadena, 2624 Lolita, Dallas, TX Benjamin Magana, 2624 Lolita, Dallas, TX
APPEARING IN OPPOSITION:	No one

MOTION#1: **Wise**

I move that the Board of Adjustment in Appeal No. **BDA 045-258,** on application of Benjamin and Estela Magana, **grant** the request of this applicant to maintain a fence, gate, and gate posts that fall within a visibility corner clip as a special exception to the visibility obstruction regulations 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 submitted site plan and amended elevation dated 8-17-05 is required.

SECONDED: **Brannon**
AYES: 4–Cox, Brannon, Wise, Jaffe
NAYS: 0 - None
MOTION PASSED 4 – 0 (Unanimously)

MOTION#2: **Wise**

I move that the Board of Adjustment in Appeal No. **BDA 045-258,** on application of Benjamin and Estela Magana, **grant** the request of this applicant to maintain a 5 foot 10 inch fence on the property as a special exception to the height requirements 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 conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan and amended elevation dated 8-17-05 is required.

SECONDED: **Brannon**
AYES: 4–Cox, Brannon, Wise, Jaffe
NAYS: 0 - None
MOTION PASSED 4 – 0 (Unanimously)

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FILE NUMBER: BDA 045-266

BUILDING OFFICIAL'S REPORT:

Application of Eden Landscape Co., represented by Todd Roberts for a special exception to the fence regulations at 4722 Walnut Hill Lane. This property is more fully described as a tract of land in City Block 5543 and is zoned R-1Ac(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct an 8 foot 10 inch fence in the required front yard setback which would require a special exception of 4 feet 10 inches. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 4722 Walnut Hill Lane

APPLICANT: Eden Landscape Co.
Represented by Todd Roberts

REQUEST:

- A special exception to the fence height regulations of 4’10” is requested in conjunction with constructing an 8’-high solid stucco fence with 8’10” stucco columns

and 8' metal gates in the front yard setback on a site that is developed with a single family house.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
- A site plan has been submitted that documents the location of the proposed fence relative to the proximity to the property line and pavement line. The site plan also shows the length of the proposed fence relative to the lot, approximately 240 feet.
- Senior Planner Pitner conducted a field visit of the site and surrounding area and noted multiple fences that appeared to be located along Walnut Hill Lane. Most fences appeared to be larger than 4', some larger than 8'. It was not determined if those fences were in a front, side, or rear yard.
- The proposed fence on this site is located on a site where no single family homes would face the fence.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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

Timeline:

May 9, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

July 12, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

July 21, 2005: The Board Administrator contacted the applicant's representative and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the August 5th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- that additional evidence submitted past this date should be brought to the public hearing, 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 27, 2005: 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 Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Department Transportation Engineer; the Chief Arborist, Senior Planner Pitner and the Assistant City Attorney to the Board.

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

August 5, 2005 The applicant submitted information beyond what was submitted with the original application (see Attachment A).

STAFF ANALYSIS:

- Walnut Hill Lane is classified by the Thoroughfare Plan as a 6-lane divided principle arterial.
- The site plan shows two gates at the access points for the semi-circular driveway and meets the minimum visibility distance for vehicles entering and exiting the

driveway. A pedestrian gate is also provided near the center of the north side of the motor court.

- The proposed fence is to be constructed of durable material (stucco fence and columns, and metal gates).
- The site plan indicates that landscaping adjacent to the fence to be provided.
- An elevation has been submitted that documents the height of the proposed fence (8'), columns (8'10"), and gates (8').
- It was observed in surrounding area on Walnut Hill Lane that many homes were screened by fences or plant life, most exceeding 4' in height. The screening provided by plant life appeared to often exceed 8' in height. Homes nearby did not appear to be oriented towards Walnut Hill Lane.
- Granting the fence height special exception of 4'10" with conditions imposed that the applicant complies with the submitted site plan and fence elevation would assure that the proposed fence is maintained as shown on these documents.

BOARD OF ADJUSTMENT ACTION: August 17, 2005

APPEARING IN FAVOR: Todd Roberts, 6302 Sudbury, Dallas, TX 75214
Will Hartnett, 4722 Walnut Hill, Dallas, TX 75224

APPEARING IN OPPOSITION: No one

MOTION: **Wise**

I move that the Board of Adjustment in Appeal No. **BDA 045-266,** on application of Will Hartnett, **grant** the request of this applicant to maintain an 8 foot 10 inch fence on the property as a special exception to the height requirements 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 plan and elevation is required.

SECONDED: **Jaffe**
AYES: 4–Cox, Brannon, Wise, Jaffe
NAYS: 0 - None
MOTION PASSED 4 – 0 (Unanimously)

****

FILE NUMBER: BDA 045-270

BUILDING OFFICIAL'S REPORT:

Application of Caye Cook and Associates, represented by Lindsey White, for a special exception to tree preservation regulations at 2050 N. Stemmons Freeway. This property is more fully described as a tract of land in City Blocks 6053 and 7896 and is zoned MU-

3 (A) which mitigation for every protected tree removed. The applicant proposes to construct an addition and provide an tree mitigation plan which would require a special exception to the tree preservation regulations. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 2050 N. Stemmons Freeway

APPLICANT: Caye Cook and Associates
Represented by Lindsey White

REQUEST:

- A special exception to the tree preservation regulations is requested in conjunction with removing trees on a site developed with an office/showroom use (Dallas Market Center). The tree removal is proposed given plans to add a 320,000 square foot multi-level parking garage (with additional showroom space atop) on this site.

STANDARD FOR A SPECIAL EXCEPTION TO THE TREE PRESERVATION REGULATIONS:

The board may grant a special exception to the tree preservation 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 Tree Preservation Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet.
- The applicant has submitted a “Planting Plan” that does not fully comply with the tree preservation regulations, specifically a plan where (according to the City of Dallas Chief Arborist) the applicant is requesting an exception from the required amount of tree mitigation.

- The requirements that the applicant is seeking the special exception from are not imposed by a site-specific landscape plan approved by the city plan commission or city council.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included a revised "Planting Plan," and a letter that provides additional details about the request and why it should be granted.
- The applicant has stated that the new expansion will require removing 40 trees that were voluntarily planted when the site was developed several decades ago prior to the creation of the City's current Landscape and Tree Preservation Regulations. In addition, the applicant has stated that even though 40 trees are being removed on the site, 79 existing trees will remain, which is 10 trees beyond the 69 trees that would be required to be located on the site per the current Landscape and Tree Preservation Regulations.
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Chief Board of Adjustment Planner (see Attachment B). This memo states the following:
  - The applicant is requesting relief from the required amount of tree mitigation.
  - The special exception request is triggered by new construction.
  - Deficiency:
    - The applicant is required to provide inch-for-inch replacement of any protected tree removed.
      The applicant is proposing to remove 39 trees (totaling 716 inches with a replacement value of $57,054.00) and to provide one new 4" Live Oak tree.
  - Factors for consideration:
    - All of the existing trees on the site were planted voluntarily when the site was developed several decades ago.
    - There is little (almost no) opportunity to plant any replacement trees on the site.
    - The proposal involves retaining many more trees than are being removed, and the site will maintain a significant canopy cover.

BACKGROUND INFORMATION:

Zoning:

Site: MU-3 (Mixed use)
North: PD No. 193 (Planned Development District)
South: MU-3 (Mixed use)
East: MU-3 (Mixed use)
West: MU-3 (Mixed use)

Land Use:

The subject site is developed with a showroom use (Dallas Market Center). The area to the north is developed with commercial uses; the areas to the east and west are developed with showroom uses; and the area to the south is the Stemmons Freeway.

Zoning/BDA History:

1. BDA 034-198, 2020 N. Stemmons Freeway (a site that included part of the subject site)	On September 20, 2004, the Board of Adjustment Panel C granted a request for a special exception to off-street parking regulations of 1,073 spaces (or 25% of the required parking), subject to the following conditions: The special exception of 1073 spaces shall automatically and immediately terminate if and when the mixed use (office/showroom/warehouse) on the site is changed or discontinued; and the Dallas Market Center, Ltd., must maintain parking leases totaling 3,050 parking spaces. The case report states that the request was related to the applicant's proposal to reclassify the use for the three existing buildings on the site that contain over 4,000,000 square feet from "trade center" to "office showroom/warehouse" use. The report states that the request was not triggered by the applicant's intent to increase the square footage of any structure on the site, adding additional square footage on the lot, nor to reduce the amount of existing parking provided on the site.

Timeline:

June 24, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

July 15, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

July 15, 2005: The Board Administrator contacted the applicant's representative and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the requests;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;

- the July 25th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the August 5th 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 27, 2005 The applicant's representative two letters to the Board Administrator. One letter formally requested that her original request for a special exception to the landscape regulations be withdrawn since a revised plan had been made that fully met the landscape requirements. The other letter further explained the scope of the tree preservation special exception request and why it should be granted (see Attachment A).

July 27, 2005: 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 Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

Although no review comments sheets (with comments) were submitted in conjunction with this application, the City of Dallas Chief Arborist submitted a memo regarding this appeal (see Attachment B).

STAFF ANALYSIS:

- The applicant has submitted a revised "Planting Plan" that reflects the removal of 39 trees and the retention of 79 trees that were voluntarily planted on the site prior to the creation of the site and street tree requirement.
- Granting this request, subject to a condition that the applicant comply with the submitted revised planting plan, will allow the proposed 320,000 square foot multi-level parking garage with additional showroom space above, while simultaneously preserve/retain 79 existing trees on the site (10 trees beyond the 69 trees that the current landscape ordinance would require to be located on the site).
- Granting this request, subject to the submitted revised planting plan, does not provide any relief from (or exception to) the landscape regulations since the applicant modified the originally submitted plans for the purpose of being able to fully comply with the landscape regulations.

BOARD OF ADJUSTMENT ACTION: August 17, 2005

APPEARING IN FAVOR: David Voss, 6536 Kenwell, Dallas, TX
Caye Cook, 6425 Royalton Dr., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION#1: **Jaffe**

I move that the Board of Adjustment, in Appeal No. **BDA 045-270**, on application of Dallas Market Center Co., **grant** the request of this applicant to provide an alternate landscape and tree mitigation plan as a special 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 conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the $57,054 as a requirement for the inch for inch replacement for the protected trees removed is required.

SECONDED: No one
***The motion was withdrawn by the maker of the motion.**

MOTION#2: **Jaffe**

I move that the Board of Adjustment, in Appeal No. **BDA 045-270**, on application of Dallas Market Center Co., **deny** the special exception to the landscape and tree preservation 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.

SECONDED: **Wise**
AYES: 1–Jaffe
NAYS: 3 - Cox, Brannon, Wise,
MOTION FAILED 1 – 3

MOTION#3: **Brannon**

I move that the Board of Adjustment, in Appeal No. **BDA 045-270**, on application of Dallas Market Center Co., **grant** the request of this applicant to provide an alternate landscape and tree mitigation plan as a special 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 conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted landscape and tree mitigation plan is required and the relief is only for 370 caliper inches of trees.

SECONDED: **Wise**
AYES: 3–Cox, Brannon, Wise
NAYS: 1 -Jaffe
MOTION FAILED 3 –1 ***The motion to grant the request did not get four concurring votes, therefore the motion was deemed denied with prejudice.**

MOTION#4: **Brannon**

I move that the Board of Adjustment, in Appeal No. **BDA 045-270**, **reconsider** the previous motion and **deny the request without prejudice**.

SECONDED: **Wise**
AYES: 1–Jaffe
NAYS: 3 - Cox, Brannon, Wise
MOTION FAILED 3 –1

MOTION#5: **Wise**

I move that the Board of Adjustment, in Appeal No. **BDA 045-270**, hold this matter under advisement until **September 21, 2005**.

SECONDED: **Brannon**
AYES: 3–Cox, Brannon, Wise
NAYS: 0 –
NO VOTE: 1- Jaffe
MOTION PASSES 3 –0

****

FILE NUMBER: BDA 045-262

BUILDING OFFICIAL'S REPORT:

Application of Virgil Fleming represented by Raymond S. Lambert for a variance to the side yard setback regulations at 2433 Southwood Drive. This property is more fully described as Lot 6 in City Block A/6038 and is zoned R-10 (A) which requires a 6 foot side yard setback. The applicant proposes to construct an addition and provide a 3 foot side yard setback which would require a variance of 3 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

LOCATION: 2433 Southwood Drive

APPLICANT: Virgil Fleming
Represented by Raymond S. Lambert

REQUEST:

- A variance to the side yard setback regulations of 3' is requested in conjunction with constructing an addition on a single-family home.

STANDARD FOR A VARIANCE:

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

GENERAL FACTS:

- The site is flat, rectangular in shape (70' x 175'), and approximately 12,250 square feet in area.
- The typical lot size in R-10 (A) zoning district is 10,000 square feet.
- A 6' side yard setback is required in the R-10(A) zoning district.
- DCAD records indicate that the site is developed with a single family home in average condition that was built in 1952 and has 1,139 square feet of living area and a detached 440 square foot servants quarters.
- The addition to the single family structure is an enclosed breezeway that would connect the main structure with the detached gameroom accessory structure.
- The area of the proposed enclosed breezeway is approximately 138 square feet.
- The detached gameroom accessory structure, located 3' in the 6'-side yard setback, is approximately 400 square feet in area , or 20' x 20' according to the site plan.
- There is a second accessory structure on the request site, a 420 square foot (14' x 30') storage building, indicated on the landscape plan.

BACKGROUND INFORMATION:

Zoning:

Site: R-10 (A) (Single family residential 10,000 square feet)
North: R-10 (A) (Single family residential 10,000 square feet)
South: R-10 (A) (Single family residential 10,000 square feet)
East: R-10 (A) (Single family residential 10,000 square feet)
West: R-10 (A) (Single family residential 10,000 square feet)

Land Use:

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

Zoning/BDA History:

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

Timeline:

June 23, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

July 15, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

July 21, 2005: The Board Administrator contacted the applicant's representative and shared the following information:

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

July 22, 2005: The applicant's representative submitted revised site plans to show an enclosed breezeway as opposed to a covered breezeway as shown on the site plan originally submitted.

July 27, 2005: 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 Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Department Transportation Engineer; the Chief Arborist, Senior Planner Pitner and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The attached plat map indicates that the site is 12,250 square feet. This total lot size is greater than the typically-sized lot in the R-10(A) zoning district at 10,000 square feet.
- The revised site plan shows an enclosed breezeway that would connect the main structure to the accessory structure.
- If the Board were to grant the request, imposing a condition whereby the applicant must comply with the revised site plan, the amount of encroachment into the side yard setback would be limited in this case to an area of approximately 60 square feet.

BOARD OF ADJUSTMENT ACTION: August 17, 2005

APPEARING IN FAVOR: Raymond Lambert, 12250 Inwood Rd, #9, Dallas, TX

APPEARING IN OPPOSITION: Lorraine Terry, 6602 Atlanta Drive, Colleyville, TX 76034

MOTION: **Brannon**

I move that the Board of Adjustment in Appeal No. **BDA 045-262**, hold this matter under advisement until **September 21, 2005.**

SECONDED: **Wise**
AYES: 4–Cox, Brannon, Wise, Jaffe
NAYS: 0 - None
MOTION PASSED 4 – 0 (Unanimously)

****

FILE NUMBER: BDA 045-252

BUILDING OFFICIAL'S REPORT:

Application of Gregory W. and Martha A. Clay for a special exception to allow an additional dwelling unit and a variance to the off street parking regulations at 6668 Avalon Avenue. This property is more fully described as part of Lots 8 and 9 in City Block L/2797 and is zoned CD-2 which limits the property to one dwelling unit per lot and requires that an enclosed parking space be located 20 feet from the right-of-way line. The applicant proposes to construct an additional dwelling unit which would require a special exception and provide a 9 foot 7 inch setback for an enclosed parking space which would require a variance of 10 feet 3 inches to the off street parking regulations. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) (10) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions and variances.

LOCATION: 6668 Avalon Avenue

APPLICANT: Gregory W. and Martha A. Clay

REQUEST:

- A special exception to the single family use regulations is requested in conjunction with constructing an additional "dwelling unit" on a site developed with a single family home. The proposed additional "dwelling unit" in this appeal is a 2-story garage/guest house structure.
- A variance to the off-street parking regulations of 10' 3" is requested to enclose parking spaces on site developed with a single family home.

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

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

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 REGARDING THE SPECIAL EXCEPTION:

- "Single family" use is defined in the Dallas Development Code as "one dwelling unit located on a lot," however, the code allows the Board of Adjustment to grant a special exception to this provision to allow an additional dwelling unit when, in their opinion, the additional dwelling unit will not:
  1) be used as rental accommodations; or
  2) adversely affect neighboring properties.
- The subject site is 14,550 square feet in area and developed with, according to DCAD records, a single family home that is in very good condition, built in 1924 with 4,025 square feet of living area and located in CD 2, the Lakewood Conservation District.
- The site plan indicates that the additional "dwelling unit" structure has a building footprint of approximately 35' x 29' or is about 1,015 square feet in area.
- The site plan indicates that the additional "dwelling unit" structure will be located 8" from the nearest property line which in this case is the side property line on the east and 4'5" from the rear property line. The garage opening is 9'7" from the rear property line. The CD-2 ordinance allows for garage structures to be exempt from rear and side setbacks when the structure is not closer than half of the distance between the rear of the house and the rear property line. The proposed garage structure meets this distance and is exempt from the rear and side setbacks.
- The submitted elevation indicates that the 2-story additional "dwelling unit" structure will be approximately 18' in height.
- Floor plans indicate the following spaces within the proposed detached 2-story additional "dwelling unit" structure on the site:
  - a 2-car garage and storage on 1st floor; and
  - a bedroom, bath, kitchen and closet on the 2nd floor.
- The Board of Adjustment has seen an increased number in special exceptions for additional dwelling units since November of 2004. This increase is most likely somewhat attributable to a memo that the Building Official wrote to city plan reviewers in September in 2004 (see Attachment A). This memo requested that plan reviewers carefully review applications for an addition or accessory structure on a lot zoned single family with regard for compliance with code-provisions related to the definitions of "dwelling unit," " family," and "single family."
- On May 11, 2005, the City Council adopted an ordinance that amended the provisions set forth in the Dallas Development Code regarding single family accessory structures. This ordinance does not impact any special exceptions filed with the City of Dallas prior to May 11, 2005.

- At the time the application was submitted, the Dallas Development Code defined "dwelling unit" as "one or more rooms designed to accommodate one family and containing only one kitchen plus living, sanitary, and sleeping conditions."
- The Dallas Development Code defines "family" as "individuals living together as a single housekeeping unit in which not more than four individuals are unrelated to the head of the household by blood, marriage, or adoption."
- The Dallas Development Code defines "single family" use as "one dwelling unit located on a lot."
- If this request is granted, a completed deed restriction stating that the additional dwelling unit on the site will not be used for rental accommodations must be submitted to the Board Administrator, approved by the City Attorney's Office as to form, and filed in the deed records of the applicable county (in this case, Dallas County) before the applicable permits for this additional dwelling unit can be issued by the City.
- The applicant submitted a petition signed by 8 people who support the request (see Attachment B).

GENERAL FACTS REGARDING THE VARIANCE:

- The site is flat, rectangular in shape (75' x 191'), and approximately 14,544 square feet in area.
- The Dallas Development Code states the following:
  - "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. This provision controls over any building line platted to a lesser setback and any other provision of this article."
- The submitted site plan indicates that enclosed parking spaces (in an attached garage structure) are to be located 10' 3" from the alley right of way line on the south.
- The CD-2 ordinance allows for garage structures to be exempt from rear and side setbacks when the structure is not closer than half of the distance between the rear of the house and the rear property line. The proposed garage structure meets this distance and is exempt from the rear and side setbacks.

BACKGROUND INFORMATION:

Zoning:

Site: CD No. 2 (Lakewood Conservation District)
North: CD No. 2 (Lakewood Conservation District)
South: CD No. 2 (Lakewood Conservation District)
East: CD No. 2 (Lakewood Conservation District)
West: CD No. 2 (Lakewood Conservation District)

Land Use:

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

Zoning/BDA History:

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

Timeline:

May 11, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

May 19, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

May 21, 2005: 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 June 1st deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 27, 2005: 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 Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Department Transportation Engineer, Senior Planner Pitner; and the Assistant City Attorney to the Board.

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

June 1, 2005 — The applicant submitted information beyond what was submitted with the original application (see Attachment B page 1 and Attachment D).

August 4, 2005 — The applicant submitted information beyond what was submitted with the original application (see Attachment B page 2)

STAFF ANALYSIS:

- The Development Services Transportation Engineer provided comments on June 6, 2005 (Attachment C).
- The proposed 2-story "dwelling unit" structure meets all setback, lot coverage, and height regulations, except for the enclosed parking setback.
- If the Board were to approve the special exception and variance request, subject to imposing a condition that the applicant comply with the submitted elevation and site plan, the proposed "dwelling unit" structure would be restricted to the specific location, size, and height shown on the plans, which in this case is a 2-story garage/guest house structure.
- As of June 6, 2005, no letters in opposition to this request had been submitted to staff, and one petition had been submitted signed by 4 neighbors who support the request.
- The Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.
- The submitted site plan indicates there would be a distance about 11' from the garage door to the alley – a distance that would not accommodate the length of most vehicles as they would enter/exit the enclosed parking spaces/garage from the alley. Most vehicles would not be able to park behind the structure without hanging over or impeding the alley.
- Typically, when the Board has found that this type of variance request is warranted, they have imposed the following conditions:
  - 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.

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

This request was scheduled to be heard at the June 2005 Board hearing for Panel B. The notices that were mailed as the required 200' public notification were mailed to an incorrect set of property owners. The buffer has since been correctly drawn and notices were mailed to the appropriate property owners.

BOARD OF ADJUSTMENT ACTION: August 17, 2005

APPEARING IN FAVOR: Gregory Clay, 6668 Avalon, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION#1: **Brannon**

I move that the Board of Adjustment in Appeal No. **BDA 045-252,** on application of Gregory W. and Martha A. Clay, **grant** the variance to the off-street parking regulations, 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 result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required;
- An automatic garage door must be installed and maintained in working order at all times;
- At no time may the alley side of the garage be utilized for the parking of vehicles; and
- All applicable permits must be obtained.

SECONDED: **Wise**
AYES: 3–Cox, Brannon, Wise
NAYS: 1 - Jaffe
MOTION PASSED 3 – 1

MOTION#2: **Brannon**

I move that the Board of Adjustment in Appeal No. **BDA 045-252,** on application of Gregory W. and Martha A. Clay, **grant** the request of this applicant to maintain an additional dwelling unit on the property, because our evaluation of the property and testimony shows that the additional dwelling unit will not be used as rental accommodations nor adversely affect neighboring properties. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: **Wise**
AYES: 4–Cox, Brannon, Wise, Jaffe
NAYS: 0 - None
MOTION PASSED 4 – 0 (Unanimously)

****

MOTION: **Brannon**

I move to adjourn this meeting.

SECONDED: **Cox**
AYES: 4 –Cox, Brannon, Wise, Jaffe
NAYS: 0 - None
MOTION PASSED: 4– 0 (Unanimously)

3:30 P.M. - Board Meeting adjourned for August 17, 2005.

_____
CHAIRPERSON

_____
BOARD ADMINISTRATOR

_____
BOARD SECRETARY

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