

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM
WEDNESDAY, SEPTEMBER 20, 2006**

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

MEMBERS ABSENT FROM BRIEFING: No one

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

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Claire Swann, Asst. City Attorney, Danny Sipes, Development Code Specialist, Donnie, Moore, Chief Planner, Jennifer Hiromoto, Senior Planner, Mike Sultan, Chief Arborist, Steve Parker, Flood Plain Mgmt., and Trena Law, Board Secretary

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

10:05 AM. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's August 16, 2006 docket.

1:02 P.M.

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

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel B August 16, 2006 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 20, 2006

MOTION: **Brannon**

I move approval of the Wednesday, August 16, 2006 Board of Adjustment Public Hearing minutes.

SECONDED: **Chernock**

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

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 056-193(J)

BUILDING OFFICIAL'S REPORT:

Application of DR Horton represented by Jimmy Schnurr for a special exception to the tree preservation regulations at 1 Summit Parc Drive, and other lots within the Summit Parc subdivision, located at the northwest corner of Clark Road and Summit Parc Drive. This property is more fully described as City Blocks H/8721, J-N/8721, P/8721 and a tract of land in City Block S/8721 and is zoned PD-521 which requires mitigation for protected trees that are removed. The applicant has removed protected trees and proposes to provide an alternate tree mitigation plan and landscape and entrance plan for Summit Parc Drive to allow a driveway to the proposed amenity center which would require a special exception.

LOCATION: 1 Summit Parc Drive

APPLICANT: DR Horton
 Represented by Jimmy Schnurr

REQUEST:

- A special exception to the tree preservation regulations is requested in conjunction with altering a portion of previously approved tree preservation plan in order to construct a driveway.

STAFF RECOMMENDATION:

Approval

Rationale:

- The City's Chief Arborist supports the applicants request for a special exception to the tree replacement requirements of Article X.

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 received a tree preservation special exception on September 11, 2001 from Panel B of the Board of Adjustment in conjunction with constructing 240 single family homes. The special exception was conditional upon compliance with the submitted site/landscape plan, which was a 5 page plan that included tree data, a tree preservation plan, an enhanced landscape plan for each of the entryways into the subdivision (Summit Parc Drive and Panavision Trail) and landscaping details.
- The applicant is requesting a revision to one page of the approved site/landscape plan in order to construct a driveway for the amenity center onto Summit Parc Drive.

The location of the driveway traverses the area that received the enhanced landscaping plan approval.

BACKGROUND INFORMATION:

Zoning:

Site: PD 521 (Mountain Creek Planned Development District)
North: PD 521 (Mountain Creek Planned Development District)
South: PD 521 (Mountain Creek Planned Development District)
East: Duncanville City Limits
West: PD 521 (Mountain Creek Planned Development District)

Land Use:

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

Zoning/BDA History:

1. Z001-234 (the subject site) On September 11, 2001, Panel B of the Board of Adjustment granted a special exception for tree preservation.

Timeline:

June 23, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

July 16, 2006: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B per the Board's rule of procedures.

July 17, 2006: The Board Administrator contacted the applicant's representative and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the September 8th 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 September public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

August 30, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Current Planning Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

September 1, 2006 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the special exception to the tree preservation regulations (see Attachment A).

STAFF ANALYSIS:

- The applicant has the burden of proof in establishing the following:
 - Strict compliance with the requirements of the tree preservation regulations will unreasonably burden the use of the property.
 - The special exception will not adversely affect neighboring property.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 20, 2006

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Chernock

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

- Compliance with the submitted tree mitigation plan and revised landscape/entrance plan is required.

SECONDED: Brannon

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

NAYS: 0 –

MOTION PASSED – 5-0 (unanimously)

FILE NUMBER: BDA 056-203(J)

BUILDING OFFICIAL'S REPORT:

Application of Jack Woodworth to install a second electrical meter at 4804 Dorset Road. This property is more fully described as Lot 4C in City Block E/5532 and is zoned R-1ac(A) which allows only one electrical meter. The applicant proposes to construct an addition and obtain a second electrical meter which would require a special exception.

LOCATION: 4804 Dorset Road

APPLICANT: Jack Woodworth

REQUEST:

A special exception to the single family use regulations is requested in conjunction with adding a second electrical meter on a site developed with a single family home.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to the single family use regulations to authorize an additional electrical meter in a single family district since the basis for this type of appeal is *when in the opinion of the board*, the special exception will not be contrary to the public interests; not adversely affect neighboring property; and not be used to conduct a use not permitted in the district where the building site is located.

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

The board may grant a special exception within the single family use regulations to authorize more than one electrical utility service or more than one electrical meter on a lot in a single family, duplex, or townhouse district when, in the opinion of the board, the special exception will:

- (aa) not be contrary to the public interests;
- (bb) not adversely affect neighboring properties; and
- (cc) not be used to conduct a use not permitted in the district where the building site is located.

GENERAL FACTS:

- “Single family” use is defined in the Dallas Development Code as “one dwelling unit located on a lot.”

- In a single family, duplex, or townhouse district, a lot for a single family use may be supplied by not more than one electrical utility service, and metered by not more than one electrical meter.
- The subject site is 1.08 acres and developed with, according to DCAD records, a single family home that is in good condition built in 1986 with 7,900 square feet of living area, a 1,188 square foot detached garage, a 1,015 square foot servants quarters, and a 1,852 square foot servants quarters.
- The site plan indicates location of the proposed second electric meter on an existing meter base, adjacent to the portion of the structure labeled “area of new construction”. The existing electrical meter is shown on the site plan adjacent to the east side of the main structure.
- The site plan indicates that the additional electric meter will be located 16 feet from the nearest property line which in this case is the side property line on the west.
- The applicant has indicated on the application that the existing electric meter is inadequate to serve the electrical needs of the residence.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA 023-040 On January 14, 2003, the Board of Adjustment granted a fence height special exception at 4626 Dorset Road.

Timeline:

- July 27, 2006: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- August 17, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- August 18, 2006: The Board Senior Planner contacted the applicant and 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 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 September 8th 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 September public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

August 30, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; the Chief Arborist, and the Assistant City Attorney to the

No review comment sheets were received on this case.

STAFF ANALYSIS:

- The applicant has the burden of proof in establishing that the additional electrical meter will not be contrary to the public interests; not adversely affect neighboring properties; and not be used to conduct a use not permitted in the district where the building site is located.
- If the Board were to approve the special exception request, subject to imposing a condition that the applicant comply with the submitted site plan, the applicant could construct or install a second electrical meter in the location shown on the site plan.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 20, 2006

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Chernock

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

- Compliance with the submitted site plan is required.

SECONDED: Brannon

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

NAYS: 0 –

MOTION PASSED – 5-0 (unanimously)

FILE NUMBER: BDA 056-208(J)

BUILDING OFFICIAL'S REPORT:

Application of D.R. Lakewood L.P./Lakewood Heights Development Inc. represented by Dennis Wheeler for a variance to the front yard setback regulations and a special exception to the fence regulations at 6180 Vanderbilt Ave. This property is more fully described as lot 3 in city block 2843 and is zoned R-7.5(A), which requires a front yard setback of 25 feet and limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a single family dwelling and provide a 5.1 foot front yard setback on the east, and to maintain an 8 foot high fence in the required front yard setback, which would require a variance of 19.9 feet to the front yard setback regulations and a special exception to the fence regulations.

LOCATION: 6180 Vanderbilt Avenue

APPLICANT: D.R. Lakewood L.P./Lakewood Heights Development Inc.
Represented by Dennis Wheeler

REQUEST:

- A variance to the front yard setback regulations of 19.9 feet requested in conjunction with constructing a single family structure and a special exception to the fence height regulations of 4' requested in order to maintain an existing 8' fence.

STAFF RECOMMENDATION (for the variance):

Approval

Rationale:

- The request site is 50 feet in width and has two front yards according to the Dallas Development Code. If the applicant were to comply with the 25' front yard setback adjacent to Norris Street and the 5' side yard setback from the interior property line, the site would be limited to a maximum building width of 20' (restrictive site area).

STAFF RECOMMENDATION (for the fence special exception):

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

STANDARD FOR A VARIANCE:

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

STANDARD FOR A SPECIAL EXCEPTION TO 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 request site is currently undeveloped.
- The property is zoned R-7.5(A) which requires a front yard setback of 25 feet.
- The request site has front yards on both Vanderbilt Avenue and Norris Street. The yard adjacent to Vanderbilt Avenue is the shorter of the two frontages, but the yard adjacent to Norris Street has a front yard requirement due to the single family use to the south having a front yard on Norris Street. The continuity of the established Norris Street front yard must be maintained as required in the front yard regulations.

- The submitted site plan shows the proposed single family structure will provide a setback of 5.1 foot front yard setback adjacent to Norris Street and a 27 foot front yard setback adjacent to Vanderbilt Avenue.
- The plat map shows that the request site is 50 feet by 150 feet, or 7,500 square feet in area.
- The site appears to be flat, rectangular in shape, and approximately 7,500 (50'x 150') in area.
- The submitted site plan shows a footprint of approximately 40' x 62' (or 2,480 square feet) with a front porch (approximately 5' x 28') and a detached garage (approximately 25.5' x 25.5' or 650 square feet).
- The applicant provided a site plan labeled Exhibit A that is the previous single family structure that has been removed. The site plan is a reduction, but it appears the previous structure provided approximately a 5' front yard setback adjacent to Norris Street.
- DCAD indicates that the request site is developed with a 1,017 square foot residential structure that was in average condition built in 1928 and a 320 square foot detached garage. The site visit shows that the structure has since been demolished.
- The request site has a partial fence in the southwest corner of the request site that is located in the Norris Street front yard. It was discovered on the site visit that the fence exceeds 4' in height.
- The applicant has provided information on the location, height and materials of the fence on a revised site plan (to be provided at the hearing).
- The applicant has indicated that the fence will not be located in a 20' x 20' driveway/street visibility triangle.
- No landscape materials have been noted to be located adjacent to the proposed fence.
- There is one single family home that would have direct frontage to the proposed fence located southeast of the request site.
- It was observed on the site visit that four properties (east and south and two properties to the southeast,) appear to have a fence in a required front yard that exceeds 4'.

BACKGROUND INFORMATION:

Zoning:

Request Site: R-7.5(A) (Single Family Residential 7,500 square feet)
North: R-7.5(A) (Single Family Residential 7,500 square feet)
South: R-7.5(A) (Single Family Residential 7,500 square feet)
East: R-7.5(A) (Single Family Residential 7,500 square feet)
West: R-7.5(A) (Single Family Residential 7,500 square feet)

Land Use:

The request site is undeveloped. The areas to the north, south, east and west are developed with single family residential. The area immediately to the south is developed with a duplex use.

Zoning/BDA History:

1. BDA 045-243 On June 13, 2005, Panel C of the Board of Adjustment approved a variance to the front yard setback regulations at the northwest corner of Norris Street and Vickery Boulevard.

2. BDA 045-244 On June 13, 2005, Panel C of the Board of Adjustment approved a variance to the front yard setback regulations at the northeast corner of Norris Street and Vickery Boulevard.

Timeline:

- July 27, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- August 17, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- August 18, 2006: The Board Administrator contacted the applicant via email 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 September 8th 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 September public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- August 30, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the

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

STAFF ANALYSIS:

- Granting this variance, subject to the submitted site plan, would allow a single family structure to encroach 19.9 feet into the required Norris Street front yard.
- The applicant has the burden of proof in establishing the following in regards to the front yard setback variance request:
 - That granting the variance will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site (that appears to be flat, rectangular in shape, and approximately 7,500 square feet in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.
 - The variance would not to be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' will not adversely affect neighboring property.
- Granting this special exception of 4' with conditions imposed that the applicant complies with the submitted site plan and elevation would assure that the proposed fence/wall and gate would be constructed and maintained as shown on these documents where, in this case, would be fence/wall of a specific height and in a specific location, but *not* of specific building materials.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 20, 2006

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Chernock

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

In conjunction with the variance request:

- Compliance with the submitted revised site plan is required.

In conjunction with the special exception request:

- Compliance with the submitted revised site plan and fence elevation is required.

SECONDED: Brannon

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

NAYS: 0 –

MOTION PASSED – 5-0 (unanimously)

FILE NUMBER: BDA 056-176

BUILDING OFFICIAL'S REPORT:

Application of David Piro for a special exception to allow an additional sign at 6033 Campbell Road. This property is more fully described as Lot 1A in City Block 8206 and is zoned CR which allows one detached sign per street frontage. The applicant proposes to erect one additional detached sign which would require a special exception. Referred to the Board of Adjustment in accordance with Section 51A-7.703 (d) (2) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 6033 Campbell Road

APPLICANT: David Piro

REQUEST:

- A special exception to the sign regulations is requested to locate and maintain an additional detached sign on the subject site's Campbell Road street frontage. The applicant proposes to construct and maintain a detached monument sign that would advertise an existing retail business (Sheridan's Lattes & Frozen Custard) for the site's only free-standing structure/business on Campbell Road. The subject site is currently developed as a shopping/office center (Preston Trail Village).

STANDARD FOR A SPECIAL EXCEPTION TO THE SIGN REGULATIONS FOR AN ADDITIONAL DETACHED SIGN:

The Board of Adjustment may, in specific cases and subject to appropriate conditions, authorize one additional detached sign on a premise in excess of the number permitted by the sign regulations as a special exception to these regulations when the board has made a special finding from the evidence presented that strict compliance with the requirement of the sign regulations will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.

GENERAL FACTS:

- The Dallas Development Code states that only one detached sign is allowed per street frontage other than expressways.
The applicant has a submitted site plan of the subject site – a site with approximately 850 linear feet of frontage along Campbell Road. The site plan denotes an existing sign fronting Campbell Road (which, according to a field visit of the site, is a multi-tenant sign advertising businesses in the existing shopping center) and a proposed sign to front Campbell Road (which, according to a submitted elevation, is a single-tenant sign that would advertise the business in the free-standing retail building on the site: Sheridan’s Lattes & Frozen Custard).
- A sign elevation of the proposed additional single-tenant monument sign indicates that this sign is 66” high, 96” long, and 18” wide. (A sign elevation of the existing multi-tenant sign has not been submitted).
- The site plan of the overall subject site indicates that the proposed sign is to be located about 13’ from the subject site’s western boundary and about 450’ west of the existing multi-tenant sign that is located near the center of the site.
- Amendments to the sign regulations of the Dallas Development Code were made in October of 2004. The previous sign regulations allowed one detached sign on any premise except that a premise that has more than 450 feet of frontage along a public way other than an alley may have no more than one additional sign for each additional 450 feet of frontage or fraction thereof. The subject site (with over 800 linear feet of Campbell Road frontage) would have been allowed 2 detached premise signs prior to October 2004. According to a City of Dallas sign inspector, the site had two detached premise signs – one multi-tenant sign (that still exists on the subject site) and another single tenant sign (that was removed by the applicant in the approximate location that the new sign is proposed).
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included a letter that additional details about the request and why it should be granted.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	CR (Community Retail)
<u>North:</u>	CR and MC-1 (Community Retail and Multiple Commercial)
<u>South:</u>	CR (Community Retail)
<u>East:</u>	R-10 (A) (Single family district 10,000 square feet)
<u>West:</u>	NO (A) (Neighborhood office)

Land Use:

The site is currently developed with as a shopping/office center (Preston Trail Village). The areas to the north and south are developed with retail uses, the area to the east is developed with single family uses; and the area to the west is developed with office uses.

Zoning/BDA History:

1. BDA 056-178, 17194 Preston Road (the subject site)

On August 16, 2006, the Board of Adjustment Panel B will consider a request for a special exception to the off-street parking regulations of 142 spaces made in conjunction with reallocating uses within an existing shopping center.
2. BDA 95-035, 17194 Preston Road (the subject site)

On March 28, 1995, the Board of Adjustment granted a request for a special exception to the landscape regulations. The board imposed the following condition: compliance with the submitted landscape plan is required. The case report states the request was made to construct a 20,000 square foot addition to an existing 42,000 square foot grocery store.
3. Z 70-241, (an area encompassing the subject site)

On April 23, 1974, the City established deed restrictions that limited uses to certain areas to those uses permitted in the Shopping Center zoning classification, the O-2 zoning classification, and the MF-1 zoning classification of the Zoning Ordinance. A review of these deed restrictions show that they no longer exist on the site since the restrictions stipulate that they terminate on the 20th anniversary of the date of execution.

Timeline:

- April 28, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 11, 2006: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- July 17, 2006: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the requests;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;

- the July 24th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the August 4th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

July 24, 2006 The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).

July 26, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; the Chief Arborist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- Prior to October of 2004, the proposed sign that is the nature of this appeal would have been allowed by right since the sign regulations at that time allowed two detached premise signs on the subject site's over 800 linear feet of Campbell Road frontage.
- According to the applicant and a City of Dallas sign inspector, the subject site had two detached premised signs along Campbell Road – one multi-tenant sign that still exists on the subject site (a multi-tenant sign that, according to the applicant, is full and that cannot be added upon), and another sign that was recently removed by the applicant for the only "stand alone" building on the site (a sign that advertised the former Kentucky Fried Chicken business in the free-standing retail structure on the site currently occupied by Sheridan's, and a sign that was permitted by right under the pre-2004 sign regulations). According to the City of Dallas sign inspector, the previous single tenant KFC sign lost its nonconforming rights once it was removed by the applicant.
- The applicant could locate and maintain the proposed sign on the subject site if it was (or was to become) a separately platted lot rather than a lot that is part of a larger lot that encompasses the Preston Trail Shopping Center. The current sign regulations allow any separately platted lot (regardless of its linear feet/frontage) one detached sign per street frontage.

- A sign elevation of the proposed additional single-tenant monument sign indicates that the additional proposed sign is 66” high, 96” long, and 18” wide. (A sign elevation of the existing multi-tenant sign has not been submitted).
- The site plan of the overall subject site indicates that the proposed sign is to be located about 13’ from the subject site’s western boundary and about 450’ west of the existing multi-tenant sign that is located near the center of the subject site.
- The applicant states that the business is losing about 15-20% in sales without the use of the proposed sign compared to other Sheridan’s Lattes & Frozen Custard establishments that have signs similar to that which is proposed in this request.
- The applicant has the burden of proof in establishing the following:
 - That strict compliance with the requirement of the sign regulations will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.
- Granting this special exception with conditions imposed that the applicant complies with the submitted site plans and sign elevation would allow a 2nd sign to be placed on the site with assurance that the existing and proposed signs are located/maintained as shown of the submitted site plans, and that the additional/second sign is constructed/maintained as indicated on the submitted sign elevation (a sign that is shown to be 5.5’ high and 8’ long).

BOARD OF ADJUSTMENT ACTION: AUGUST 16, 2006

APPEARING IN FAVOR: Tim O’Hanlon, 9399 Wade Blvd., Frisco, TX

APPEARING IN OPPOSITION: Robert Franklin, 17201 Hiddenglen Dr., Dallas, TX

MOTION #1: Gillespie

I move that the Board of Adjustment **in Appeal No. BDA 056-176**, on application of David Piro, **grant** the request of this applicant to erect one additional detached sign as a special exception to the sign regulations in the Dallas Development Code because our evaluation of the property and the testimony shows that strict compliance with the requirement of the sign regulations will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan and elevation with the elimination of the digital display is required.

SECONDED: No one

AYES: 0 –

NAYS: 0 –

MOTION FAILED FOR LACK OF A SECOND

MOTION #2: Chernock

I move that the Board of Adjustment in **Appeal No. BDA 056-176**, on application of David Piro, **grant** the request of this applicant to erect one additional detached sign as a special exception to the sign regulations in the Dallas Development Code because our evaluation of the property and the testimony shows that strict compliance with the requirement of the sign regulations will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan and elevation is required.
- The detached premise sign may only display advertising for the use at 6033 Campbell Road in public service announcements.

SECONDED: **No one**

AYES: 0 –

NAYS: 0 –

MOTION FAILED FOR LACK OF A SECOND

MOTION #3: **Brannon**

I move that the Board of Adjustment in Appeal No. **BDA 056-176**, hold this matter under advisement until **September 20, 2006**.

SECONDED: **Chernock**

AYES: 4– Cox, Brannon, Gillespie, Chernock

NAYS: 0 –

MOTION PASSED: 4-0

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 20, 2006

APPEARING IN FAVOR: David Piro, 6033 Campbell Rd., Dallas, TX

APPEARING IN OPPOSITION: Robert Franklin, 17201 Hiddenglen Dr., Dallas, TX

MOTION #1: **Beikman**

I move that the Board of Adjustment in **Appeal No. BDA 056-176**, on application of David Piro, **deny** this special exception to the sign regulations requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that the strict compliance with the requirement of the sign regulations will not result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.

SECONDED: Chernock
AYES: 2 – Beikman, Chernock
NAYS: 3 – Cox, Brannon, Gillespie
MOTION FAILED: 3-2

MOTION #2: Gillespie

I move that the Board of Adjustment in **Appeal No. BDA 056-176**, on application of David Piro, **grant** the request of this applicant to erect one additional detached sign as a special exception to the sign regulations in the Dallas Development Code because our evaluation of the property and the testimony shows that strict compliance with the requirement of the sign regulations will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations. 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 sign elevation is required, but applicant must eliminate the LED display from his elevation.

SECONDED: Chernock
AYES: 4 – Cox, Brannon, Gillespie, Chernock
NAYS: 1 – Beikman
MOTION PASSED: 4-1

FILE NUMBER: BDA 056-177(J)

BUILDING OFFICIAL'S REPORT:

Application of T-Mobile, represented by Rob Baldwin, for a variance to the height regulations at 2424 Simpson Stuart Road. This property is more fully described as Lot 1B in City Block A/6884 and is zoned CR (A) which limits the height of a structure to 26 feet due to the residential proximity slope regulations. The applicant proposes to construct a monopole cell tower with a height of 85 feet, which would require a variance of 59 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: 2424 Simpson Stuart Road

APPLICANT: T-Mobile
Represented by Rob Baldwin

REQUEST:

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

STANDARD FOR A VARIANCE:

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

GENERAL FACTS:

- The request site is currently developed parking lot for a church.
- The property is zoned CR Community Retail District. The property to the east, northeast, and south are zoned R-7.5(A), which requires any development on the request site to respect a 1-to-3 residential proximity slope that is over 26 feet in height.
- Residential proximity slope requires a setback for development on properties adjacent to residential districts at a specified ratio or distance.
- A cell tower is a use allowed by Specific Use Permit in a CR District. The applicant has applied for the SUP and received a conditional approval from the City Plan Commission.
- An SUP cannot be granted for a development that does not meet the requirements of the Dallas Development Code. In this case, the cell tower exceeds RPS and cannot be considered by City Council unless a variance for additional height is granted.
- The proposed cell tower is 85' in height.
- The elevation shows a "stealth" tower design, meaning there will not be antenna extending on the outside of the tower.
- The submitted site plan shows the location of the existing cell tower. The cell tower is approximately 230 feet from the west property line (Lancaster Road side), 145 feet from the north property line (Simpson Stuart Road side), and 37 feet from the closest R-7.5(A) boundary line (the east property line).
- The proposed height of 85 feet requires a setback of 255 feet from the site of origination (the nearest property line of a residential district).
- The location of the cell tower is approximately 248 feet from the R-7.5(A) property to the south; approximately 37 feet from the R-7.5(A) property to the east; and approximately 140 feet from the R-7.5(A) property to the northeast. It appears that

the location would provide approximately 340 feet setback from the R-7.5(A) property line to the west across Lancaster Road.

- At the proposed location, the cell tower would be allowed a maximum height of 26 feet. To construct an 85 foot cell tower in this location would require a variance of 59 feet to the height.
- The site appears slightly sloped, irregular in shape, and approximately 8.37 acres in area. The site could not be fully viewed or evaluated on the site visit because the driveways were chained closed.
- DCAD indicates that the request site is a church built in 1984.

BACKGROUND INFORMATION:

Zoning:

<u>Request Site:</u>	CR (Community Retail)
<u>North:</u>	CR (Community Retail), PD 625 (Mixed Use), and R-7.5(A) (Single Family Residential 7,500 Square Feet)
<u>South:</u>	R-7.5(A) (Single Family Residential 7,500 Square Feet)
<u>East:</u>	R-7.5(A) (Single Family Residential 7,500 Square Feet)
<u>West:</u>	R-7.5(A) (Single Family Residential 7,500 Square Feet)

Land Use:

The request site is undeveloped. The area to the east is developed with a church; the area to the west is undeveloped; the areas to the northeast and south are developed with single family residential; the area to the north is developed with motel use.

Zoning/BDA History:

1. Z056-236 (request site) On June 22, 2006, the City Plan Commission recommended approval of a Specific Use Permit for a tower/antenna for cellular communication, subject to a height variance due to RPS.

Timeline:

- | | |
|----------------|--|
| June 19, 2006 | The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report. |
| July 12, 2006: | The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B. |
| July 17, 2006: | The Board Senior Planner contacted the applicant and conveyed the following information: <ul style="list-style-type: none">• 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 4th 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 26, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; the Chief Arborist, and the Assistant City Attorney to the Board.

No review comment sheets were received on this case.

August 7, 2006 The applicant submitted additional information explaining the application.

STAFF ANALYSIS:

- Attachment A is letter from the applicant further explaining the purpose of his application and color photos of the site.
- The applicant has a pending SUP application which received a recommendation of approval from CPC on June 22, 2006 that is conditional on receiving a height variance. If the variance is denied, the City Council cannot consider the SUP application.
- A cell tower at a height of 85' would require a setback of 255' from the R-7.5(A) district property's boundary lines to the west, east, northeast, and south.
- Granting this variance, subject to the submitted site plan and elevation, would allow the construction of a cell tower at a height that exceeds the Residential Proximity Slope by 59 feet if City Council approves the SUP.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance of 59' to the height regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this

chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.

- The height variance of 59' is necessary to permit development of the subject site (that appears slightly sloped, irregular in shape, and approximately 8.37 acres in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same CR zoning classification.
- The height variance of 59' would not to be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same CR zoning classification.

BOARD OF ADJUSTMENT ACTION: AUGUST 16, 2006

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

***Member Sam Gillespie recused himself and did not vote on this matter. Therefore, this matter was held under advisement for lack of a quorum.**

MOTION: **Chernock**

I move that the Board of Adjustment in Appeal No. **BDA 056-177**, hold this matter under advisement until **September 20, 2006**.

SECONDED: **Brannon**

AYES: 3–Cox, Brannon, Chernock,

NAYS: 0 –

MOTION PASSED 3 – 0

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 20, 2006

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

APPEARING IN OPPOSITION: No one

***Member Sam Gillespie recused himself and did not vote on this matter.**

MOTION: **Brannon**

I move that the Board of Adjustment in Appeal No. **BDA 056-177**, on application of T-Mobile, represented by Rob Baldwin, **grant** the 59 foot variance to the height 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 conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan and elevation is required.

SECONDED: Chernock

AYES: 4–Cox, Brannon, Beikman, Chernock,

NAYS: 0 –

MOTION PASSED 4 – 0

FILE NUMBER: BDA 056-209(J)

BUILDING OFFICIAL'S REPORT:

Application of James and Amy Martin represented by Rob Baldwin for a special exception to flood plain regulations at 2526 Loving Avenue. This property is more fully described as Lot 17 in City Block 6/2748 and is zoned R-7.5(A)FP which prohibits building in a flood plain. The applicant proposes to re-construct a single family dwelling in a flood plain, which would require a special exception.

LOCATION: 2526 Loving Avenue

APPLICANT: James and Amy Martin
Represented by Rob Baldwin

REQUEST:

A special exception to the floodplain regulations is requested in conjunction with reconstructing a single family home in a floodplain overlay.

STAFF RECOMMENDATION:

Approval, subject to the following conditions:

1. Compliance with the submitted site plan is required noting that the reconstruction of a structure in an FP area may not increase the lot coverage of the structure.
2. Reconstruction would not result in any increase in flood levels during the base flood discharge.

STANDARD FOR A SPECIAL EXCEPTION TO RECONSTRUCT A STRUCTURE IN A FLOODPLAIN:

The board of adjustment may grant a special exception to allow the reconstruction of a structure in an FP area upon a showing of good and sufficient cause, a determination that failure to allow the reconstruction would result in exceptional hardship to the property owner, and a determination that the reconstruction will not result in increased

flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with other local laws. The board may not grant a special exception to authorize reconstruction within any designated floodway if any increase in flood levels during the base flood discharge would result. Any special exception granted must be the minimum necessary, considering the flood hazard, to afford relief. The reconstruction of a structure in an FP area may not increase the lot coverage of the structure.

GENERAL FACTS:

- FLOOD PLAIN (FP) area means any land area susceptible to inundation by the design flood.
- The subject site is located within a flood plain overlay area.
- The applicant received the portion of the Flood Plain Regulation that indicates to the owner of a structure in an FP area that:
 - (i) the granting of a special exception to reconstruct the structure below the base flood level will result in increased premium rates for flood insurance that will be commensurate with the increased risk; and
 - (ii) the construction below the base flood level increases risks to life and property. The notification letter must be maintained with the record of the board's action.
- The subject site is 7,930 square feet in area and developed with, according to DCAD records, a single family home that is in fair condition built in 1953 with 1,430 square feet of living area and a 624 square foot detached garage. The site visit shows that the structure has since been demolished.
- The plat map indicates the subject site is 60 feet in width by 130 feet in depth with a 30 foot platted front building line.
- The applicant provided a survey showing the previous structure (not to scale). The dimensions on the survey show the main structure had a footprint of approximately 1,444.39 square feet and the detached garage had a footprint of 639.09 square feet. The lot coverage is approximately 2,083.48 square feet, the sum of these footprints.

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, south, east and west are developed with single family uses.

Zoning/BDA History:

There have been no recent or relevant zoning or board of adjustment cases in the area.

Timeline:

July 27, 2006: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

August 17, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

August 18, 2006: The Board Senior Planner contacted the applicant and 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 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 September 8th 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 September public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

August 29, 2006 The applicant provided additional information (see Attachment A).

August 30, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; the Chief Arborist, and the Assistant City Attorney to the

No review comment sheets were received on this case.

STAFF ANALYSIS:

- The applicant has the burden of proof in establishing the following in the reconstruction of a structure in an FP area that:
 - failure to allow the reconstruction would result in exceptional hardship to the property owner
 - the reconstruction will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with other local laws.
 - reconstruction will not increase in flood levels during the base flood discharge.
 - the special exception granted is the minimum necessary, considering the flood hazard, to afford relief.
 - the reconstruction of a structure in an FP area does not increase the lot coverage of the structure.
- If the Board were to approve the special exception request, subject to imposing a condition that the applicant complies with the submitted site plan, the applicant could reconstruct a structure in a flood plain.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 20, 2006

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

APPEARING IN OPPOSITION: No one

MOTION: Gillespie

I move that the Board of Adjustment in Appeal No. **BDA 056-209**, on application of James and Amy Martin, represented by Rob Baldwin, **grant** the special exception authorizing reconstruction of a structure at 2526 Loving Avenue, because our evaluation of the property, the testimony, and facts show that the property the property owner has good and sufficient cause; failure to allow reconstruction would result in exceptional hardship to the property owner; and reconstruction will not result in increased flood heights, additional threats to public safety, extraordinary public expense, crease nuisances, cause fraud on or victimization of the public, or conflict with other local laws I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Lot coverage of structures may not exceed 2,083 square feet.
- The first floor must be constructed above the flood level.

SECONDED: Brannon

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 056-194 (J)

BUILDING OFFICIAL'S REPORT:

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

LOCATION: 5207 Gaston Avenue

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

REQUEST:

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

STAFF RECOMMENDATION:

Denial

Rationale:

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

STANDARD FOR A VARIANCE:

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

GENERAL FACTS:

- The request site is zoned PD No. 99 which prohibits circular driveways and vehicular paving (excluding driveways to off-street parking areas located behind the front façade) between the property line and the front façade. (Building Inspection has deemed that in this case, given that the existing apartment structure is located at the corner of Gaston Avenue and Munger Boulevard, the structure has a front facade along Gaston Avenue, Munger Boulevard is deemed to be a corner side yard).
- A site plan has been submitted that shows the vehicular paving located between the front façades of the existing apartment structure and the Gaston Avenue front property line and the Munger Boulevard front property line.
- DCAD records indicate that the site is developed with a 29,120 square foot apartment built in 1957.
- The site is flat, rectangular in shape (200' x 236'), and 1.13 acres in area.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA 012-116, 5121 Gaston Avenue (the area immediately southwest of the subject site) On December 11, 2001, the Board of Adjustment Panel A granted a request for a variance to the parking regulations. The board imposed the following condition: compliance with the submitted site plan is required. The case report stated that the request was made in conjunction with locating/maintaining 8 additional non-required off-street parking spaces in the 25' front yard setback on Gaston Avenue on a site developed with an apartment complex.
2. BDA 990-170, 5307 Gaston Avenue (the area immediately northeast of the subject site) On December 16, 1999, the Board of Adjustment Panel C granted a request for a variance to the parking regulations (to locate 7 off-street parking spaces in the Gaston

Road front yard setback), a variance to the rear yard setback regulations of 15', and a special exception to the landscape regulations. The board imposed the following conditions: compliance with the submitted revised site plan showing an enclosed dumpster and landscape plan and plant list is required, and compliance with Article X Tree Preservation Regulations is required. The case report stated that the requests were made in conjunction with renovating/maintaining an existing circa. 1960 apartment building.

Timeline:

- June 23, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 11, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- July 13, 2006: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the requests;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the July 24th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - the August 4th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- April 4, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board

of Adjustment Chief Planner, the Board Administrator, the Development Services Department Transportation Engineer, Senior Planner Hironoto, Development Services Department Code Specialist, Chief Arborist, and the Assistant City Attorney to the Board.

Transportation Engineer Nguyen has no objection to the variance request.

April 7, 2006: The applicant submitted additional information (see Attachment A).

STAFF ANALYSIS:

- The applicant submitted additional information to further explain the application (Attachment A).
- Transportation Engineer Nguyen has no objection to the variance request as indicated on his comment sheet dated April 4, 2006.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the off-street parking regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The off-street parking variance is necessary to permit development of the subject site (that is flat, rectangular in shape (70' x 180'), and approximately 12,600 square feet in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD 99 zoning classification.
 - The off-street parking variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD 99 zoning classification.
- If the Board were to grant the request, imposing a condition whereby the applicant must comply with the submitted site plan, the surface parking and vehicular paving between the front façade and the right of way could be maintained.

PUBLIC HEARING NOTE: At the hearing, the applicant submitted additional information including a notice and photos and Ms. McAlester submitted photo documentation.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 20, 2006

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

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

MOTION #1: Beikman

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

SECONDED: Brannon

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

MOTION #2: Chernock

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

SECONDED: Brannon

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 056-218(J)

BUILDING OFFICIAL'S REPORT:

Application of Karen Vernon for a variance to the height regulations at 6220 Oram Street. This property is more fully described as Lot 6 in City Block 1/2143 and is zoned MF-2(A) which limits the height of a structure to 26 feet due to the residential proximity slope regulations. The applicant proposes to construct a multi-family dwelling with a height of 38 feet which would require a variance of 12 feet.

LOCATION: 6220 Oram Street

APPLICANT: Karen Vernon

REQUEST:

A variance to the height regulations (due to RPS) of 12 feet requested in conjunction with constructing a multifamily structure.

STAFF RECOMMENDATION:

Denial

Rationale:

- The request site appears to be flat, rectangular, and approximately 8,850 square feet. The request site was previously developed with a structure and can be developed with a structure that is 26 feet in height.
- The applicant has not substantiated how the site's restrictive area, shape and/or slope prevents the site being developed in a way that meets the applicable development standards, including height regulation provisions, commensurate with other developments found on other similarly-zoned lots.

STANDARD FOR A VARIANCE:

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

GENERAL FACTS:

- The request site is currently undeveloped.
- The property is zoned MF-2(A). The property to the south is zoned PD 63, which requires any development on the request site to respect a 1-to-3 residential proximity slope.
- Residential proximity slope requires a setback for development on properties adjacent to residential districts at a specified ratio or distance. In this case, RPS applies to any portion of a structure over 26 feet.
- The submitted elevations show the proposed height of the multifamily structure is 38 feet, which would require a setback of 114 feet from the site of origination, the property line of the parcels that are causing the RPS.
- The submitted site plan shows the proposed 4-unit multifamily structure will provide a setback of 25 feet to the rear property line. The site plan shows the proposed structure would meet the front, side, rear, and enclosed parking space setback requirements.
- A structure that is 26 feet in height could be constructed without additional setbacks or a height variance.
- The plat map shows that the request site is 50 feet by 177 feet, or 8,850 square feet in area.
- The site appears to be flat, rectangular in shape, and approximately 8,850 square feet (50'x 177') in area.

- DCAD indicates that the request site is developed with a 1,616 square foot residential structure that was in very good condition built in 1938. The site visit shows that the structure has since been demolished.

BACKGROUND INFORMATION:

Zoning:

Request Site: MF-2(A) (Multifamily)
North: MF-2(A) (Multifamily)
South: PD 63
East: MF-2(A) (Multifamily)
West: MF-2(A) (Multifamily)

Land Use:

The request site is undeveloped. The areas to the north and south are developed with single family residential; the areas to the west, east and northeast are developed with multifamily uses. The area immediately to the east is undeveloped.

Zoning/BDA History:

1. BDA 056-163 On August 14, 2006, Panel C of the Board of Adjustment denied without prejudice a variance to the front yard setback regulations, a variance to the height regulations (due to RPS), a special exception to the off-street parking regulations, and a variance to the off-street parking regulations for an enclosed parking space.

Timeline:

- July 1, 2006: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- August 17, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- August 18, 2006: The Board Administrator contacted the applicant via email 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 September 8th 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 September public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

August 30, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

STAFF ANALYSIS:

- Granting this variance, subject to the submitted site plan, would allow a multifamily structure to encroach 12 feet in height into the Residential Proximity Slope.
- The applicant has the burden of proof in establishing the following in regards to the height variance request:
 - That granting the variance will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site (that appears to be flat, rectangular in shape, and approximately 8,850 square feet in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same MF-2(A) zoning classification.
 - The variance would not to be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same MF-2(A) zoning classification.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 20, 2006

APPEARING IN FAVOR: Karen Vernon, 6155 Palo Pinto, Dallas, TX

APPEARING IN OPPOSITION: John Oberpriller, 6219 LaVista Dr., Dallas, TX
John McCrary, 6241 LaVista Dr., Dallas, TX
Larry Worisanen, 5105 Swiss Ave., Dallas, TX
Virginia McAlester, 5703 Swiss Ave., Dallas, TX
Paul Schmidt, 6209 LaVista Dr., Dallas, TX

MOTION: **Gillespie**

I move that the Board of Adjustment in Appeal No. **BDA 056-218**, on application of Karen Vernon, **deny** the variance requested by this applicant **with prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: **Beikman**

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

MOTION: **Brannon**

I move to adjourn this meeting.

SECONDED: **Gillespie**

AYES: 4– Cox, Brannon, Gillespie, Chernock

NAYS: 0 -

MOTION PASSED 4 – 0 (unanimously)

3:15 P.M. - Board Meeting adjourned for September 20, 2006.

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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