

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
CITY HALL, COUNCIL CHAMBERS
MONDAY, MAY 15, 2006**

MEMBERS PRESENT AT BRIEFING: Frank Madrigal, Vice-Chair, Sharon Boyd, Panel Vice-Chair, Joel Maten, regular member, Robert Moore, regular member and Dean Carter, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Frank Madrigal, Vice-Chair, Sharon Boyd, Panel Vice-Chair, Joel Maten, regular member, Robert Moore, regular member and Dean Carter, alternate member

MEMBERS ABSENT FROM HEARING: No one

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

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

10:02 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **May 15, 2006** docket.

1:06 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 C April 17, 2006 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: MAY 15, 2006

MOTION: **Maten**

I move approval of the Monday, April 17, 2006 public hearing minutes.

SECONDED: **Boyd**

AYES: 5– Madrigal, Boyd, Maten, Moore, Carter

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 056-111

BUILDING OFFICIAL’S REPORT:

Application of Lee W. Johnson for a special exception to the fence height regulations at 5808 Desco Drive. This property is more fully described as Lot 1 in City Block G/5614 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 7 foot fence in the required front yard setback which would require a special exception of 3 feet. Referred to the Board of Adjustment in accordance with Section 51A-4.602 (a) (6) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 5808 Desco Drive

APPLICANT: Lee W. Johnson

REQUEST:

- A special exception to the fence height regulations of 3’ is requested in conjunction with completing and maintaining (according to the submitted site plan and revised “proposed fence elevation”) an approximately 6’ 6” open picket fence with 7’ high columns in the site’s 40’ Desco Drive and Douglas Avenue front yard setbacks 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.

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 applicant requests a special exception to the fence regulations to construct and maintain a fence and columns that would exceed 4' in height and reach a maximum height of 7'.
- The subject site has two front yard setbacks: one along Desco Drive, the other along Douglas Avenue. Although the site has a Desco Drive address with the house oriented to Desco Drive, the Dallas Development Code states that if a corner lot in a single family district has two street frontages of unequal distance (as the subject site has), the shorter of frontages is governed by the front yard provisions (which in this case is Douglas Avenue) and the longer frontage is governed by the side yard regulations (which in this case is Desco Drive). However because the code continues to state that notwithstanding this provision, the continuity of the established setback along street frontage must be maintained, the established setback of homes that front Desco Drive east of the subject site create a situation where the subject site's Desco Drive frontage is a front yard setback where a maximum 4' high fence is permitted by right. (If it were not for this specific code provision and the fact that homes east of the site front Desco Drive, the subject site's frontage along Desco Drive would be deemed a side yard setback where a 9' high fence could be erected by right).
- The following additional information was gleaned from the submitted site plan:
 - The proposed fence located in the Desco Drive 40' front yard setback would be approximately 240' in length, linear in design, about 1' from the property line (or about 16' from the Desco Drive pavement line).
 - The proposed fence located in the Douglas Avenue 40' front yard setback would be approximately 130' in length, linear in design, about 1' from the property line (or about 24' from the Douglas Avenue pavement line).
 - A notation stating "Existing Perimeter Fence Conditions Prior to Renovation:
 1. Desco – A 6' 6" height masonry columns wood and iron fence existed (see photos) and was hidden by a height privet hedge. Upon removal of the hedges the wood panels were found deteriorated and several columns damaged.
 2. Douglas – Similar existing conditions to Desco (see photos).
- A document entitled "Proposed Fence Elevation Study" was submitted with the application. This document included two photographs of the site. One photo is described with the following text: "Proposed fence with screening shrubs between columns. Ornamental grass at the front of the columns. Street frontage view." The

other photo on this document is described with the following text: Fence elevation matching ornamental balcony barrier at the façade of the building.”

- A revised document entitled “Proposed Fence Elevation Study” was submitted on May 4, 2006. This document includes the same two photographs mentioned above in the originally submitted elevation. However the elevation on this revised document has been amended to reflect 7’ high columns (with an open iron picket fence at a somewhat lower height and described in a letter submitted by the applicant at 6’ 6”).
- There are two single family homes under development that have direct frontage to the proposed Desco Drive fence, and one single family home that has direct frontage to the proposed Douglas Avenue fence. (This single family home is located behind a solid masonry wall that appears to be approximately 5’ in height with no history with the Board of Adjustment).
- The Board Administrator conducted a field visit of the site and surrounding area along Desco Drive (from Douglas Avenue to the area about 500 to the west) and noted the following visible fences above four (4) feet high which appeared to be located in the front yard setback (Note that these locations and dimensions are approximations):
 - A 4’ high fence with a 6’ 6” high gate and 6’ 6” high columns located northeast of the subject site.
 - An entryway feature with 6.5’-high entry columns and a 6’-high open wrought iron gate located two lots northeast of the site.
- The Board Administrator conducted a field visit of the site and surrounding area along Douglas Avenue (approximately 300’ to the north and south of the subject site) and noted the following fence/wall above four (4) feet high which appeared to be located in the front yard setback:
 - A 5’ high solid masonry wall located immediately west of the subject site.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following information:
 - a letter that provided additional information about the request; and
 - a revised “Proposed Fence Elevation Study” document.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA 045-131, 5831 Desco Drive (the lot northeast of the subject site) On February 16, 2005, the Board of Adjustment Panel B denied requests for special exceptions to the fence height regulations of 2' without prejudice. The case report states that requests were made to construct a 6'-high open metal tube fence with 6'-high columns and a 6'-high gate in the 40'-Desco Drive front yard setback, and a 6'-high cyclone fence in the 40'-Watson Drive front yard setback.
2. BDA 045-181, 5831 Desco Drive (the lot northeast of the subject site) On April 20, 2005, the Board of Adjustment Panel B granted a request for special exception to the fence height regulations of 2' 6" to maintain a 4' fence with 4' columns and a 6' 6" gate with two, 6' 6" columns. The board imposed the following condition with this appeal: Compliance with a revised site plan and elevation to be submitted to the Board Administrator indicating the fence, column, and gate dimensions specified above is required. The case report states that a special exception of 2' 6" was requested in conjunction with constructing a 6' 6" high open metal tube fence with 6' 6" high columns, and a 6' 6" high open tube entry gate in the 40' Desco Drive front yard setback.

Timeline:

- Feb. 23, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- April 19, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- April 20, 2006: The Board Administrator contacted with the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;

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

May 1 & 4, 2006 The applicant submitted information beyond what was submitted with the original application (see Attachment A).

May 2, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Current Planning Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- A scaled site plan has been submitted that documents the location of the entire proposed fence in the front yard setbacks (about 240' long on Desco Drive and about 130' long on Douglas Avenue), and its location relative to the front property lines (about 1') and pavement lines (at a range of 16' – 24').
- A revised elevation has been submitted that denotes a partial view of the proposal whereby the columns are specified at 7' in height and the open picket columns are slightly lower in height. (Building materials are not specified on the elevation).
- There are two single family homes under development that have direct frontage to the proposed Desco Drive fence, and one single family home that has direct frontage to the proposed Douglas Avenue fence. (This single family home across from the subject site on Douglas Avenue is located behind a solid masonry wall that appears to be approximately 5' in height with no history with the Board of Adjustment).
- The Board Administrator conducted a field visit of the site and surrounding area along Desco Drive (from Douglas Avenue to Preston Road) and noted the following visible fences above four (4) feet high which appeared to be located in the front yard setback (Note that these locations and dimensions are approximations):

- A 4' high fence with a 6' 6" high gate and 6' 6" high columns located northeast of the subject site.
- An entryway feature with 6.5'-high entry columns and a 6'-high open wrought iron gate located two lots northeast of the site.
- The Board Administrator conducted a field visit of the site and surrounding area along Douglas Avenue (approximately 300' to the north and south of the subject site) and noted the following fence/wall above four (4) feet high which appeared to be located in the front yard setback:
 - A 5' high solid masonry wall located immediately west of the subject site.
- A site plan or landscape plan denoting specific landscape materials to be located adjacent to the fence has not been submitted.
- As of May 5th, no letters have been submitted in opposition to the special exception, and a petition has been submitted signed by 17 neighbors/owners in support of the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 3' (whereby the proposed 6' 6" high fence and 7' high columns) will not adversely affect neighboring property.
- Granting this special exception of 3' with conditions imposed that the applicant complies with the submitted site plan and revised elevation would assure that the proposed fence and columns would be constructed and maintained as shown on these documents.

BOARD OF ADJUSTMENT ACTION: MAY 15, 2006

APPEARIN IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Moore**

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

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

SECONDED: Maten

AYES: 5— Madrigal, Boyd, Maten, Moore, Carter

NAYS: 0—

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 056-131(J)

BUILDING OFFICIAL'S REPORT:

Application of Dave Kirk for a variance to the height regulations at 5515 W. Illinois Avenue. This property is more fully described as Lot 1 in City Block A/6110 and is

zoned A(A), which limits the height of a structure to 43 feet due to the residential proximity slope. The applicant proposes to extend the height of an existing cell tower to 90 feet which would require a variance of 47 feet to the height regulations. Referred to the Board of Adjustment in accordance with Section 51A 3.102 (d) (10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

LOCATION: 5515 W. Illinois Avenue

APPLICANT: Dave Kirk

REQUEST:

- A variance to the height regulations of 47' are requested in conjunction with adding an additional antenna on an existing 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 with a cell tower and a church.
- The property is zoned A(A) and SUP No. 1265. The property to the east is zoned R-7.5(A), 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.
- The existing tower is 75' in height, which is the maximum height allowed by the SUP No. 1265. The only use allowed by the SUP is a cell tower use; all permitted main uses in the A(A) district are also allowed.
- The proposed additional antenna will have a total height of 90' to the tallest point. The elevation shows a height of 87' to the midpoint of the antenna, which are 6' in height.

- The submitted site plan shows the location of the existing cell tower.
- The site is sloped, irregular in shape, and approximately 22.4 acres in area.
- DCAD indicates that the request site is a church built in 1959.

BACKGROUND INFORMATION:

Zoning:

Request Site: A(A) (Agricultural)
North: CH (Clustered Housing)
South: R-5(A) (Single Family Residential 5,000 Square Feet)
East: PDD No. 435
West: R-7.5(A) (Single Family Residential 7,500 Square Feet)

Land Use:

The request site is developed with a cell tower and church. The area to the north is undeveloped; the area to the south is developed with single family residential; the area to the west is undeveloped; and the area to the east is developed with a school.

Zoning/BDA History:

- | | |
|-----------------------------|--|
| 1. Z045-283 (request site) | On January 12, 2006, the City Plan Commission approved an amendment to SUP No. 1265 subject to a height variance due to RPS. |
| 2. BDA95-117 (request site) | On October 10, 1995, the Board of Adjustment approved a Residential Proximity Slope variance of 24 feet for a 75 foot antenna tower. |
| 3. Z945-244 (request site) | On July 13, 1995, the City Plan Commission approved a request for an SUP for a cellular telephone antenna with a condition that the case would not be forwarded to City Council until October 1995 in order for the Board of Adjustment to act on a variance request to the residential proximity slope. |

Timeline:

- March 29, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- April 20, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

April 21, 2006: The Board Administrator contacted the applicant via letter and shared the following information:

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

April 27, 2006: The applicant submitted additional information (Attachment A).

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

No review comment sheets were received on this case.

STAFF ANALYSIS:

- Attachment A is a drawing showing the location of the SUP boundaries and the boundaries of the adjacent zoning districts based on the legal descriptions of the zoning ordinances. It also shows the distance from the cell tower to the R-7.5(A) zoning district boundary to the east, which is 129'.
- SUP No. 1265 allows a maximum height of 75'.
- The applicant has a pending SUP amendment which received CPC approval on January 12, 2006 that is conditional on receiving a height variance.
- An additional antenna on the cell tower at a height of 90' would require a setback of 270' from the R-7.5(A) district property's boundary lines to the east. Attachment A shows a setback of approximately 129' to the existing cell tower.

- The request site received Board of Adjustment approval for cell tower with a total height of 75'. A height of 75' requires a setback of 225' from the R-7.5(A) district to the east.
- Granting this variance, subject to the submitted site plan and elevation, would allow an additional antenna at a height that exceeds the Residential Proximity Slope by 47'.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance of 47' 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 47' is necessary to permit development of the subject site (that is sloped, irregular in shape, and approximately 22.4 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 A(A) zoning classification.
 - The height variance of 47' 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 A(A) zoning classification.

BOARD OF ADJUSTMENT ACTION: MAY 15, 2006

APPEARIN IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Moore**

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

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

SECONDED: **Maten**

AYES: 5– Madrigal, Boyd, Maten, Moore, Carter

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 056-133(J)

BUILDING OFFICIAL’S REPORT:

Application of Robert Preston represented by Stuart Mut Architect for a variance to the off-street parking regulations and a variance to the side yard setback regulations at 5947 Vanderbilt Avenue. This property is more fully described as Lot 12 in City Block 7/2167 and is zoned CD-11 which requires a 20 foot setback for an enclosed parking space and a 20 foot side yard setback for an accessory building. The applicant proposes to construct an accessory building and provide a 3.8 foot setback for an enclosed parking space and a 3.8 foot side yard setback variance for an accessory building which would require a variance of 16.2 feet to the off-street parking regulations and a variance of 16.2 feet to the side yard setback regulations. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

LOCATION: 5947 Vanderbilt Avenue.

APPLICANT: Robert Preston
Represented by Stuart Mut Architect

REQUESTS:

- A variance to the off-street parking regulations of 16.2’ is requested to enclose a parking space and a variance to the side yard setback regulations of 16.2’ for an accessory building on a site developed with 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 zoned Conservation District 11 which allows for R-7.5(A) sized lots in this area, requiring a minimum of 7,500 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 side yard setback regulations in CD 11 state the following:
 - The minimum cornerside yard setback for all garages that enter from a side street is 20 feet.
 - On corner lots, accessory structures may not be located closer to the cornerside lot line than the main structure
- CD 11 states that an accessory structure 15 feet or less in height must provide a 3’ rear setback.
- The applicant proposes to construct a detached two-story one-car garage that replaces the existing detached one-story one-car garage.
- Submitted elevations show the proposed garage is approximately 15’ in height.
- The submitted site plan indicates that an enclosed parking space (in a detached garage structure) is to be located 3.8’ from the east property line.
- The submitted site plan shows a 3’ rear yard setback for the detached garage.
- The proposed structure would have a total building footprint of about 484 square feet (22’ x 22’).
- The site is flat, rectangular in shape (50’ x 170’), and approximately 8,500 square feet in area.
- DCAD indicates that the site is developed with a 1,652 square foot single family home constructed in 1935 in good condition and a 400 square foot detached garage.

BACKGROUND INFORMATION:

Zoning:

Site: CD No. 11 (M-Streets East Conservation District)
North: CD No. 11 (M-Streets East Conservation District)
South: CD No. 11 (M-Streets East Conservation District)
East: CD No. 11 (M-Streets East Conservation District)
West: CD No. 11 (M-Streets East 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:

- March 30, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- April 20, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- April 21, 2006: The Board Administrator contacted the applicant via letter and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the May 5th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the May public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- May 1, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Department Transportation Engineer, Senior Planner Hiromoto, Development Services Department Code Specialist, and the Assistant City Attorney to the Board.
- May 3, 2006: Transportation Engineer Nguyen submitted a review comment sheet on this case (Attachment A).

STAFF ANALYSIS:

- The Development Services Transportation Engineer provided comments on May 3, 2006 (see Attachment A).
- The submitted site plan indicates there would be a distance of about 3.8' from the garage to the property line and a distance of about 15.5' from the garage to the pavement line.

- Because the request site is located in CD 11, the elevations will be reviewed for compliance with the architectural requirements of the conservation district before the issuance of a building permit.
- If the Board were to approve the variance requests, subject to imposing a condition that the applicant complies with the submitted site plan, the proposed garage structure would be restricted to the specific location shown on the plans.
- Typically, when the Board has found that this type of variance request is warranted, they have imposed the following conditions to assure that the variance will not be contrary to public interest:
 - 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.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance of 16.2' to the side yard setback regulations and the variance of 16.2' 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 variances are necessary to permit development of the subject site (that is flat, (50' x 170'), and approximately 8,500 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 CD 11 zoning classification.
 - The variances 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 not permitted by this chapter to other parcels of land in districts with the same CD 11 zoning classification.
- Granting these variances would allow an accessory structure to encroach 16.2'' into the 20' side yard setback and provide a 3.8' enclosed parking space setback.

BOARD OF ADJUSTMENT ACTION: MAY 15, 2006

APPEARIN IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Moore**

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

I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

In conjunction with the variance to the off-street parking regulations:

- 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 vehicles.
- All applicable permits must be obtained.

In conjunction with the variance to the side yard setback regulations:

- Compliance with the submitted site plan is required.

SECONDED: Maten

AYES: 5– Madrigal, Boyd, Maten, Moore, Carter

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 056-142

BUILDING OFFICIAL’S REPORT:

Application of Office Investors of Royal Creek, L.P., represented by Peter Meyer, for a special exception to the tree preservation regulations at 8610 Greenville Avenue. This property is more fully described as a tract of land in City Block 8143 and is zoned NO(A) which requires tree mitigation for new construction. The applicant proposes to construct a building and provide an alternate 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-10.110 of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 8610 Greenville Avenue

**APPLICANT: Office Investors of Royal Creek, L.P.
Represented by Peter Meyer**

REQUEST:

- A special exception to the tree preservation regulations is requested in conjunction with removing protected trees on a site developed with an approximately 63,000 square foot office development.

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 is requesting an exception from the required amount of tree mitigation on the site.
- The requirements that the applicant is seeking the special exception from are not imposed by a site-specific landscape plan approved by the city plan commission or city council.
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Chief Board of Adjustment Planner (see Attachment A). This memo states the following:
 - The applicant is requesting relief from tree replacement requirements.
 - The special exception request is triggered by the removal of protected trees for new construction.
 - Deficiency:
 - The applicant is required to provide caliper inch-for-inch replacement of any protected tree removed (which in this case, is 1,992 caliper inches for 124 protected trees).
The applicant is proposing to provide 450 caliper inches of replacement trees on-site and requesting to make a payment to the reforestation fund in the amount of \$70,972.97 to satisfy the remaining balance (\$132,494.34 / 1,542 caliper inches).
 - Factors for consideration:
 - Plans for this site were reviewed by the city's express review team. The arborist formerly working as a member of the express review team made comments during the review that any individual protected tree saved as a part of the project would count towards the tree replacement requirements. There were notes on the tree tabulation spreadsheet indicating the equivalent replacement value of the protected trees to remain. These amounts were

applied as a credit to the replacement value of the outstanding tree mitigation on-site.

- The arborist should have informed the owner/applicant that the total caliper inches of replacement trees required was equal to 1,992 caliper inches and carried a replacement value of \$171,160.00. They planted 450 caliper inches of replacement trees which carry an equivalent replacement value of \$38,665.66. The remaining balance would be 1,542 caliper inches or \$132,494.34.
 - Instead, the owner/applicant was told that they would receive tree mitigation credit for the 716 caliper inches (\$61,665.66) of protected trees to remain on-site which would reduce the remaining balance to 826 caliper inches or \$70,828.68.
 - It was not until they called for final inspections that anyone became aware of the discrepancy. There is very little room on-site for any additional trees. There is not a suitable alternate site within a one-mile radius. The Park and Recreation Department was not able to accept any donated trees. Thus, they are left with have to make a payment to the city's reforestation fund.
 - The applicant is requesting that the Board of Adjustment grant a tree preservation special exception and allow them to receive tree mitigation credit for the individual protected trees that remain on-site which would allow them to reduce tree mitigation required by 716 caliper inches or \$61,665.66.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment B). This information included a letter that provides additional details about the request and why it should be granted, and a spreadsheet of the existing tree tabulation table of trees removed on the site.

BACKGROUND INFORMATION:

Zoning:

Site: NO (A) (Neighborhood Office)
North: NO (A) (Neighborhood Office)
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: NO (A) (Neighborhood Office)

Land Use:

The subject site is developed with an office development. The areas to the north and west are developed with office and institutional (church) uses; the area to the east is developed with single family uses; and the area to the south is developed as a park (Harry S. Moss Park).

Zoning/BDA History:

- | | |
|--|---|
| 1. Z023-145, Greenville Avenue and Royal Lane, northeast corner (the subject site) | On August 28, 2003, the City Plan Commission recommended denial without prejudice to an application for a TH-3(A) |
|--|---|

Townhouse District on property zoned NO
(A) Neighborhood Office.

Timeline:

April 3, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

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

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

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

May 2, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Current Planning Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

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

May 4, 2006 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the special exception to the landscape regulations (see Attachment A).

May 5 2006 The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment B).

STAFF ANALYSIS:

- The applicant has requested that the Board of Adjustment require the applicant to mitigate protected trees removed on the site per the method of calculating the Tree Mitigation Fees as was originally instructed to the owner of the site by a City Arborist in November of 2004, which in this case is a mitigation fee of \$77,021.83.
- The applicant has the burden of proof in establishing the following:
 - Strict compliance with the requirements of the tree preservation regulations (i.e. mitigating 1,992 caliper inches of trees removed on the site) will unreasonably burden the use of the property (in this case, an approximately 63,000 square foot office development on a 6 acre site).
 - The special exception (whereby 1,276 caliper inches of the 1,992 caliper inches would be mitigated on the site) will not adversely affect neighboring property.
- If the Board were to grant this request and impose a condition that the applicant's mitigation requirement be reduced by 716 caliper inches, the site could receive their final building permit and Certificate of Occupancy for an office, and would be "excepted" from fully mitigating the 1,992 caliper inches of trees removed on the site.

BOARD OF ADJUSTMENT ACTION: MAY 15, 2006

APPEARIN IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Moore**

I move that the Board of Adjustment **grant** the following application for a special exception of 716 caliper inches to the tree preservation regulations as listed on the uncontested docket because it appears, from our evaluation of the properties and all relevant evidence that the application satisfies all the requirements of the Dallas Development Code and are consistent with the general purpose and intent of the Code.

SECONDED: **Maten**

AYES: 5– Madrigal, Boyd, Maten, Moore, Carter

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 056-145

BUILDING OFFICIAL'S REPORT:

Application of Glenn Gehan, represented by Rob Baldwin, for a special exception to the fence height regulations at 4562 Isabella Lane. This property is more fully described as Lot 4 in City Block H/5534 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 6 foot fence in the required front yard setback which would require a special exception of 2 feet. Referred to the Board of Adjustment in accordance with Section 51A-4.602 (a) (6) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 4562 Isabella Lane

APPLICANT: Glenn Gehan
Represented by Rob Baldwin

REQUEST:

- A special exception to the fence height regulations of 2' is requested in conjunction with constructing and maintaining the following in the site's 40' front yard setback along Isabella Lane:
 1. a 6' high open iron gate with two 7.5' long, 4'- 6' high entry gate wing walls that are oriented parallel to Isabella Lane; and
 2. a small portion of one of the two 7.5' long, 4'- 6' high entry gate wing walls that is oriented perpendicular to Isabella Lane and/or parallel to Welch Road.(The site is being 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.

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 applicant requests a special exception to the fence regulations to construct and maintain a gate and entry gate wing walls that would exceed 4' in height and reach a maximum height of 6 feet.
- The following additional information was gleaned from the submitted site plan/elevation:
 - The proposed gate and wing walls located in the Isabella Lane 40' front yard setback (and parallel to Isabella Lane) is approximately 30' in length, and about 13' from the property line (or about 24' from the Isabella Lane pavement line).

- The proposed wing wall located *in the Isabella Lane 40' front yard setback* (and parallel to Welch Road) is approximately 3' in length, and about 6' from the property line (or about 23' from the Welch Road pavement line).
- There is one single family home that has direct frontage to the proposed gate/wing walls on Isabella Lane, and no single family home that has direct frontage to the proposed wing wall in the site's 40' Isabella Lane front yard setback on Welch Road.
- The Board Administrator conducted a field visit of the site and surrounding area and noted the following fences/walls above four (4) feet high which appeared to be located in the front yard setback:
 - a fence/wall located immediately north of the subject site that is approximately 20' long, consisting of an approximately 6' high, open metal pedestrian gate with two approximately 8' long, 6' high brick wing walls on either side; and
 - an approximately 5' high open wrought fence with 5.5' high columns located immediately northeast of the site (and what appears to be the result of board action made in conjunction with BDA989-216).
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included a letter that provided additional details about the request and why it should be granted.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

- | | |
|---|--|
| <p>1. BDA 989-216, 4611 Isabella Lane (the lot northeast of the subject site)</p> | <p>On May 17, 1999, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 1' 6". The board imposed the following condition in conjunction with this request: Compliance with the submitted site/landscape plan and submitted elevation plan is required. The case report states that request was made to construct and maintain a 5' high open metal picket fence and gates with 5' 6" high stucco columns in the front yard setback along Isabella Lane.</p> |
|---|--|

Timeline:

March 31, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

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

April 20, 2006: The Board Administrator contacted with the applicant's representative and shared the following information:

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

May 2, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Current Planning Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

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

May 5, 2006 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).

STAFF ANALYSIS:

- A scaled site plan/elevation has been submitted that documents the location of two “areas to be addressed in this variance submittal,” which in this case, are areas encircling one proposed gate and two full entry wing walls parallel to Isabella Lane, and one partial entry wing wall in the Isabella Lane front yard setback parallel to Welch Road. (No fence is noted on the submitted plan that would exceed the maximum 4’ height that is permitted by right).
- The scaled site plan/elevation documents the location of the proposed gate and entry wing walls relative to the site’s property lines (at a range of approximately 6’ – 13’) and pavement lines (at a range of 23’ – 24’).
- The site plan/elevation does not denote the building materials of the gate and wing walls (however the elevation does appear to portray an open wrought iron gate and stone wing walls). The site plan/elevation denotes the maximum heights of the gate (6’) and wing wall (ranging from 4’ – 6’).
- According to information submitted by the applicant’s representative, the special exception request (where some fence/column/gate component would exceed 4’ in height and be located in the front yard setback) would account for about 42’ (or less than 10%) of the entire site’s 466 feet of frontage.
- There is one single family home that has direct frontage to the proposed gate/wing walls on Isabella Lane, and no single family home that has direct frontage to the proposed wing wall in the site’s 40’ Isabella Lane front yard setback on Welch Road.
- The Board Administrator conducted a field visit of the site and surrounding area and noted the following fences/walls above four (4) feet high which appeared to be located in the front yard setback:
 - a fence/wall located immediately north of the subject site that is approximately 20’ long, consisting of an approximately 6’ high, open metal pedestrian gate with two approximately 8’ long, 6’ high brick wing walls on either side; and
 - an approximately 5’ high open wrought fence with 5.5’ high columns located immediately northeast of the site (and what appears to be the result of board action made in conjunction with BDA989-216).
- As of May 5th, no letters have been submitted either in support or in opposition to the special exception.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 2’ (whereby the proposed 6’ high gate and three, 4’ – 6’ high wing walls that would exceed 4’ in height) will not adversely affect neighboring property.
- Granting this special exception of 2’ with conditions imposed that the applicant complies with the submitted site plan/elevation would assure that the proposed gate and entry wing walls would be constructed and maintained as shown on this document.

BOARD OF ADJUSTMENT ACTION: MAY 15, 2006

APPEARIN IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Moore

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

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

SECONDED: Maten

AYES: 5– Madrigal, Boyd, Maten, Moore, Carter

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 056-126

BUILDING OFFICIAL’S REPORT:

Application of Donna Dickinson for a special exception to the sign regulations at 655 W. Illinois Avenue. This property is more fully described as a tract of land in City Block A/5973 and is zoned RR which prohibits non-monument signs within 250 feet of a non-business zoning district. The applicant proposes to erect a detached multi-tenant sign 100 feet from a residential zoned district which would require a special exception of 150 feet. Referred to the Board of Adjustment in accordance with Section 51A-7.703 (d) (1) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 655 W. Illinois Avenue

APPLICANT: Donna Dickinson

REQUEST:

- A special exception to the sign regulations of 150’ is requested to locate a non-monument sign closer than 250 feet from private property in a non-business zoning district on a site developed as a retail/office center (Wynnewood Village).

STANDARD FOR A SPECIAL EXCEPTION TO THE SIGN REGULATIONS FOR THE LOCATION OF NON-MONUMENT SIGNS:

The Board of Adjustment may grant a special exception to the provision that non-monument signs are not allowed within 250 feet of either private property in a non-business zoning district or a public park of more than one acre when, in the opinion of the board, the special exception will not adversely affect neighboring property.

GENERAL FACTS:

- The Dallas Development Code states that non-monument signs are not allowed within 250' of either private property in a non-business zoning district or a public park of more than one acre.
The applicant proposes to locate a non-monument sign 100' from property in a non-business zoning district which in this case is an MF-1 (A) (Multifamily) zoning district located east of the site across Zang Boulevard. (The original Building Official's Report that had conveyed that the applicant was proposing to locate a non-monument sign 175' from a non-business zoning district was amended on April 28, 2006).
- A sign elevation has been submitted with the application. This elevation provides the following information:
 - A sign that is 12' x 16' 8" in size, and 18' 4" from grade."
- A site plan has been submitted that denotes the location of the "proposed pylon sign" on the site. The plan shows that the sign is oriented perpendicular to Zang Boulevard where messages on the sign would be oriented to be read for travelers traversing north or south on Zang Boulevard (as opposed to being oriented to be read by the residents of the adjacent apartments that trigger the 250' distance).
- On April 24, 2006, the applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a letter that provided further details about the request;
 - a colored elevation;
 - a photograph that appears to depict the proposed sign location, the 100' distance between the proposed sign and the MF zoning line, and the 250' distance between the proposed sign and the nearest multifamily structure; and
 - an aerial photograph with concentric rings that appear to depict a 100', 175' and 250' radius from the proposed sign location.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	RR (Regional Retail)
<u>North:</u>	RR (Regional Retail)
<u>South:</u>	MF-1 (A) (Multifamily residential)
<u>East:</u>	MF-1 (A) & MU-1 (Multifamily residential and Mixed Use)
<u>West:</u>	RR (Regional Retail)

Land Use:

The site is currently developed with a retail/office center (Wynnewood Village). The areas to the north and west are developed with retail/office uses; and the areas to the south and east are developed with multifamily uses.

Zoning/BDA History:

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

Timeline:

- March 22, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- April 19, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- April 20, 2006: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the April 28th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - the May 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 May public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- April 24, 2006 The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).
- May 2, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Current Planning Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- A site plan has been submitted that identifies the location of the proposed pylon sign that, according to calculations made by the applicant and the Building Inspection Development Code Specialist, is 100' from property in a non-business zoning district. In this case the non-business zoning district is MF-1(A)-zoned property (where the land use on this property is multifamily) located to the east of the subject site across Zang Boulevard. The site plan also denotes that orientation of the proposed pylon sign perpendicular to (rather than parallel to) the multifamily residential use/residentially-zoned property to the east.
- A sign elevation has been submitted that identifies the size of the proposed pylon sign (12' x 16' 8") and height (18' 4" from grade).
- The applicant has the burden of proof in establishing the following:
 - Granting the special exception to the sign regulations of 150' to locate an approximately 200 square foot, pylon sign 100' from property in the non-business (MF-1(A)) zoning district to the east of the subject site will not adversely affect neighboring property.
- Granting this special exception of 150' with conditions imposed that the applicant complies with the submitted site plan and sign elevation would allow the sign to be located on the site 100'(rather than 250') away from property in a non-business zoning district.
- Granting the request with a condition imposed that the applicant complies with the submitted site plan and sign elevation (not to include text on the sign elevation) would assure that the proposed sign would be located and constructed as shown of these documents.

BOARD OF ADJUSTMENT ACTION: MAY 15, 2006

APPEARIN IN FAVOR: Donna Dickinson, 655 W. Illinois, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Carter**

I move that the Board of Adjustment in **Appeal No. BDA 056-126**, on application of Donna Dickinson, **grant** the special exception to the sign regulations of the Dallas Development Code, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that this special exception will not 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 sign elevation (not to include text on sign elevation) is required.

SECONDED: **Boyd**
AYES: 5– Madrigal, Boyd, Maten, Moore, Carter
NAYS: 0–
MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 056-116

BUILDING OFFICIAL’S REPORT:

Application of Woodmont, represented by James Schnurr, Winstead Sechrest Minick P.C., for a variance to the front yard setback regulations, a variance to the urban form front yard setback regulations, and a variance to the tower spacing side yard setback regulations at 12379 Merit Drive. This property is more fully described as a tract of land in City Block 7732 and is zoned MU-3 which requires a front yard setback of 15 feet for portions of structures 45 feet in height or less, an additional urban form front yard setback of 20 feet for portions of structures above 45 feet in height, and a 30 foot tower spacing side yard setback. The applicant proposes to construct a multifamily structure and provide a 0 foot front yard setback which would require a variance of 15 feet to the front yard setback regulations for the portion of the structure 45 feet in height or less, and a variance to 35’ to the urban form front yard setback regulations for the portion of the structure above 45 feet in height; and provide a side yard setback of 3 feet which would require a variance to 27 feet to the tower spacing side yard setback regulations. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

LOCATION: 12379 Merit Drive

APPLICANT: Woodmont
Represented by James Schnurr, Winstead Sechrest Minick P.C.

May 15, 2006 Public Hearing Notes:

- The applicant’s representative presented testimony at the public hearing pertaining to a revision that he wished to make to the revised submitted site plan: that the center triangular area shown to require a tower spacing side yard setback variance on the west side of the subject site be deleted.

REQUESTS:

- The following appeals have been made in this application to construct and maintain a maximum 80’ high condominium structure on a site that is undeveloped:
 1. a variance to the urban form front yard setback regulations of 20’ for the portion of the proposed structure above 45’ along Merit Drive; and
 2. a variance to the tower spacing side yard setback regulations of 7’ 6” for the portion of the proposed structure above 45’ on the west side of the site.

Originally, the following appeals had been made in this application to construct and maintain a condominium structure on a site that is undeveloped:

- two variances to the front yard setback regulations of up to 15' for the portions of the proposed structure 45' in height or less;
- two variances to the urban form front yard setback regulations of up to 35' for portions of the proposed structure above 45'; and
- two variances to the tower spacing side yard setback regulations of up to 27 feet for portions of the proposed structure above 45'.

STANDARD FOR A VARIANCE:

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

GENERAL FACTS:

- A 15' front yard setback is required in the MU-3 (A) zoning district for portions of a structure 45' in height or less.
The originally submitted site plan denoted a structure that was providing up to a 0' front yard setback along Merit Drive (where the structure was up to 15' into the 15' front yard setback), and an approximately 2' front yard setback along Churchill Way (where the structure was up to 13' into the 15' front yard setback).
The revised site plan submitted on April 28, 2006 (see Attachment D), denotes a structure (maximum height 80') that complies with the 15' front yard setback on Merit Drive and Churchill Way.
- An urban form front yard setback is required in the MU-3 (A) zoning district where an additional 20' front yard setback is required for portions of a structure above 45' in height. (In this case, any portion of a structure over 45' in height would be required to be setback 35' from the site's front property line on Merit Drive and Churchill Way).
The applicant's representative submitted a document entitled "schematic design package" on April 7, 2006. This unscaled document was of a 4-story structure. Although no scaled elevation had been submitted for the board's consideration prior to the April hearing, the applicant's representative had stated that the intent was to construct a structure straight up from the building footprint shown on the submitted

site plan, and, according to an April 7th letter, a structure that would not exceed 80' in height. Assuming this, the portion of the structure over 45' in height would have been at its closest point 35' into the 35' urban form front yard setback along Merit Drive since the building footprint was (at places) located as close as on the Merit Drive front property line, and 33' into the 35' urban form front yard setback along Churchill Way since the building footprint was (at places) located as close as 2' from the Churchill Way front property line.

The applicants' representative submitted a revised site plan and "Building Section" document on April 28, 2006 (see Attachment D). The revised site plan indicates that the portion of the proposed structure (over 45' in height) will be in compliance with the additional urban form setback along Churchill Way, and will require an urban form front yard variance of 20' since the structure is proposed to reach 80' in height from the 15' front yard setback on Merit Drive.

- A tower spacing side yard setback is required in the MU-3 (A) zoning district where an additional side yard setback of one foot for each two feet in height over 45 feet is required for that portion of a structure above 45' in height for a total setback of 30 feet.

The applicant's representative submitted a document entitled "schematic design package" on April 7, 2006. This unscaled document was of a 4-story structure. Although no scaled elevation had been submitted for the board's consideration prior to the April hearing, the applicant's representative had stated that the intent was to construct a structure straight up from the building footprint shown on the submitted site plan, and, according to an April 7th letter, a structure that would not exceed 80' in height. Assuming this, the submitted site plan denoted a structure that was providing a 3' side yard setback for the portion of the structure over 45' on the west side of the site where the structure was (at its closest point) 27' into the site's 30' tower spacing side yard setback on the west; and a structure that was providing a 12' side yard setback for the portion of the structure over 45' on the south side of site where the structure was (at its closest point) 18' into the site's 30' tower spacing side yard setback on the south.

The applicants' representative submitted a revised site plan and "Building Section" document on April 28, 2006 (see Attachment D). The revised site plan indicates that the proposed structure (over 45' in height) will be in compliance with the additional tower spacing side yard setback on the south side of the site, and will require an tower spacing side yard variance of 7' 6" since a portion of the structure exceeding 45' in height (but not to exceed 80' in height) will be located 10' from the western side property line (or 7' 6" into the 17' 6" tower spacing side yard setback).

- According to calculations made by the Board Administrator from the submitted originally submitted revised site plan, the structure has a building footprint of approximately 480' x 190' (or 91,200 square feet).
- According to calculations made by the Board Administrator from the *revised* site plans submitted on April 28, 2006, the structure has a building footprint of approximately 95,000 square feet.
- The site has two, 15' front yard setbacks and as well as two, 35' front yard urban form setbacks: a front yard setback and urban form front yard setback on Merit Drive, and another front yard setback and urban form front yard setback on Churchill Way. The front yard setbacks on this MU-3 zoned site are typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural. The site has

two, 0 foot side yard setbacks for the portion of a structure 45' in height or less, and two side yard setbacks of 30' for the portion of the structure above 45' in height.

- The applicant's representative has described the subject site has having an "irregular slope" (a 25' difference in elevation across the approximately 480' width of the property), being irregular in shape, and, according to the application, 2.984 acres in area.
 - The site is zoned MU-3(A) which allows a structure to reach 270' in height.
 - The applicant's representative submitted information beyond what was submitted with the original application (see Attachments A and B). This information included the following:
 - a revised site plan;
 - a letter that provides additional details about the requests; and
 - a drawing entitled "schematic design package."
 - The Board of Adjustment conducted a public hearing on these matters on April 17, 2006. The applicant's representative submitted additional documentation prior to the board's briefing (see Attachment C), and requested that the board delay the variance requests until May 2006 at the public hearing.
 - The applicant's representative submitted additional information on April 28, 2006 (see Attachment D). This information included the following:
 - a letter that provides additional details about the requests;
 - a revised site plan;
 - a document entitled "Building Section;"* and
 - a drawing that is untitled affixed with a note labeled "massing exhibit." *
- * (Reduced copies were not provided, however, full-scale documents will be available for review at the briefing/public hearing).

BACKGROUND INFORMATION:

Zoning:

Site: MU-3 (A) (Mixed Use)
North: MU-3 (A) (Mixed Use)
South: MU-3 (A) (Mixed Use)
East: MU-3 (A) (Mixed Use)
West: MU-3 (A) (Mixed Use)

Land Use:

The subject site is undeveloped. The areas to the north and east are developed with multifamily uses; and the areas to the south and west are developed with office uses.

Zoning/BDA History:

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

Timeline:

- Feb. 24, 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.
- March 15, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- March 16, 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 April 10th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the April public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- April 3 &7, 2006 The applicant’s representative submitted information beyond what was submitted with the original application (see Attachments A and B).
- 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 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.
- April 17, 2006: The Board of Adjustment conducted a public hearing on these matters. The applicant’s representative submitted additional information at the briefing (see Attachment C).

- April 20, 2006: The Board Administrator contacted with the applicant's representative and shared the following information:
- the April 28th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - the May 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 May public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- April 28, 2006 The applicant's representative submitted information beyond what was submitted with the original application and at the April 17 public hearing (see Attachment D).
- May 2, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Current Planning Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

STAFF ANALYSIS:

- The 6 variances that were originally made in conjunction with this appeal (2 front yard setback variances for the portion of the structure under and over 45' in height along Merit Drive on the east, 2 front yard setback variances for the portion of the structure under and over 45' in height along Churchill Way on the north; a tower spacing side yard variance on the west; a tower spacing side yard variance on the south) have been reduced to 2 variances: a variance to the urban form front yard setback regulations of 20' for the portion of the proposed structure above 45' along Merit Drive; and a variance to the tower spacing side yard setback regulations of up to 7' 6" for the portion of the proposed structure above 45' on the west side of the site.
- Both of the two remaining variances are related to the portion of the proposed structure that, according to a revised site plan and elevation, is at a maximum height of 80 feet.
- According to the applicant's representative, the approximately 480' wide subject site has a 25' grade change from east to west. The subject site is slightly irregular in shape, and according to the application, 2.984 acres in area.
- The site is zoned MU-3 where structures can reach 270' in height.

- The site has two, 15' front yard setbacks and as well as two, 35' front yard urban form setbacks: a front yard setback and urban form front yard setback on Merit Drive, and another front yard setback and urban form front yard setback on Churchill Way. The front yard setbacks on this MU-3 zoned lot are typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural.
- According to calculations made by the Board Administrator from the revised site plans submitted on April 28, 2006, the structure has a building footprint of approximately 95,000 square feet.
- It appears from calculations taken from the submitted revised site plan submitted on April 28, 2006 by the Board Administrator that about 1,350 square feet of the 95,000 square foot building footprint is located in the Merit Drive urban form front yard setback, and about 87 square feet of the 95,000 square foot building footprint is located in the tower spacing side yard setback on the west side of the site.
- The applicant has the burden of proof in establishing the following related to each of the 2 variance requests:
 - That granting the variances to the front and side yard setback regulations to construct and maintain a structure in one of the site's two urban form front yard setbacks, and in one of the site's two tower spacing side yard setback 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 variances to the front urban form front yard setback regulations and tower spacing side yard setback regulations to construct and maintain a structure is necessary to permit development of the subject site (an undeveloped site that is about 3 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 MU-3 zoning classification.
 - The variances to the urban form front yard setback regulations and tower spacing side yard setback regulations to construct and maintain a structure 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 MU-3 zoning classification.
- If the Board were to grant to the 2 variances to the urban form front yard setback regulations and tower spacing side yard setback regulations, and impose the revised site plan and elevation (submitted on April 28, 2006) as a condition to the requests, there would be assurances as to how much of the proposed structure could be located in the Merit Drive urban form front yard setback and in the tower spacing side yard setback on the west side of the site since the revised site plan denotes these areas in plan view and denotes a maximum building height of 80 feet.

BOARD OF ADJUSTMENT ACTION: APRIL 17, 2006

APPEARING IN FAVOR: Jimmy Schnurr, 5400 Renaissance Tower, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Boyd**

I move that the Board of Adjustment, in Appeal No. **BDA 056-116**, hold this matter under advisement until **May 15, 2006** to bring back adjustments and clarifications.

SECONDED: **Maten**

AYES: 5– Madrigal, Boyd, Maten, Moore, Griggs

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: MAY 15, 2006

APPEARIN IN FAVOR: Jimmy Schnurr, 5400 Renaissance Tower, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION#1: **Maten**

Per the applicant's request, I move that the Board of Adjustment, in Appeal No. **BDA 056-116**, on application of Woodmont, represented by Winstead Sechrest Minick P.C., **deny** the variance to the front yard setback regulations, **without prejudice**.

SECONDED: **Moore**

AYES: 4– Madrigal, Maten, Moore, Carter

NAYS: 1– Boyd

MOTION PASSED: 4 –1

MOTION#2: **Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 056-116**, on application of Woodmont, represented by Winstead Sechrest Minick P.C., **grant** the 20 foot variance to the urban form front yard setback regulations for portions of the proposed structure above 45 feet in height along Merit Drive, because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan submitted on April 28, 2006 (and amended per the applicant's representative's request at this public hearing) is required.

SECONDED: **Boyd**

AYES: 4– Madrigal, Boyd, Maten, Carter

NAYS: 1–Moore

MOTION PASSED: 4 – 1

MOTION#3: **Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 056-116**, on application of Woodmont, represented by Winstead Sechrest Minick P.C., **grant** the 7 foot, 6 inch variance to the side yard setback regulations, because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan submitted on April 28, 2006 (and amended per the applicant's representative's request at this public hearing) is required.

SECONDED: **Boyd**

AYES: 4– Madrigal, Boyd, Maten, Carter

NAYS: 1– Moore

MOTION PASSED: 4 – 1

FILE NUMBER: BDA-056-138

BUILDING OFFICIAL'S REPORT:

Application of David McNeil, represented by Masterplan, for a special exception to the landscape regulations at 2222 McKinney Avenue. This property is more fully described as Lot 1B in City Block A/541 and is zoned PD-193 which requires mandatory landscaping for new construction. The applicant proposes to construct a building and provide an alternate landscape plan which would require a special exception to the landscape regulations. Referred to the Board of Adjustment in accordance with Section 51A-10.110 of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 2222 McKinney Avenue

APPLICANT: David McNeil
Represented by Masterplan

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with obtaining a final CO (Certificate of Occupancy) and building permit on a site developed with an approximately 34,000 square foot retail center (Uptown Plaza).

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

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

GENERAL FACTS:

- The Dallas Development Code requires full compliance with the Landscape Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet.
The applicant is proposing an alternate landscape plan that does not fully comply with the landscape regulations, specifically a landscape plan where, according to the City of Dallas Chief Arborist, the applicant is specifically requesting relief from the street tree and sidewalk requirements.
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner (see Attachment A). The memo stated the following:

- The applicant is requesting relief from the landscape requirements of PD 193, more specifically, relief from the street tree and the sidewalk requirements.
- The special exception request is triggered by new construction.
- Deficiencies:
 1. The applicant is required to provide one, 3.5” diameter street tree for each linear feet of street frontage, and plant them in the tree planting zone: 2.5’ – 5’ from the back of curb (which on this site is 36 trees)
The applicant is proposing to provide 23 trees.
 2. The applicant is required to provide a 6’ wide sidewalk between 5’ – 12’ from the back of curb.
The applicant is proposing to provide a 4’ wide sidewalk at varying distances from the back of curb.

Factors for consideration:

- The city arborist office reviewed a landscape plan prior to the issuance of a building permit, and the city approved a landscape plan that complied with the requirements of Section 26 in PD 193. Additionally the approved plan included information regarding the tree replacement requirements which they (the owner/applicant) have not yet met.
- During the construction phase of the project, a portion of the property was sold. This created a situation whereby they (the owner/applicant) are not able to meet the street tree requirements. The part of the property sold was taking on a disproportionate number of street trees – the landscape regulations do not require the trees be allocated to each street individually.
- Details as to how the width and the location of the required sidewalk became an issue cannot be provided. The approved landscape plan shows sidewalks that comply with the landscape requirements of PD 193.
- The applicant’s representative submitted additional information beyond what was submitted with the original application (see Attachment B). This information included the following:
 - a letter that provided additional details about the request; and
 - photographs of areas on the site where the applicant states the special exception is needed (with corresponding site plan/map showing where these areas are located).

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (HC Subdistrict) (Planned Development District, Heavy Commercial)
North: PD No. 193 (HC Subdistrict) (Planned Development District, Heavy Commercial)
South: PD No. 193 (HC Subdistrict) (Planned Development District, Heavy Commercial)
East: PD No. 330 (Planned Development District)
West: PD No. 193 (HC Subdistrict) (Planned Development District, Heavy Commercial)

Land Use:

The subject site is developed with a retail center (Uptown Plaza). The areas to the north, east, south, and west are developed with office and retail uses.

Zoning/BDA History:

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

Timeline:

March 30, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

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

April 27, 2006: The Board Administrator met with the applicant's representative and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the April 28th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the May 8th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the May public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 2, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Current Planning Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

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

May 4, 2006 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the special exception to the landscape regulations (see Attachment A).

May 5, 2006 The applicant's representative submitted additional information to the Board Administrator (see Attachment B).

STAFF ANALYSIS:

- An alternate landscape plan has been submitted with this request that, according to the City of Dallas Chief Arborist, is not fully complying with street tree and sidewalk requirements.
- The applicant has the burden of proof in establishing the following:
 - The special exception (where an alternate plan has been submitted that, according to the Chief Arborist, is providing 23 of the required 36 street trees; and is not fully providing the required 6' wide sidewalks between 5' – 12' from the back of curb on the site) will not compromise the spirit and intent of the section of the ordinance (Section 26: Landscape, streetscape, screening, and fencing standards).
- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted alternate landscape plan, the final building permit and Certificate of Occupancy could be issued on the site, where the site would be "excepted" from full compliance to the street tree and sidewalk requirements of the Oak Lawn PD landscape ordinance.

BOARD OF ADJUSTMENT ACTION: MAY 15, 2006

APPEARIN IN FAVOR: Willie Cothrum, 900 Jackson St., Ste 640, Dallas, TX
Santos Martinez, 900 Jackson St., Ste 640, Dallas, TX
Dick Brinke, 1999 McKinney, #1207, Dallas, TX

APPEARING IN OPPOSITION: No one

1:59 P.M. Break
2:07 P.M. Resumed

MOTION: Boyd

I move that the Board of Adjustment, in Appeal No. **BDA 056-138**, on application of David McNeil, represented by Masterplan, **grant** the request of this applicant to provide an alternate landscape plan as a special exception to the landscape requirements contained in PD 193 because our evaluation of the property and the testimony shows that this special exception will not compromise the spirit and intent of the Oak Lawn Ordinance. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Applicant must comply with all landscape regulations in PD 193 except they are able to maintain their sidewalks as depicted on the submitted tree survey.
- Applicant must provide a pedestrian walkway at the corner of Pearl Street and McKinney Avenue.

SECONDED: Carter

AYES: 5– Madrigal, Boyd, Maten, Moore, Carter

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

MOTION: Maten

I move to adjourn this meeting.

SECONDED: Boyd

AYES: 5 – Madrigal, Boyd, Maten, Moore, Carter

NAYS: 0 - None

MOTION PASSED: 5 – 0 (Unanimously)

2:13 P. M. - Board Meeting adjourned for **May 15, 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.