

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
CITY HALL, COUNCIL CHAMBERS
MONDAY, JUNE 19, 2006**

MEMBERS PRESENT AT BRIEFING: Frank Madrigal, Vice-Chair, Sharon Boyd, Panel Vice-Chair, Robert Moore, regular member, Johnny Jefferson, alternate member Maria Gomez, alternate member

MEMBERS ABSENT FROM BRIEFING: Joel Maten, regular member

MEMBERS PRESENT AT HEARING: Frank Madrigal, Vice-Chair, Sharon Boyd, Panel Vice-Chair, Robert Moore, regular member, Johnny Jefferson, alternate member Maria Gomez, alternate member

MEMBERS ABSENT FROM HEARING: Joel Maten, regular member

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

10:07 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **June 19, 2006** docket.

1:05 P.M.

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

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel C May 15, 2006 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: JUNE 19, 2006

MOTION: **Jefferson**

I move **approval** of the Monday, May 15, 2006 public hearing minutes.

SECONDED: **Gomez**

AYES: 5– Madrigal, Boyd, Moore, Jefferson, Gomez

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: BDA 056-053

REQUEST: To extend the time period in which to apply for a building permit or certificate of occupancy an additional 12 months from the Board of Adjustment’s favorable action on a request for special exception to the parking regulations of 288 spaces that was granted on February 13, 2006.

LOCATION: 8383 (aka 8333) Douglas Avenue

APPLICANT: DeShazo, Tang,& Associates
 Represented by John DeShazo

STANDARD FOR EXTENDING THE TIME PERIOD IN WHICH TO APPLY FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY:

The Board of Adjustment Working Rules of Procedure states that a panel may not extend the time period for making application for a building permit or certificate of occupancy beyond 180 days from the date of its favorable action unless it makes a specific finding based on evidence presented at a public hearing that there are no substantially changed conditions or circumstances regarding the property to the

satisfaction of the panel. In no event, however, may the board extend the time period beyond 18 months from the date of its favorable action.

GENERAL FACTS:

- The Dallas Development Code states the following with regard to board action:
 - The applicant shall file an application for a building permit or certificate of occupancy within 180 days for the date of the favorable action of the board, unless the applicant files for and is granted an extended time period prior to the expiration of the 180 days. The filing of a request for an extended time period does not toll the 180 day time period. If the applicant fails to file an application within the time period, the request is automatically denied without prejudice, and the applicant must begin the process to have his request heard again.
- On February 13, 2006, the Board of Adjustment Panel C granted a request for a special exception to the parking regulations of 288 spaces. (The board imposed the following condition: The special exception shall automatically and immediately terminate if and when the office and restaurant uses on the site are changed or discontinued). The case report stated that this request was made in conjunction with constructing and maintaining a new 126,000 square foot office tower and 8,500 square foot restaurant on a site currently developed with an approximately 278,000 square foot office tower.
- On June 14, 2006, the applicant's representative submitted a letter to staff requesting that time period in which to apply for a building permit or certificate of occupancy be extended an additional one year beyond the 180 day time period in which the applicant had to do so pertaining to the special exception that was approved on February 13, 2006 (see Attachment A).
- On June 14, 2006, the Board Administrator spoke with the applicant's representative and informed him of the standard that the board would use in extending the time period in which to make application for a building permit or certificate of occupancy

BOARD OF ADJUSTMENT ACTION: JUNE 19, 2006

APPEARIN IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Moore**

I move to extend the time period in which to apply for a building permit or certificate of occupancy an additional 12 months from the Board of Adjustment's favorable action on a request for special exception to the parking regulations of 288 spaces that was granted on February 13, 2006.

SECONDED: **Jefferson**

AYES: 5- Madrigal, Boyd, Moore, Jefferson, Gomez

NAYS: 0-

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 056-150

BUILDING OFFICIAL'S REPORT:

Application of Leetha Butler represented by Willie McDowell for a special exception to the side yard setback regulations at 3255 Kinmore Street. This property is more fully described as Lot 14 in City Block K/2111 and is zoned R-7.5(A) which requires a side yard setback of 5 feet. The applicant proposes to maintain a carport in the required side yard and provide a 3 foot setback which would require a special exception of 2 feet. Referred to the Board of Adjustment in accordance with Section 51A-4.402 (c) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 3255 Kinmore Street

APPLICANT: Leetha Butler
Represented by Willie McDowell

REQUEST:

- A special exception to the side yard setback regulations of 2' is requested in conjunction with maintaining a carport on a site developed with a single family home.

(The existing carport on the subject site is in the same location with the same characteristics as when it was "special excepted" by Board of Adjustment Panel C almost a year ago in August of 2005. A new appeal has returned merely because the applicant did not file an application for a building permit for the existing carport within 180 days from the board's favorable action on the previous appeal granted on August 15, 2005).

STANDARD FOR A SPECIAL EXCEPTION TO ALLOW A CARPORT IN THE SIDE YARD:

The Board of Adjustment may grant a special exception to the minimum side yard requirements to allow a carport for a single family or duplex use when, in the opinion of the Board, the carport will not have a detrimental impact on surrounding properties. In determining whether to grant a special exception, the Board shall consider the following:

- (1) Whether the requested special exception is compatible with the character of the neighborhood.
- (2) Whether the value of surrounding properties will be adversely affected.
- (3) The suitability of the size and location of the carport.
- (4) The materials to be used in construction of the carport.

(Storage of items other than motor vehicles is prohibited in a carport for which a special exception is granted in this section of the Code).

GENERAL FACTS:

- A 5'-side yard setback is required in the R-7.5(A) zoning district. The applicant proposes to maintain a carport on the site that is located 3' from the site's eastern side property line (or 2' into the 5' side yard setback).
- The existing carport has the following characteristics:
 - 20' x 10' (or 200 square feet) in area;
 - constructed of metal materials; and
 - 9' 5" in height.
- The subject site is 149' x 50' (or 7,450 square feet) in area.
- According to DCAD, the site is developed with a single family home in fair condition built in 1925 with 1,169 square feet of living area, and a 616 square foot detached garage.
- Building Inspection states that no permit was issued by the City for the existing carport on this site.
- Two other carports were noted on the block. The carport immediately southeast of the subject site at 3302 Kinmore Street was "special excepted" to encroach into the side setback by Board of Adjustment Panel C in November of 2005 (BDA 056-018). Another carport located four lots southeast of the subject site at 3314 Kinmore Street does not have Board history and appears to encroach into the 25' front yard setback.
- The Dallas Development Code provides for the Board of Adjustment to consider special exceptions for *carports* in the side yard with a specific basis for this type of appeal. (Note that the Dallas Development Code does not provide a definition of "carport" however Building Inspection interprets a "carport" to be a structure that would cover a vehicle and be open on at least one side. Building Inspection has recently been interpreting what would appear to a layperson to be a garage without a garage door as a "carport").
- The Dallas Development Code provides for the Board of Adjustment to consider *variances for structures* in the side yard setback with a different basis for appeal than that of *special exceptions for carports* in the side yard setback.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. Unassigned, 3255 Kinmore (the On March 14, 2005, the Board of

subject site)

2. BDA045-255, 3255 Kinmore (the subject site)

Adjustment Panel C waived the filing fee to be submitted in conjunction with a potential board appeal.

On August 15, 2005, the Board of Adjustment Panel C granted a request for a special exception of 2 feet to the side yard setback regulations requested in conjunction with maintaining a carport located in the site's side yard setback. The Board imposed the following conditions: The carport must remain open at all times; there must be no lot-to-lot drainage in conjunction with this proposal; all applicable building permits must be obtained; compliance with the submitted site plan is required; and no item (other than a motor vehicle) may be stored in the carport.

3. BDA 056-018, 3302 Kinmore Street (the lot immediately southeast of subject site)

On November 14, 2005, the Board of Adjustment Panel C granted a request for a special exception to the side yard setback regulations of 4' 6" requested to maintain a carport located in the 5' side yard setback. The board imposed the following conditions with this request: Compliance with the submitted site plan and elevation is required; the carport must remain open at all times; there must be no lot-to-lot drainage in conjunction with this proposal; all applicable building permits must be obtained; and no item (other than a motor vehicle) may be stored in the carport.

4. Unassigned, 3255 Kinmore (the subject site)

On April 17, 2006, the Board of Adjustment Panel C waived the filing fee to be submitted in conjunction with a potential board appeal which in this case, was a filing fee for an application to resubmit a special exception to the side yard regulations to maintain the carport on the site. (The applicant did not file an application for a building permit for the carport within 180 days from the Board's favorable action made on August 15, 2005 for the same carport that is the matter at hand in the current application).

Timeline:

April 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.

May 18, 2006: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If any preliminary action is required on a case, including but not limited to a fee waiver or waiver of the two year waiting period, the case must be returned to the panel taking the preliminary action."

May 19, 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 June 2nd deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the June 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

June 5, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Chief Arborist, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The existing carport on the subject site and the issue at hand in this request is the same carport (in terms of location, design, and materials) that was “special excepted” by Board of Adjustment Panel C almost a year ago in August of 2005. The appeal has returned merely because the applicant did not file an application for a building permit for the existing carport within 180 days from the board’s favorable action on this matter made on August 15, 2005.
- The existing approximately 200 square foot metal carport on the subject site is located 2’ into the site’s 5’ side yard setback on the east side of the subject site. According to calculations taken from the submitted site plan by the Board Administrator, about 40 square feet of the carport is located in the side yard setback.
- The applicant has the burden of proof in establishing that the special exception to the side yard regulations of 2’ (whereby the existing 200 square foot, 9.5’ high metal carport that is 2’ into the 5’ side yard setback) will not adversely affect neighboring property.
- Granting this special exception would allow the carport to remain in its current location 3’ away from the site’s eastern side property line (or 2’ into the required 5’ side yard setback).
- As of June 9, 2006, no letters or petitions have been submitted either in support or in opposition to the request.
- Typically, staff has suggested that the Board impose conditions with this type of appeal. The following conditions would restrict the location and size of the carport’s location in the side yard setback; would require the carport in the side yard setback to be retained in its current design, materials, and configuration; and would require the applicant to mitigate any water drainage related issues that the carport may cause on the lot immediately adjacent:
 1. Compliance with the submitted site plan and elevation is required.
 2. The carport structure must remain open at all times.
 3. There is no lot-to-lot drainage in conjunction with this proposal.
 4. All applicable building permits are obtained.
 5. No item (other than a motor vehicle) may be stored in the carport.

BOARD OF ADJUSTMENT ACTION: JUNE 19, 2006

APPEARIN IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Jefferson**

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.
- The carport must remain open at all times.
- There must be no lot-to-lot drainage in conjunction with this proposal.
- All applicable building permits must be obtained.

- No item (other than a motor vehicle) may be stored in the carport.

SECONDED: Gomez

AYES: 5– Madrigal, Boyd, Moore, Jefferson, Gomez

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 056-153

BUILDING OFFICIAL’S REPORT:

Application of Don Elliott for a variance to the side yard setback regulations and for a special exception to the landscape regulations at 1808 W. Jefferson Blvd. This property is more fully described as Lot 31 in City Block 28/3447 and is zoned NS(A) which requires mandatory landscaping where there is residential adjacency for new construction, and requires a side yard setback of 20 feet. The applicant proposes to construct a building and provide a 5 foot side yard setback which would require a variance of 15 feet to the side yard setback regulations 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, and 51A-3.102(d)(10) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions and variances.

LOCATION: 1808 W. Jefferson Boulevard

APPLICANT: Don Elliott

REQUESTS:

- The following appeals have been made in this application:
 1. variances to the side yard setback regulations of 15 feet; and
 2. a special exception to the landscape regulations.These appeals are requested in conjunction with constructing and maintaining an approximately 1,200 square foot, one-story office on a site that is undeveloped.

STANDARD FOR A VARIANCE:

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area ratios, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations that will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done. The variance must be necessary to permit development of a specific parcel of land which differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same zoning classification. A variance

may not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land in districts with the same zoning classification.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

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

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

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

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

GENERAL FACTS (related to the variances):

- The Dallas Development Code requires sites zoned NS (Neighborhood Service) zoning that are adjacent to or directly across the alley from an R, R(A), D, D(A), TH, TH(A), CH, MF, MF(A) to provide a 20' side yard setback. (In all other cases, no minimum setback is required).
- A site plan has been submitted that denotes a structure on the NS(A) zoned site (flanked to the east and west by R-7.5(A) zoning) that is located 5' from both the east and west side property lines (or 15' into the site's 20' side yard setbacks on the east and west). The structure on the plan has an approximately 1,200 square foot (or 30' x 40') building footprint where about 300 square feet lies outside the site's two 20' side yard setbacks. (If the site were flanked on the sides by non-residential zoning, no side yard setbacks would be required).
- An elevation has been submitted that indicates a one-story structure.
- The subject site is flat, irregular in shape (approximately 54' on the north, approximately 50' on the south, approximately 135' on the east, and approximately 155' on the west), and approximately 7,500 square feet in area.
- According to research of archived zoning maps by the Board Administrator, the site has been zoned NS since March of 1965.
- DCAD records indicate that the site has "no improvements."
- The applicant submitted additional information on June 9, 2006 (see Attachment A). This information included the following:
 - a letter that provides additional details about the request;

- copies of certificates of occupancy issued on the site showing that the property has been use for retail/commercial use from 1966 to 1985; and
- three letters from neighbors/owners who support the request.

GENERAL FACTS (related to the landscape regulations):

- 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 requirements that the applicant is seeking the special exception from are not imposed by a site-specific landscape plan approved by the city plan commission or city council.
 - The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner (see Attachment B). The memo stated the following:
 - The applicant is requesting relief from the landscape requirements of Article X (The Landscape Regulations), more specifically, relief from the required perimeter landscape buffer strip where there is residential adjacency along both the east and west sides of the subject site.
 - The special exception request is triggered by new construction.
 - Deficiencies:
 1. The applicant is required to provide a 10' wide (or 10% of the lot depth/width) perimeter landscape buffer strip where there is residential adjacency to the east and west. Each buffer strip must contain one plant group for each 50 linear feet. (In this case, with the requirement to provide a 6' solid screen on each side of the property, each buffer must contain one 2" diameter large canopy tree for each 50 linear feet – 5' wide buffers and 5 large canopy trees).
The applicant is proposing to provide landscape buffer strips that are 4' wide along the sides of the structure where it encroaches 1' into each of the required perimeter landscape buffer strips.
- Factors for consideration:
- The proposed alternate landscape plan still contains the required number of plant groups to satisfy the perimeter landscape buffer strip requirements but only providing 4' in some areas instead of the 5' required. The plan also includes 5 more site trees than what is required in addition to extra shrubs throughout the property.
 - In order to completely satisfy two design standards, the applicant would need to add a row of screening shrubs between the off-street parking on the north side of the property and Jefferson.
 - The applicant submitted additional information on June 9, 2006 (see Attachment A). This information included the following:
 - a letter that provides additional details about the request;
 - copies of certificates of occupancy issued on the site showing that the property has been use for retail/commercial use from 1966 to 1985; and
 - three letters from neighbors/owners who support the request.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	NS(A) (Neighborhood Service)
<u>North:</u>	R-7.5 (A) (Single family district 7,500 square feet)
<u>South:</u>	R-7.5 (A) (Single family district 7,500 square feet)
<u>East:</u>	R-7.5 (A) (Single family district 7,500 square feet)
<u>West:</u>	R-7.5(A) (Single family district 7,500 square feet)

Land Use:

The subject site is undeveloped. The area to the north is developed with single family uses; the area to the east is undeveloped; the area to the south is developed with a church; and the area to the west is developed with surface parking.

Zoning/BDA History:

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

Timeline:

- April 27, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 18, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- May 19, 2006: The Board Administrator contacted the applicant and conveyed the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the June 2nd deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - the June 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and

- that the board will take action on the matter at the June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

June 5, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Chief Arborist, 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.

June 9, 2006 The applicant submitted information beyond what was submitted with the original application (see Attachment A).

June 9, 2006 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the special exception to the landscape regulations (see Attachment B).

STAFF ANALYSIS (related to the variances):

- The subject site is flat, irregular in shape (approximately 54' on the north, approximately 50' on the south, approximately 135' on the east, and approximately 155' on the west), and approximately 7,500 square feet in area.
- The site has been zoned NS(A) since 1965 and because it is flanked on either side by R-7.5(A) zoned lots (one of which is undeveloped, the other which is developed as a surface parking lot), 20' side yard setbacks are required on both sides of the approximately 50'-wide site. (If the site were flanked on the sides by non-residential zoning, no side yard setbacks would be required).
- According to calculations taken from the submitted site plan by the Board Administrator, about 900 square feet of the 1,200 square foot structure is in the two 20' side yard setbacks. (The area of the proposed 1,200 square foot structure that lies outside the two side yard setbacks is about 300 square feet in area, or an area that is 30' long and 10' wide).
- The applicant has the burden of proof in establishing the following:
 - That granting the variances to the side yard setback regulations of 15' to construct and maintain a one-story, approximately 1,200 square foot office structure will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variances to the side yard setback regulations of 15' to construct and maintain a one-story, approximately 1,200 square foot office structure is necessary to permit development of the subject site (a site that is undeveloped

and is flat, irregular in shape, 50' wide with two, 20' side yard setbacks, and approximately 7,500 square feet in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same NS(A) zoning classification.

- The variances to the side yard setback regulations of 15' to construct and maintain a one-story, approximately 1,200 square foot office structure on a site that has been NS-zoned since 1965 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 NS(A) zoning classification.
- If the Board were to grant the side yard variance requests of 15', imposing a condition whereby the applicant must comply with the submitted site plan, a 1,200 square foot office structure could be constructed and maintained as close as 5' from the site's eastern and western side property lines (or 15' into the 20' side yard setbacks), and would be restricted to the specific location, size, and height shown on this document.

STAFF ANALYSIS (related to the landscape special exception):

- An alternate landscape plan has been submitted with this request that, according to the City of Dallas Chief Arborist, is deficient in meeting the required perimeter landscape buffer strip where there is residential adjacency along both the east and west sides of the subject site of the landscape regulations.
- The special exception to the landscape regulations is triggered by the applicant's intent to construct and maintain an office structure on the site.
- The applicant has the burden of proof in establishing the following:
 - Strict compliance with the requirements of the landscape regulations (i.e. providing the required 5' wide landscape buffer strip with 5 large canopy trees and fully providing the required 2 design standards) will unreasonably burden the use of the property (which in this case is an undeveloped 50' wide site that the applicant intends to develop with an approximately 1,200 square foot office structure).
 - The special exception (whereby 4' wide buffer strips will be provided as well as street trees and shrubs that exceed the requirements) will not adversely affect neighboring property.
- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted alternate landscape plan, the site would be "excepted" from full compliance with the 5' wide landscape buffer strip and design standard requirements of the landscape regulations.

BOARD OF ADJUSTMENT ACTION: JUNE 19, 2006

APPEARIN IN FAVOR: Joe Ramez, 1500 Kings Hwy, Dallas, TX
Barbara Horton, 1720 W. 10th St., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION#1: Jefferson

I move that the Board of Adjustment in Appeal No. **BDA 056-153**, on application of Don Elliot, **grant** the 15 foot 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 conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: Moore

AYES: 5– Madrigal, Boyd, Moore, Jefferson, Gomez

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

MOTION#2: Jefferson

I move that the Board of Adjustment in Appeal No. **BDA 056-153**, on application of Don Elliot, **grant** the request of this applicant to provide an alternate landscape plan as a special exception to the landscape requirements in the Dallas Development code, because our evaluation of the property and testimony shows that strict compliance with the requirements will unreasonably burden the use of the property; the special exception will not adversely affect neighboring property; and the requirements are not imposed by a site specific landscape plan approved by the city plan commission or city council. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted alternate landscape plan is required.
- A row of shrubs must be provided between the off-street parking on the north side of the property and Jefferson Boulevard.

SECONDED: Boyd

AYES: 5– Madrigal, Boyd, Moore, Jefferson, Gomez

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 056-162

BUILDING OFFICIAL’S REPORT:

Application of GWTH, L.P. represented by Karl A. Crawley, Masterplan for a special exception to the landscape regulations at 2429 N. Hall Street. This property is more fully described as Lots 1 and 16 in City Block P/582 and is zoned PD-225 which requires mandatory landscaping. The applicant proposes to construct a shared access development 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: 2429 N. Hall Street.

APPLICANT: GWTH, L.P.
Represented by Karl A. Crawley, Masterplan

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with constructing and maintaining a shared access development with 8 single family attached homes on a site that is undeveloped.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS IN PD No. 225:

Section 18 of Ordinance No. 19084, which establishes PD No. 225, specifies that the board may grant a special exception to the landscaping requirements of this section upon making a special finding from the evidence presented that strict compliance with this section will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives and purposes of this section.

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 site and street tree requirements.
- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included a copy of what appears to be an alternate landscape plan –a document entitled "Landscape Submittal."
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner (see Attachment B). The memo stated the following:
 - The application is triggered by new construction.
 - The applicant is requesting relief from the landscape requirements of PD 225 and Shared Access Developments, more specifically, relief from the street and site tree requirements.
 - Deficiencies:
 1. The applicant is required to provide three 2" diameter site trees for each lot within the shared access development with 2 of the 3 trees located in the front

yards of the shared access development (viewed as one lot for landscape purposes) and the 3rd tree located within the development (which in this case is a total of 24 site trees with 16 trees in the front yards).

The applicant is proposing to provide only 5 site trees.

2. The applicant is required to provide one 4" diameter street tree for each 25' of frontage and located between 2.5' and 4' from the back of curb (which in this case is a total of 4 street trees).

The applicant is proposing to provide 0 street trees: Two 3" diameter trees are proposed for Hugo but one is between 9' and 10' from the curb and the other tree is in the front yard, and one 3' diameter tree is shown on Hall but is between 5' and 6' from the curb.

- Factors for consideration:
 - The proposed alternate landscape plan satisfies the 20 design standard points required under the landscape section of PD 225. The narrow frontage and small front yards make it physically impracticable to locate 16 site trees therein.
 - Although not a requirement of the landscape section, the sidewalks shown on the plan do not provide the 6' unobstructed width the PD wants to realize between the curb and 10' from the curb. It may not be addressed as part of the landscape special exception since it is not a landscape requirement. It would be possible to relocate the proposed street tree along Hall to allow for an additional foot of unobstructed width (currently showing 5' unobstructed at best) where a street tree is provided. Along Hugo, the sidewalk begins 6' from the curb, and only 4' unobstructed width would be within the 10' from the curb at best.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 225 (Planned Development District)
North: PD No. 193 (MF-2 Subdistrict) (SUP 113 & 1058) (Planned Development District, Specific Use Permit)
South: PD No. 225 (Planned Development District)
East: PD No. 225 (Planned Development District)
West: PD No. 225 (Planned Development District)

Land Use:

The subject site is undeveloped. The areas to the north and west are developed as a cemetery (Greenwood Cemetery); the area to the east is under development; and the area to the south is developed with multifamily uses.

Zoning/BDA History:

1. BDA 045-107, 3201 State Street (the lot immediately east of the subject site) On November 16, 2004, the Board of Adjustment Panel A granted a request for a variance to the front yard setback regulations of 5' (subject to compliance with

a revised site plan to be submitted to the board administrator reflecting the lack of lot lines), granted a request for a special exception to the landscape regulations (subject to compliance with a revised site/landscape plan that does not have reference to shared access development to be submitted to the board administrator), and denied a request for a variance to the parking regulations of 16 parking spaces without prejudice. The case report stated that the requests were made in conjunction with a "shared access development" proposal that would include 652 single family lots on a site that was undeveloped.

2. BDA 001-218, 2406-34 Ellis Street, 3115 State Street, 2414 Ellis Street and 2421 Hugo Street (the lot immediately south of the subject site)

On June 19, 2001, the Board of Adjustment Panel A granted requests for variances to the front yard setback regulations of 8' requested in conjunction with constructing a 177-unit townhouse development on the site. The board imposed the following condition: compliance with the submitted site plan is required. The case report stated that most of the variance needs were for "minimal encroachments into setbacks, most of which are for stairwells."

Timeline:

- Undated: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 18, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- May 19, 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 June 2nd deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - the June 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;

- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

June 2, 2006 The applicant’s representative submitted additional information to the Board Administrator (see Attachment A).

June 5, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Chief Arborist, 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.

June 9, 2006 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the special exception to the landscape regulations (see Attachment B).

STAFF ANALYSIS:

- An alternate landscape plan has been submitted with this request that, according to the City of Dallas Chief Arborist, is not fully complying with the site and street tree requirements of the PD No. 225 landscape regulations.
- The applicant has the burden of proof in establishing the following:
 - Strict compliance with the Landscape Requirements of PD No. 225 (where an alternate landscape plan has been submitted that, according to the Chief Arborist, is providing 5 of the required 24 site trees and 0 of the required 4 street trees) will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives and purposes of this section.
- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted alternate landscape plan, a shared access development with 8 single family attached homes could be developed on the undeveloped site where the site would be “excepted” from full complying with the site and street tree requirements of the PD No. 225 landscape regulations.

BOARD OF ADJUSTMENT ACTION: JUNE 19, 2006

APPEARIN IN FAVOR: Karl Crawley, 900 Jackson St., #640, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Moore**

I move that the Board of Adjustment in Appeal No. **BDA 056-162**, on application of GWTH, LP., **grant** the request of this applicant to provide an alternate landscape plan as a special exception to the landscape requirements in the Dallas Development code, because our evaluation of the property and testimony shows that strict compliance with the landscape regulations of PD 225 will result in substantial financial hardship or inequity to the applicant with sufficient corresponding benefit to the city and its citizens in accomplishing the objectives and purposes of the landscape regulations in PD 225. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted alternate landscape plan is required.

SECONDED: **Boyd**

AYES: 5– Madrigal, Boyd, Moore, Jefferson, Gomez

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 056-163(J)

BUILDING OFFICIAL’S REPORT:

Application of Masterplan for a variance to the front yard setback regulations, a variance to the height regulations, a variance to the parking regulations, and a special exception to the parking regulations at 1951 Empire Drive. This property is more fully described as Lot 7 in City Block 1/2143 and is zoned MF-2(A) which requires a front yard setback of 15 feet, limits the height of a structure to 26 feet (due to the residential proximity slope), requires a 20 foot setback for an enclosed parking space, and requires parking to be provided for new construction. The applicant proposes to construct a multi-family dwelling and provide a 10 foot front yard setback which would require a variance of 5 feet to the front yard setback regulations, to provide a height of 41 feet which would require a variance of 15 feet to the height regulations, provide a 15 foot setback for an enclosed parking space which would require a variance of 5 feet to the parking regulations, and to provide 10 of the required 13 parking spaces which would require a special exception of 3 spaces to the parking regulations. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(10) and 51A-4.311 (a) of the Dallas Development Code, as amended, which states the power of the Board to grant variances and special exceptions.

LOCATION: 1951 Empire Drive

APPLICANT: Masterplan

Public Hearing Note: The applicant showed a PowerPoint presentation that will be retained in the file on a CD.

REQUEST:

- A variance to the front yard setback regulations of 5 feet, a variance to the height regulations of 15 feet, a variance of 5 feet for an enclosed parking space, and a special exception to the parking regulations of 3 spaces are requested in conjunction with constructing a multifamily structure.

STANDARD FOR A VARIANCE:

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

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

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

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

GENERAL FACTS (regarding the variance):

- The request site is currently undeveloped.
- The plat map shows that the request site is 50 feet by 176.9 feet, or 8,845 square feet in area.
- The site appears to be flat, rectangular in shape, and approximately 8,845 (50'x 176.9') in area.
- DCAD indicates that the request site is developed with a 2,988 square foot residential structure that was in average condition built in 1938. The site visit shows that the structure has since been demolished.
- The property is zoned MF-2(A). The property to the south is zoned PD 63, which requires any development on the request site to respect a 1-to-3 residential proximity slope.
- Residential proximity slope requires a setback for structures on properties adjacent to residential districts at a specified ratio or distance. In this case, RPS applies to any portion of a structure over 26 feet.
- A structure could be constructed on the request site up to 26 feet in absolute height or higher if the RPS setback is met.

- The submitted elevations show the proposed height of the multifamily structure is 41 feet, which would require a setback of 123 feet from the site of origination, which is the property line of the parcels that are causing the RPS.
- The MF-2(A) zoning allows a maximum height of 36 feet, as height is defined in the Dallas Development Code, which is to the midpoint of a pitched roof in this case. The submitted elevations show proposed structure will have a midpoint of 36 feet.
- The front yard setback in an MF-2(A) zoning district is 15 feet for a multifamily use. In a multifamily district, a yard that has street frontage is considered to be a front yard. In this case, the request site has a front yard adjacent to Empire Drive and Oram Street.
- The submitted site plan shows the proposed structure to provide a 15'1" front yard setback adjacent to Oram Street and a 10 foot front yard setback adjacent to Empire Drive.
- The proposed enclosed parking space adjacent to the alley provides a setback of 15 feet to the property line and a setback of 20 feet to the center line of the alley. A setback of 20 feet from the property line is required for an enclosed parking space.
- The MF-2(A) determines minimum lot area based upon the bedroom count of multifamily structures. According to the applicant, each of the units would have 3 bedrooms, requiring a minimum lot area of 6,750 square feet.

GENERAL FACTS (regarding the Special Exception):

- The number of required off-street parking spaces is determined by the proposed multifamily use. The request site is not subject to any special conditions of an ordinance or specific use permit.
- The Dallas Development Code states the parking requirements for the following uses:
 - 1 space per 500 square feet of multifamily dwelling units;
 - Not less than 1 or more than 2 ½ spaces are required for each dwelling unit in a multifamily structure under 36 feet in height.
- The proposed multifamily use requires 13 off-street parking spaces. The site plan provides 10 off-street parking spaces to be enclosed in 2-car garages.
- The applicant is proposing to provide 10 (or 76.9%) of the total 13 required off-street parking spaces. The maximum allowed by special exception is 25% (23.1% is being asked for in this request).
- The driveways are 20 feet in length to the property line adjacent to Empire Drive. The driveways adjacent to Empire Drive can serve as 8 off-street parking spaces, but not count towards the required number of spaces.
- In an MF-2(A) district, no required or excess parking may be placed in the required front yard.
- The site plan provides the 3 off-street parking spaces tandem in the driveway.
- The request site is not in a modified delta overlay.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The request site is undeveloped. The areas to the east and northeast are developed with multifamily uses; the area to the south is developed with single family residential; and the areas to the west and north are a mix of single-, two-, and 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:

- April 28, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 18, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- May 30, 2006: The Board Senior Planner contacted the applicant via email and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the June 9th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

June 5, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

June 8, 2006: The applicant submitted additional information (Attachment A).
Transportation Engineer Nguyen provided a review comment sheet (Attachment B).

STAFF ANALYSIS:

- Attachment A is a color drawing demonstrating the effect of RPS on the request site.
- Attachment B is review comment sheet from Transportation Engineer Nguyen indicating a recommendation of denial. He notes that it appears that the guest parking spaces either partially block the driveways or do not have sufficient clearance from the sidewalks or both. (Note that the initial application indicated the off-street parking issue was regarding a variance for the location of guest parking. The application was revised to seek a relief from the required number of spaces.)
- Granting this variance, subject to the submitted site plan and elevation, would allow a multifamily structure to encroach into the Empire Drive front yard setback by 5 feet, encroach 15 feet in height into the Residential Proximity Slope, and provide enclosed parking spaces to be closer to the alley right-of-way by 5 feet.
- Typically, when the Board has found that an enclosed parking space variance 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 in regards to the three variance requests (front yard setback, height, and enclosed parking spaces):
 - That granting the variances 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 appears to be flat, rectangular in shape, and approximately 8,845 square feet in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same MF-2(A) zoning classification.

- The 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 (the subject site) not permitted by this chapter to other parcels of land in districts with the same MF-2(A) zoning classification.
- Granting the off-street parking special exception, subject to the condition that the special exception automatically and immediately terminates if and when the multifamily use on the site is changed or discontinued, would allow the construction of a 5-unit multifamily structure.
- The applicant has the burden of proof in establishing the following as related to the request for a special exception of 3 parking spaces:
 - The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - The parking demand and trip generation characteristics of all uses for which the special exception is requested.
 - Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
 - The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
 - The availability of public transit and the likelihood of its use.
 - The feasibility of parking mitigation measures and the likelihood of their effectiveness.

BOARD OF ADJUSTMENT ACTION: JUNE 19, 2006

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

APPEARING IN OPPOSITION: John McCrary, 6241 LaVista Dr., Dallas, TX
 Paul Schmidt, 6209 LaVista Dr., Dallas, TX
 John Oberpriller, 6219 LaVista Dr., Dallas, TX

MOTION: Boyd

I move that the Board of Adjustment in Appeal No. **BDA 056-163**, hold this matter under advisement until **August 14, 2006** so that the applicant may revise the site plan and remove a unit.

SECONDED: Jefferson

AYES: 4 – Madrigal, Boyd, Jefferson, Gomez

NAYS: 1 – Moore

MOTION PASSED: 4 – 1

FILE NUMBER: BDA 056-164

BUILDING OFFICIAL'S REPORT:

Application of Brad Bundy represented by Richard M Hill for a special exception to the landscape regulations at 5148 S. Lancaster Road. This property is more fully described as Lot 1A in City Block 5839 and is zoned CR 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: 5148 S. Lancaster Road

APPLICANT: Brad Bundy
Represented by Richard M Hill

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 18,500 square foot structure (Texas Barber College).

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

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

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

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

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

GENERAL FACTS:

- The Dallas Development Code requires full compliance with the Landscape Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet.

The applicant is proposing an alternate landscape plan that does not fully comply with the landscape regulations, specifically a landscape plan where, according to the City of Dallas Chief Arborist, the applicant is specifically requesting relief from the perimeter landscape buffer strip requirement of the landscape regulations where there is residential adjacency to the east of the subject 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 Board of Adjustment Chief Planner (see Attachment A). The memo stated the following:
 - The applicant is requesting relief from the landscape requirements of Article X (The Landscape Regulations), more specifically, relief from the perimeter landscape buffer strip where there is residential adjacency along the east side of the site.
 - The special exception request is triggered by new construction.
 - Deficiencies:
 1. The applicant is required to provide a 10' wide perimeter landscape buffer strip where there is residential adjacency to the east. The buffer strip must include one plant group for each 50 linear feet of adjacency, and in this case, with the requirement to provide a 6' solid screen along the same side of the property, the buffer must contain one 2" diameter large canopy tree for each 50 linear feet. (A total of 5 trees would be required in the buffer strip for this site).

The applicant is proposing to provide none of the required buffer.

Factors for consideration:

 - The city-approved landscape plan did not contain a perimeter landscape buffer strip nor did it contain a note identifying the need to provide the buffer. It was during a final landscape inspection that a city arborist discovered the deficiency.
- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment B). This information included a copy of a revised alternate landscape plan – a plan that deleted what had been a series of landscape materials located in required visibility triangles on the originally submitted landscape plan.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail)
North: CR (Community Retail)
South: R-7.5(A) (SUP 1438) (Single family residential 7,500 square feet, Specific Use Permit)
East: R-7.5(A) (Single family residential 7,500 square feet)
West: TH-3(A) (Townhouse)

Land Use:

The subject site is developed with (according to the submitted landscape plan) an 18,500 square foot structure. The area to the north is developed with retail uses; the area to the east is developed with single family uses; the area to the south is developed

with an institutional use (fire station); and the areas to the west is developed with a DART rail station.

Zoning/BDA History:

- | | |
|---|--|
| 1. Z 945-281, Lancaster Avenue & 56 th Street, north corner (the subject site) | On October 25, 1995, the City Council granted an application for a CR Community Retail District on property zoned an R-7.5(A). |
|---|--|

Timeline:

- May 1, 2006: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- May 18, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- May 19, 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 June 2nd deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board’s docket;
 - the June 9th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- May 2, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Current Planning Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior

Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board

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

June 9, 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).

June 9, 2006 The applicant's representative submitted additional information to the Board Administrator (see Attachment B).

STAFF ANALYSIS:

- A revised alternate landscape plan has been submitted with this request that, according to the City of Dallas Chief Arborist, is deficient in meeting the perimeter landscape buffer strip of the landscape regulations where there is residential adjacency to the east.
- The applicant has the burden of proof in establishing the following:
 - Strict compliance with the requirements of the landscape regulations (i.e. providing the required perimeter landscape buffer strip with 5 trees) will unreasonably burden the use of the property (in this case, if approved, with an 18,500 square foot structure).
 - The special exception (whereby none of the 10' wide landscape buffer strip is to be provided) will not adversely affect neighboring property.
- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted revised alternate landscape plan, the site could be "CO'ed" and "finalized" for an institutional use, and would be "excepted" from complying with the 10' wide landscape buffer strip requirement of the landscape regulations.

BOARD OF ADJUSTMENT ACTION: JUNE 19, 2006

APPEARIN IN FAVOR: Richard Hill, 2517 Larkspur Ln., Rowlett, TX 75089

APPEARING IN OPPOSITION: No one

MOTION: Gomez

I move that the Board of Adjustment in Appeal No. **BDA 056-164**, on application of Brad Bundy, **grant** the request of this applicant to provide an alternate landscape plan as a special exception to the landscape requirements in the Dallas Development code, because our evaluation of the property and testimony shows that strict compliance with the requirements will unreasonably burden the use of the property; the special exception will not adversely affect neighboring property; and the requirements are not imposed by a site specific landscape plan approved by the city plan commission or city

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

- Compliance with the submitted revised alternate landscape plan is required.

SECONDED: Moore

AYES: 5– Madrigal, Boyd, Moore, Jefferson, Gomez

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 056-151(J)

BUILDING OFFICIAL’S REPORT:

Application of Jeffery D Kahla to appeal the decision of the administrative official at 4140-42 Prescott Avenue. This property is more fully described as Lot 18 in City Block 12/2027 and is zoned PD-193 MF-1. The applicant proposes to appeal the decision of the building official. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(1) of the Dallas Development Code, as amended, which states the power of the Board to hear an appeal of an administrative official decision.

LOCATION: 4140-42 Prescott Avenue

APPLICANT: Jeffery D Kahla

REQUEST:

- An appeal of the Building Official’s decision approving a final building permit for a duplex structure at 4140/4142 Prescott Avenue that included a determination that a fireplace is an architectural feature which the zoning allows to encroach into the side yard setback by 1 foot. The appeal requests for the decision to be reversed/overturned.

BASIS FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:

Section 51A-3.102(d)(1) of the Dallas Development Code states that the Board of Adjustment has the power and duty to hear and decide appeals from decisions of Administrative Officials made in the enforcement of the Dallas Development Code.

GENERAL FACTS:

- On April 19, 2006, the applicant filed an appeal to the Board of Adjustment alleging that the Building Official erred in the approval of a final building permit for a duplex structure.
- The date that the decision of the Building Official was made is April 12, 2006, which is the date of the approval of the final inspection (“green tag”) for the duplex. (see Attachment A)

- The date in which the decision is made by the Building Official is relevant since the Dallas Development Code states that an appeal to the board must be made within 15 days after notice of the decision of the official.
- PD 193, the Oak Lawn Special Purpose District, states the following in general for the minimum side yard regulations (Sec. 51P-193.119(a)(1)):

Required side yards must be open and unobstructed except for fences and accessory structures. In a multiple-family subdistrict, trellises, screens, awnings, and canopies may project up to three feet into the required side yard. Otherwise, ordinary projections of window sills, belt courses, cornices, and other architectural features may not project more than 12 inches into the required side yard. Roof eaves may not project more than three feet into the required side yard. Balconies may not project into the required side yard.
- The Building Official has determined that fireplaces are architectural features.
- The Board Administrator forwarded a copy of the “Outline of Procedure for Handling Appeals from Decisions of the Building Official by the Board of Adjustment of the City of Dallas” to the applicant via email and regular mail (see Attachment B).
- Additional documentation to staff beyond that what was submitted with the original application was received on June 2, 2006 (see Attachment C). This information includes previous letters to City staff regarding the November 14, 2005 (Panel C) variance request on the subject site.

BACKGROUND INFORMATION:

Zoning:

Site: PD 193 MF-1 (Multiple-family residential)
North: PD 193 MF-1 (Multiple-family residential)
South: PD 193 MF-1 (Multiple-family residential)
East: PD 193 MF-1 (Multiple-family residential)
West: PD 193 MF-1 (Multiple-family residential)

Land Use:

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

Zoning/BDA History:

1. BDA056-042 On November 14, 2005 the Board of Adjustment Panel C denied without prejudice a variance of 2 feet to the side yard setback at 4140/4142 Prescott Avenue (the subject site).

Timeline:

April 12, 2006 The Building Official completed and approved a final inspection on a building permit for a duplex structure.

- April 19, 2006 The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- May 18, 2006: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, “If any preliminary action is required on a case, including but not limited to a fee waiver or waiver of the two year waiting period, the case must be returned to the panel taking the preliminary action.”
- May 30, 2006: The Board of Adjustment Senior Planner contacted the applicant via email and regular mail to convey the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the June 9th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
 - a copy of the “Outline of Procedure for Handling Appeals from Decisions of the Building Official by the Board of Adjustment of the City of Dallas” was forwarded to the applicant’s (see Attachment B).
- May 30, 2006 The Board of Adjustment Senior Planner mailed a letter via certified mail informing the owners of the subject property of the following information:
- that an appeal to the Board of Adjustment has been made on their property;
 - 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;
 - a copy of the application submitted was provided;
 - a copy of the section of the Dallas Development Code that describes the Board of Adjustment; and

- a copy of the Board of Adjustment Hearing Procedures.

June 5, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

June 2, 2006 The applicant submitted information beyond what was submitted with the original application (see Attachment C).

June 9, 2006 Assistant City Attorney Hughes submitted documents in support of the Building Official's decision (see Attachment D).

STAFF ANALYSIS:

- A building permit for an 8,082 square foot, 2-story duplex structure received approval for the final inspection on April 12, 2006.
- The applicant has the burden of proof in establishing the necessary facts to show that Building Official's decision of April 12th should be overturned/or reversed.
- The Board of Adjustment history on the subject site was a variance request in November 2005 for two fireplaces on the duplex structure that encroached into the side yard setback by approximately 2 feet. The variance was denied without prejudice.
- The builder of the duplex revised the fireplaces to encroach into the side yard setback by 1 foot subsequent to the Board of Adjustment's decision.
- According to the Development Code Specialist Sipes, the Building Official determined that fireplaces are architectural features, which the zoning allows for architectural features to encroach into the side yard setback by 1 foot.
- If the Board were to overturn the decision of the Building Official, the City would require that the structure come into compliance. If the Board were to uphold the decision of the Building Official, the fireplaces would be allowed to remain as they are built.

BOARD OF ADJUSTMENT ACTION: JUNE 19, 2006

APPEARIN IN FAVOR: Jeffery Kahla, 4241 Throckmorton, Dallas, TX
Jennifer Duncan, 2 Nonesuch Rd., Dallas, TX

APPEARING IN OPPOSITION: Annadele Ross, 5319 Edmondson, Dallas, TX
Ed Gray, 4137 Prescott, Dallas, TX
David Schoenbaum, 4436 N. Hall St., Dallas, TX

APPEARING FOR THE CITY: Scott Hughes, Asst. City Atty, 1500 Marilla, 7DN,
William Shaw, NW District, 9803 Harry Hines

3:38 P.M. Break
3:48 P.M. Resumed

MOTION: **Boyd**

Having fully reviewed the decision of the building official of the City of Dallas in Appeal No. **BDA 056-151**, on application of Jeffery D. Kahla, and having evaluated the evidence pertaining to the property and heard all testimony and facts supporting the application, I move that the Board of Adjustment **affirm** the decision of the building official and **deny** the relief requested by this applicant **with prejudice**.

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

MOTION: **Moore**

I move to adjourn this meeting.

SECONDED: **Boyd**
AYES: 5 – Madrigal, Boyd, Moore, Jefferson, Gomez
NAYS: 0 - None
MOTION PASSED: 5 – 0 (Unanimously)

4:30 P. M. - Board Meeting adjourned for **June 19, 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.