

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
MONDAY, JUNE 23, 2008**

MEMBERS PRESENT AT BRIEFING: Sharon Boyd, Panel Vice-Chair, Joel Maten, regular member, Elizabeth Wahlquist, regular member, Tony Rios, regular member and John McBride, alternate member

MEMBERS ABSENT FROM BRIEFING: Robert Moore, regular member

MEMBERS PRESENT AT HEARING: Sharon Boyd, Panel Vice-Chair, Joel Maten, regular member, Elizabeth Wahlquist, regular member, Tony Rios, regular member and John McBride, alternate member

MEMBERS ABSENT FROM HEARING: Robert Moore, regular member

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Casey Burgess, Asst. City Attorney, Donnie Moore, Chief Planner, Kyra Blackston, Senior Planner, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, Chau Nguyen, Traffic Engineer, Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Casey Burgess, Asst. City Attorney, Donnie Moore, Chief Planner, Kyra Blackston, Senior Planner, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, Chau Nguyen, Traffic Engineer, Trena Law, Board Secretary

10:15 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **June 23, 2008** docket.

1:00 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 19, 2008 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: **JUNE 23, 2008**

MOTION: **Wahlquist**

I move **approval** of the Monday, **May 19, 2008** public hearing minutes.

SECONDED: **Maten**

AYES: 5–Boyd, Maten, Wahlquist, Rios, McBride

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 078-078(K)

BUILDING OFFICIAL’S REPORT:

Application of Tim Hagen for a special exception to the parking regulations at 4050 Black Gold Drive. This property is more fully described as the western 39 feet of Lot 18 and all of Lots 19, & 20 in City Block A/7705 and is zoned IR, which requires parking to be provided. The applicant proposes to maintain a nonresidential structure for an industrial (inside) use and provide 73 of the required 83 parking spaces which will require a special exception of 10 spaces (12% reduction) to the parking regulations.

LOCATION: 4050 Black Gold Drive

APPLICANT: Tim Hagen

REQUEST:

- A special exception to the off-street parking regulations of 10 parking spaces (or 12% of the required off-street parking) is requested in conjunction with maintaining an approximately 50,000 square foot “industrial inside use.”

STAFF RECOMMENDATION:

Approval, subject to the following conditions:

1. The special exception shall automatically and immediately terminate if and when the “industrial (inside)” use is changed or discontinued.
2. The parking spaces must meet the requirement for:
 - a. 20’x20’ driveway visibility
 - b. Setback
 - c. Drive aisle width for maneuver of vehicles

Rationale:

- The Development Services Senior Engineer has no objections if certain conditions are met to the request based on a review of the site plan.
- The applicant has substantiated how the parking demand generated by the use does not warrant the number of off-street parking spaces required, and that the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- This application is triggered by a change of use requiring a new Certificate of Occupancy (see attachment) where the applicant is adding two paint booths to the facility. The square footage of the building is not increasing.

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:

- This application was triggered by an application for a new certificate of occupancy. The applicant applied for a building permit, on April 28, 2008, to install two paint booths. The square footage of the building (50,000 sq. ft) is not increasing.
- The Dallas Development Code 51A-4.203(b)(1)(C) gives the following off-street parking requirement for industrial (inside) use:
 - Required off-street parking: One space per 600 square feet of floor area.The application and Building Official's Report state that 73 (or 88 percent) of the required 83 spaces will be provided in conjunction with the proposed 50,000 square foot industrial (inside) use.
- The proposed site is developed with Lundy Services that has been in operation since 1993. The surrounding properties are industrial uses.

BACKGROUND INFORMATION:

Zoning:

Site: IR (Industrial/research district)
North: IR (Industrial/research district)
South: A(A) (Trinity River)
East: IR (Industrial/research district)
West: IR (Industrial/research district)

Land Use:

The subject site is developed with an industrial (inside) use “Lundy Services.” The properties to the north, east and west are developed with industrial uses. The property to the south is the Trinity River.

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, 2008: 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 22, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- May 23, 2008: The Board of Adjustment Senior Planner contacted the applicant and shared the following information by phone and letter:
- the public hearing date and panel that will consider the application;
 - the criteria and standard that the board will use in their decision to approve or deny the request;
 - the June 9th deadline to submit additional evidence for staff to factor into their analysis;
 - the June 13th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the June public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.
- June 10, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearing. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- June 11, 2008 The Development Services Senior Engineer submitted a review comment sheet (see attachment).

STAFF ANALYSIS:

- The special exception request is triggered by a building permit for the addition of two paint booths inside the facility. Applying for the building permit and new certificate of occupancy to include staining and painting, requires the applicant to comply the current ordinance.
- The applicant received a certificate of occupancy in 1993 and has remained in service since that time.
- The applicant proposes to provide 73 of the 83 required parking spaces for an existing 50,000 square foot “industrial inside use.”
- The applicant (Tim Hagen) provided the following information during a telephone interview on June 9, 2008:
 - There are 55 employees of Lundy Services
 - At any give time there are no more than 3 visitors on site.
 - The operating hours of the business are from 7:00 am until 5:30 pm.
 - Two delivery trucks and one van are parked on the property.
 - The business is not open to the public.
- The Dallas Development Code 51A-4.203(b)(1)(C) gives the following off-street parking requirement:
 - Required off-street parking: One space per 600 square feet of floor area.
- Granting this request, subject to the condition that the special exception of 10 spaces automatically and immediately terminates if and when the “industrial (inside)” use is changed or discontinued, would allow the continuation of the proposed approximately 50,000 square foot structure to be leased with this specific use.
- The applicant has the burden of proof in establishing the following:
 - - The parking demand generated by the “industrial (inside)” use does not warrant the number of off-street parking spaces required, and
 - The special exception of 10 spaces (or 12 percent of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- The Development Services Senior Engineer has indicated that he has no objections to this request. If certain conditions are met (see attachment).

BOARD OF ADJUSTMENT ACTION: **JUNE 23, 2008**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Maten**

I move that the Board of Adjustment grant application **BDA 078-078** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- The special exception shall automatically and immediately terminate if and when the industrial (inside) use on the site is changed or discontinued.

SECONDED: **Wahlquist**

AYES: 5–Boyd, Maten, Wahlquist, Rios, McBride

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 078-082

BUILDING OFFICIAL’S REPORT:

Application of James D. Ray for a special exception for the handicapped at 8550 Westfield Drive. This property is more fully described as Lot 3 in City Block 14/7522, is zoned R-7.5(A), and has a 30 foot platted building line from the front property line. The applicant proposes to maintain a carport for a handicapped person and provide a 9 foot setback which will require a special exception of 21 feet.

LOCATION: 8550 Westfield Drive

APPLICANT: James D. Ray

REQUEST:

- A special exception for the handicapped is requested in conjunction with maintaining an approximately 320 square foot carport in the site’s 30’ front yard setback on a site developed with a single family home.

STAFF RECOMMENDATION:

Approval, subject to the following conditions:

1. Compliance with the submitted partial site plan and elevation is required.

2. The special exception expires when a handicapped person no longer resides on the property.

Rationale:

- Staff concludes that the carport is needed to afford a handicapped person (in this case, the applicant) equal opportunity to use and enjoy his dwelling unit. The attached garage on the site does not appear to be of a width to accommodate the applicant's van and necessary maneuvering space.

STANDARD FOR A SPECIAL EXCEPTION TO AFFORD A HANDICAPPED PERSON EQUAL OPPORTUNITY TO USE AND ENJOY A DWELLING: Section 51A-1.107.(b)(1) states that the Board of Adjustment shall grant a special exception to any regulation in this chapter, if, after a public hearing, the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit. The term "handicapped person," means a person with a "handicap," as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended.

GENERAL FACTS:

- Generally a 25' front yard setback is required in the R-7.5(A) zoning district. But because the subject site is located in a subdivision with a 30' platted building line, the front yard setback on the subject site is 30 feet.
A survey plat and partial site plan have been submitted where the Building Official has determined that the existing carport structure that is located 9' from the site's front property line or 21' into the 30' front yard setback.
- Section 51A-1.10 (b)(1) states that the Board of Adjustment shall grant a special exception to any regulation in this chapter, if, after a public hearing, the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit. The term "handicapped person," means a person with a "handicap," as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended.
A copy of the "handicap" definition from this act was provided to the Board Administrator by the City Attorney's Office. Section 3602 of this act states the following:
“(h) “Handicap” means, with respect to a person -
 1. a physical or mental impairment which substantially limits one or more of such person's major life activities,
 2. a record of having such an impairment, or
 3. being regarded as having such an impairment,
but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 802 of Title 21).”
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a letter from a medical doctor stating that the applicant has quadriplegia and is wheelchair bound; and
 - a petition signed by 19 neighbors/owners in support of the request.

BACKGROUND INFORMATION:

Zoning:

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

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 25, 2008 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 22, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- May 22, 2008: The Board Administrator contacted the applicant and shared the following information by phone and email:
- 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 June 9th deadline to submit additional evidence for staff to factor into their analysis;
 - the June 13th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and, if not, 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 9, 2008 The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).

June 10, 2008: 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 Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- This request focuses on a special exception for the handicapped to allow a carport to remain in its current location 9’ from the front property line (or 21’ into the required 30’ front yard setback).
- Unlike most requests where the board is considering a structure that encroaches into a setback via a variance (where property hardship must be demonstrated) or via a special exception for a carport (where lack of detrimental impact on neighboring property must be demonstrated), the board is to consider this special exception for the handicapped request solely on whether they conclude that the special exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit.
- A medical doctor has been submitted a letter establishing that the applicant has quadriplegia and is wheelchair-bound.
- The applicant has the burden of proof in establishing the following:
 - The special exception (which in this case is requested to retain a carport in a front yard setback) is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit; and
 - there is a person with a “handicap” (as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended) who resides and/or will reside on the site.
- If the Board were to grant the request, and impose conditions that compliance with the submitted partial site plan and elevation is required, and that the special exception expires when a handicapped person no longer resides on the property, the carport could be retained of the size and location shown on these plans for as long as the applicant or any other handicapped person resides on the site.

BOARD OF ADJUSTMENT ACTION: **JUNE 23, 2008**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Maten**

I move that the Board of Adjustment grant application **BDA 078-082** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted partial site plan and elevation is required.
- The special exception expires when a handicapped person no longer resides on the property.

SECONDED: **Wahlquist**

AYES: 5–Boyd, Maten, Wahlquist, Rios, McBride

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 078-084

BUILDING OFFICIAL’S REPORT:

Application of Steve Tortolani for a special exception to the landscape regulations at 4206 Buena Vista Street. This property is more fully described as Lot 70A in City Block 1522 and is zoned PD-193 (GR) which requires mandatory landscaping. The applicant proposes to construct and maintain a residential multifamily structure and provide an alternate landscape plan which will require a special exception to the landscape regulations.

LOCATION: 4206 Buena Vista Street

APPLICANT: Steve Tortolani

June 23, 2008 Public Hearing Notes:

- The Board Administrator circulated a revised alternate landscape plan to the board members at their briefing - a plan that, according to the Chief Arborist, noted Highrise live oak trees as well as full compliance with visual obstruction regulations.

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with completing and maintaining a multifamily development on the subject site.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan is required with the following conditions:
 1. the live oak trees shown on the submitted plan should be re-designated as the “Highrise live oak” variety; and
 2. the projected corner structure within the visibility triangle extending from the retaining wall in front of the south building should be re-designed/reduced to the maximum height above the street curb per city ordinance.

Rationale:

- If the board were to grant this request with the staff suggested condition imposed, the site would only be minimally “excepted” from sidewalk width/location and street tree location provisions while exceeding requirements related to landscape site area/required front yard, landscape site area/required lot area, general planting area/required front yard, and special planting area/required front yard.
- The City’s Chief Arborist recommends approval of this request whereby if the condition mentioned above is imposed the special exception would not compromise the spirit and intent of the landscaping requirements of PD No. 193.

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:

- PD No. 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood tornado, riot, act of the public enemy, or accident of any kind.
The applicant has submitted an alternate landscape plan (see Attachment A) that, according to the City of Dallas Chief Arborist, is seeking relief from the landscaping requirements of the PD No. 193, specifically the sidewalk width/location and street tree location requirements of this ordinance (Section 51P-193.126(b)(4)(B)(i) and Section 51P-193.126(b)(5)(A)).
- The City of Dallas Chief Arborist has submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner pertaining to the submitted landscape plan (see Attachment B). The memo stated the following:
 - The special exception request is triggered by the new construction of multifamily development.

- Deficiencies:
 1. Four (4) street trees are required between 2.5' – 5' from the curb.
The applicant is proposing to provide 4 street trees between 8' from the curb.
 2. Six (6) foot wide sidewalks are required between 5' – 10' from the curb.
The applicant is proposing a 4' 8" wide sidewalk 3' from the curb.
A table indicates that the site *exceeds* the landscape requirements with regard to landscape site area/required front yard, landscape site area/required lot area, general planting area/required front yard, and special planting area/required front yard.
- Factors for consideration:
 - A landscape plan was approved through Express Review that identified sidewalk and street trees in the correct locations as required per code. The site plans for the property approved during review identify the terminus for the driveway grade change midway through the drawn 6' sidewalk route. The sidewalk and parkway were shown in the correct dimensions. The building permits were issued on July 21, 2006.
 - The building inspector approved the drive approach and sidewalk location with a green tag on March 26, 2008. The approved sidewalk was in its current placement.
 - The arborist office had not yet completed a landscape inspection of the property. Deficiencies were discovered by the city arborist during a preliminary review and discussions with the owner.
 - The front of the property has a significant grade differential between the front structures and the edge of the sidewalk. Overhead utility lines are located in the parkway in proximity to the correct tree placement locations for street trees.
 - A ramp with a steep grade projects into the required sidewalk location and the retaining wall is wider than the area provided in the parkway between the curb and the sidewalk. The owner proposes to plant 3.5" live oaks within the 4.5' wide planting area.
 - The requested sidewalk projection is in line with the sidewalk in front of the adjacent properties.
- Recommendation:
 - Approval, subject to the following conditions:
 - The live oaks should be designated as the variety "highrise" live oaks to allow for a reduced canopy width that may interfere with utility lines and the elevated "planting area" above the retaining wall. ("Highrise" live oaks obtain a more vertical growth with less horizontal expansion of tree canopy).
 - A projected corner structure within the visibility triangle, extending from the retaining wall in front of the south building, must be reduced to the maximum height allowed above the street curb per city ordinance.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (GR Subdistrict) (Planned Development District, General Retail)
North: PD No. 193 (MF-2 Subdistrict) (Planned Development District, Multifamily)
South: PD No. 193 (GR Subdistrict) (Planned Development District, General Retail)
East: PD No. 193 (GR Subdistrict) (Planned Development District, General Retail)
West: PD No. 193 (GR Subdistrict) (Planned Development District, General Retail)

Land Use:

The subject site is being developed with a multifamily development. The area to the north is developed with residential uses; the areas to the east and west are developed with residential and nonresidential uses; and the area to the south is developed with retail use.

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 25, 2008 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 22, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- May 27, 2008: The Board Administrator contacted the applicant and shared the following information by phone and email:
- 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 June 9th deadline to submit additional evidence for staff to factor into their analysis;
 - the June 13th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and, if not, 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 10, 2008: 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 Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist.

- June 13, 2008 The applicant submitted additional information to the Board Administrator (see Attachment A).
- June 13, 2008 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment B).

STAFF ANALYSIS:

- This request focuses on completing and maintaining a multifamily development on the site.
- Approval of this landscape special exception request would remedy a “green tag” issued in error by a building inspector in March of 2008 when the approved sidewalk was in its current location 3’ from the back of the curb rather than 5’-10’ from the back of the curb.
- An alternate landscape plan has been submitted whereby the applicant seeks an exception from the landscape requirements in the following ways:
 - providing the required number of street trees 8’ from curb (rather than 2.5’ – 5’ from curb), and
 - providing a 4’ 8” wide sidewalk 3’ from curb (rather than a 6’ wide sidewalk between 5’ – 10’ from back of curb).

The alternate landscape plan *exceeds* the landscape requirements with regard to landscape site area/required front yard, landscape site area/required lot area, general planting area/required front yard, and special planting area/required front yard.

- The City of Dallas Chief Arborist supports the request.
- The applicant has the burden of proof in establishing the following:
 - The special exception (where an alternate landscape plan has been submitted that is deficient in the street tree location and sidewalk width/location requirements) 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 (with the designation of “highrise” live oaks and revisions to comply with visual obstruction regulations), the site would be “excepted” from compliance to the sidewalk location/width and street tree location requirements of the Oak Lawn PD landscape ordinance.

BOARD OF ADJUSTMENT ACTION: JUNE 23, 2008

APPEARIN IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Maten**

I move that the Board of Adjustment grant application **BDA 078-084** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted revised alternate landscape plan dated 6/23/08 is required.

SECONDED: **Wahlquist**

AYES: 5–Boyd, Maten, Wahlquist, Rios, McBride

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 078-064(K)

BUILDING OFFICIAL’S REPORT:

Application of Turimex Internacional/Jesus Martinez represented by Jesus Martinez for a special exception to the landscaping regulations at 501 E. Jefferson Boulevard. This property is more fully described as Lot 8 in City Block 108/3091 and is zoned RR which requires mandatory landscaping. The applicant proposes to construct and maintain a nonresidential structure and provide an alternate landscape plan which will require a special exception.

LOCATION: 501 E. Jefferson Boulevard

APPLICANT: Turimex Internacional/Jesus Martinez
Represented by Jesus Martinez

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with the construction and maintenance of a nonresidential structure.

STAFF RECOMMENDATION:

Approval

Rationale:

- The City's Chief Arborist recommends approval of this request for the following reasons:
 - Strict compliance with the ordinance will unreasonably burden the use of the property;
 - The special exception will not adversely affect neighboring properties: and
 - The requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.
 - The following condition is recommend:
 - i. Wheel stops, a curb, or other permanent barrier must be provided, as required under Section 51A-10.105, to protect the perimeter street buffer and trees on the northwest portion of the property from vehicular traffic.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS:

Section 51A-10.100 specifies that the board of adjustment may grant a special exception to the requirements of the landscape article upon making a special finding of evidence presented that:

- (1) strict compliance with the requirements of this article will unreasonably burden the use of this 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 under Subsection (a), the board shall consider the following factors:

- (1) The extent to which there is residential adjacency.
- (2) The topography of the site.
- (3) The extent to which landscaping exists for which no credit is given under this article.
- (4) The extent to which other existing or proposed amenities will compensate for the reduction of landscaping. (Ord. Nos. 22053, 25155)

GENERAL FACTS:

- The site is currently developed with a commercial use, Turimex International.
- The applicant is requesting a special exception to the landscape requirements of Article X. More specifically, the request is for relief from street tree requirements specified under Section 51A-10.125 (b)(1), "perimeter landscape buffer strip."
- Article X stipulates the perimeter buffer be maintained where residential adjacency exists and be at least 10 feet wide.
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Board Chief Planner pertaining to the submitted site plan (see attachment A). The memo stated the following:
 - The special exception requested is triggered by new construction on a previously developed lot.

- Deficiencies:
 - Two original structures on the property are positioned within the mandatory perimeter landscape buffer strip.
 - The two plant buffer groups and groundcover cannot be installed in the required buffer.
- Factors:
 - The initial plan review for new construction was conducted in late 2003 to early 2004. A permit was issued February 23, 2004.
 - The site plan for review identified the structures within the perimeter location.
 - A separate landscape plan indicated the buildings were to be removed from the buffer and the site would be in compliance with Article X upon final inspection.
 - Upon final landscape inspection on December 13, 2007, it was determined that the conflict with the existing structures remained on the property. The rest of the landscaping was not yet properly installed as specified in plan review.
 - Preliminary inspection of the property, as of May 7, 2008, indicated that the proposed alternate landscape plan could be completed as requested.
 - All Article X conditions could be met with the exception of the north perimeter landscape buffer strip.
- Recommendation
 - Approval subject to the following condition:
 - Wheel stops, a curb, or other permanent barrier must be provided, as required under section 51A-10.105, to protect the perimeter street buffer and trees on the northwest portion of the property from vehicular traffic.

BACKGROUND INFORMATION:

Zoning:

Site: RR (Regional Retail)
North: D A (Duplex)
South: RR (Regional Retail)
East: RR (Regional Retail)
West: CS (Commercial Service)

Land Use:

The subject site is developed with a nonresidential use. The property to the north is undeveloped and zoned residential. The properties to the east and south are zoned RR, the property to the west is zoned CS.

Zoning/BDA History:

There has been neither any zoning nor BDA case history for this site or sites in the immediate area.

Timeline:

- March 4, 2008: 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 17, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- April 18, 2008: The Board's Senior Planner contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria and standard that the board will use in their decision to approve or deny the request;
 - the May 5th deadline to submit additional evidence for staff to factor into their analysis and discuss at the staff review team meeting;
 - the May 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 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 and evidence and testimony presented to them by the applicant and all other interested parties.
- May 6, 2008: 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 Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.
- May 7, 2008 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment A).
- May 19, 2008 The Board of Adjustment voted to hold this case under advisement until June 23, 2008.

June 10, 2008

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 Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

STAFF ANALYSIS:

- A landscape plan has been submitted and reviewed by the Board's Senior Planner and the City of Dallas Chief Arborist. A review of the site plan by the Board's Senior Planner shows the plan to include:
 - 30 burford holly
 - 8 live oak 2 ½ " to 3" x 8' h
- A review of the site plan by the Board's Senior planner illustrated:
 - An existing office and wait area 1,816 square feet
 - An existing storage unit 276 square feet
 - An existing office building 576 square feet
 - 22 parking spaces
- The applicant has the burden of proof in establishing the following:
 - strict compliance with the requirements of this article will unreasonably burden the use of this 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.

If the Board chooses to approve the request the staff recommends imposing the submitted site plans as a condition.

BOARD OF ADJUSTMENT ACTION: **MAY 19, 2008**

APPEARING IN FAVOR: Jesus Martinez, 501 E. Jefferson, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Bateman**

I move that the Board of Adjustment in Appeal No. **BDA 078-064**, hold this matter under advisement until **June 23, 2008**.

SECONDED: **Wahlquist**

AYES: 4–Boyd, Wahlquist, Rios, Bateman

NAYS: 1– Moore

MOTION PASSED: 4 – 1

BOARD OF ADJUSTMENT ACTION: **JUNE 23, 2008**

APPEARING IN FAVOR: Jesus Martinez, 501 E. Jefferson, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Rios**

I move that the Board of Adjustment, in Appeal No. **BDA 078-064** on application of Turimex/Jesus Martinez, represented by Jesus Martinez, **grant** the request of this applicant to provide an alternate landscape plan as a special exception to the landscape requirements in the Dallas Development Code because our evaluation of the property and the testimony shows that strict compliance with the requirements will unreasonably burden the use of the property; the special exception will not adversely affect neighboring property; and the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised alternate landscape plan submitted on **6/23/08** is required.
- Wheel stops, a curb, or another permanent barrier must be provided, as required under Section 51A-10.105, to protect the perimeter street buffer and trees on the northwest portion of the property from vehicular traffic.

SECONDED: **Maten**

AYES: 5–Boyd, Maten, Wahlquist, Rios, McBride

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 078-069(K)

BUILDING OFFICIAL’S REPORT:

Application of Charles Morgan represented by Masterplan for a variance to the front yard setback regulations and for a variance to the off-street parking regulations at 3530 Gillespie Street. This property is more fully described as part of Lots 1 through 3 in City Block 1030 and is zoned PD-193 (MF-3) which requires a front yard setback of 20 feet and requires a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley. The applicant proposes to construct and maintain a single family residential structure and provide a 3 foot front yard setback which will require a 17 foot variance and to construct and maintain a single family residential structure and provide a 15 foot front yard setback at the enclosed parking space which will require a 5 foot variance to the off-street parking regulations.

LOCATION: 3530 Gillespie Street

APPLICANT: Santos Martinez
Represented by Masterplan

REQUEST:

- A variance to the front yard setback regulations of 17 feet is requested in conjunction with constructing and maintaining a single family home in the site's Hood St 20' front yard setback on a site that is developed.
- A variance to the off street parking regulation of 5 feet is requested in conjunction with constructing and maintaining an enclosed parking structure on a site that is developed.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The City's Senior Engineer has no objections to the 5' variance to the enclosed parking regulation (see attachment).
- The site is different from other parcels of land in that it has two 20' front yard setbacks (one along Hood St. and another on Gillespie St). Once both front yard setbacks have been accounted for, the site has a developable area of 2,394 square feet or 43% of the total lot.
- The lot's Hood street front yard setback leaves only about 21' of developable space on the approximately 41' wide site once a 20' front yard setback is accounted for.
- The restrictive area of the subject site caused by its two front yard setbacks precludes it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same PD 193 MF-3 for single family use.
- Granting this variance does not appear to be contrary to the public interest for the following reasons:
 - It appears that the proposed encroachment into the site's Hood Street front yard setback would not violate any existing established 20' setback of homes. In this particular case, this is the only single family home on Hood St.
 - The building footprint on the submitted site plan shows compliance with the site's 20' front yard setback along Gillespie St – the front yard setback of the two on the site that functions more as a typical front yard.
 -

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:

- Structures on lots zoned MF 3 in PD 193 are required to provide a minimum front yard setback of 20'. The site is located on the eastern corner of Gillespie St and Hood St.
- In PD 193 all corner lots are required to provide two front yard setbacks.
- The site is flat and rectangular being 41' x 134' in dimension or 5,504 square feet.
- The properties in the immediate area are zoned PD 193 MF-3, where the subject site is the only single family structure.
- Single family structures in the PD 193 MF-3 zoning are required to provide a 20' front yard setback.

BACKGROUND INFORMATION:

Zoning:

Site: PD 193 MF-3 (Planned Development, Multi-family)
North: PD 193 MF-3 (Planned Development, Multi-family)
South: PD 193 MF-3 (Planned Development, Multi-family)
East: PD 193 MF-3 (Planned Development, Multi-family)
West: PD 193 MF-3 (Planned Development, Multi-family)

Land Use:

The subject site is developed with a single family structure. The properties to the north, south, east and west, are developed with multi-family structures.

Zoning/BDA History:

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

Timeline:

May 1, 2008: The applicant's representative submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

May 22, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

May 23, 2008: The Board of Adjustment's Senior Planner contacted the applicant and shared the following information by phone and letter:

- the public hearing date and panel that will consider the application;
- the criteria and standard that the board will use in their decision to approve or deny the request;
- the June 9th deadline to submit additional evidence for staff to factor into their analysis;
- the June 13th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

June 10, 2008: 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 Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

June 13, 2008 The City's Senior Engineer submitted a comment sheet marked, no objections (see attachment).

The applicant's representative submitted additional information for the Board's consideration (see attachment).

STAFF ANALYSIS:

- The subject site is encumbered by two front yard setbacks on Gillespie St and Hood St. Once the front yard setbacks have been accounted for, there is 2,394 square feet of developable area, or 43% of the total lot area 5,504 square feet.
- The site is flat and rectangular (41' x 134') and 5,504 square feet according to DCAD. The site is zoned PD 193 MF-3 where lots in the vicinity are typically developed with multi-family structures. The subject site is the only single family structure in the vicinity. The existing structure does not appear to encroach into the Gillespie Street front yard setback, in that the submitted site plan indicates the structure is 24' from the Gillespie Street front yard setback.

- This site is different from other properties in the area in that it is encumbered by two front yard setbacks. The setback requirements for single family structure in PD 193 MF-3 are the most restrictive for this zoning district, in that it requires a front yard setback of 20 feet. By contrast other permitted structures in the PD193 MF-3 zoning have a front yard setback requirement of 10 feet.
- The applicant's representative and the submitted site plan indicate the existing structure will remain on the property. The applicant desires to build an addition (a second floor) onto the existing structure and provide enclosed parking.
- DCAD indicates the lot is developed with a one-story single family structure. The 1,864 square foot structure was developed in 1947 and is in good condition.
- The proposed addition will consist of a second level and enclosed parking for a total of 4,387 square feet.
- The applicant proposes to construct and maintain an enclosed parking space and provide a 15 foot front yard setback which will require a 5 foot variance to the off-street parking requirement.
- The City's Senior Engineer has submitted a comment sheet stating no objection to the proposed enclosed parking.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations of 17' requested in conjunction with constructing and maintaining a single family home in the site's Hood St. front yard setback will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site (a site that is flat, rectangular in shape (41' x 134') and 5,504 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 PD193 MF-3 zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the PD 193 MF 3 zoning classification.
 - That granting the variance to the off-street parking regulations of 5' in conjunction with constructing and maintaining an enclosed parking space will not create a traffic hazard.
- If the Board were to grant the front yard variance request of 17', imposing a condition whereby the applicant must comply with the submitted site plan, the structure in the front yard setback would be limited to that shown on this plan – which in this case is a single family structure located 3' from the site's Hood Street front property line (or 17' into one of the site's two 20' front yard setbacks).
- If the Board were to grant the 5 foot variance to the off-street parking regulation whereby the applicant must comply with the submitted sit plan, the structure in the front yard setback would be limited to that shown on this plan—which in this case is an enclosed parking space located 15' from the Hood St. front yard setback.

BOARD OF ADJUSTMENT ACTION: **JUNE 23, 2008**

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

APPEARING IN OPPOSITION: Harriet Rubin, 2714 Turtle Creek Cr., Dallas, TX

MOTION #1: **Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 078-069**, on application of Charles Morgan, represented by Masterplan, **grant** the 17 foot variance to the front 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 site plan is required.

SECONDED: **Wahlquist**

NAYS: 0-

MOTION PASSED: 5 – 0 (unanimously)

MOTION #2: **Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 078-069**, on application of Charles Morgan, represented by Masterplan, **grant** the five-foot variance for an enclosed parking space entered directly from a street or alley, 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
- An automatic garage door must be installed and maintained in working order at all times.
- At no time may the area in front of the garage be utilized for parking of vehicles.
- All applicable permits must be obtained.

SECONDED: **Rios**

NAYS: 0-

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 078-087

BUILDING OFFICIAL’S REPORT:

Application of David Gaona for a special exception to the landscape regulations at 3816 Hawthorne Avenue. This property is more fully described as Lot 8 in City Block 10/2038 and is zoned PD-193 (MF-1) which requires mandatory landscaping. The applicant proposes to construct and maintain a residential multifamily structure and provide an alternate landscape plan which will require a special exception to the landscape regulations.

LOCATION: 3816 Hawthorne Avenue

APPLICANT: David Gaona

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with obtaining a final building permit and Certificate of Occupancy for a recently constructed multifamily development on the subject site.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan is required.

Rationale:

- If the board were to grant this request with the staff suggested condition imposed, the site would only be minimally “excepted” from sidewalk width/location and street tree location provisions while exceeding requirements related to landscape site area/required front yard, general planting area/lot area, general planting area/required front yard, special planting area/lot area, and special planting area/required front yard.
- The City’s Chief Arborist recommends approval of this request whereby if the alternate landscape plan were imposed as a condition, the special exception would not compromise the spirit and intent of the landscaping requirements of PD No. 193.

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:

- PD No. 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood tornado, riot, act of the public enemy, or accident of any kind.

The applicant has submitted an alternate landscape plan that, according to the City of Dallas Chief Arborist, is seeking relief from the landscaping requirements of the PD No. 193, specifically the sidewalk width/location and street tree location requirements of this ordinance (Section 51P-193.126(b)(4)(B)(i) and Section 51P-193.126(b)(5)(A)).

- The City of Dallas Chief Arborist has submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner pertaining to the submitted landscape plan (see Attachment A). The memo stated the following:
 - The special exception request is triggered by the new construction of multifamily development.
 - Deficiencies:
 1. Four (4) street trees are required between 2.5' – 5' from the curb.
The applicant is proposing to provide 4 street trees between 18" – 24" from the curb.
 2. Six (6) foot wide sidewalks are required between 5' – 10' from the curb.
The applicant is proposing a 4' wide sidewalk 3.5' from the curb.
A table indicates that the site *exceeds* the landscape requirements with regard to landscape site area/required front yard, general planting area/lot area, general planting area/required front yard, special planting area/lot area, and special planting area/required front yard.
 - Factors for consideration:
 - A landscape plan was approved through Express Review that identified sidewalk and street trees in the correct locations as required per code. The building permit was issued on May 7, 2007.
 - The building inspector approved the drive approach and sidewalk location with a green tag on March 26, 2008. The approved sidewalk was in its current placement.
 - The arborist failed the landscape inspection with a red tag on March 28, 2008 since the sidewalk was not in the correct location and the trees were not in the correct planting zone.
 - The front of the property has a significant grade change between the front of the structure and the edge of the sidewalk. The new sidewalk was placed in the original footing. The sidewalk is in alignment with the sidewalk on the adjacent property to the west.
 - The current alignment of trees and sidewalk on this property is in conformity with other facing properties across the street and property adjacent to the west.
 - Recommendation:
 - Approval.

BACKGROUND INFORMATION:

Zoning:

| | |
|---------------|---|
| <u>Site:</u> | PD No. 193 (MF-1 Subdistrict) (Planned Development District, Multifamily) |
| <u>North:</u> | PD No. 193 (MF-1 Subdistrict) (Planned Development District, Multifamily) |
| <u>South:</u> | PD No. 193 (MF-2 Subdistrict) (Planned Development District, Multifamily) |
| <u>East:</u> | PD No. 193 (MF-1 Subdistrict) (Planned Development District, Multifamily) |
| <u>West:</u> | PD No. 193 (MF-2 Subdistrict) (Planned Development District, Multifamily) |

Land Use:

The subject site is being developed with three detached townhomes. The area to the north, east, south, and west are developed with residential uses.

Zoning/BDA History:

1. BDA 990-193, 4616-4620 Gilbert Avenue (the lots immediately northwest of the subject site) On January 18, 2000, the Board of Adjustment Panel A granted a request for a special exception to the landscape regulations and imposed the following condition: compliance with the submitted landscape plan is required. The case report stated that the request was made in conjunction with constructing and maintaining 20 single family units on the site.

Timeline:

- April 25, 2008 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 22, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- May 27, 2008: The Board Administrator contacted the applicant and shared the following information by phone and email:
- 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 June 9th deadline to submit additional evidence for staff to factor into their analysis;
 - the June 13th deadline to submit additional evidence to be incorporated into the Board's docket materials;

- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and, if not, 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 10, 2008: 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 Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist.

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

June 11, 2008 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment A).

June 13, 2008 The applicant submitted additional information (i.e. photos) to the Board Administrator (see Attachment B).

STAFF ANALYSIS:

- This request focuses on being able to obtain a final building permit and Certificate of Occupancy on a recently constructed multifamily development on the site.
- Approval of this landscape special exception request would remedy a “green tag” issued in error by a building inspector in March of 2008 when the approved sidewalk was in its current location 3.5’ from the back of the curb rather than 5’-10’ from the back of the curb.
- An alternate landscape plan has been submitted whereby the applicant seeks an exception from the landscape requirements in the following ways:
 - providing the required number of street trees 18” – 24” from curb (rather than 2.5’ – 5’ from curb), and
 - providing a 4’ wide sidewalk 3.5’ from curb (rather than a 6’ wide sidewalk between 5’ – 10’ from back of curb).

The alternate landscape plan exceeds the landscaping requirements with regard to the landscape site area/required front yard, general planting area/lot area, general planting area/required front yard, special planting area/lot area, and special planting area/required front yard.

- The City of Dallas Chief Arborist supports the request.
- The applicant has the burden of proof in establishing the following:

- The special exception (where an alternate landscape plan has been submitted that is deficient the street tree location and sidewalk width/location requirements) 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 site would be “excepted” from compliance to the sidewalk location/width and street tree location requirements of the Oak Lawn PD landscape ordinance.

BOARD OF ADJUSTMENT ACTION: **JUNE 23, 2008**

APPEARING IN FAVOR: David Gaona, 2808 Tumbleweed Trail, Grapevine, TX

APPEARING IN OPPOSITION: No one

MOTION: **McBride**

I move that the Board of Adjustment, in Appeal No. **BDA 078-087**, on application of David Gaona, **grant** the request of this applicant for a special exception to the landscaping requirements contained in PD 193, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that this special exception will not compromise the spirit and intent of Section 51P-193.126 of the Dallas Development Code. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted alternate landscape plan is required.

SECONDED: **Maten**

AYES: 5–Boyd, Maten, Wahlquist, Rios, McBride

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

MOTION: **Maten**

I move to adjourn this meeting.

SECONDED: **Wahlquist**

AYES: 5 –Boyd, Maten, Wahlquist, Rios, McBride

NAYS: 0 - None

MOTION PASSED: 5 – 0 (Unanimously)

1:50 P. M. - Board Meeting adjourned for **June 23, 2008.**

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.