

**BOARD OF ADJUSTMENT, PANEL C  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, COUNCIL CHAMBERS  
MONDAY, AUGUST 11, 2008**

MEMBERS PRESENT AT BRIEFING: Sharon Boyd, Panel Vice-Chair, Robert Moore, regular member, Joel Maten, regular member, and Tony Rios, regular member

MEMBERS ABSENT FROM BRIEFING: Elizabeth Wahlquist, regular member

MEMBERS PRESENT AT HEARING: Sharon Boyd, Panel Vice-Chair, Robert Moore, regular member, Joel Maten, regular member, and Tony Rios, regular member

MEMBERS ABSENT FROM HEARING: Elizabeth Wahlquist, 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, Chau Nguyen, Traffic Engineer and 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, Chau Nguyen, Traffic Engineer and Trena Law, Board Secretary

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**10:15 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **August 11, 2008** docket.

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**1:04 P.M.**

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

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel C June 23, 2008 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION:     **AUGUST 11, 2008****

**MOTION:     **Maten****

I move **approval** of the Monday, **June 23, 2008** public hearing minutes.

**SECONDED:     **Moore****

**AYES: 4–Boyd, Moore, Maten, Rios**

**NAYS: 0–**

**MOTION PASSED: 4 – 0 (unanimously)**

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**FILE NUMBER:     BDA 078-106**

**BUILDING OFFICIAL’S REPORT:**

Application of Paul M. Hames for a special exception to the parking regulations at 4120 Gaston Avenue (aka 4122 Gaston Avenue). This property is more fully described as Lots 8-11 in City Block 6/774 and is zoned PD-298 (Subarea 13) which requires parking to be provided. The applicant proposes to construct a structure as a general merchandise or food store use greater than 3500 square feet and provide 74 of the 83 required parking spaces which will require a special exception of 9 spaces (11% reduction) to the parking regulations.

**LOCATION:             4120 Gaston Avenue (aka 4122 Gaston Avenue)**

**APPLICANT:         Paul M. Hames**

**REQUEST:**

- A special exception to the off-street parking regulations of 9 parking spaces (or 11% of the required off-street parking) is requested in conjunction with constructing and maintaining an approximately 17,000 square foot “general merchandise or food store greater than 3,500 square foot” (Aldi Food Market) on a site that is undeveloped.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- The special exception shall automatically and immediately terminate if and when the “general merchandise or food store greater than 3,500 square feet” use limited to a food store, on the site is changed or discontinued.

Rationale:

- This request is the same identical application that Board of Adjustment Panel C granted in December of 2007 – a new application that must return to the same board merely on the fact that the applicant failed to make an application for a building permit or certificate of occupancy within 180 days from the board’s favorable action on December 10, 2007.
- The Development Services Senior Engineer has no objections to the request.
- The applicant has once again 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. In this case, the applicant has submitted information indicating that the site would be providing about 60 percent more (i.e. 27 spaces) than the 85<sup>th</sup> percentile peak parking demand (i.e. 47 spaces) estimated or almost double than that of the average peak parking demand using ITE published *Parking Generation, 3<sup>rd</sup> Edition*. Additionally the site is surrounded by high density residential developments where a significant number of walk trips are expected and in close proximity to two bus stops where a significant number of transit trips are expected.

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

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

automatically and immediately terminates if and when that use is changed or discontinued.

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

**GENERAL FACTS:**

- The Dallas Development Code requires the following off-street parking requirements:
  - General merchandise or food store greater than 3,500 square feet: 1 space per 200 square feet of floor area. If more than ten off-street parking spaces are required for this use, handicapped parking must be provided pursuant to code.The application and Building Official's Report state that 74 (or 89 percent) of the required 83 spaces will be provided in conjunction with the proposed 16,623 square foot grocery.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD No. 298 (Planned Development)  
North: PD No. 298 (Planned Development)  
South: PD No. 298 (Planned Development)  
East: PD No. 98 (Planned Development)  
West: PD No. 298 (Planned Development)

**Land Use:**

The subject site is undeveloped. The areas to the north, south, and west are developed with commercial/retail uses; and the area to the east is developed with a church and a child care facility.

## **Zoning/BDA History:**

1. BDA 067-174, 4122 Gaston Avenue (the subject site)

On December 12, 2007, the Board of Adjustment Panel C granted a request for a special exception to the parking regulations of 9 spaces and imposed the following conditions: the special exception shall automatically and immediately terminate if and when the general merchandise or food store greater than 3,500 square feet use, limited to a food store, is changed or discontinued. The case report stated that the request was made in conjunction with constructing and maintaining an approximately 3,500 square foot “general merchandise or food store greater than 3,500 square foot” use (Aldi Food Market) on a site that is undeveloped.

## **Timeline:**

- June 26, 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.
- July 16, 2008: 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 a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case.”
- July 17, 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 July 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
  - the August 1<sup>st</sup> 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 August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

July 29, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the 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.

July 31, 2008 The Development Services Senior Engineer submitted a review comment sheet marked "Has no objections" with the following comments "Ref: BDA067-174." (Note the Development Services Senior Engineer's review comment sheet of November 30, 2007 regarding BDA067-174 was marked "Has no objections if certain conditions are met" with the following comments: "The parking study dated 10/25/07 does not specify the name of the grocery store chain. Based on my dialogue with the design engineer, it was proposed to be "Aldi" store, a discount store popular in Europe. Therefore I recommend approval only for this specific brand: Aldi.")

### **STAFF ANALYSIS:**

- This parking special exception request is made to allow the construction and maintenance of the same approximately 17,000 square foot "general merchandise or food store greater than 3,500 square foot" use (Aldi Food Market) that was the issue at hand in BDA067-174 - a parking special exception request that was granted on the subject site by Board of Adjustment Panel C in December of 2007.
- The applicant returns with this "reinstatement request" since he failed to meet the Dallas Development Code provision stating that an applicant is required to file an application for a building permit or certificate of occupancy within 180 days from the favorable action of the board. The code continues to state if the applicant fails to file an application within this time period, the request is automatically denied without prejudice and the applicant must begin the process to have his request heard again, hence this application: BDA078-106.
- The applicant once again proposes to provide the same 74 (or 89 percent) of the required 83 spaces for a new approximately 17,000 square foot "general merchandise or food store greater than 3,500 square feet" use (Aldi Food Market) on a site that is undeveloped.
- According to information submitted by the applicant, the site would be providing about 60 percent more (i.e. 27 spaces) than the 85<sup>th</sup> percentile peak parking demand (i.e. 47 spaces) estimated or almost double than that of the average peak parking demand using ITE published *Parking Generation, 3<sup>rd</sup> Edition*. Additionally the site is surrounded by high density residential developments where a significant

number of walk trips are expected and in close proximity to two bus stops where a significant number of transit trips are expected.

- The Development Services Senior Engineer has indicated that he has no objections to this request.
- Granting this request, subject to the condition that the special exception of 9 spaces automatically and immediately terminates if and when the “general merchandise or food store greater than 3,500 square feet” use limited to the store selling grocery products is changed or discontinued, would allow the development of vacant tract of land with an approximately 17,000 square foot grocery store.
- The applicant has the burden of proof in establishing the following:
  - The parking demand generated by the “general merchandise or food store greater than 3,500 square feet” use does not warrant the number of off-street parking spaces required, and
  - The special exception of 9 spaces (or 11 percent of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

**BOARD OF ADJUSTMENT ACTION:    AUGUST 11, 2008**

APPEARING IN FAVOR:                    No one

APPEARING IN OPPOSITION:    No one

MOTION:    **Moore**

I move that the Board of Adjustment grant application **BDA 078-106** 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 general merchandise or food store greater than 3,500 square feet use, limited to a food store, on the site is changed or discontinued.

SECONDED:    **Maten**

AYES: 4–Boyd, Moore, Maten, Rios

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

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FILE NUMBER:    BDA 078-109(K)

**BUILDING OFFICIAL’S REPORT:**

Application of Bill Hanks for a special exception to the parking regulations at 5757 W. Lovers Lane. This property is more fully described as Lot 1A in City Block A/5632 and is zoned CR, which requires parking to be provided. The applicant proposes to construct and maintain a nonresidential structure for office use, medical clinic or ambulatory surgical center use, personal service use, restaurant without drive-in or drive-through use, and general merchandise or food store less than 3500 square feet use and provide 146 of the required 173 parking spaces, which will require special exception of 27 spaces (15.6% reduction) to the parking regulations.

**LOCATION:** 5757 W. Lovers Lane

**APPLICANT:** Bill Hanks

**REQUEST:**

- A special exception to the off-street parking regulations of 27 parking spaces (or 15.6% of the required off-street parking) is requested in conjunction with constructing and maintaining an approximately 29,348 square foot nonresidential structure for office use, medical clinic or ambulatory surgical center use, personal service use, restaurant without drive-in or drive-through use, and general merchandise or food store less than 3500 square feet use and provide 146 of the required 173 parking spaces.

**STAFF RECOMMENDATION:**

Approval, if certain conditions are met:

- A parking study is conducted containing a count of actual parked vehicles at various times of day to support the applicants claim that “parking requirements for our tenant mix don’t peak at the same time, and therefore, we have excess parking available for customers when needed.”
- A revised site plan is submitted showing the location of the proposed valet stand.
- All parking spaces are in compliance with Dallas City Code.

Rationale:

- The Development Services Senior Engineer has no objections to the request if certain conditions are met.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial



amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.

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

### **GENERAL FACTS:**

- The site is currently developed with a multi-use shopping center with surface and underground parking.
- The Dallas Development Code requires the following off-street parking requirements:
  - Office use: One space per 333 square feet of floor area.
  - Medical clinic or ambulatory surgical center: One space per 200 square feet of floor area.

- Personal services uses: One space per 200 square feet of floor area.
- Restaurant without drive-in or drive-through service: One space per 100 square feet of floor area.
- General merchandise or food store 3,500 square feet or less: One space per 200 square feet of floor area.

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

The subject site is developed with a shopping center. The areas to the, south, east, and west are developed with commercial/retail uses; and the area to the north is developed with single 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:**

- June 26, 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.
- July 14, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- July 15, 2008: The Board of Adjustment Senior Planner contacted the applicant’s representative and shared the following information by phone and letter:
- the public hearing date and panel that will consider the application;
  - the criteria or standard that the board will use in their decision to approve or deny the request;
  - the July 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
  - the August 1<sup>st</sup> 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 August public hearing after considering the information, evidence and testimony presented to them by the applicant and all other interested parties.

July, 29 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December 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.

August 1, 2008 The Development Services Senior Engineer submitted a review comment sheet marked “Has no objections if certain conditions are met.”

#### **STAFF ANALYSIS:**

- The site is currently developed with a mixed use shopping center. According to the submitted site plan the uses on the property include: restaurant, retail, personal services, medical, and office use.
- The applicant proposes to provide 146 of the required 173 parking spaces (or about 84.4%).
- According to the site plan the site is developed with a shopping center that is 29,348 square feet of which 4,688 square feet (approximately 16%) is vacant. The vacant space includes: 3,708 square feet of office space, and 980 square feet of retail space.
- Analysis of the submitted site plan by the Board of Adjustment Senior Planner reveals the site requires 176 parking spaces for its current uses. The site provides a total of 146 parking spaces in grade level and underground parking. The site is deficient a total of 30 parking spaces or 17% of the required parking.
- The Development Services Senior Engineer has indicated that he has no objections if certain conditions are met.
- The applicant has the burden of proof in establishing the following:
  - The parking demand generated by the “office use, medical clinic, or ambulatory surgical center use, personal service use, restaurant without drive-in or drive-through use, and general merchandise or food store less than 3,500 square feet” use does not warrant the number of off-street parking spaces required, and
  - The special exception of 27 spaces (or 15.6 percent of reduction the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

#### **BOARD OF ADJUSTMENT ACTION:    AUGUST 11, 2008**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Moore**

I move that the Board of Adjustment grant application **BDA 078-109** 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 office, medical clinic or ambulatory surgical center, personal service, restaurant without drive-in or drive-through service, and general merchandise or food store less than 3500 square feet uses on the site are changed or discontinued.

SECONDED: **Maten**

AYES: 4–Boyd, Moore, Maten, Rios

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

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FILE NUMBER: BDA 078-111

**BUILDING OFFICIAL’S REPORT:**

Application of John J. DeShazo, Jr. of DeShazo, Tang & Associates, Inc. for a special exception to the parking regulations at 8343 Douglas Avenue (aka 8333/8383 Douglas Avenue). This property is more fully described as Lot 5A in City Block 2/5625 and is zoned PD-314 (Tract II) which requires parking to be provided. The applicant proposes to construct and maintain structures as office and financial institution with drive-in window uses and provide 1,176 of the required 1,251 parking spaces which will require a special exception of 75 spaces (6% reduction) to the parking regulations.

LOCATION: 8343 Douglas Avenue (aka 8333/8383 Douglas Avenue)

APPLICANT: John J. DeShazo, Jr. of DeShazo, Tang & Associates, Inc.

**REQUEST:**

- A special exception to the off-street parking regulations of 75 spaces (or 6% of the required off-street parking) is requested in conjunction with completing and maintaining a seven story tower with 145,052 square feet of office use and a

separate one story structure with 3,983 square feet of “financial institution with drive-in window” use. The applicant proposes to provide 1,176 (or 94%) of the total required 1,251 off-street parking spaces on a site that is partially currently under development and partially developed with an existing approximately 270,000 square foot office tower.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- The special exception shall automatically and immediately terminate if and when the office and financial institution with drive-in window uses on the site are changed or discontinued.

Rationale:

- The Development Services Senior Engineer has no objections to the request.
- The applicant has substantiated how the parking demand generated by the office and financial institution with drive-in window uses 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. In this case, the applicant has submitted information indicating that the proposed provided 1,176 spaces will satisfy the parking needs for the proposed “modifications” to the development at 8343 Douglas Avenue since application of ITE (Institute of Transportation Engineers) recommended parking ratios yield a peak parking demand of 1,075 spaces which is 101 spaces less than what is provided or 176 spaces less than what is required.

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

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

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

**GENERAL FACTS:**

- The Dallas Development Code requires the following parking requirements for the existing/proposed uses on the subject site:
  - 1 space is required for every 333 square feet of office use.
  - 1 space is required for every 333 square feet of financial institution with or without drive-in window use.
 The application and Building Official's Report state that 1,176 (or 94 percent) of the required 1,251 spaces will be provided in conjunction with the proposed office tower and bank structure.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD No. 314 (Planned Development District)  
North: PD No. 314 (Planned Development District)  
South: PD No. 314 (Planned Development District)  
East: PD No. 314 (Planned Development District)

West: PD No. 314 (Planned Development District)

**Land Use:**

The subject site is partially under development and partially developed with an office tower. The areas to the north, east, south, and west are developed with office, restaurant, and retail uses.

**Zoning/BDA History:**

1. BDA 067-051, 8333 Douglas Avenue/AKA 8383 Douglas Avenue (the subject site)  
On August 13, 2007, the Board of Adjustment Panel C denied a request for a special exception to the parking regulations of 181 spaces without prejudice. The case report stated that the request was made in conjunction with constructing an office tower with 144,400 square feet of office uses and a 4,600 square foot bank use on a site currently developed with an approximately 278,000 square foot office tower.
  
2. BDA 056-053, 8383 Douglas Avenue/AKA 8333 Douglas Avenue (the subject site)  
On February 13, 2006, the Board of Adjustment Panel C granted a request for a special exception to the parking regulations of 288 spaces and imposed the following conditions: 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 the request was made in conjunction with constructing and maintaining a new 126,000 square foot office tower and an 8,500 square foot restaurant on the site.

**Timeline:**

- June 27, 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.
- July 16, 2008: 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 a subsequent case is filed concerning

the same request, that case must be returned to the panel hearing the previously filed case.”

- July 17, 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 July 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
  - the August 1<sup>st</sup> 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 August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

July 29, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the 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.

July 31, 2008 The Development Services Senior Engineer submitted a review comment sheet marked “Has no objections” with the following comment: “Revised Parking Analysis dated 6/27/2008.

**STAFF ANALYSIS:**

- 94 percent of the required off-street parking spaces are proposed to be provided in conjunction with constructing a new seven story tower structure with 145,052 square feet of office use and a new separate structure with 3,983 square feet of “financial institution with drive-in window” use on a site that is partially developed with an approximately 278,000 square foot office tower.
- This request is different in part to a parking special exception request on the subject site that was denied (without prejudice) by Board of Adjustment Panel C in August of 2007 – an application that had been made to construct a tower with 144,400 square feet of office uses (as opposed to in this case, a structure with 145,052 square feet of office use) and a building with 4,600 square feet of bank use (as opposed to in this case, a structure with 3,983 square feet of bank use) whereby 86 percent (as



opposed to in this case, 94 percent) of the off-street parking was proposed to be provided.

- According to information submitted by the applicant, the proposed provided 1,176 spaces will satisfy the parking needs for the proposed “modifications” to the development at 8343 Douglas Avenue since application of ITE (Institute of Transportation Engineers) recommended parking ratios yield a peak parking demand of 1,075 spaces which is 101 spaces less than what is provided or 176 spaces less than what is required.
- The Development Services Senior Engineer has indicated that he has no objections to this request based on the submitted revised parking analysis dated 6/27/08.
- Granting this request, subject to the condition that the special exception of 75 spaces automatically and immediately terminates if and when the office and financial institution with drive-in window uses on the site are changed or discontinued, would allow development of the office and bank on the site.
- The applicant has the burden of proof in establishing the following:
  - that the parking demand generated by the proposed office and financial institution with drive-in window uses does not warrant the number of off-street parking spaces required; and
  - the special exception of 75 spaces (or 6% of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

**BOARD OF ADJUSTMENT ACTION:     **AUGUST 11, 2008****

APPEARING IN FAVOR:             No one

APPEARING IN OPPOSITION:     No one

MOTION:     **Moore**

I move that the Board of Adjustment grant application **BDA 078-111** 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 office and financial institution with drive-in window uses on the site are changed or discontinued.

SECONDED:     **Maten**

AYES: 4–Boyd, Moore, Maten, Rios

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

\*\*\*\*\*

**FILE NUMBER:** BDA 078-112

**BUILDING OFFICIAL'S REPORT:**

Application of Santos T. Martinez of Masterplan for special exceptions to the sign regulations at 6055 LBJ Freeway (aka 13020 Preston Road). This property is more fully described as Lot 2 in City Block A/7437 and is zoned RR which restricts detached non-monument premise highway signs to a maximum effective area of 150 square feet and a maximum height of 30 feet when having a minimum setback of 15 feet. The applicant proposes to construct and maintain a detached non-monument premise expressway sign with an effective area of 165 square feet, and with a height of 33 feet which will require special exceptions to the sign regulations.

**LOCATION:** 6055 LBJ Freeway (aka 13020 Preston Road)

**APPLICANT:** Santos T. Martinez of Masterplan

**REQUESTS:**

- Special exceptions to the sign regulations related to effective area and height are requested in conjunction with replacing an existing 158 square foot, 50' high nonconforming detached premise sign (Terra Cotta Inn) with a new 165 square foot, 33' high detached premise sign (Holiday Inn Express).

**STAFF RECOMMENDATION (sign special exception related to *effective area*):**

Approval, subject to the following condition:

- Compliance with the submitted site plan and revised elevation dated 7-29-08 is required.

Rationale:

- Strict compliance with the 150 square foot effective area provision of the sign regulations would result in an inequity to the applicant in this case given the following:
  - The subject site has limited visibility given its narrow frontage (67' access frontage). This narrow site frontage is its only visible frontage from the LBJ Freeway. In addition to this narrow frontage is the fact that the largest portion of the property remains over 150' from the access road and could be hidden if the vacant lot located between the main area of the subject site and the access road were developed as allowed in its RR (Regional Retail) zoning with a four story retail or office building;
  - Utility and water easements on the subject site preclude locating the proposed sign further from the front property line. If the sign were able to be setback further from the front property line with a minimum 25' front yard setback, the Dallas Development Code would allow the sign to be 40 feet in height with an effective area of 400 square feet.

- There is no corresponding benefit to the city and citizens in accomplishing the objectives of this article by restricting this sign to a 150 square foot effective area. If the special exception were granted, the proposed sign would be only 7 square feet (or 4 percent) larger than the existing 158 square foot nonconforming sign on the subject site that the applicant intends to replace in the same location, and/or 15 square feet greater than what is allowed by right.

**STAFF RECOMMENDATION (sign special exception related to *height*):**

Approval, subject to the following condition:

- Compliance with the submitted site plan and revised elevation dated 7-29-08 is required.

Rationale:

- Strict compliance with the 30' height provision of the sign regulations would result in an inequity to the applicant in this case given the following:
  1. The subject site has limited visibility given its narrow frontage (67' access frontage). This narrow site frontage is its only visible frontage from the LBJ Freeway. In addition to this narrow frontage is the fact that the largest portion of the property remains over 150' from the access road and could be hidden if the vacant lot located between the main area of the subject site and the access road were developed as allowed in its RR (Regional Retail) zoning with a four story retail or office building;
  2. Utility and water easements on the subject site preclude locating the proposed sign further from the front property line. If the sign were able to be setback further from the front property line with a minimum 25' front yard setback, the Dallas Development Code would allow the sign to be 40 feet in height with an effective area of 400 square feet.
- There is no corresponding benefit to the city and citizens in accomplishing the objectives of this article by restricting this sign to a 30' height. If the special exception were granted, the proposed sign would be 17' lower than the existing 50' high nonconforming sign on the subject site that the applicant intends to replace in the same location, and/or 3' higher than what is allowed by right.

**STANDARD FOR A SPECIAL EXCEPTION TO THE SIGN REGULATIONS FOR THE EFFECTIVE AREA AND HEIGHT OF A DETACHED PREMISE SIGN:**

The Board of Adjustment may, in specific cases and subject to appropriate conditions, authorize a special exception to the sign regulations to permit a detached premise sign of up to 10 percent of the effective area and height of this article when the board has made a special finding from the evidence presented that strict compliance with this article would result in substantial financial hardship or inequity to the applicant without corresponding benefit to the city and citizens in accomplishing the objectives of this article.

**GENERAL FACTS (related to the sign special exception *effective area*):**

- The Dallas Development Code states that an expressway sign with a minimum setback of 15’ may have a maximum height of 30’ and a maximum effective area of 150 square feet.

A site plan has been submitted indicating that the “proposed existing sign with new Holiday Inn and Suites signage” along the site’s LBJ Freeway street frontage will be located approximately 18’ from the front property line. An elevation of the existing sign has been submitted indicating the height of the “Terra Cotta Inn” sign to be 50’ with no dimensions or scale provided for the sign board. (The applicant has submitted letters stating that this existing sign is 158 square feet in effective area). A revised elevation of the proposed replacement sign (dated 7-29-08) has been submitted denoting that the sign to be 18’ 2” long and 9’ 1” high. This elevation denotes that the effective area of the sign is 165 square feet or 10 percent greater than the effective area allowed by the code at 150 square feet.

- On July 25, 28, and 29, 2008, the applicant submitted additional information to staff regarding the request (see Attachment A). This information included letters that provided additional details about the requests as well as sign elevations.

**GENERAL FACTS (related to the sign special exception height):**

- The Dallas Development Code states that an expressway sign with a minimum setback of 15’ may have a maximum height of 30’ and a maximum effective area of 150 square feet.

A site plan has been submitted indicating that the “proposed existing sign with new Holiday Inn and Suites signage” along the site’s LBJ Freeway street frontage will be located approximately 18’ from the front property line. An elevation of the existing sign has been submitted indicating the height of the “Terra Cotta Inn” sign to be 50’ with no dimensions or scale provided for the sign board. A revised elevation of the proposed replacement sign (dated 7-29-08) has been submitted denoting the sign to be 33’ in total height or 10 percent greater than the height allowed by the code at 30’.

- On July 25, 28, and 29, 2008, the applicant submitted additional information to staff regarding the request (see Attachment A). This information included letters that provided additional details about the requests as well as sign elevations.

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: RR (Regional Retail)
- North: PD No. 16 (Planned Development)
- South: RR (Regional Retail)
- East: RR (Regional Retail)
- West: RR (Regional Retail)

**Land Use:**

The site is currently undeveloped. The areas to the north, south, and west are developed with retail uses; and the area to the east is undeveloped.

### **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:**

- June 27, 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.
- July 16, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- July 17, 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 July 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
  - the August 1<sup>st</sup> 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 August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- July 25, 28, & 29, 2008 The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).
- July 29, 2008 The Building Inspection Development Code Specialist forwarded a revised Building Official's Report to the Board Administrator (see Attachment B).
- July 29, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the 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.

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

**STAFF ANALYSIS (related to the sign special exception *effective area*):**

- This special exception request is made to allow the construction and maintenance of detached premise expressway sign with an effective area of 165 square feet – an effective area that would exceed the 150 square foot effective area allowed by code by 10 percent or 15 square feet.
- Granting this special exception request would allow the replacement of the existing nonconforming sign (i.e. a sign that does not conform to the current sign regulations but was lawfully erected under the regulations in force at the time of its construction) that according to the applicant has an effective area of 158 square feet – a sign larger that is 8 square feet larger than the 150 square feet allowed by the current code. The proposed replacement hotel sign (Holiday Inn Express to be substituted for the existing Terra Cotta Inn) would be restricted to an effective area that is 7 square feet larger than the existing sign, and, according to the applicant, would be replaced in the same location.
- The applicant has the burden of proof in establishing the following:
  - That strict compliance with the requirement of the sign regulations (where in this case, the site would be limited to having a sign with an effective area of 150 square feet) will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.
- Granting this special exception (with a condition imposed that the applicant complies with the submitted site plan and revised elevation dated July 29, 2008) would allow the replacement sign to be erected on the site in the same location but limited to the specifications shown on these documents which in this case is a sign that is 165 square feet in area or 15 square feet greater in effective area than that what is allowed by code (or a sign that is 7 square feet greater in effective area than the existing nonconforming sign on the subject site).

**STAFF ANALYSIS (related to the sign special exception *height*):**

- This special exception request is made to allow the construction and maintenance of detached premise expressway sign with a height of 33 feet – a height that would exceed the 33 foot height allowed by code by 10 percent or 3 feet.
- Granting this special exception request would allow the replacement of the existing nonconforming sign (i.e. a sign that does not conform to the current sign regulations but was lawfully erected under the regulations in force at the time of its construction) that according to the submitted elevation is at a height of 50' – a sign that is 20' higher than the 30' height allowed by the current code. The proposed replacement hotel sign (Holiday Inn Express to be substituted for the existing Terra Cotta Inn)

would be restricted to a height of 33 feet that is 17 feet lower than the existing sign, and, according to the applicant, would be replaced in the same location.

- The applicant has the burden of proof in establishing the following:
  - That strict compliance with the requirement of the sign regulations (where in this case, the site would be limited to having a 30' high sign) will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.
- Granting this special exception (with a condition imposed that the applicant complies with the submitted site plan and revised elevation dated July 29, 2008) would allow the replacement sign to be erected on the site in the same location but limited to the specifications shown on these documents which in this case is a sign that is 33' high or 3 feet higher in height than that what is allowed by code (or a sign that is 17 feet lower in height than the existing sign on the subject site).

**BOARD OF ADJUSTMENT ACTION:     **AUGUST 11, 2008****

APPEARING IN FAVOR:                    No one

APPEARING IN OPPOSITION:        No one

MOTION:     **Moore**

I move that the Board of Adjustment grant application **BDA 078-112** 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 site plan and revised elevation dated 7/29/08 is required.

SECONDED:     **Maten**

AYES: 4–Boyd, Moore, Maten, Rios

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

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FILE NUMBER:     BDA 078-096(K)

**BUILDING OFFICIAL’S REPORT:**

Application of Suzan Kedron to appeal the decision of an administrative official at 4223 Shorecrest Drive. This property is more fully described as part of Lot 3 in City Block 2/5070 and is zoned R-10(A) FP, which requires that the owner of a structure in an FP

(flood plain) area shall not make any improvements to the structure without first obtaining approval from the director of public works and transportation. The applicant proposes to appeal the issuance of a building permit for a fence which will require that the board reverse the decision of an administrative official to issue a building permit for a fence in an FP area.

**LOCATION:** 4223 Shorecrest Drive

**APPLICANT:** Suzan Kedron

**REQUEST:**

- An application has been made requesting that the Building Official's decision be reversed or overturned. The application states that "the applicant proposes that the board hear and decide to appeal the issuance of a building permit for a fence which will require that the board reverse the decision of an administrative official to issue a building permit for a fence in a Floodplain area on Shorecrest Drive.

**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.

- On June 11, 2008, the applicant filed an appeal to the Board of Adjustment alleging that the Building Official erred in "their failure to require a fill or flood plain alteration permit."
- On February 21, 2008, a building permit was issued to allow for the construction of an 8 foot fence on the east side of the property (see Attachment B).
- The Board Senior Planner 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's representative (see Attachment A).

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-10(A) (Single family 10,000 square feet)  
North: R-1ac(A) (Single family 1 acre)  
South: R-10(A) (Single family 10,000 square feet)  
East: R-10(A) (Single family 10,000 square feet)  
West: R-10(A) (Single family 10,000 square feet)

**Land Use:**

The subject site is a single family dwelling, the properties to the north, south, east and west are developed with single 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:**

June 11 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.

July 14 2008      The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

July 21 2008      The Board Senior Planner contacted the applicant's representative by letter and shared the following information:

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

July 21 2008      The Board of Adjustment Senior Planner mailed 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's representative (see Attachment A).

July 29 2008      The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Assistant Director of Development Services, 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.

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

**STAFF ANALYSIS:**

- A “City of Dallas Building Permit” was issued on February 21, 2008, to build an “8’ fence on the east side of the property.”
- The applicant has the burden of proof in establishing the necessary facts to show that the Building Official’s decision should be overturned or reversed.

**BOARD OF ADJUSTMENT ACTION:     **AUGUST 11, 2008****

APPEARING IN FAVOR:             Suzan Kedron, 901 Main St, Dallas, TX  
Frank Garnier, 5650 Stanford Ave., Dallas, TX  
Ruth Lindsley, 5619 Caruth, Dallas, TX  
Joe Davis, 4130 Shorecrest, Dallas, TX  
Susan Mead, 901 Main St., Dallas, TX  
Melonie Kastman, 4231 Shorecrest, Dallas, TX

APPEARING FOR THE CITY:     Dan Weir, 1500 Marilla, 7DN, Dallas, TX  
Steve Parker, 320 E Jefferson, Dallas, TX

APPEARING IN OPPOSITION:   Tommy Mann, 5400 Renaissance Tower, Dallas, TX  
Kirk Williams, 5400 Renaissance Tower, Dallas, TX  
Justin Small, 4215 Shorecrest, Dallas, TX

**MOTION #1:   **Moore****

I move that the Board of Adjustment in Appeal No. **BDA 078-096**, suspend the rules and accept the evidence that is being presented to us today.

**SECONDED:   **Maten****

AYES: 4–Boyd, Moore, Maten, Rios

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

**MOTION #2: Maten**

Having fully reviewed the decision of the building official of the City of Dallas in Appeal No. **BDA 078-096**, on application of Suzan Kedron, 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 the applicant **without** prejudice.

**SECONDED: Rios**

**AYES:** 4–Boyd, Moore, Maten, Rios

**NAYS:** 0–

**MOTION PASSED:** 4 – 0 (unanimously)

\*\*\*\*\*

**FILE NUMBER:** BDA 078-098(K)

**BUILDING OFFICIAL’S REPORT:**

Application of Vince Gurley for a special exception to the sign regulations at 8300 Douglas Avenue. This property is more fully described as Lot 6A in City Block 5623 and is zoned PD 314 (Tract 3), which allows 1 detached sign per street frontage. The applicant proposes to construct a second additional detached premise sign which would require a special exception to the sign regulations.

**LOCATION:** 8300 Douglas Avenue

**APPLICANT:** Vince Gurley

**REQUEST:**

A special exception to the sign regulation for an additional detached sign is requested on property located on the corner of Douglas and Luther Lane.

**STAFF RECOMMENDATION:**

Denial

Rationale:

The applicant has not substantiated how compliance with the requirements of the Dallas Development Code results in substantial financial hardship or inequity to the applicant.

**STANDARD FOR A SPECIAL EXCEPTION TO SIGN REGULATIONS:**

Section 51A-7.703(a) The board of adjustment may, in specific cases, take the following actions and authorize the following special variances and exceptions with respect to the provisions of this article.

- (d) Except as provided in Section 51A-7.703(c) the board of adjustment may, in specific cases and subject to appropriate conditions, authorize only the following special variances and exceptions to the regulations established in this article when the board has made a special finding from the evidence presented that strict compliance with the requirement of this article will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of this article:
- (2) Authorize one additional detached premise sign on premise in excess of the number permitted by this article.

**GENERAL FACTS:**

- The subject site is currently developed with office and retail use.
- The applicant proposes to construct and maintain an additional 5' x 4'2" monument sign on Douglas Avenue.
- The code states that properties in PD314 (tract 3) are allowed to have one monument sign per 450 feet of frontage on a public street.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 314 (tract 3) (Planned Development)  
North: PD 314 (Planned Development)  
South: PD 314 (Planned Development)  
East: PD 314 (Planned Development)  
West: PD 314 (tract 2)(Planned Development)

**Land Use:**

The site is currently developed with a mixed use structure. The property to the west is under construction. The properties to the north, east, and south are developed with commercial and retail uses.

**BDA History:**

There is no history on this site or sites in the immediate vicinity.

**Timeline:**

June 16, 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.

July 15, 2008      The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

- July 16, 2008: The Board of Adjustment 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 importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the July 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
  - the August 1<sup>st</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the August public hearing after considering the information, evidence and testimony presented to them by the applicant and all other interested parties.

July 29, 2008 : The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

### **STAFF ANALYSIS:**

- The proposed site is zoned PD 314 (tract 3) which limits a property to one detached premise sign for 450 feet of street frontage.
- The site currently developed with Preston Center has one detached monument sign on the corner of Douglas and Luther Lane. The applicant proposes to construct and maintain an additional sign on Douglas.
- The site has four attached signs on Luther Lane.
- The submitted site plan and elevation indicates the proposed sign will be a single tenant internally lit sign 4'6" in height and 5' in width. Or 22.5 square feet.
- The site has approximately 220 feet of street frontage along Douglas and 290 feet of street frontage on Luther Lane.

- The applicant has the burden of proof to substantiate how strict compliance of the sign regulation with one detached premise sign for each 450 feet of street frontage causes a substantial financial hardship or inequity to the applicant
- If the Board chooses to grant the special exception of an addition detached premise sign, staff recommends imposing the following condition, strict compliance with the submitted site plan and elevation is required.

**BOARD OF ADJUSTMENT ACTION:    AUGUST 11, 2008**

APPEARING IN FAVOR:                    Steve Holly, Republic Title Co., Dallas, TX  
Ben Sumner, 3544 University Blvd, Dallas, TX

APPEARING IN OPPOSITION:    No one

**MOTION #1:    Rios**

I move that the Board of Adjustment, in Appeal No. **BDA 078-098** on application of Vince Gurley, **deny** the special exception to allow an additional detached premise sign requested by this applicant **without** prejudice because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that any financial hardship or inequity that may result from strict compliance with the provisions of Article VII of the Dallas Development Code is outweighed by the benefit to be received by the citizens of the City of Dallas in promoting the health, safety, and welfare of the public in accomplishing the objectives of that article.

**SECONDED:    No one**  
**\*Motion failed for lack of a second.**

**MOTION #2:    Moore**

I move that the Board of Adjustment in Appeal No. **BDA 078-098**, hold this matter under advisement until **September 15, 2008**.

**SECONDED:    Maten**  
**AYES: 4–Boyd, Moore, Maten, Rios**  
**NAYS: 0–**  
**MOTION PASSED: 4 – 0 (unanimously)**

\*\*\*\*\*

**FILE NUMBER:** BDA 078-079

**BUILDING OFFICIAL'S REPORT:**

Application of Jim Gamble for an extension of the nonconforming use compliance date at 4210 Ross Avenue. This property is more fully described as Lot 1 in City Block 15/646 and is zoned PD-298 (Subarea 1) which requires that all nonconforming uses must be brought to conformance no later than April 26, 2008. The applicant requests a later conformance date for a nonconforming vehicle display, sales, and service use.

**LOCATION:** 4210 Ross Avenue

**APPLICANT:** Jim Gamble

**REQUEST:**

- A request is made for the Board of Adjustment to consider extending a City Council ordinance-imposed compliance date of April 26, 2008 for a nonconforming vehicle display, sales and service use (Big Daddy's Used Cars) on the subject site.

**COMPLIANCE REGULATIONS FOR NONCONFORMING USES:** SEC. 51A-4.704. NONCONFORMING USES AND STRUCTURES of the Dallas Development Code provides the following provisions:

(a) Compliance regulations for nonconforming uses. It is the declared purpose of this subsection that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.

(1) Amortization of nonconforming uses.

(A) Request to establish compliance date. The city council may request that the board of adjustment consider establishing a compliance date for a nonconforming use. In addition, any person who resides or owns real property in the city may request that the board consider establishing a compliance date for a nonconforming use. Upon receiving such a request, the board shall hold a public hearing to determine whether continued operation of the nonconforming use will have an adverse effect on nearby properties. If, based on the evidence presented at the public hearing, the board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for the nonconforming use; otherwise, it shall not.

(B) Factors to be considered. The board shall consider the following factors when determining whether continued operation of the nonconforming use will have an adverse effect on nearby properties:

- (i) The character of the surrounding neighborhood.
- (ii) The degree of incompatibility of the use with the zoning district in which it is located.
- (iii) The manner in which the use is being conducted.
- (iv) The hours of operation of the use.

- (v) The extent to which continued operation of the use may threaten public health or safety.
  - (vi) The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust, and odor.
  - (vii) The extent to which public disturbances may be created or perpetuated by continued operation of the use.
  - (viii) The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use.
  - (ix) Any other factors relevant to the issue of whether continued operation of the use will adversely affect nearby properties.
- (C) Finality of decision. A decision by the board to grant a request to establish a compliance date is not a final decision and cannot be immediately appealed. A decision by the board to deny a request to establish a compliance date is final unless appealed to state court within 10 days in accordance with Chapter 211 of the Local Government Code.
- (D) Determination of amortization period.
- (i) If the board determines that continued operation of the nonconforming use will have an adverse effect on nearby properties, it shall, in accordance with the law, provide a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.
  - (ii) The following factors must be considered by the board in determining a reasonable amortization period:
    - (aa) The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.
    - (bb) Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
    - (cc) Any return on investment since inception of the use, including net income and depreciation.
    - (dd) The anticipated annual recovery of investment, including net income and depreciation.
- (E) Compliance requirement. If the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.
- (F) For purposes of this paragraph, "owner" means the owner of the nonconforming use at the time of the board's determination of a compliance date for the nonconforming use.

**GENERAL FACTS:**

- City records indicate that a Certificate of Occupancy (CO # 0511111092) was issued on February 3, 2006, and that the vehicle display, sales, and service use on the subject site became nonconforming on August 24, 1988.



- The Dallas Development Code states that “nonconforming use” means “a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time.”
- The subject site is zoned PD No. 298 (Subarea 1) where the ordinance includes a provision specifically related to nonconforming uses (Section 51P-298.108). This ordinance (Ordinance No. 25960 which was established on April 27, 2005) states that all nonconforming uses must be brought to conformance no later than April 26, 2008, except those uses that became nonconforming as a result of city council action on April 27, 2005 must be brought into conformance no later than April 26, 2010. The ordinance states that the owner of a nonconforming use in Subarea 1 may appeal to the board of adjustment for a later compliance date at any time up to the conformance date set forth in this subsection if the owner will not be able to recover his investment in the use (up to the date of nonconformance) by the conformance date set forth in this subsection.
- The owner of use on the site could transition the use to any use that is permitted by right in the site’s PD 298 (Subarea 1) zoning classification.
- On June 16, 2008, a subpoena duces tecum and interrogatories were sent to the applicant/owner of the nonconforming use on the site.
- On July 15 and 18, 2008, the applicant/owner of the nonconforming use on the site submitted responses to the subpoena duces tecum and interrogatories (see Attachment A).
- On August 1, 2008, a document was submitted to the Board Administrator entitled “Big Daddy’s Car Lot, Board of Adjustment, Case No. 078-079, As of July 31, 2008, Prepared August 1, 2008” (see Attachment B). The document was prepared by VALUE Incorporated, a company that the document describes as one that was retained by the City of Dallas to conduct an independent analysis to determine the extent to which the owner’s capital investments in structures, fixed equipment and other assets in and related to the business currently known as Big Daddy’s Auto (the “business”) located at 4210 Ross Avenue (the “subject property”) made prior to the use becoming nonconforming, have been amortized. This document explains, among other things, its methodology for concluding that it is in their opinion that the income generated by the rents for the subject property and income for the business has exceeded the maximum amount of costs required to bring the property into conformance; that in their opinion, no additional time is needed for the owner of the subject property to collect rent from Big Daddy’s for the owner to recover costs necessary to bring the property into conformance; that in their opinion, no additional time is needed for Big Daddy’s to operate for the owner to recover costs necessary to bring the property into conformance; and therefore, in their opinion, the remaining amortization period of investment in the subject property and Big Daddy’s could be reasonably stated as zero (0) years.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD No. 298 (Subarea 1) (Planned Development)

North: PD No. 298 (Subarea 1) (Planned Development)  
South: PD No. 298 (Subarea 1) (Planned Development)  
East: PD No. 298 (Subarea 1) (Planned Development)  
West: PD No. 298 (Subarea 1) (Planned Development)

**Land Use:**

The site is currently developed with nonconforming vehicle display, sales, and service use (Big Daddy's Used Cars). The areas to the north, east, and south are developed with a mix of nonresidential 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 23, 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.

June 9, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

June 16, 2008: A subpoena duces tecum and interrogatories were sent to the applicant/owner of the nonconforming use on the site.

July 15 and 18, 2008 The applicant/owner of the nonconforming use on the site submitted a response to the subpoena duces tecum and interrogatories given (see Attachment A).

July 29, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the 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.

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

August 1, 2008: A document was submitted to the Board Administrator prepared by a company retained by the City of Dallas to conduct an independent analysis to determine the extent to which the owner's capital investments in structures, fixed equipment and other assets in and related to the business currently known as Big Daddy's Auto

made prior to the use becoming nonconforming, have been amortized (see Attachment B).

### **STAFF ANALYSIS:**

- The vehicle display, sales, and service use on the subject site is a nonconforming use. City records indicate that a Certificate of Occupancy (CO # 0511111092) was issued on February 3, 2006, and that the vehicle display, sales, and service use on the subject site became nonconforming on August 24, 1988.
- The Dallas Development Code states that it is the declared purpose of this subsection (Sec. 51A-4.704. Nonconforming Uses and Structures) that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.
- The subject site is zoned PD No. 298 (Subarea 1) where the ordinance includes a provision specifically related to nonconforming uses (Section 51P-298.108). This ordinance (Ordinance No. 25960 which was established on April 27, 2005) states that all nonconforming uses must be brought to conformance no later than April 26, 2008, except those uses that became nonconforming as a result of city council action on April 27, 2005 must be brought into conformance no later than April 26, 2010. The ordinance states that the owner of a nonconforming use in Subarea 1 may appeal to the board of adjustment for a later compliance date at any time up to the conformance date set forth in this subsection if the owner will not be able to recover his investment in the use (up to the date of nonconformance) by the conformance date set forth in this subsection.
- The Dallas Development Code states the following factors must be considered by the board in determining a reasonable amortization period:
  - The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.
  - Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
  - Any return on investment since inception of the use, including net income and depreciation.
  - The anticipated annual recovery of investment, including net income and depreciation.
- The purpose of the public hearing is to determine if additional time is needed to recover his investment in the use (up to the date of nonconformance) by the conformance date set by this subsection of the ordinance which in this case is April 26, 2008.
- The Dallas Development Code additionally states that if the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.
- As is the case with any nonconforming use, the owner of the use could transition the use on the site from vehicle display, sales, and service use to any use that is permitted by right in the site's PD No. 298 (Subarea 1) zoning classification.

- On July 15 and 18, 2008, the applicant/owner of the nonconforming use on the site submitted responses to the subpoena duces tecum and interrogatories (see Attachment A).
- On August 1, 2008, a document was submitted to the Board Administrator entitled “Big Daddy’s Car Lot, Board of Adjustment, Case No. 078-079, As of July 31, 2008, Prepared August 1, 2008” (see Attachment B). The document was prepared by VALUE Incorporated, a company that the document describes as one that was retained by the City of Dallas to conduct an independent analysis to determine the extent to which the owner’s capital investments in structures, fixed equipment and other assets in and related to the business currently known as Big Daddy’s Auto (the “business”) located at 4210 Ross Avenue (the “subject property”) made prior to the use becoming nonconforming, have been amortized.  
This document explains, among other things, its methodology for concluding that it is in their opinion that the income generated by the rents for the subject property and income for the business has exceeded the maximum amount of costs required to bring the property into conformance; that in their opinion, no additional time is needed for the owner of the subject property to collect rent from Big Daddy’s for the owner to recover costs necessary to bring the property into conformance; that in their opinion, no additional time is needed for Big Daddy’s to operate for the owner to recover costs necessary to bring the property into conformance; and therefore, in their opinion, the remaining amortization period of investment in the subject property and Big Daddy’s could be reasonably stated as zero (0) years.

**BOARD OF ADJUSTMENT ACTION:     **AUGUST 11, 2008****

APPEARING IN FAVOR:                     Jim Gamble, 11628 hickory Gardens, Dallas, TX

APPEARING FOR THE CITY:             Lemul Thomas, 1500 Marilla, 7DN, Dallas, TX  
David Fuller, 5220 O’Connor, Irving, TX

APPEARING IN OPPOSITION:         William Brown, 9538 Mossridge Cr, Dallas, TX  
Linda Morgan, 4214 Roseland, Dallas, TX  
Wayne Smith, 927 Liberty St., Dallas, TX  
Jim Rogers, 3208 Trevolle Place, Dallas, TX

**MOTION #1:   **Moore****

I move that the Board of Adjustment, in Appeal No. **BDA 078-079**, on application of Jim Gamble, **deny** the extension to the compliance date requested by this applicant **with** prejudice, because our evaluation of the property and testimony shows that the owner’s actual investment in the use before the time the use became nonconforming has been fully amortized.

**SECONDED:   **No one****

**\*Motion failed for lack of a second.**

**MOTION #2:   **Maten****

I move that the Board of Adjustment, in Appeal No. **BDA 078-079**, on application of Jim Gamble, provide a compliance date of **December 31, 2008** for the nonconforming vehicle display, sales, and service use currently being operated on the property located at **4210 Ross Avenue**, because the facts and testimony show that the owner's actual investment in the use, before the time that the use became nonconforming, can be amortized within this time period. I further move that the owner's certificate of occupancy for the vehicle display, sales, and service use be revoked on **December 31, 2008**, unless the vehicle display, sales, and service use becomes a conforming use.

**SECONDED: Rios**

**AYES: 2–Maten, Rios**

**NAYS: 2– Moore, Boyd**

**MOTION FAILED: 2 – 2**

**\*This motion to grant the request did not receive four concurring votes, therefore the motion failed. Since no subsequent motion was made, the request was deemed denied with prejudice.**

\*\*\*\*\*

**FILE NUMBER:** BDA 078-090

**BUILDING OFFICIAL'S REPORT:**

Application of Samson Woube, represented by Jordan Holt, for an extension of the nonconforming use compliance date at 4201 Ross Avenue. This property is more fully described as Lot 1 in City Block 3/649 and is zoned PD-298 (Subarea 1) which requires all nonconforming uses must be brought to conformance no later than April 26, 2008. The applicant proposes to request a later conformance date for a nonconforming auto service center use.

**LOCATION:** 4201 Ross Avenue

**APPLICANT:** Samson Woube  
Represented by Jordan Holt

**REQUEST:**

- A request is made for the Board of Adjustment to consider extending a City Council ordinance-imposed compliance date of April 26, 2008 for nonconforming auto service center use (Block Auto) on the subject site.

**COMPLIANCE REGULATIONS FOR NONCONFORMING USES:** SEC. 51A-4.704. NONCONFORMING USES AND STRUCTURES of the Dallas Development Code provides the following provisions:

(b) Compliance regulations for nonconforming uses. It is the declared purpose of this subsection that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property

rights of the persons affected, the public welfare, and the character of the surrounding area.

(1) Amortization of nonconforming uses.

- (A) Request to establish compliance date. The city council may request that the board of adjustment consider establishing a compliance date for a nonconforming use. In addition, any person who resides or owns real property in the city may request that the board consider establishing a compliance date for a nonconforming use. Upon receiving such a request, the board shall hold a public hearing to determine whether continued operation of the nonconforming use will have an adverse effect on nearby properties. If, based on the evidence presented at the public hearing, the board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for the nonconforming use; otherwise, it shall not.
- (B) Factors to be considered. The board shall consider the following factors when determining whether continued operation of the nonconforming use will have an adverse effect on nearby properties:
- (i) The character of the surrounding neighborhood.
  - (ii) The degree of incompatibility of the use with the zoning district in which it is located.
  - (x) The manner in which the use is being conducted.
  - (xi) The hours of operation of the use.
  - (xii) The extent to which continued operation of the use may threaten public health or safety.
  - (xiii) The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust, and odor.
  - (xiv) The extent to which public disturbances may be created or perpetuated by continued operation of the use.
  - (xv) The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use.
  - (xvi) Any other factors relevant to the issue of whether continued operation of the use will adversely affect nearby properties.
- (C) Finality of decision. A decision by the board to grant a request to establish a compliance date is not a final decision and cannot be immediately appealed. A decision by the board to deny a request to establish a compliance date is final unless appealed to state court within 10 days in accordance with Chapter 211 of the Local Government Code.
- (D) Determination of amortization period.
- (iii) If the board determines that continued operation of the nonconforming use will have an adverse effect on nearby properties, it shall, in accordance with the law, provide a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.
  - (iv) The following factors must be considered by the board in determining a reasonable amortization period:
    - (aa) The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly

- transferred to another site) on the property before the time the use became nonconforming.
- (bb) Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
  - (cc) Any return on investment since inception of the use, including net income and depreciation.
  - (dd) The anticipated annual recovery of investment, including net income and depreciation.
- (E) Compliance requirement. If the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.
- (F) For purposes of this paragraph, "owner" means the owner of the nonconforming use at the time of the board's determination of a compliance date for the nonconforming use.

### **GENERAL FACTS:**

- City records indicate that a Certificate of Occupancy (CO # 0303131049) was issued on May 15, 2008, and that the auto service center use on the subject site became nonconforming on August 24, 1988.
- The Dallas Development Code states that "nonconforming use" means "a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time."
- The subject site is zoned PD No. 298 (Subarea 1) where the ordinance includes a provision specifically related to nonconforming uses (Section 51P-298.108). This ordinance (Ordinance No. 25960 which was established on April 27, 2005) states that all nonconforming uses must be brought to conformance no later than April 26, 2008, except those uses that became nonconforming as a result of city council action on April 27, 2005 must be brought into conformance no later than April 26, 2010. The ordinance states that the owner of a nonconforming use in Subarea 1 may appeal to the board of adjustment for a later compliance date at any time up to the conformance date set forth in this subsection if the owner will not be able to recover his investment in the use (up to the date of nonconformance) by the conformance date set forth in this subsection.
- The owner of use on the site could transition the use to any use that is permitted by right in the site's PD 298 (Subarea 1) zoning classification.
- On June 16, 2008, a subpoena duces tecum and interrogatories were sent to the applicant/owner of the nonconforming use on the site.
- On August 1, 2008, a document was submitted to the Board Administrator entitled "Block Auto Car Lot, Board of Adjustment, Case No. 078-090, As of July 31, 2008, Prepared August 1, 2008" (see Attachment A). The document was prepared by VALUE Incorporated, a company that the document describes as one that was retained by the City of Dallas to conduct an independent analysis to determine the extent to which the owner's capital investments in structures, fixed equipment and other assets in and related to the business currently known as Block Auto (the

“business”) located at 4201 Ross Avenue (the “subject property”) made prior to the use becoming nonconforming, have been amortized.

This document explains, among other things, its methodology for concluding that it is in their opinion that the income generated by the rents for the subject property has exceeded the maximum amount of costs required to bring the property into conformance; that in their opinion, no additional time is needed for the owner of the subject property to collect rent from Block Auto for the owner to recover costs necessary to bring the property into conformance; that in their opinion, no additional time is needed for Block Auto to operate for the owner to recover costs necessary to bring the property into conformance; and therefore, in their opinion, the remaining amortization period of investment in the subject property and Block Auto could be reasonably stated as zero (0) years.

- As of August 4, 2008, the applicant/owner of the nonconforming use on the site had not submitted a response to the subpoena duces tecum and interrogatories.

### **BACKGROUND INFORMATION:**

#### **Zoning:**

Site: PD No. 298 (Subarea 1) (Planned Development)  
North: PD No. 298 (Subarea 1) (Planned Development)  
South: PD No. 298 (Subarea 1) (Planned Development)  
East: PD No. 298 (Subarea 1) (Planned Development)  
West: PD No. 298 (Subarea 1) (Planned Development)

#### **Land Use:**

The site is currently developed with nonconforming auto service center use (Block Auto). The areas to the north, east, and south are developed with a mix of nonresidential 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.

June 9, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

June 16, 2008: A subpoena duces tecum and interrogatories were sent to the applicant/owner of the nonconforming use on the site.



July 29, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the 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.

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

August 1, 2008: A document was submitted to the Board Administrator prepared by a company retained by the City of Dallas to conduct an independent analysis to determine the extent to which the owner's capital investments in structures, fixed equipment and other assets in and related to the business currently known as Block Auto made prior to the use becoming nonconforming, have been amortized (see Attachment A).

#### **STAFF ANALYSIS:**

- The auto service center use on the subject site is a nonconforming use. City records indicate that a Certificate of Occupancy (CO # 0303131049) was issued on May 15, 2008, and that the auto service center use on the subject site became nonconforming on August 24, 1988.
- The Dallas Development Code states that it is the declared purpose of this subsection (Sec. 51A-4.704. Nonconforming Uses and Structures) that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.
- The subject site is zoned PD No. 298 (Subarea 1) where the ordinance includes a provision specifically related to nonconforming uses (Section 51P-298.108). This ordinance (Ordinance No. 25960 which was established on April 27, 2005) states that all nonconforming uses must be brought to conformance no later than April 26, 2008, except those uses that became nonconforming as a result of city council action on April 27, 2005 must be brought into conformance no later than April 26, 2010. The ordinance states that the owner of a nonconforming use in Subarea 1 may appeal to the board of adjustment for a later compliance date at any time up to the conformance date set forth in this subsection if the owner will not be able to recover his investment in the use (up to the date of nonconformance) by the conformance date set forth in this subsection.
- The Dallas Development Code states the following factors must be considered by the board in determining a reasonable amortization period:
  - The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.

- Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
- Any return on investment since inception of the use, including net income and depreciation.
- The anticipated annual recovery of investment, including net income and depreciation.
- The purpose of the public hearing is to determine if additional time is needed to recover his investment in the use (up to the date of nonconformance) by the conformance date set by this subsection of the ordinance which in this case is April 26, 2008.
- The Dallas Development Code additionally states that if the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.
- As is the case with any nonconforming use, the owner of the use could transition the use on the site from auto service center use to any use that is permitted by right in the site's PD No. 298 (Subarea 1) zoning classification.
- On August 1, 2008, a document was submitted to the Board Administrator entitled "Block Auto Car Lot, Board of Adjustment, Case No. 078-090, As of July 31, 2008, Prepared August 1, 2008" (see Attachment A). The document was prepared by VALUE Incorporated, a company that the document describes as one that was retained by the City of Dallas to conduct an independent analysis to determine the extent to which the owner's capital investments in structures, fixed equipment and other assets in and related to the business currently known as Block Auto (the "business") located at 4201 Ross Avenue (the "subject property") made prior to the use becoming nonconforming, have been amortized.

This document explains, among other things, its methodology for concluding that it is in their opinion that the income generated by the rents for the subject property has exceeded the maximum amount of costs required to bring the property into conformance; that in their opinion, no additional time is needed for the owner of the subject property to collect rent from Block Auto for the owner to recover costs necessary to bring the property into conformance; that in their opinion, no additional time is needed for Block Auto to operate for the owner to recover costs necessary to bring the property into conformance; and therefore, in their opinion, the remaining amortization period of investment in the subject property and Block Auto could be reasonably stated as zero (0) years.

As of August 4, 2008, the applicant/owner of the nonconforming use on the site had not submitted a response to the subpoena duces tecum and interrogatories.

**BOARD OF ADJUSTMENT ACTION:    AUGUST 11, 2008**

APPEARING IN FAVOR:                    Jordan Holt, 7008 Meadow Lane, Dallas, TX

APPEARING FOR THE CITY:           Lemul Thomas, 1500 Marilla, 7DN, Dallas, TX  
David Fuller, 5220 O'Connor, Irving, TX

APPEARING IN OPPOSITION:       William Brown, 9538 Mossridge Cr, Dallas, TX  
Jim Rogers, 3208 Trevolle Place, Dallas, TX  
Melanie Wester, 3220 San Jacinto, Dallas, TX  
Wayne Smith, 927 Liberty St., Dallas, TX

MOTION:    **Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 078-090**, on application of Samson Woube, represented by Jordan Holt, **deny** the extension to the compliance date requested by this applicant **with** prejudice, because our evaluation of the property and testimony shows that the owner's actual investment in the use before the time the use became nonconforming has been fully amortized.

SECONDED:    **Moore**  
AYES: 4-Boyd, Moore, Maten, Rios  
NAYS: 0-  
MOTION PASSED: 4 – 0 (unanimously)

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MOTION:    **Maten**

I move to adjourn this meeting.

SECONDED:    **Moore**  
AYES: 4 -Boyd, Moore, Maten, Rios  
NAYS: 0 - None  
MOTION PASSED: 4 – 0 (Unanimously)

**3:38 P. M.** - Board Meeting adjourned for **August 11, 2008.**

\_\_\_\_\_  
CHAIRPERSON

\_\_\_\_\_  
BOARD ADMINISTRATOR

\_\_\_\_\_  
BOARD SECRETARY

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