

**BOARD OF ADJUSTMENT, PANEL C  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, L1FN AUDITORIUM  
MONDAY, NOVEMBER 12, 2007**

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

MEMBERS ABSENT FROM BRIEFING: No one

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

MEMBERS ABSENT FROM HEARING: No one

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

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**10:42 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **November 12, 2007** docket.

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**1:00 P.M.**

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

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel C October 15, 2007 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: NOVEMBER 12, 2007**

**MOTION:** **Maten**

I move **approval** of the Monday, **October 15, 2007** public hearing minutes.

**SECONDED:** **Jefferson**

**AYES:** 5– Madrigal, Boyd, Moore, Maten, Jefferson

**NAYS:** 0–

**MOTION PASSED:** 5 – 0 (unanimously)

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**MISCELLANEOUS ITEM NO. 2**

**FILE NUMBER:** BDA067-160

**REQUEST:** To reimburse the filing fees submitted in conjunction with requests for variances to the front yard setback and off-street parking regulations

**LOCATION:** 5102 Mission Avenue

**APPLICANT:** Mark Tomasson

**STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:**

The Dallas Development Code states that the board may waive the filing fee for a board of adjustment application if the board finds that payment of the fee would result in substantial financial hardship to the applicant.

**GENERAL FACTS:**

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waivers/reimbursements:
  - The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.
  - The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board’s miscellaneous docket for predetermination.
  - If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.

- In making this determination, the board may require the production of financial documents.
- The applicant's attorney submitted a letter requesting a reimbursement of the filing fees submitted in conjunction with the requests for variances to the front yard setback and off-street parking regulations (see Attachment A).

**Timeline:**

- October 17, 2007 The applicant's attorney submitted a letter to the board requesting a reimbursement of the 1,220.00 filing fee submitted in conjunction with the requests for variance to the front yard setback and off-street parking regulations.
- October 18, 2007: The Board of Adjustment Secretary randomly assigned BDA067-160 to Board of Adjustment Panel C.
- October 26, 2007: 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 October 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
  - the November 2<sup>nd</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 November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

**BOARD OF ADJUSTMENT ACTION: NOVEMBER 12, 2007**

APPEARING IN FAVOR: Mark Thomas, 3026 Mockingbird, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Jefferson**

I move to **deny** the reimbursement of the filing fees submitted in conjunction with requests for variances to the front yard setback and off-street parking regulations.

SECONDED: **Maten**

AYES: 4– Madrigal, Moore, Maten, Jefferson

NAYS: 1– Boyd

MOTION PASSED: 4 – 1

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**FILE NUMBER:** BDA 067-151

**BUILDING OFFICIAL’S REPORT:**

Application of Legion Construction, represented by John Lee, for a variance to the front yard setback regulations at 6141 Prospect Avenue. This property is more fully described as Lot 1 in City Block 3/2097 and is zoned CD No. 14 which requires a front yard setback of 25 feet. The applicant proposes to construct a single family residence and provide a 6 foot front yard setback which will require a variance of 19 feet

**LOCATION:** 6141 Prospect Avenue

**APPLICANT:** Legion Construction  
Represented by John Lee

**REQUEST:**

- A variance to the front yard setback regulations of 19’ is requested in conjunction with constructing and maintaining a single family home in the site’s Clements Street 25’ front yard setback. (The proposal would replace the existing single family home located on the subject site).

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The site is different from other parcels of land in that it has two front yard setbacks. The lot’s Clements street front yard setback leaves only about 27’ of developable space on the approximately 57’ wide site once a 25’ front yard setback is accounted for on the west and a 5’ side yard setback is accounted for on the east.
- The restrictive area of the subject site caused by its two front yard setbacks precludes it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same CD No. 14 zoning classification – in this case with, according to information submitted by the applicant, a single family home with about 3,600 square feet of living area - close to the average of 11 homes’ living area in the zoning district at 3,630 square feet.
- Granting this variance does not appear to be contrary to the public interest for the following reasons:
  - It appears that the proposed encroachment into the site’s Clements Street front yard setback would not violate any existing established 25’ setback of homes. In this particular case, there is only one house located immediately north of the site that fronts Clements Street. It is this one house fronting Clements Street that establishes a front yard setback that must be maintained between Richmond

Avenue and Prospect Avenue. The home on this intervening lot does not appear to provide a 25' front yard setback.

- The building footprint on the submitted site plan shows compliance with the site's 40' front yard setback along Prospect Avenue – the front yard setback of the two on the site that functions more as a typical front yard.
- According to the applicant, the structure has been approved by the City's Conservation District staff.

### **STANDARD FOR A VARIANCE:**

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

### **GENERAL FACTS:**

- The Dallas Development Code provides the following front yard provisions for residential districts: If the corner lot has two street frontages of unequal distance, the shorter frontage is governed by the front yard provisions of the code, and the longer frontage is governed by side yard regulations. The code further states that notwithstanding this provision the continuity of the established setback along street frontage must be maintained.  
Structures on lots zoned CD No. 14 are required to provide a minimum front yard setback of 40'. Structures on lots zoned R-7.5(A) are required to provide a minimum front yard setback of 25'.  
The subject site is located at the northeast corner of Prospect Avenue and Clements Street and has two front yard setbacks: the shorter frontage along Prospect Avenue where a 40' front yard setback must be provided, and the longer frontage along Clement Street where a 25' front yard setback must be provided in order to maintain continuity of the established setback of one home directly north zoned R-7.5(A) that fronts westward onto Clement Street and is located between Richmond Avenue and Prospect Avenue.
- A scaled site plan has been submitted that shows a "two story brick" building footprint that is located in the site's 25' Clements Street front yard setback. The site plan shows that the structure would be located 6' from the site's Clements Street front property line (or 19' into the site's 25' front yard setback).

- The site is flat, generally rectangular in shape (58' on the north, 55' on the south, and 170' on the east and west) and approximately 9,700 square feet in area. The site is zoned CD No. 14 where prior to its creation in 2006, the site was zoned R-7.5(A) where lots are typically 7,500 square feet in area. The site has two front yard setbacks: a 40' front yard setback on Prospect Avenue, and a 25' front yard setback on Clements Street.
- DCAD records indicate that the site is developed with the following:
  - a single family home in average condition built in 1933 with 1,528 square feet of living space;
  - a 336 square foot cabana; and
  - a 306 square foot detached garage.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
  - a copy of a site plan;
  - a copy of a letter sent to neighbors explaining the request;
  - two addendums that provide additional details about the request.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: CD No. 14 (Conservation District)  
North: R-7.5 (A) (Single family district 7,500 square feet)  
South: CD No. 14 (Conservation District)  
East: CD No. 14 (Conservation District)  
West: CD No. 14 (Conservation District)

**Land Use:**

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

**Zoning/BDA History:**

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

**Timeline:**

- Sept. 25, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- October 18, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- October 18, 2007: 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 October 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
- the November 2<sup>nd</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 November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

October 23, 2007 The applicant submitted additional information to the Board Administrator (see Attachment A).

October 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Development Services Current Planning Assistant Director, 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.

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

**STAFF ANALYSIS:**

- This variance request is made to allow approximately half of a single family structure footprint to be located in the one of the site's front yard setback – the 25' front yard setback on Clements Street.
- According to calculations taken from the site plan by the Board Administrator, the proposed building footprint is approximately 1,900 square feet (55' x 35') of which approximately 1,000 square foot (or 55' x 18') of the footprint is located in the site's Clements Street 25' front yard setback. (No encroachment is shown or requested to be located in the site's Prospect Avenue 40' front yard setback).
- The proposed house would replace a house on the site built in the 1930's that does not appear to be providing a 25' front yard setback on Clements Street.
- The site is flat, generally rectangular in shape (58' on the north, 55' on the south, and 170' on the east and west) and approximately 9,700 square feet in area. The site is zoned CD No. 14 where prior to its creation in 2006, the site was zoned R-7.5(A) where lots are typically 7,500 square feet in area. The site has two front yard

setbacks: a 40' front yard setback on Prospect Avenue, and a 25' front yard setback on Clements Street.

- Once a 25' front yard setback is accounted for on the west along Clements Street and a 5' side yard setback is accounted for on the east, the developable width remaining on the approximately 57' wide site is 27'.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the front yard setback regulations of 19' requested in conjunction with constructing/maintaining about half of a single family home building footprint in the site's Clements Street front yard setback will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance is necessary to permit development of the subject site (a site that is developed with a house that does not appear to provide a 25' front yard setback on Clements Street, and a site that is rectangular in shape, approximately 9,700 square feet in area with two front yard setbacks) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same CD No. 14 zoning classification.
  - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the CD No. 14 zoning classification.
- If the Board were to grant the front yard variance request of 19', imposing a condition whereby the applicant must comply with the submitted site plan, the structure in the front yard setback would be limited to that shown on this plan – which in this case is about half of a single family structure building footprint that is located 6' from the site's Clements Street front property line (or 19' into the site's Clements Street 25' front yard setback).

**BOARD OF ADJUSTMENT ACTION: NOVEMBER 12, 2007**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Moore**

I move that the Board of Adjustment grant application **BDA 067-151** 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 is required.

SECONDED: **Boyd**



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

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**FILE NUMBER:** BDA 067-154

**BUILDING OFFICIAL’S REPORT:**

Application of Sandlin-Mountain Hollow, represented by Melodie Geisler, for a special exception to the tree preservation regulations at 5500 Eagle Ford Drive. This property is more fully described as Lots 1-51 in City Block N/8682 and Lots 1-60 in City Block P/8682 and is zoned PD 521(Subdistrict 6), which requires mandatory landscaping. The applicant proposes to construct a single family residential development and provide an alternate tree mitigation plan which will require a special exception.

**LOCATION:** 5500 Eagle Ford Drive

**APPLICANT:** Sandlin-Mountain Hollow  
Represented by Melodie Geisler

**November 12, 2007 Public Hearing Notes:**

- The applicant’s representative and opposing property owners submitted additional written documentation to the board at the public hearing.
- The board delayed action on the request until their February hearing to give the applicant an opportunity to address some of the concerns mentioned at the public hearing by neighboring property owners.

**REQUEST:**

- A special exception to the tree preservation regulations is requested in conjunction with removing protected trees on a site that is currently being developed with a 111 lot single family development (Mountain Hollow).

**STAFF RECOMMENDATION:**

Approval, subject to the following conditions:

1. Full compliance with Article X: Tree Preservation Regulations is required with one exception: the applicant must fully mitigate all protected trees removed on the site by December 31, 2012.
2. All conditions stated under Section 51A-10.134 (C) (i) must be met. (For single family developments, at least 50 percent of the total caliper of replacement trees must be planted before 65 percent of the development has received a final building inspection).

3. All trees planted for mitigation must be maintained in a healthy growing condition as required under Article X.
4. All replacement trees must be planted prior to the completion of the development.
5. All vacant lots not under construction must introduce storm water management practices to reduce soil erosion on the properties within 90 days of the November 12, 2007 board of adjustment public hearing. Procedures used must be according to best management practices recommended by the Public Works and Transportation Storm Water Management office and in compliance with state law. A letter describing city-approved measures taken to prevent site erosion must be provided to the building official.

Rationale:

- The applicant has substantiated:
  - how strict compliance with the requirements of the Landscape and Tree Preservation Regulations of the Dallas Development Code (whereby replacement trees would be required to be put on the site prior to the construction/completion of 111 homes on the undeveloped site) will unreasonably burden the use of the property; and
  - that the special exception will not adversely affect neighboring property (given that full compliance with the Tree Preservation Regulations will be achieved on the site just not within 30 days - 18 months from when a tree removal permit was issued for the site in June of 2006).
- The City's Chief Arborist recommends approval of the request, subject to the conditions listed above.

**STANDARD FOR A SPECIAL EXCEPTION TO THE TREE PRESERVATION REGULATIONS:**

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

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

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

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

**GENERAL FACTS:**

- The Dallas Development Code requires full compliance with the Tree Preservation Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet.  
The applicant's representative has submitted a proposed alternate mitigation plan "to permit the owner 6.5 years from the dated of the removal for all trees to be replaced" (see Attachment A). The applicant has stated that no deviation from the quantity, species, size, or location of replacement trees is requested.
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Chief Board of Adjustment Planner (see Attachment B). The memo stated the following:
  - The applicant is requesting relief from tree mitigation regulations of Article X of the Dallas Development Code (The Landscape and Tree Preservation Regulations), more specifically, relief from Section 51A-10.134(5) pertaining to timing of protected tree mitigation.
  - Trigger:  
The developer was issued a tree removal permit on June 6, 2006 for the legal removal of protected trees to begin development of the property.
  - Deficiencies:  
The owner of the property is required to fully mitigate within 30 days or request an extension of 6 months with written affidavit, or request an extension to 18 months with a letter of credit or performance bond. The site is currently not in compliance with any of the allowed measures.
  - Factors for consideration:
    - The Mountain Hollow development obtained a grading permit and a tree removal permit on June 6, 2006. The tree removal permit identifies the mitigation to be 831 caliper inches. The applicant identifies 778 caliper inches for mitigation. The discrepancy will be clarified at the November 12<sup>th</sup> public hearing.
    - The owners have identified on their "General Tree Survey" a mitigation plan to plant 856 caliper inches (two 3" trees and one 2" tree per lot)
    - The development site infrastructure appears complete. All lots are vacant and exposed to rain and wind erosion. Permits have not yet been issued for the construction of homes.
    - The applicant proposes to mitigate within 6.5 years from the date of the tree removal permit. The owner would provide a letter of credit or performance bond in the amount required by ordinance.
    - Section 51A-10.134 (C) states the requirement for determining the amount for a letter of credit or performance bond is "the total cost of purchasing and planting replacement tree." This number would be provided by the applicant based upon conditions set by their tree supplier and other contractors.
  - Recommendation
    - Approval, subject to the following conditions:
      1. The conditions stated under Section 51A-10.134 (C) (i) must be met. (For single family developments, at least 50 percent of the total caliper of replacement trees must be planted before 65 percent of the development has received a final building inspection.
      2. All trees planted for mitigation must be maintained in a healthy growing condition as required under Article X.

3. All replacement trees must be planted prior to the completion of the development.
4. All vacant lots not under construction must introduce storm water management practices to reduce soil erosion on the properties within 90 days of the hearing. Procedures used must be according to best management practices recommended by the Public Works and Transportation Storm Water Management office and in compliance with state law. A letter describing city-approved measures taken to prevent site erosion must be provided to the building official.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD No. 521 (Planned Development)  
North: PD No. 521 (Planned Development)  
South: PD No. 521 (Planned Development)  
East: PD No. 521 (Planned Development)  
West: PD No. 521 (Planned Development)

**Land Use:**

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

**Zoning/BDA History:**

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

**Timeline:**

- Sept. 26, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- October 18, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- October 18, 2007: The Board Administrator contacted the applicant's representative 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 October 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;

- the November 2<sup>nd</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 November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

October 25, 2007 The applicant’s representative submitted additional information to the Board Administrator (see Attachment A).

October 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Development Services Current Planning Assistant Director, 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.

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

November 5, 2007 The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment B).

**STAFF ANALYSIS:**

- The applicant has submitted an alternate tree mitigation plan that proposes to fully mitigate all protected trees removed on the site within 6.5 years from the date of the tree removal permit issued in June of 2006 rather than the 30 days – 18 months required by Article X of the Dallas Development Code.
- The applicant has the burden of proof in establishing the following:
  - Strict compliance with the requirements of the Tree Preservation Regulations of the Dallas Development Code (i.e. mitigating all protected trees removed on the site within 30 days – 18 months from removal) will unreasonably burden the use of the property (in this case, a site that is currently under development as a single family subdivision).
  - The special exception (allowing for an extension of the time period in which to fully mitigate protected trees removed on the site) will not adversely affect neighboring property.

**BOARD OF ADJUSTMENT ACTION: NOVEMBER 12, 2007**

**APPEARING IN FAVOR:** Chuck McKinney, 17090 Dallas Parkway, Dallas, TX

Melodie Geisler, 17090 Dallas Parkway, Dallas, TX

APPEARING IN OPPOSITION: Warren Hansen, 5659 High Creek Dr, Dallas, TX

MOTION: **Boyd**

I move that the Board of Adjustment, in Appeal No. **BDA 067-154**, hold this matter under advisement until **February 11, 2008**.

SECONDED: **Moore**

AYES: 4– Madrigal, Boyd, Moore, Jefferson

NAYS: 1– Maten

MOTION PASSED: 4 – 1

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FILE NUMBER: BDA 067-162

**BUILDING OFFICIAL’S REPORT:**

Application of Masterplan, represented by Ed Simons, for a special exception to restore a nonconforming use at 4635 S. Lancaster Road (aka 4631 S. Lancaster Road). This property is more fully described as Lots 33 and 34 in City Block 31/4329 and is zoned CR which limits the legal uses in a zoning district. The applicant proposes to restore a nonconforming vehicle display, sales, and service use which will require a special exception to the nonconforming use regulations.

LOCATION: 4635 S. Lancaster Road (aka 4631 S. Lancaster Road)

APPLICANT: Masterplan  
Represented by Ed Simons

**REQUEST:**

- A special exception to reinstate nonconforming use rights is requested in conjunction with obtaining a Certificate of Occupancy (CO) for a “vehicle display, sales, and service” use on the subject site even though this nonconforming use was discontinued for a period of six months or more.

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to operate a nonconforming use if that use is discontinued for six months or more since the basis for this type of appeal is based on whether the board determines that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

**STANDARD FOR A SPECIAL EXCEPTION TO OPERATE A NONCONFORMING USE IF THAT USE IS DISCONTINUED FOR SIX MONTHS OR MORE:**

The Dallas Development Code specifies that the Board may grant a special exception to operate a nonconforming use that has been discontinued for six months or more if the owner can show that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

**GENERAL FACTS:**

- The subject site is zoned CR (Community Retail) – a zoning district that does not permit a “vehicle display, sales, and service” use.  
The “vehicle display, sales, and service” use on the site is a nonconforming use given that Building Inspection has determined that this use was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time.  
The Dallas Development Code defines “nonconforming use” as “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 nonconforming use regulations of the Dallas Development Code state it is the declared purpose of the nonconforming use section of the code 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 nonconforming use regulations continue to state that the right to operate a nonconforming use ceases if the nonconforming use is discontinued for six months or more, and that the board of adjustment may grant a special exception to operate a nonconforming use that has been discontinued for six months or more if the owner can show that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.
- According to information from Dallas Central Appraisal District (DCAD), the property at 4931 S. Lancaster Road is developed with a “sales office” with 840 square feet that was constructed in 1966.
- According to the applicant, the use was established on the site in 1962.
- The “vehicle display, sales, and service” use that existed on the site was a legal nonconforming use. Zoning maps dated July 31, 1986 indicated that the site had been zoned LC (Light Commercial). The LC zoning district allowed “auto or motorcycle display, sales and service” use as a permitted use but was one of several cumulative zoning districts that were eliminated during the city-wide zoning transition program in the late 80’s. Most likely, the “vehicle display, sales, and service” use on the subject site became a legal *nonconforming* use upon the passing of the city-wide ordinance that created Chapter 51(A) in the late 80’s.
- Given provisions set forth in the Dallas Development Code, a “vehicle display, sales, and service” use can obtain “conforming use” status upon attaining a different zoning district from the City Council.
- The nonconforming “vehicle display, sales, and service” use on the site would be subject to the possibility of an application that may be brought to the Board of

Adjustment requesting that the board establish a compliance date as is the case with any other nonconforming use in the city.

- The Board Administrator has informed the applicant of the provisions set forth in the Dallas Development Code pertaining to nonconforming uses.
- The applicant submitted additional documentation to staff beyond that submitted with the original application (see Attachment A). This information included a letter that provided additional details about the request.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: CR (Community Retail)  
North: CR (Community Retail)  
South: CR (Community Retail)  
East: MF-2 (A)(SUP 181) (Multifamily residential, armory)  
West: R-7.5 (A) (Single family residential 7,500 square feet)

### **Land Use:**

The subject site is developed as a vacant car lot. The areas to the north and south are developed with commercial uses; the area to the east appears to be developed with an institutional/office use; and the area to the west is developed with single family uses.

### **Zoning/BDA History:**

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

### **Timeline:**

- Sept. 28, 2007      The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- October 18, 2007:    The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- October 18, 2007:    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 October 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
  - the November 2<sup>nd</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 November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

October 23, 2007 The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

October 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Development Services Current Planning Assistant Director, 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.

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

**STAFF ANALYSIS:**

- This special exception request is made to restore nonconforming use rights (and obtain a Certificate of Occupancy) for a “vehicle display, sales, and service” use that has been discontinued for six months or more.
- The “vehicle display, sales, and service” use on the subject site is a nonconforming use that appears to have become a nonconforming use in 1989 during the city-wide zoning transition program.
- Although the applicant has stated that his client purchased the property in September of 2007, and that the previous owner had been looking for a suitable tenant for over a year, no information has been submitted documenting how long the nonconforming “vehicle display, sales, and service” use on the site has been discontinued.
- The applicant has the burden of proof in establishing the following related to the special exception request:
  - There was a clear intent not to abandon the nonconforming “vehicle display, sales, and service” use on the subject site even though the use was discontinued for six months or more.
- Granting this request would reinstate/restore the nonconforming use rights that were lost when the “vehicle display, sales, and service” use was vacant for a period of six (6) months or more. Granting this request would restore the “vehicle display, sales, and service” use as legal nonconforming use but not as a legal *conforming* use. The

applicant would have to make application for a change in zoning and obtain approval from City Council in order to make the use on the site a legal conforming use.

- If restored/reinstated, the nonconforming use would be subject to compliance to use regulations of the Dallas Development Code by the Board of Adjustment as any other nonconforming use in the city. (The applicant has been advised by staff of Section 51A-4.704 which is the provision in the Dallas Development Code pertaining to “Nonconforming Uses and Structures”).

**BOARD OF ADJUSTMENT ACTION: NOVEMBER 12, 2007**

**APPEARING IN FAVOR:** Ed Simons, 900 Jackson St., #640, Dallas, TX

**APPEARING IN OPPOSITION:** No one

**MOTION:** **Moore**

I move that the Board of Adjustment, in Appeal No. **BDA 067-162**, on application of Masterplan, represented by Ed Simons, **deny** the special exception requested by this applicant **without** prejudice, because the nonconforming use was discontinued for six months or more and the owner has failed to show that there was a clear intent not to abandon the use even though it was discontinued for six months or more.

**SECONDED:** **Boyd**

**AYES:** 3– Madrigal, Boyd, Moore,

**NAYS:** 2– Maten, Jefferson

**MOTION PASSED:** 3 – 2

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**FILE NUMBER:** BDA 067-163

**BUILDING OFFICIAL’S REPORT:**

Application of Masterplan, represented by Ed Simons, for a special exception to the parking regulations and for variances to the front yard setback regulations at 3434 Swiss Avenue. This property is more fully described as a 1.615 acre tract in City Block 750 and is zoned PD-298 (Subarea 12) which requires parking to be provided and requires a maximum front yard setback of 15 feet. The applicant proposes to construct a nonresidential structure for medical clinic or ambulatory surgical center use and provide 345 of the required 431 parking spaces which would require a special exception of 86 spaces to the parking regulations; and to construct and maintain a nonresidential structure and provide as much as a 134 foot, 6 inch front yard setback which will require a variance of up to 119 feet, 6 inches to the front yard setback regulations.

**LOCATION:** 3434 Swiss Avenue

**APPLICANT:** Masterplan  
Represented by Ed Simons

## **REQUESTS:**

- The following appeals have been made in this application:
  1. A special exception to the off-street parking regulations of 86 spaces (or 20% of the required off-street parking) is requested in conjunction with constructing an approximately 27,000 square foot “medical clinic or ambulatory surgical center” use addition proposed to be located atop an existing 3 story parking garage.
  2. Variances to the maximum front yard setback regulations of up to 119’ 6” are requested in conjunction with constructing the medical office addition atop the existing parking garage since both the existing garage and proposed addition exceed/would exceed the maximum front yard setback established for the Planned Development zoning district in the late 1980’s.

## **STAFF RECOMMENDATION (related to parking special exception):**

Approval, subject to the following condition:

- The special exception of 86 spaces shall automatically and immediately terminate if and when the “medical clinic or ambulatory surgical center” use is changed or discontinued.

Rationale:

- This special exception is the exact same request that staff supported and was granted in March of 2007 by Board of Adjustment Panel C but “lost”/expired since the applicant failed to make application for a building permit or certificate of occupancy within 180 days from the March 2007 favorable action.
- The Development Services Senior Engineer has indicated that he has (once again) no objections to the request.
- The applicant has substantiated how the parking demand generated by the use does not warrant the number of off-street parking spaces required, and that the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

## **STAFF RECOMMENDATION (related to variances):**

Approval, subject to the following condition:

- Compliance with the submitted revised site plan is required.

Rationale:

- The site is different from other parcels of land in that it has 3 front yard setbacks. This characteristic of the site creates hardship and precludes the existing nonconforming structure (and the proposed addition to sit atop) from complying with the minimum and maximum front yard setbacks of PD No. 298.
- Granting the front yard setback variances along Swiss Avenue and Swiss Circle would not appear to be contrary to the public interest since the proposed addition triggering/requiring the variances would sit atop an existing 1960’s nonconforming parking structure and would only increase its nonconforming by enlarging it upward with an additional floor/story.

**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.

### **STANDARD FOR A VARIANCE:**

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

### **GENERAL FACTS (related to parking special exception):**

- The Dallas Development Code requires the following parking requirements for the existing/proposed use on the subject site:
  - 1 space is required for every 200 square feet of “medical clinic or ambulatory surgical center use” use.According to a document submitted by the applicant’s representative and the Building Official’s Report, the applicant proposes to provide 345 (or 80 percent) of the total required 431 off-street parking spaces for the existing and proposed medical clinic or ambulatory surgical center use on the site.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
  - a letter and related documentation that provided additional details about the request; and
  - a revised full site plan.

### **GENERAL FACTS (related to variances):**

- Structures on lots located in Subdistrict 12 of PD No. 298 are required to provide a front yard setback of no less than 5’ and no more than 15’.  
The PD No. 298 *maximum* front yard setback provision was established in the late 1980’s to encourage new development close to the street in order to promote a more urban/pedestrian environment.  
According to a letter written by the applicant’s representative, the proposed addition will provide a 134.5’ setback along Swiss Avenue, a 22’ setback along the western portion of Swiss Avenue where it intersects Floyd Street, and a 12’ setback along Floyd Street – a setback that complies with the setback regulations.

A site plan has been submitted that shows the proposed garage/office building to be in compliance with the minimum 5' front yard setback. The proposal does not comply with the PD No. 298 *maximum* 15' front yard setback because the proposed building will be located as far as 22' from the front property line along Swiss Circle and as far as 134.5' from the front property line along Swiss Avenue.

- The existing parking structure on the site that the office is proposed to be located atop is a nonconforming structure – that is a structure that does not conform to the regulations (other than use regulations) of the code, but was lawfully constructed under the regulations in force at the time of construction. The Dallas Development Code states that a person may renovate, remodel, repair, rebuild, or enlarge a nonconforming structure if the work does not cause the structure to become more nonconforming as to the yard, lot, and space regulations. Variances are requested in conjunction with this proposal since the addition is to cause the structure to become more nonconforming upwards with an additional floor. (The existing building footprint of the 1960's structure does not conform with the minimum and maximum front yard setbacks that were established for PD No. 298 in the late 80's).
- The site is flat, slightly irregular in shape and according to the Building Official's Report, 1.645 acres in area. The site has three front yard setbacks: one along Swiss Avenue, one along Swiss Circle, and one along Floyd Street. (No encroachment is shown or requested to be located in the site's Floyd Street front yard setback).
- DCAD records indicate that the site is developed with a 51,820 square foot medical office building built in 1966.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
  - a letter and related documentation that provided additional details about the request; and
  - a revised full site plan.

## **BACKGROUND INFORMATION:**

### **Zoning:**

<u>Site:</u>	PD No. 298 Subarea 12 (Planned Development District)
<u>North:</u>	PD No. 298 Subarea 11A and 12 (Planned Development District)
<u>South:</u>	PD No. 298 Subarea 12 and 12A (Planned Development District)
<u>East:</u>	PD No. 298 Subarea 12A (Planned Development District)
<u>West:</u>	PD No. 298 Subarea 11A (Planned Development District)

### **Land Use:**

The subject site is developed with medical office uses. The areas to the north, east, south, and west are developed with medical office, hospital, office, and off-street parking uses.

### **Zoning/BDA History:**

1. BDA 067-042, 3534 Swiss Avenue, the subject site  
 On March 29, 2007, the Board of Adjustment Panel C granted a special exception to the off-street parking regulations of 86 spaces (or 20% of the required off-street parking). The board imposed the following condition: the special exception shall automatically and immediately terminate if and when the medical office use on the site is changed or discontinued. The case report stated that the request was made in conjunction with constructing a 26,941 square foot addition for medical office use on a site developed with a 59,240 square feet building for medical office uses, and that the applicant proposed to provide 345 (or 80%) of the total required 431 off-street parking spaces.
  
2. BDA 056-144, 3515 Swiss Avenue, the north of the subject site  
 On May 17, 2006, the Board of Adjustment Panel B granted a variance to the off-street parking regulations of 21 spaces (or 46% of the required off-street parking). The case report stated that the request was made in conjunction with leasing an existing 11,480 square foot structure with a combination of “medical clinic” and “office” uses.

**Timeline:**

- Sept. 28, 2007: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- October 18, 2007: 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.”
- October 18, 2007: 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 requests;
  - the October 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;

- the November 2<sup>nd</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 November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Oct. 24 & Nov. 11, 2007      The applicant submitted additional information to the Board Administrator (see Attachment A).

October 25, 2007      The Building Inspection Development Code Specialist forwarded a revised Building Official’s Report to the Board Administrator (see Attachment B).

October 30, 2007:      The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Development Services Current Planning Assistant Director, 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.

October 31, 2007      The Development Services Senior Engineer submitted a review comment sheet marked “Has no objections” with the following comments:

1. “Refer to previous BDA067-042.
2. Letter dated 10/24/07.
3. Count of parking spaces for more than 2 weeks (1-24-07 to 2-9-07).”

**STAFF ANALYSIS (related to parking special exception):**

- This special exception request is made to restore a staff-endorsed, Board of Adjustment Panel C-approved application that expired/was lost since the applicant failed to make application for a building permit or certificate of occupancy within 180 days from the board’s favorable action on March 19, 2007.
- The applicant once again proposes to provide 345 (or 80 percent) of the required 431 spaces for a new approximately 27,000 square foot “medical clinic or ambulatory surgical center” use addition that will sit atop an existing parking garage.
- The applicant’s representative has submitted a letter stating that “This request is the same proposed addition of 26,941 square foot addition to an existing 3 story parking garage requested in BDA067-041” which was a request for a special exception to the off-street parking regulations of 86 spaces granted by Board of Adjustment Panel



A in on March 19, 2007. The letter states that the current application is being resubmitted for two reasons: 1) the applicant did not apply for a building permit or certificate of occupancy within 180 days from the favorable action and the special exception expired; and 2) since the addition is to be constructed on an existing parking garage that exceeds the maximum setback requirements, the applicant can not obtain a permit for the addition atop the garage without obtaining variances to the front yard setback regulations.

- Granting this request, subject to the condition that the special exception of 86 spaces automatically and immediately terminates if and when the “medical clinic or ambulatory surgical center” use is changed or discontinued, would allow the proposed approximately 27,000 square foot addition to be added atop the existing parking garage structure.
- The applicant has the burden of proof in establishing the following:
  - The parking demand generated by the “medical clinic or ambulatory surgical center” use does not warrant the number of off-street parking spaces required, and
  - The special exception of 86 spaces (or 20 percent of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- The Development Services Senior Engineer has indicated that he has no objections to this request.

#### **STAFF ANALYSIS (related to variances):**

- Variances to the *maximum* front yard setbacks along Swiss Avenue and Swiss Avenue Circle are requested to construct/maintain a medical office addition atop an existing nonconforming parking garage structure constructed in the 1960’s.
- The site plans submitted in conjunction with this application are virtually identical to plans submitted in conjunction with BDA067-042 – which was an application that was merely for a special exception to the off-street parking regulations, and was staff-endorsed and board-approved in March of 2007. According to the applicant, the front yard variance needs were not identified by the applicant/city staff in conjunction with BDA067-042.
- Although the existing parking garage structure can remain out of compliance with the maximum front yard setbacks established with the creation of a Planned Development District in the late 80’s as a nonconforming structure, the addition proposed to sit atop this nonconforming structure requires variances since it causes the structure to become more nonconforming, in this case, upwards with an additional floor.
- The site is flat, slightly irregular in shape and according to the Building Official’s Report, 1.645 acres in area. The site has three front yard setbacks: one along Swiss Avenue, one along Swiss Circle, and one along Floyd Street. (No encroachment is shown or requested to be located in the site’s Floyd Street front yard setback).
- The applicant has the burden of proof in establishing the following:
  - That granting the variances to the front yard setback regulations of up to 119.5’ requested in conjunction with constructing/maintaining an addition atop an existing 1960’s parking garage in the site’s Swiss Avenue and Swiss Circle front yard setbacks will not be contrary to the public interest when, owing to special

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

- The variances are necessary to permit development of the subject site (a site that is developed with a medical office and a parking garage, and a site that is flat, slightly irregular in shape and according to the Building Official's Report, 1.645 acres in area with three front yard setbacks) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 298 zoning classification.
- The variances would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the PD No. 298 zoning classification.
- If the Board were to grant the front yard variance requests, imposing a condition whereby the applicant must comply with the submitted revised site plan, the structure in the front yard setbacks would be limited to that what is shown on this plan (which in this case is an existing structure (with an addition floor atop) that would continue to provide a 134.5' setback along Swiss Avenue and a 22' setback along Swiss Circle – an existing structure with proposed added floor atop located beyond/behind 2 of the site's 3 *maximum* 15' front yard setbacks).

**BOARD OF ADJUSTMENT ACTION: NOVEMBER 12, 2007**

APPEARING IN FAVOR: Ed Simons, 900 Jackson St., #640, Dallas, TX

APPEARING IN OPPOSITION: No one

**MOTION #1: Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 067-163**, on application of Masterplan, represented by Ed Simons, **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development Code by 86 parking spaces, because our evaluation of the property and the testimony shows that the parking demand generated by the proposed use on the site does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard nor increase traffic congestion on adjacent and nearby streets. I further move that the following conditions 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 medical clinic or ambulatory surgical center use on the site is changed or discontinued.

**SECONDED: Boyd**

**AYES:** 5– Madrigal, Boyd, Moore, Maten, Jefferson

**NAYS:** 0–

**MOTION PASSED:** 5 – 0 (unanimously)

**MOTION #2: Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 067-163**, on application of Masterplan, represented by Ed Simons, **grant** the 119-foot-six-inch variance to the maximum front yard setback regulations along Swiss Avenue because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan is required.

**SECONDED: Moore**

**AYES:** 5– Madrigal, Boyd, Moore, Maten, Jefferson

**NAYS:** 0–

**MOTION PASSED:** 5 – 0 (unanimously)

**MOTION #3: Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 067-163**, on application of Masterplan, represented by Ed Simons, **grant** the seven-foot variance to the maximum front yard setback regulations along Swiss Circle because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan is required.

**SECONDED: Moore**

**AYES:** 5– Madrigal, Boyd, Moore, Maten, Jefferson

**NAYS:** 0–

**MOTION PASSED:** 5 – 0 (unanimously)

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**FILE NUMBER:** BDA 067-160

**BUILDING OFFICIAL’S REPORT:**

Application of Mark Tomason for a variance to the front yard setback regulations and for a variance to the off-street parking regulation at 5102 Mission Avenue. This property is more fully described as Lot 18 in City Block A/1998 and is zoned TH-3(A) which requires a front yard setback of 15 feet and requires a parking space to be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley. The applicant proposes to construct and maintain a residential structure and

provide a 5 foot 3 inch front yard setback which will require a 9 foot 9 inch variance to the front yard setback regulations, and to construct and maintain a structure with enclosed parking spaces with a setback of 14 feet 3 inches which will require a variance of 5 feet 9 inches to the off-street parking regulations.

**LOCATION:** 5102 Mission Avenue

**APPLICANT:** Mark Tomason

**REQUESTS:**

- The following appeals have been made in this application:
  1. A variance to the front yard setback regulations of 9' 9" is requested in conjunction with completing and maintaining two detached single family homes (or townhomes) in the site's Garrett Avenue 15' front yard setback on a site that is currently under development.
  2. A variance to the off-street parking regulations of 5' 9" is requested in conjunction with constructing and maintaining enclosed parking spaces in a two vehicle attached garage in one of the two detached single family homes currently under development on the subject site. (The enclosed parking spaces in the proposed garage would be located less than the required 20' distance they must be from Garrett Avenue right-of-way line).

**STAFF RECOMMENDATION (related to the front yard variance):**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The site is different from other parcels of land in that it has two front yard setbacks. This characteristic of the site creates hardship and precludes it from being developed in a manner commensurate with development upon other parcels of land in districts with the same TH-3 zoning classification. The required 15' front yard setback along Garrett Avenue only leaves about 21' of developable space left on the 41.3' wide site once a 15' front yard setback is accounted for on the south and a 5' side yard setback is accounted for on the north.
- In addition, although the proposed development complies with its TH-3 front yard setback requirements, it is held/unable to comply with the MF-2(A) front yard setback requirement that must be imposed on its Garrett Avenue frontage since the block of Garrett Avenue between Mission Avenue and Mannett Street is bisected with a zoning line whereby the most restrictive setback on the block must be provided for all lots within that block.

**STAFF RECOMMENDATION (related to the parking variance):**

Denial without prejudice

Rationale:

- Although staff recognizes that the site's property hardship created by its two front yard setbacks, staff recommends denial of this request since the applicant has not substantiated how granting this variance to the off-street parking regulations would not be contrary to public interest. The Development Services Senior Engineer is unable to make a recommendation on this request stating that the site plan does not show dimensions giving the distance of the enclosed parking spaces/garage door to the curb.

**STANDARD FOR A VARIANCE:**

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

**GENERAL FACTS (related to front yard variance):**

- Structures on lots zoned TH-3(A) are required to provide a minimum front yard setback of 0'. Structures on lots zoned MF-2(A) are required to provide a 15' front yard setback. The Dallas Development Code includes a general provision in its minimum front yard regulations stating that the front yard for the entire block must comply with the requirements of the district with the greatest yard requirement. The TH-3(A)-zoned site is located at the northeast corner of Mission Avenue and Garrett Street and has two front yard setbacks. The TH-3(A) zoned site has a 0' front yard setback on Mission Avenue, and a 15' front yard setback on Garrett Street since the more restrictive setback within the block (between Mission Avenue and Mannett Street) must be provided along Garrett Avenue. (This block on which the site is located is divided by a zoning line where part of the block is zoned TH-3(A) where a 0' front yard setback is required and the other part of the block is MF-2(A) where a 15' front yard setback is required).
- The site is flat, generally rectangular in shape (144' on the north, 115' on the south, 41' on the east, and 40' on the west) and approximately 5,200 square feet in area. The site is zoned TH-3(A). The site has two front yard setbacks: a 0' front yard setback on Mission Avenue, and a 15' front yard setback on Garrett Avenue. (No encroachment is shown or requested to be located in the site's Mission Avenue 0' front yard setback).

- DCAD records indicate that the site is developed with the following:
  - a single family home in very good condition built in 1940 with 1,523 square feet of living space; and
  - a 216 square foot detached garage.
 (The Board Administrator’s field visit of the site indicates that these structures have been demolished).

**GENERAL FACTS (related to the parking variance):**

- The Dallas Development Code requires that a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley.  
 The submitted site plan, floor plan, and elevation show that one of the two homes (the home addressed at 5100 Mission Avenue) is shown to have proposed enclosed parking spaces that would be located as close as 14’ 3” from the Garrett Avenue right of way line (or 5’ 9” into the 20’ setback/distance that an enclosed parking space is required to be from a street right-of-way line). (The site plan shows that the garage on the home located at 5102 Mission Avenue is in compliance with the parking regulation). This site plan appears to show that the enclosed parking spaces/garage door along Garrett Avenue is approximately 29’ from the projected pavement line.
- The site is flat, generally rectangular in shape (144’ on the north, 115’ on the south, 41’ on the east, and 40’ on the west) and approximately 5,200 square feet in area. The site is zoned TH-3(A). The site has two front yard setbacks: a 0’ front yard setback on Mission Avenue, and a 15’ front yard setback on Garrett Avenue. (No enclosed parking space is shown to be located within the 20’ location/distance requirement that a garage door/enclosed parking space must be from the Mission Avenue right-of-way line).
- DCAD records indicate that the site is developed with the following:
  - a single family home in very good condition built in 1940 with 1,523 square feet of living space; and
  - a 216 square foot detached garage.
 (The Board Administrator’s field visit of the site indicates that these structures have been demolished).

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: TH-3 (A) (Townhouse)
- North: TH-3 (A) (Townhouse)
- South: TH-3 (A) (Townhouse)
- East: MF-2 (A) (Multifamily)
- West: TH-3 (A) (Townhouse)

**Land Use:**

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

**Zoning/BDA History:**

- |   |  |
|---|--|
| 1. Miscellaneous Item #2, 5102<br>Mission Avenue (the subject site) | On November 12, 2007, the Board of Adjustment Panel C will consider granting a fee reimbursement in conjunction with this application. |
|---|--|

**Timeline:**

- Sept. 28, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- October 18, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- October 18, 2007: 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 October 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
  - the November 2<sup>nd</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 November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- October 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Development Services Current Planning Assistant Director, 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.

November 1, 2007 The Development Services Senior Engineer submitted an unmarked review comment sheet with the following comments: "No recommendation. The site plan does not show dimensions giving indication of the distance from curb to garage door."

**STAFF ANALYSIS (related to the front yard variance):**

- This front yard variance request is made to complete/maintain portions of two detached single family structures in the site's 15' front yard setback on Garrett Avenue.
- The proposal complies with the front yard setback requirements of the zoning district in which the site lies: TH-3(A). However the proposed homes do not comply with the MF-2(A) front yard setback requirement that must be provided along the site's Garrett Avenue frontage. The Dallas Development Code provision states that the most restrictive setback within a block divided by a zoning line must be provided along that street frontage. The block of Garrett Avenue on which the site is located is divided by a zoning line that separates lots zoned TH-3(A) zoning with a 0' front yard setback and lots zoned MF-2(A) zoning with a 15' front yard setback.
- A scaled site plan has been submitted that shows portions of both of the two "3 story" homes located in the site's 15' Garrett Avenue front yard setback. The site plan shows that the structures would be located 5' 3" from the site's Garrett Avenue front property line (or 9' 9" into the site's Garrett Avenue 15' front yard setback). According to calculations taken from the site plan by the Board Administrator, about 330 square feet of each of the proposed building footprints (one at about 1,000 square feet, the other at about 1,300 square feet) is located in the site's Garrett Avenue 15' front yard setback.
- The site is flat, generally rectangular in shape (144' on the north, 115' on the south, 41' on the east, and 40' on the west) and approximately 5,200 square feet in area. The site is zoned TH-3(A). The site has two front yard setbacks: a 0' front yard setback on Mission Avenue, and a 15' front yard setback on Garrett Avenue. (No encroachment is shown or requested to be located in the site's Mission Avenue 0' front yard setback).
- Once a 15' front yard setback is accounted for on the south along Garrett Avenue and a 5' side yard setback is accounted for on the north, the developable width remaining on the 41.3' wide site is 21.3'.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the front yard setback regulations of 9' 9" requested in conjunction with completing/maintaining two single family homes/townhomes in the site's Garrett Avenue front yard setback will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance to the front yard setback regulations of 9' 9" is necessary to permit development of the subject site (a site that is under development, and is generally rectangular in shape, approximately 5,200 square feet in area, zoned TH-3(A) with two front yard setbacks) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be



developed in a manner commensurate with the development upon other parcels of land in districts with the same TH-3(A) zoning classification.

- The variance to the front yard setback regulations of 9' 9" would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the TH-3(A) zoning classification.
- If the Board were to grant the front yard variance request of 9' 9", imposing a condition whereby the applicant must comply with the submitted site plan, the structures in the front yard setback would be limited to that shown on this plan – which in this case is portions of the two single family structure/townhomes located 5' 3" from the site's Garrett Avenue front property line (or 9' 9" into the Garrett Avenue 15' front yard setback).

**STAFF ANALYSIS (related to the parking variance):**

- This variance request to the off-street parking regulations is made to allow the applicant the ability to enclose parking spaces in the garage of one of the two proposed homes on the site that would face/access to Garrett Avenue.
- If the board were to grant the front yard variance request to complete/maintain the single family townhomes located in the 15' Garrett Avenue front yard setback, the detached townhome whose garage door is less than 20' from Garrett Avenue could be constructed and maintained on the site as shown on the submitted site plan *without* a garage door (on enclosed parking spaces) if this parking variance request were denied.
- The Development Services Senior Engineer has submitted an unmarked review comment sheet commenting that the site plan does not show dimensions giving indication of the distance from the curb to garage door.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the parking regulations of 5' 9" to construct and maintain a garage with enclosed parking spaces 14' 3" away from the Garrett Avenue right of way line will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance to the parking regulations of 5' 9" is necessary to permit development of the subject site (a site that is under development, and is generally rectangular in shape, approximately 5,200 square feet in area, zoned TH-3(A) with two front yard setbacks) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same TH-3(A) zoning classification.
  - The variance to the parking regulations of 5' 9" requested to construct and maintain a garage structure with enclosed parking spaces 14' 3" away from the Garrett Avenue right of way line would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this

chapter to other parcels of land in districts with the same TH-3(A) zoning classification.

- Typically, when the Board has found that this type of variance request is warranted, they have imposed the following conditions:
  1. Compliance with the submitted site plan is required.
  2. An automatic garage door must be installed and maintained in working order at all times.
  3. At no time may the area in front of the garage be utilized for parking of vehicles.
  4. All applicable permits must be obtained.

These conditions are imposed to help assure that the variance will not be contrary to public interest.

If the Board were to grant the variance request of 5' 9", imposing a condition whereby the applicant must comply with the submitted site plan, the garage structure could be constructed and maintained as shown on the site plan with a garage door or enclosed parking spaces that is 14' 3" away from the Garrett Avenue right of way line (or as much as 5' 9" into the 20' setback/distance requirement).

**BOARD OF ADJUSTMENT ACTION: NOVEMBER 12, 2007**

APPEARING IN FAVOR: Mark Tomason, 3026 Mockingbird #241, Dallas, TX

APPEARING IN OPPOSITION: No one

**MOTION #1: Jefferson**

I move that the Board of Adjustment, in Appeal No. **BDA 067-160**, on application of Mark Tomason, **grant** the nine-foot-nine-inch variance to the front yard setback regulations because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

**SECONDED: Boyd**

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

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

**MOTION #2: Jefferson**

I move that the Board of Adjustment, in Appeal No. **BDA 067-160**, on application of Mark Tomason, **grant** the five-foot-nine-inch variance for an enclosed parking space entered directly from a street or alley, because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following

conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.
- An automatic garage door must be installed and maintained in working order at all times.
- At no time may the area in front of the garage be utilized for parking of vehicles.
- All applicable permits must be obtained.

**SECONDED: Maten**

**AYES:** 5– Madrigal, Boyd, Moore, Maten, Jefferson

**NAYS:** 0–

**MOTION PASSED:** 5 – 0 (unanimously)

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**MOTION: Maten**

I move to adjourn this meeting.

**SECONDED: Boyd**

**AYES:** 5 – Madrigal, Boyd, Moore, Maten, Jefferson

**NAYS:** 0 - None

**MOTION PASSED:** 5 – 0 (Unanimously)

**2:43 P. M.** - Board Meeting adjourned for **November 12, 2007.**

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CHAIRPERSON

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BOARD ADMINISTRATOR

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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.