

NOTICE FOR POSTING
BOARD OF ADJUSTMENT, PANEL A
TUESDAY, OCTOBER 18, 2005

Briefing:	10:00 A.M.	L1FN CONFERENCE CENTER AUDITORIUM
Public Hearing:	1:00 P.M.	L1FN CONFERENCE CENTER AUDITORIUM

Purpose: To take action on the attached agenda, which contains the following:

1. Zoning Board of Adjustment appeals of cases the Building Official has denied.
2. And any other business which may come before this body and is listed on the agenda.

***All meeting rooms and chambers are located in Dallas City Hall, 1500 Marilla, Dallas, Texas 75201**

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10-18-2005

BOARD OF ADJUSTMENT, PANEL A
TUESDAY, OCTOBER 18, 2005
AGENDA

BRIEFING	L1FN CONFERENCE CENTER AUDITORIUM	10:00 A.M.
LUNCH		
PUBLIC HEARING	L1FN CONFERENCE CENTER AUDITORIUM	1:00 P.M.

Donnie Moore, Chief Planner
Steve Long, Board Administrator

MISCELLANEOUS ITEM

Approval of the Tuesday, September 20, 2005 Board of Adjustment Public Hearing Minutes	M1
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UNCONTESTED CASES

BDA 045-290	3605 Brown Street REQUEST: Application of Anna Pace, President, Brown St. HOA, represented by Erin Scherer of the Michael R. Coker Company, for a special exception to the fence regulations and to the visibility obstruction regulations	1
BDA 056-003	9423 Alva Court REQUEST: Application of Buddy Mullino for a special exception to the fence regulations and special exceptions to the visibility obstruction regulations	2
BDA 056-005	11700 Preston Road REQUEST: Application of Greenberg Farrow Architecture, Inc., represented by Jackson Walker L.L.P., for a special exception to the parking regulations	3
BDA 056-010	4425 N. Central Expressway REQUEST: Application of MD Promenade, represented by Suzan Kedron of Jackson Walker L.L.P., for a special exception to the sign regulations	4

HOLDOVER CASES

BDA 045-257	6535 Winton Street REQUEST: Application of Carolyn E. Roberts for a special exception to allow a second dwelling unit and a variance to the side yard, rear yard, height, and floor area ratios regulations	5
BDA 045-283	12115 Fieldwood Lane REQUEST: Application of Zone Systems Inc. for a variance and a special exception for tree preservation to the side yard setback regulations	6

EXECUTIVE SESSION NOTICE

The Commission/Board may hold a closed executive session regarding any item on this agenda when:

1. seeking the advice of its attorney about pending or contemplated litigation, settlement offers, or any matter in which the duty of the attorney to the Commission/Board under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act. [Tex. Govt. Code §551.071]
2. deliberating the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.072]
3. deliberating a negotiated contract for a prospective gift or donation to the city if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.073]
4. deliberating the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or to hear a complaint or charge against an officer or employee unless the officer or employee who is the subject of the deliberation or hearing requests a public hearing. [Tex. Govt. Code §551.074]
5. deliberating the deployment, or specific occasions for implementation, of security personnel or devices.. [Tex. Govt. Code §551.076]
6. discussing or deliberating commercial or financial information that the city has received from a business prospect that the city seeks to have locate, stay, or expand in or near the city and with which the city is conducting economic development negotiations; or deliberating the offer of a financial or other incentive to a business prospect. [Tex. Govt. Code §551.086]

(Rev. 6-24-02)

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel A September 20, 2005 public hearing minutes.

FILE NUMBER: BDA 045-290

BUILDING OFFICIAL'S REPORT:

Application of Anna Pace, President, Brown St. HOA, represented by Erin Scherer of the Michael R. Coker Company, for a special exception to the fence regulations and to the visibility obstruction regulations at 3605 Brown Street. This property is more fully described as Lots 12 and 13 in City Block 8/1013 and is zoned PD 193 MF-3, which limits the height of a fence in the required front yard to 4 feet and requires that no structure be located in a visibility triangle. The applicant proposes to maintain an existing 7 foot fence in the required front yard and maintain a fence located in the visibility triangles, which would require a special exception of 3 feet to the fence height regulations and special exceptions to the visibility obstruction regulations. Referred to the Board of Adjustment in accordance with Section 51-3.102(d) (3) (10) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions and variances.

LOCATION: 3605 Brown Street

APPLICANT: Anna Pace, President, Brown St. HOA
Represented by Erin Scherer of the Michael R. Coker Company

REQUESTS:

The following appeals have been made in this application on a site currently developed with townhomes:

1. A special exception to the fence height regulations of 3' is requested to maintain a 7'-high open steel fence located in the Brown Street front yard setback.
2. Special exceptions to the visibility obstruction regulations are requested to maintain an open steel vehicular gate and an open steel fence located in the two, 20'-visibility triangles at the drive approach into the site from Brown Street.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE REGULATIONS:

Section 51A-4.602 of the Dallas Development Code states that the board may grant a special exception to the fence regulations when in the opinion of the board, the special exception will not adversely affect neighboring property.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISIBILITY OBSTRUCTION REGULATIONS:

The Board shall grant a special exception to the requirements of the visibility obstruction regulations when, in the opinion of the Board, the item will not constitute a traffic hazard.

GENERAL FACTS (related to the fence special exception):

- The Dallas Development Code states that in all residential districts, except multifamily districts, a fence may not exceed four feet above grade when located in the required front yard, except when the required front yard is governed by the side or rear yard regulations pursuant to Section 51A-4.401.
- In addition, the Dallas Development Code states that in a multifamily districts, a fence located in the required front yard may be built to a maximum height of 6 feet above grade if all conditions in the following subparagraph are met:
 - No lot in the blockface may be zoned as a single family or duplex district.
 - No gates for vehicular traffic may be located less than 20 feet from the back of the street curb.
 - No fence panel having less than 50 percent open surface may be located less than five feet from the front lot line.
- The applicant is proposing to maintain a 7'-high steel fence on the subject site which is located in a multifamily subdistrict. But in this particular case, the maximum height allowed for a fence located in the required front yard is 4' since a gate for vehicular traffic is located less than 20 feet from the back of the street.
- Building Inspection had originally documented that the need before the board of adjustment was a special exception to the fence regulations related to the location of the gates on the site that were not located 20' from the back of the street curb. The applicant's application/appeal to the board addressed this issue. However, upon further review of the Dallas Development Code by the Board Administrator and the Assistant City Attorneys to the board, it appeared that the gate location was only a factor as to the issue at hand: how high a fence could be constructed and maintained in a multifamily district or subdistrict. The Board of Adjustment review staff members determined at the August 29th staff review team meeting that the issue before the board was a fence height special exception of 2' since only a 4'-high fence is permitted on this site in the multifamily subdistrict since there is a gate on the site that is not located at least 20' from the back of the street curb. A revised Building Official's was created accordingly.
- Building Inspection states that no permit was issued by the City for the existing fence on this site.
- Three elevations have been submitted with this appeal: a left elevation, a right elevation, and a front elevation. These elevations show a 7'-high open steel bar fence with 7' bar steel posts, and a 7' high open steel bar "electronic gate door."
- The originally submitted site plan noted the "approximate location of fence/security gate." As a result, staff could not provide information about how long the fence was, where it was located in relation to the property line and curb line.
- On September 29, 2005, the applicant's representative submitted a revised site plan (see Attachment A). The following information could be gleaned from this plan:
 - the fence is approximately 100' long parallel to Brown Street, and 10' long on both sides of the site in the 10' Brown Street front yard setback ;
 - the fence and gate are located 12' from the Brown Street curb line (the distance of the existing fence and gate relative to the site's property line cannot be determined since the property line has not been labeled on the site plan).
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences that appeared to be above 4' in height in a front yard setback.

- On September 29, 2005, the applicant's representative submitted additional information to staff (see Attachment A). This information includes the following:
 - a letter that provides additional information about the request;
 - copies of elevations that were submitted with the original application;
 - a revised site plan; and
 - a series of support letters from neighbors/owners adjacent to the site (and map showing where the support is located).

GENERAL FACTS (related to the visibility obstruction special exception):

- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (30-foot visibility triangles at intersections and 20-foot visibility triangles at drive approaches); and
 - between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- The applicant requests to maintain an open steel bar fence and an open steel bar “electronic gate door” in the site's two 20'-visibility triangles at the drive approach to the site from Brown Street.
- On September 29, 2005, the applicant's representative submitted additional information to staff (see Attachment A). This information includes the following:
 - a letter that provides additional information about the request;
 - copies of elevations that were submitted with the original application;
 - a revised site plan; and
 - a series of support letters from neighbors/owners adjacent to the site (and map showing where the support is located).

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (MF-3 Subdistrict) (Planned Development District, Multifamily)
North: PD No. 193 (MF-3 Subdistrict) (Planned Development District, Multifamily)
South: PD No. 193 (MF-3 Subdistrict) (Planned Development District, Multifamily)
East: PD No. 193 (MF-3 Subdistrict) (Planned Development District, Multifamily)
West: PD No. 193 (MF-3 Subdistrict) (Planned Development District, Multifamily)

Land Use:

The subject site is developed with a townhomes. The areas to the north, east, south, and west are developed with residential 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:

July 26, 2005 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

August 18, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

August 19, 2005: The Board Administrator contacted the applicant's representative and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the August 26th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the September 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the September public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

August 29, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September 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 Senior Transportation Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; and the Assistant City Attorneys to the Board.

A review comment sheet was submitted by the Development Services Senior Transportation Engineer in conjunction with this

application on August 26, 2005. The engineer commented that he had no objection to the request. The engineer listed the following:

- 3600 block of Brown Street is a residential street with 26 feet of pavement that it tees into Hood Street and seems that doesn't have a high volume of traffic.
- Residents open the gate within 50' with a remote control.
- The clear distance of 15 feet from the back of the curb will provide 83% of a 18 feet car length to be in the driveway approach from street pavement.
- Since the fences in the driveway visibility triangles are made of steel bars with opening spaces therefore driver can see the incoming cars and may not jeopardize the safety.
- There are limited number of property owners that would use the driveway approach for egress and ingress.

August 31, 2005 The applicant's representative requested to delay their hearing from Panel A's September 20th hearing to Panel A's October 18th hearing.

August 19, 2005: The Board Administrator wrote the applicant's representative a letter that conveyed the following information:

- acknowledgement of the postponement of the hearing until October;
- a September 30th deadline for additional information or modifications that he wished to submit for staff analysis.

Sept. 29, 2005 The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A).

October 3, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Board Administrator, the Development Services Senior Transportation Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

STAFF ANALYSIS (related to the fence special exception):

- A scaled revised site plan has been submitted that documents the location of the existing fence and gate over 4' in height relative to its proximity to the pavement line. The site plan also clearly shows the length of the existing fence and gate relative to the entire lot.
- Scaled elevations have been submitted that document the materials and height of the existing open steel bar fence and gate (both 7').
- The existing fence and gate are constructed of durable material.
- The applicant has submitted a petition of 15 neighbors who support the requests.
- Granting this special exception of 3' with conditions imposed that the applicant complies with the submitted revised site plan and elevations would assure that the

existing fence and gate over 4' in height are maintained as they currently exist on the site and as shown on these documents.

STAFF ANALYSIS (related to the visibility obstruction special exceptions):

- The Development Services Transportation Engineer has indicated that he has no objections to these requests.
- The applicant has submitted a petition of 15 neighbors who support the requests.
- If these requests are granted, subject to compliance with the submitted revised site plan and elevations, the existing open steel fence and gate would be “excepted” into the two Brown Street 20' visibility triangles as shown on these documents.

FILE NUMBER: BDA 056-003

BUILDING OFFICIAL'S REPORT:

Application of Buddy Mullino for a special exception to the fence regulations and special exceptions to the visibility obstruction regulations at 9423 Alva Court. This property is more fully described as Lot 16 in City Block 5/5595 and is zoned R-1 AC (A) which limits the height of a fence in the front yard to 4 feet and requires that no structure be located in a visibility corner clip. The applicant proposes to construct a 7 foot fence in the required front yard setback and to locate a fence in visibility triangles which would require a special exception of 3 feet to the fence height regulations and special exceptions to the visibility obstruction regulations. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 9423 Alva Court

APPLICANT: Buddy Mullino

REQUESTS:

The following appeals have been made in this application on a site being developed with a single family home:

1. A special exception to the fence height regulations of 3' is requested to construct and maintain the following in the 40' Alva Court front yard setback: a 4' 8" high open metal fence (with an 18" brick base), 5' high brick columns, two 7' high arched entry gates with 6' high brick entry columns.
2. Special exceptions to the visibility obstruction regulations are requested to construct and maintain the fence and columns as described above in four, 20'-visibility triangles at the two drive approaches to the site on Alva Court.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

Section 51A-4.602 of the Dallas Development Code states that the board may grant a special exception to the height requirement for fences when in the opinion of the board, the special exception will not adversely affect neighboring property.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISIBILITY OBSTRUCTION REGULATIONS:

The Board shall grant a special exception to the requirements of the visibility obstruction regulations when, in the opinion of the Board, the item will not constitute a traffic hazard.

GENERAL FACTS (related to the fence height special exception):

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.

The originally submitted elevation indicated that the proposed fence on the site would reach 4' 8" in height, the columns would reach 5' in height, the gates would reach 6.5' in height, and entry columns would reach 6' in height.

A revised elevation was submitted on October 3, 2005 (see Attachment A). The only height revision made from the originally submittal elevation was increasing the height of the gates from 6.5' to 7'.

- The following information was gleaned from the originally submitted site plan:
 - the fence at approximately 175' in length along Alva Court;
 - the fence to be linear in design with two recessed entryways,
 - the fence to be located approximately on the site's property line (or about 13' from the Alva Court pavement line);
 - two "brick columns w. stone caps" (heights not specified) located on the north and south side of the site in the 40' front yard setback; and
 - the gates to be located approximately 21' from the site's property line (or about 33' from the Alva Court pavement line).

A revised site plan was submitted on October 3, 2005 (see Attachment A). The only revision made from the originally submittal site plan was amending what had been two "brick columns w. stone caps" (heights not specified) located on the north and south side of the site in the 40' front yard setback to a "open metal fence 5' 9" ht (typ)" with "6' ht columns."

- The proposal would be located on a site where three single family homes would have direct/indirect frontage. The home immediately east has no fence but approximately 6' high entry columns (a height that includes decorative lights atop the columns); the house northeast has an approximately 8' high open iron fence with significant landscaping with 8' high columns (which is a result of BDA967-297), the home to the southeast has an approximately 7' high open wrought iron fence (atop a brick base).
- The Board Administrator conducted a field visit of the site and surrounding area along Alva Court (approximately 500 feet north and south of the site) and noted the following additional fence beyond those described above which appeared to be located in the front yard setback: a 7' high open wrought iron fence with 7' columns immediately south of the site.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included a letter and a revised site plan and elevation.

GENERAL FACTS (related to the visibility obstruction special exception):

- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at intersections and 20-foot visibility triangles at drive approaches); and

- between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).

The applicant requests to construct and maintain an open metal fence (with an 18' high brick base) and brick columns in the site's two 20'-visibility triangles at the two Alva Court drive approaches.

- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included a letter and a revised site plan and elevation. The amended plans had no affect on what was originally proposed to be located in the drive approach visibility triangles: an open metal fence (with an 18' high brick base) and brick columns.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA 967-297, 9434 Alva Court (the lot northeast of the subject site) On September 15, 1997, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 4' 6". The board imposed the following condition: compliance with the submitted site/landscape plan is required. The case report states that the request was made to construct an 8' high open steel fence with 8' 6" high stucco-finish columns and an 8' high open metal gate.

Timeline:

- August 26, 2005 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report. The applicant submitted photographs of the site and surrounding area that will be available for review at the briefing and public hearing.

- Sept. 22, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Sept. 23, 2005: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the September 30th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - the October 7th 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 October public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- October 3, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Board Administrator, the Development Services Senior Transportation Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- October 3, 2005 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).
- October 7, 2005 A review comment sheet was submitted by the Development Services Senior Engineer in conjunction with this request. The engineer commented that he has no objections to the request if certain conditions are met: "Fence and posts must be outside the 20' x 20' driveway visibility triangles at both locations."

STAFF ANALYSIS (related to the fence height special exception):

- A scaled revised site plan has been submitted that documents the location of the proposal relative to its proximity to the property line and pavement line. The revised site plan also clearly shows the length of the proposal relative to the entire lot.
- A scaled revised elevation has been submitted that documents the materials and height of the proposed open metal (with brick base) fence (4' 8"), brick columns (5'), open metal arched entry gates (7') with brick entry columns (6').
- The proposed fence, columns, and gates would be constructed of durable material.
- Granting this special exception of 3' with conditions imposed that the applicant complies with the submitted revised site plan and elevation would assure that the proposed fence, columns, and gate are constructed and maintained as shown on these documents.

STAFF ANALYSIS (related to the visibility obstruction special exceptions):

- The Development Services Senior Engineer has indicated that he has no objections to this request if certain conditions are met: "Fences and posts must be outside the 20' x 20' driveway visibility triangles at both locations."
- If these requests are granted, subject to compliance with the submitted revised site plan and elevation, the proposed fence and columns would be "excepted" into the four, 20' visibility triangles at the two drive approaches into the site from Alva Court.

FILE NUMBER: BDA 056-005

BUILDING OFFICIAL'S REPORT:

Application of Greenberg Farrow Architecture, Inc., represented by Jackson Walker L.L.P., for a special exception to the parking regulations at 11700 Preston Road. This property is more fully described as a tract of land in City Block 6378 and is zoned CR which requires parking to be provided for new construction. The applicant proposes to construct an addition to an existing retail building and provide 943 of the required 1,154 parking spaces which would require a special exception of 211 parking spaces or 18.3%. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 11700 Preston Road

APPLICANT: Greenberg Farrow Architecture, Inc.
Represented by Jackson Walker L.L.P.

REQUEST:

- A special exception to the off-street parking regulations of 211 (or 18% of the required off-street parking) is requested in conjunction with providing 943 (or 82% of the total required 1,154 off-street parking spaces. The request is made to:
 - accommodate the move of the Whole Foods Market location from the west side of Preston Road to the former Minyard's location in the subject site: the Preston Forest Shopping Center at the southeast corner of Preston Road and Forest Lane; and
 - allow the existing approximately 42,500 square foot vacant grocery store space to be expanded by approximately 8,300 square feet. (With the proposed supermarket, the center would provide about 227,000 square feet of retail, restaurant, and office uses).

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:

- A table in the originally submitted parking analysis/study of August of 2005 (which will be available for review upon request at the briefing/public hearing) detailed the Dallas Development Code parking requirements for what were originally deemed to be uses in the existing shopping center:
 - 1 space is required for every 200 square feet of retail floor area use.
 - 1 space is required for every 100 square feet of restaurant floor area use.
 - 1 space is required for every 333 square feet of office floor area use.
 - 1 space is required for every 1,000 square feet of warehouse floor area use.

The table in the originally submitted parking study documented the following parking requirements for the spaces/uses in the existing shopping center:

- Retail parking spaces required:	706
- Retail supermarket spaces required:	254
- Restaurant spaces required:	83
- Office spaces required:	32
- Warehouse spaces required:	12
- Total:	1,087
- Provided:	943
- Surplus (Deficiency):	(144)

- The site plan originally submitted with the application made the following notations:
 - Existing Minyards - \pm 42,500 SF
 - Expansion areas of \pm 5,280 SF and \pm 3,021 SF
- On September 29, 2005, the applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a revised site plan;
 - a revised parking analysis/study dated September 2005; and
 - a letter that provides further details about the request (stating that the items have been changed to reflect a corrected calculation as the Code-required parking for the area of request but do not change the number of spaces provided nor materially change the analysis of the request with regard to the applicable standard).

The table in the revised submitted parking study documents the following parking requirements for the spaces/uses in the existing shopping center:

- Retail parking spaces required:	785
- Retail supermarket spaces required:	254
- Restaurant spaces required:	83
- Office spaces required:	32
- Total:	1,154
- Provided:	943
- Surplus (Deficiency):	(211)

The revised site plan makes notations that adjust parking space numbers to reflect the parking statistics above however has not altered the following notations made on the originally submitted site plan:

- Existing Minyards - \pm 42,500 SF
- Expansion areas of \pm 5,280 SF and \pm 3,021 SF
- On September 30, 2005, the applicant's representative submitted information beyond what was submitted with the original application (see Attachment B). This information included the following:
 - a letter that provides further details about the request; and
 - documents from the revised parking analysis/study dated September 2005.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail)
North: CR (Community Retail)
South: R-16(A) (Single family 16,000 square feet)
East: R-16(A) (Single family 16,000 square feet)
West: CR (Community Retail)

Land Use:

The subject site is developed as a shopping center (The Preston Forest Shopping Center). The areas to the north and west are developed with retail and commercial uses, and the areas to the east and south are developed with single family uses.

Zoning/BDA History:

1. BDA 978-121, 11661 Preston Road (the site at the southwest corner of Preston and Forest, immediately west of the subject site) On June 15, 1998, Board of Adjustment Panel C denied a request for a special exception to the off street parking regulations of 32 spaces and a variance to the off street parking regulations without prejudice. The case report stated that the applicant had requested a parking special exception request whereby 845 of 877 required spaces would be provided, and had requested a variance to the parking regulations (related to aisle width). Both appeals were requested in conjunction with transitioning retail space to restaurant space in an existing shopping center (Preston Forest Village).

Timeline:

- Sept. 1, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Sept. 22, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Sept. 23, 2005: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the

applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;

- the September 30th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the October 7th 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 October public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Sept. 29 & 30, 2005

The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A and B).

October 3, 2005:

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

October 7, 2005

The Development Services Senior Engineer forwarded the comments on this appeal. The engineer commented with no objections, and made the following comments on the appeal as originally submitted (where the special exception was for 144 spaces since the applicant was proposing to provide 943 of the required 1,087 spaces required):

- "Three different studies performed,
- Three other city's parking requirement comparison yield that the 943 proposed parking space is adequate, the maximum is for City of Plano in which requires 899,
- *Urban Land Institute (ULI) Shared Parking Study* parking demand is 919 parking spaces for weekday and 921 parking spaces for Saturday,
- *Urban Land Institute (ULI) requirements for Shopping Centers* parking recommendation yields 890 parking spaces less than the 943 proposed parking space,
- *Institute of Transportation Engineers (ITE) Parking Generation* peak parking demand yields 707 parking spaces weekday and 797 parking spaces for Saturday,

- *Institute of Transportation Engineers (ITE) Parking Generation* time-of-day parking demand yields 686 parking spaces weekday and 786 parking spaces for Saturday.”

October 10, 2005 The Development Services Senior Engineer forwarded an email to the Board Administrator stating that he felt the amended request (where the special exception was for 211 spaces since the applicant was proposing to provide 943 of the required 1,154 spaces required) was “reasonable.”

STAFF ANALYSIS:

- 82 percent of the required off-street parking spaces are proposed to be provided in conjunction expanding an approximately 42,500 square foot vacant grocery store space to be expanded by approximately 8,300 square feet.
- Granting this request, subject to the condition that the special exception of 211 spaces automatically and immediately terminates if and when the retail, restaurant, and office uses on the site is changed or discontinued, would allow an approximately 8,300 square foot expansion on an existing approximately 42,500 square foot vacant retail use with 18% less than the required number of off-street parking spaces.
- On October 7, 2005, the Development Services Senior Engineer forwarded comments on the request as it was originally submitted as a parking special exception of 144 spaces (when 943 of the required 1,087 spaces were to be provided). The engineer indicated that he had no objections and made the following additional comments:
 - “Three different studies performed,
 - Three other city’s parking requirement comparison yield that the 943 proposed parking space is adequate, the maximum is for City of Plano in which requires 899,
 - *Urban Land Institute (ULI) Shared Parking Study* parking demand is 919 parking spaces for weekday and 921 parking spaces for Saturday,
 - *Urban Land Institute (ULI) requirements for Shopping Centers* parking recommendation yields 890 parking spaces less than the 943 proposed parking space,
 - *Institute of Transportation Engineers (ITE) Parking Generation* peak parking demand yields 707 parking spaces weekday and 797 parking spaces for Saturday,
 - *Institute of Transportation Engineers (ITE) Parking Generation* time-of-day parking demand yields 686 parking spaces weekday and 786 parking spaces for Saturday.”
- On October 10, 2005, the Development Services Senior Engineer forwarded an email to the Board Administrator stating that he felt the amended request (where the special exception was for 211 spaces since the applicant was proposing to provide 943 of the required 1,154 spaces required) was “reasonable.”

FILE NUMBER: BDA 056-010

BUILDING OFFICIAL'S REPORT:

Application of MD Promenade, represented by Suzan Kedron of Jackson Walker L.L.P., for a special exception to the sign regulations at 4425 N. Central Expressway. This property is more fully described as Lot 6A in City Block G/1533 and is zoned PD 193 (GR), which states that non-monument signs are not allowed within 250 feet from private property in a non-business zoning district. The applicant proposes to erect a non-monument sign 150 feet from a non-business zoning district, which would require a special exception of 100 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 4425 N. Central Expressway

APPLICANT: MD Promenade
Represented by Suzan Kedron of Jackson Walker L.L.P

REQUEST:

- A special exception to the sign regulations of 100' is requested to locate a non-monument sign closer than 250 feet from private property in a non-business zoning district on a site developed as a restaurant use (Jaden's).

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

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

GENERAL FACTS:

- The Dallas Development Code states that non-monument signs are not allowed within 250' of either private property in a non-business zoning district or a public park of more than one acre.
The applicant is proposing to locate a non-monument sign 150' from a non-business zoning district which in this case is PD 193 (PDS 43) located south and west of the subject site. According to the applicant's representative, this is the residential subdistrict that necessitates this special exception request.
- A sign elevation had been submitted with the application. This elevation provides the following information:

- A sign that is 16' x 13' in size;
- A sign that is 45' high (a 13' long sign atop a 29' high monopole);
- A note that says "Final logo detail to be determined."
- On September 30, 2005, the applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a letter that provided further details about the request;
 - a revised application, and
 - a site plan that shows the location of the proposed sign relative to the private property in a non-business zoning district.
- On October 5, 2005, the applicant's representative submitted information beyond what was submitted with the original application (see Attachment B). This information included the following:
 - a letter stating how the proposed sign shown on the previously submitted plans was in the wrong location; how the revised site plan indicates the correct location of the sign putting the sign further south and approximately 160' from the non-business zoning district; how out of an abundance of caution, for notice purposes and to ensure that the applicant has ample room, a request of 100 feet is made whereby the sign is located 150' from a non-business zoning district; and
 - a revised site plan that shows the revised location of the proposed sign relative to the private property in a non-business zoning district.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (GR Subdistrict) (Planned Development, General Retail)
North: PD No. 193 (GR Subdistrict) (Planned Development, General Retail)
South: PD No. 193 (GR Subdistrict) & PD 193 (PDS 43) (Planned Development, General Retail. PD Sub.)
East: D(A) and MC-1 (Duplex and Multiple Commercial)
West: PD No. 193 (GR Subdistrict) & PD 193 (PDS 43) (Planned Development, General Retail. PD Sub.)

Land Use:

The site is currently developed with a restaurant use (Jaden's). The areas to the north and south are developed with office/retail uses; the area to the east is Central Expressway, and the area to the west is developed with multifamily use.

Zoning/BDA History:

- | | |
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| <ol style="list-style-type: none"> 1. Z023-154, Central Expressway, south of Armstrong Avenue and McKinney Avenue (a tract of land including the subject site) | <p>On October 8, 2004, the City Council recommended approval of an application for a GR Subdistrict within PDD No. 193, subject to deed restrictions volunteered by the applicant on property that had been zoned O-1 and O-2 Subdistricts within PDD No. 193.</p> |
|--|--|

Timeline:

- Sept. 1, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Sept. 22, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Sept. 23, 2005: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the September 30th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - the October 7th 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 October public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Sept. 30, 2005 The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A).
- October 3, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Board Administrator, the Development Services Senior Transportation Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

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

October 5, 2005 The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment B).

STAFF ANALYSIS:

- A revised site plan has been submitted that identifies the location of the sign that is proposed to be located about 160' from a non-business zoning district (which in this case is PD 193 (PDS 43) located south and west of the subject site).
- An elevation has been submitted that identifies the size of the sign (approximately 200 square feet) and height of the sign (45').
- Granting this special exception of 100' with conditions imposed that the applicant complies with the submitted revised site plan and sign elevation would allow the sign to be located on the site about 160' away from a non-business zoning district.
- In this particular case, the sign (if conditioned to the site plan and elevation) would not be visible from the condominiums located in the non-business zoning district given that there are one and two-plus story structures on the site located between the sign location and the condominiums to the south and west.
- Granting the request with a condition imposed that the applicant complies with the submitted revised site plan and sign elevation (not to include text and the logo on the sign elevation) would assure that the proposed sign would be located and constructed as shown of these plans.

FILE NUMBER: BDA 045-257

REVISED BUILDING OFFICIAL'S REPORT:

Application of Carolyn E. Roberts for a special exception to allow a second dwelling unit and a variance to the side yard, rear yard, height, and floor area ratios regulations at 6535 Winton Street. This property is more fully described as Lot 7 in City Block 12/2971 and is zoned R 7.5 (A) which allows only 1 dwelling unit per lot, and requires a 5 foot side and rear yard setback, limits the height of this accessory building to 17 feet 6 inches, and limits the floor area of an accessory structure (excluding floor area used for parking) to 25% of the floor area of the main structure or 391 square feet. The applicant proposes to construct an addition as a second dwelling unit and provide a 2 foot side yard setback, a 2 foot rear yard setback, a height of 23 feet 6 inches, and a floor area of 678 square feet or 43% of the floor area of the main structure. This requires a special exception to allow a second dwelling unit, and a variance of 3 feet to the side yard setback regulations, 3 feet to the rear yard setback regulations, 6 feet to the height regulations, and a variance of 287 square feet or 18% to the floor area ratio limitation. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) and (10) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions and variances.

LOCATION: 6535 Winton Street

APPLICANT: Carolyn E. Roberts

REQUESTS:

- A number of appeals have been made in this application in conjunction with replacing an existing detached 1-story garage with a 2-story garage/fitness room/office/dwelling unit structure on a site developed with a single family home. The appeals in this application are as follows:
 1. a special exception to the single family use regulations for an additional "dwelling unit" structure;
 2. a variance to the side yard regulations of 3' (amended from 2');
 3. a variance to the rear yard regulations of 3' (amended from 2');
 4. a variance to the height regulations of 6' (amended from 4'); and
 5. a variance to the floor area ratios regulations of 287 square feet (or 18%).

STANDARD FOR A SPECIAL EXCEPTION TO THE SINGLE FAMILY USE REGULATIONS TO AUTHORIZE AN ADDITIONAL DWELLING UNIT IN A SINGLE FAMILY ZONING DISTRICT:

The board may grant a special exception within the single family use regulations to authorize an additional dwelling unit in any single family zoning district when, in the

opinion of the board, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties. In granting a special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

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:

- “Single family” use is defined in the Dallas Development Code as “one dwelling unit located on a lot,” however, the code allows the Board of Adjustment to grant a special exception to this provision to allow an additional dwelling unit when, in their opinion, the additional dwelling unit will not:
 - 1) be used as rental accommodations; or
 - 2) adversely affect neighboring properties.
- The applicant has submitted a revised site plan that indicates a “Proposed 2 story garage/office” that will have the same building footprint (28’ 4” x 20’ 4”) and be in the same location as an existing “one story wood garage” shown on the same plan.
- The applicant has submitted a floor plan document that indicates the following four drawings:
 - a “Demo Plan – First Floor”
 - a “New First Floor Plan” indicating spaces allocated for a garage, a storage room, and a work room;
 - a “New Second Floor Plan” indicating spaces allocated for a storage room, a fitness room, an open room, an office, a bathroom, a closet, and a vestibule;
 - A “New Second Floor Plan” that provides other details specifically pertaining to location for a treadmill, tankless water heater, and glass block wall.
- The floor plan document establishes that the proposed structure will be 28’ x 20’ in area.
- The applicant has submitted an elevation document that indicates a north, south, east, and west elevation of the proposed structure. The elevations note the maximum height of the 2-story structure from the ground line to the top of the roof

pitch to be 21' 5". However, an amended "Building Official's Report" has been forwarded that indicates that the applicant proposes to construct an addition with a height of 23' 6".

- The elevation document indicates that the west elevation of the structure has no windows and that the north elevation adjacent to the alley has only a small band of windows on the 2nd floor.
- The Dallas Development Code requires a 5'-side yard setback for structures accessory to a residential use above 15' in height on lots zoned R-7.5(A).
The applicant is proposing to provide a 2'-side yard setback on the western side of the site for the approximately 21.5'-high structure which would require a variance of 3' to the side yard setback regulations.
- The Dallas Development Code requires a 5'-rear yard setback for structures accessory to a residential use above 15' in height and adjacent to an alley on lots zoned R-7.5(A).
The applicant is proposing to provide a 2'-rear yard setback on the northern side of the site for the approximately 21.5'-high structure which would require a variance of 3' to the rear yard setback regulations.
- The Dallas Development Code requires that the height of an accessory structure can not exceed the height of the main building on lots zoned R-7.5(A).
According the Building Official's Report and plans submitted by the applicant, the height of the accessory structure on this site is limited to 17' 6".
The applicant is proposing to construct (according to the revised Building Official's Report) a structure that is 23' 6" that would require a variance of 6' to the height regulations. (Note that the submitted elevation indicates that the structure is 21' 5" in height).
- The Dallas Development Code requires that the total floor area of any individual accessory structure on a lot, excluding floor area used for parking, may not exceed 25% of the floor area for the main building on lots zoned R-7.5(A).
According the Building Official's Report, the floor area of the proposed accessory structure on this site is limited to 25% of the floor area of the main structure or 391 square feet.
The applicant is proposing to construct an accessory structure with a floor area of (according the Building Official's Report) 678 square feet or 43% of the floor area of the main structure which (according to the Building Official's Report) would require a variance of 18% or 287 square feet to the floor area ratio limitation.
- The subject site is zoned R-7.5(A), flat, rectangular in shape (125' x 60'), 7,500 square feet in area, and according to DCAD records, developed with the following:
 - a single family home built in 1952 that is in "average" condition with 1,544 square feet of living area; and
 - a 560 square foot detached garage.
- The Dallas Development Code defines "family" as "individuals living together as a single housekeeping unit in which not more than four individuals are unrelated to the head of the household by blood, marriage, or adoption."
- The Dallas Development Code defines "single family" use as "one dwelling unit located on a lot."

- On May 11, 2005, the City Council adopted an ordinance that amended the provisions set forth in the Dallas Development Code regarding single family accessory structures.
- The Dallas Development Code had defined “dwelling unit” as “one or more rooms designed to accommodate one family and containing only one kitchen plus living, sanitary, and sleeping conditions.” The Dallas Development Code *now* defines “dwelling unit” as “one or more rooms designed to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms.”
- If this special exception request is granted, a completed deed restriction stating that the additional dwelling unit on the site will not be used for rental accommodations must be submitted to the Board Administrator, approved by the City Attorney’s Office as to form, and filed in the deed records of the applicable county (in this case, Dallas County) before the applicable permits for this additional dwelling unit can be issued by the City.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - photos of what the applicant states are houses larger than hers with detached garages in the area (which will be shown in the staff’s power point show at the briefing);
 - petitions signed by neighbors in support of the requests;
 - an elevation that shows the height of the existing single family home on the site;
 - a table showing other properties that are one story and have detached garages with additions;
 - a letter that explained in further detail why the requests should be granted;
 - a revised site plan/survey plat for the site where the applicant has shown that the proposed 2-story garage/office will be on the same location and sized as the existing 1-story garage; and
 - a revised elevation that inverts the originally submitted “north elevation” of the proposed accessory structure.
- The Board Administrator identified a discovery made by staff on the morning of September 16th that precluded the Board’s ability to take action on this matter at their September 20th public hearing: the address for this case on the posted agenda was incorrect. (The address on the posted agenda indicated 6335 Winton Street when the correct address for the subject site was 6535 Winton Street). The administrator informed the board that the address had been correctly conveyed in the notices sent to property owners and in the newspaper advertisement, therefore would not require renotece/readvertisement.
- However on October 4, 2005, the Building Inspection Development Code Specialist forwarded a revised “Building Official’s Report” that increased the side and rear yard variances requests from 2’ to 3’, and the height variance request from 4’ to 6’. These amendments reflected amendments sought by the applicant and required renotece to property owners and readvertisement in the newspaper.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is developed with a 1-story single family home with a 1-story detached garage. The areas to the north, east, south, and west are developed with single family uses.

Zoning/BDA History:

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

Timeline:

- June 17, 2005: 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 28, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 28, 2005: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the August 5th deadline to submit additional evidence for staff to incorporate into the board's docket;
 - 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.

August 15-

- Sept. 8, 2005 The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).
- August 29, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September 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 Senior Transportation Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; and the Assistant City Attorneys to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- Sept. 20, 2005: The Board of Adjustment was unable to hold a public hearing on this matter due to a posting error. The board delayed action on these matters until October 18, 2005.
- October 3, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Board Administrator, the Development Services Senior Transportation Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.
- October 4, 2005 The Building Inspection Development Code Specialist forwarded a revised "Building Official's Report" to the Board Administrator that increased the variances to the side and rear yard setbacks from 2' to 3' and increased the variance to the height regulations from 4' to 6'.

STAFF ANALYSIS (regarding the dwelling unit special exception request):

- The 2-story "dwelling unit" structure will additionally require variances to rear and side yard setback, floor area ratios, and height regulations.
- If the Board were to approve this request (along with the requests for variances to the rear yard, side yard, height, floor area ratios regulations), subject to imposing a condition that the applicant comply with the submitted revised elevation and revised site plan, the "dwelling unit" structure would be restricted to the specific location, size, and height shown on the submitted site/floor plan and elevation, which in this case is a 2-story structure that includes a "garage," a "work room;" two "storage rooms," an "open room," an office, a "fitness room;" bathroom, closet, and vestibule.
- The Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

- As of October 7, 2005, staff had received no letters in opposition of this request, and several petitions signed by 20 neighbors/owners in support of the second dwelling unit; by 3 neighbors/owners in support of the second dwelling unit with side, rear, height and floor area ratio variances; by 3 neighbors/owners in support of the rear and side yard variance requests; and by 3 neighbors/owners in support of the height variance and floor area ratio variance.

STAFF ANALYSIS (related to the variance requests):

- The subject site is flat, rectangular in shape (125' x 60') or 7,500 square feet in area on a parcel of land zoned R-7.5(A) – a zoning district where lots that are typically 7,500 square feet in area.
- If the Board were to grant the rear yard variance request (along with the requests for variances to the side yard, height, floor area ratios regulations, and the request for a special exception to the single family regulations for an additional dwelling unit), subject to the submitted revised site plan and revised elevations, the site could be retained with a 1-story single family home that has about 1,500 square feet of living area and further developed with a 2-story garage/fitness room/office/dwelling unit structure that has a building footprint of about 560 square feet. In addition, if the conditions were imposed, the encroachment into the site's 5'-rear yard setback for the accessory structure would be limited to an area that is 28' long and 2' wide (or 56 square feet), resulting in a 2'-rear yard setback.
- If the Board were to grant the side yard variance request (along with the requests for variances to the rear yard, height, floor area ratios regulations, and the request for a special exception to the single family regulations for an additional dwelling unit), subject to the submitted revised site plan and revised elevations, the site could be retained with a 1-story single family home that has about 1,500 square feet of living area and further developed with a 2-story garage/fitness room/office/dwelling unit structure that has a building footprint of about 560 square feet. In addition, if the conditions were imposed, the encroachment into the site's 5'-side yard setback for the accessory structure would be limited to an area that is 20' long and 2' wide (or 40 square feet), resulting in a 2'-side yard setback.
- If the Board were to grant the height variance request (along with the requests for variances to the rear yard, side yard, floor area ratios regulations, and the request for a special exception to the single family regulations for an additional dwelling unit), subject to the submitted revised site plan and revised elevations, the site could be retained with a 1-story single family home that has about 1,500 square feet of living area and further developed with a 2-story garage/fitness room/office/dwelling unit structure that has a building footprint of about 560 square feet. In addition, if these conditions were imposed, there would be a small discrepancy between the height of the proposed garage/fitness room/office/dwelling unit structure shown on the submitted elevations (at 21' 5") and the requested to be "varied" and conveyed in the revised "Building Official's Report" that would result in a structure that is 23' 6" in height, resulting in a 6' height variance (or an accessory structure 6' higher than the height of the main structure).
- If the Board were to grant the floor area ratios variance request (along with the requests for variances to the rear yard, side yard, height regulations, and the request for a special exception to the single family regulations for an additional dwelling unit),

subject to the submitted revised site plan and revised elevations, the site could be retained with a 1-story single family home that has about 1,500 square feet of living area and further developed with a 2-story garage/fitness room/office/dwelling unit structure that has a building footprint of about 560 square feet. In addition, if the conditions were imposed, the floor area (excluding floor area used for parking) of the proposed garage/fitness room/office/dwelling unit structure could not exceed beyond 678 square feet, resulting in a 287 square foot floor area ratios variance (or an accessory structure that is 18% beyond the 25% of floor area limitation permitted for an accessory structure relative to the main structure).

- As of October 7, 2005, staff had received no letters in opposition of this request, and several petitions signed by 20 neighbors/owners in support of the second dwelling unit; by 3 neighbors/owners in support of the second dwelling unit with side, rear, height and floor area ratio variances; by 3 neighbors/owners in support of the rear and side yard variance requests; and by 3 neighbors/owners in support of the height variance and floor area ratio variance.

BOARD OF ADJUSTMENT ACTION: September 19, 2005

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

- * **Due to an administrative error, the board lacked jurisdiction to hear this case and it was therefore held over to October 18, 2005.**

FILE NUMBER: BDA 045-283

ORIGINAL BUILDING OFFICIAL'S REPORT:

Application of Zone Systems Inc. for a special exception for tree preservation to the side yard setback regulations at 12115 Fieldwood Lane. This property is more fully described as Lot 16 in City Block A/6394 and is zoned R-16 (A) which requires a 10 foot side yard setback. The applicant proposes to construct an addition and provide a 1 foot side yard setback which would require a special exception of 9 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to special exceptions.

REVISED BUILDING OFFICIAL'S REPORT:

Application of Zone Systems Inc. for a variance to the side yard setback regulations at 12115 Fieldwood Lane. This property is more fully described as Lot 16 in City Block A/6394 and is zoned R-16 (A) which requires a 10 foot side yard setback. The applicant proposes to construct an addition and provide a 1 foot side yard setback which would require a variance of 9 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (10) of the Dallas Development Code, as amended, which states the power of the Board to variances.

LOCATION: 12115 Fieldwood Lane

APPLICANT: Zone Systems Inc.

REQUESTS:

- Two appeals have been made in conjunction with constructing and maintaining a 2-story garage/bedroom addition on a single family home. The applicant has made an application for a special exception of 9' to the side yard setback regulations for tree preservation and an application for a variance of 9' to the side yard setback regulations either of which (if granted) will allow an addition to be located in one of the site's two, 10' side yard setbacks.

STANDARD FOR A SPECIAL EXCEPTION TO THE SIDE YARD SETBACK REGULATIONS FOR TREE PRESERVATION:

The Dallas Development Code specifies that the board may grant a special exception to the minimum side yard requirements to preserve an existing tree. In determining to grant this special exception, the board shall consider the following factors:

- 1) whether the requested special exception is compatible with the character of the neighborhood;
- 2) whether the value of surrounding properties will be adversely affected; and
- 3) whether the tree is worthy of preservation.

STANDARD FOR A VARIANCE:

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

GENERAL FACTS:

- A 10' side yard setback is required for structures in the R-16 (A) zoning district. The applicant proposes to locate a garage/bedroom addition 1' from the site's western side property line in order to preserve 5 mature Crape Myrtles (ranging in size from 8" – 10 ¾") and one 31 caliper inch Fruitless Mulberry tree located in the site's western and northern side yard setbacks.
- The site is zoned R-16(A), is flat, rectangular in shape (138' x 119.5'), and approximately 16,500 square feet in area. The site has two, 35'-front yard setbacks and two 10'-side yard setbacks. A 15' alley separates the existing home and the house nearest the side yard encroachment on the west.
- The site plan indicates that the 2-story garage/bedroom addition will have a building footprint of approximately 21' in length by 34' in length (or 714 square feet).
- The applicant has stated that the home will be about 3,800 square feet in area after remodeling with the existing building footprint being maintained. The applicant has stated that the added 2nd floor will be only on a part of the structure to maintain roof lines that are compatible with other nearby homes.
- The subject site is developed with, according to DCAD records, the following:
 - a single family home that is in good condition, built in 1959 with 2,871 square feet of living area;
 - a 528 square foot attached carport; and
 - pool.
- The applicant submitted additional documentation regarding this request (see Attachment A). This information included the following:
 - a letter that provides additional information about the request and why it should be granted;
 - a site plan and table indicating the total land area and net land area (after setbacks are accounted) for the site and the lots west and north of the subject site;

- photos of the site and the alley that separates the site and the house nearest the side yard encroachment (that will be available for review at the briefing and hearing upon request); and
- two letters of support from the property owner immediately west of the site (and nearest the encroachment) and the other from the property owner immediately southwest of the site.
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Chief Board of Adjustment Planner (see Attachment B). This memo stated the following:
 - The applicant is required to provide a 10'-side yard setback but is proposing a 1' side yard setback in order to preserve existing trees that the applicant claims will be compromised if they have to meet the 10' setback.
 - The crepe myrtles are in decent condition and are located directly below low overhead power lines and may become misshapen as a result of pruning for line clearance.
 - The large mulberry is showing some indication that it is in slow decline where 2 major stems have died and were cut back and where one area of the canopy is beginning to die back. This tree may live a while longer but is in a declining state.
- The Board Administrator informed the Board of Adjustment of his discovery on August 12th that city staff had not properly notified property owners within a 200 foot radius of the subject site within 10 days from the public hearing. The administrator informed the board that the notification error was partially a result of the zoning map submitted with the application where the applicant's representative had circled the subject site to be located at the northwest corner of Nashwood Lane and Fieldwood Lane rather than the northwest corner of Myerwood Lane and Fieldwood Lane.
- On August 29, 2005, the applicant's representative submitted a revised zoning map that correctly encircled the subject site. This map was forwarded to Development Services Notification Staff in order for them to identify property owners within 200 feet from the site. No other information was submitted in conjunction with this appeal.
- The applicant's representative provided testimony at the September 20th public hearing requesting a delay of hearing on the matter at hand until October 18th to allow him to submit a request for a *variance* to the side yard setback regulations.
- On September 26, 2005, the Building Inspection Development Code Specialist forwarded an amended "Building Official's Report" that indicated the applicant's request for a *variance* to the side yard setback regulations of 9 feet.
- As of October 7, 2005, the applicant's representative had not submitted any additional evidence or documentation to be incorporated into the board's docket.

BACKGROUND INFORMATION:

Zoning:

Site: R-16 (A) (Single family district 16,000 square feet)
North: R-16 (A) (Single family district 16,000 square feet)
South: R-16 (A) (Single family district 16,000 square feet)
East: R-16 (A) (Single family district 16,000 square feet)

West: R-16 (A) (Single family district 16,000 square feet)

Land Use:

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

Zoning/BDA History:

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

Timeline:

- July 5, 2005: 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, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 15, 2005: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the July 25th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - the August 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- July 20, 2005 The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).
- July 27, 2005: 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.

Although no review comments sheets (with comments) were submitted in conjunction with this application, the City of Dallas Chief Arborist submitted a memo regarding this appeal (see Attachment B).

August 16, 2005 The Board of Adjustment held a public hearing on this matter but delayed action on this matter until September due to a notification error that was made by the City.

August 29, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September 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 Senior Transportation Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; and the Assistant City Attorneys to the Board.

Sept. 20, 2005 The Board of Adjustment conducted a hearing on the request for a special exception to the side yard regulations to preserve a tree. The board delayed action until October 18th and encouraged the applicant to make application for a variance to the side yard regulations.

Sept. 23, 2005: The Board Administrator wrote the applicant's representative a letter that conveyed the following information:

- the September 20th action taken by the board; and
- the September 30th deadline to submit additional evidence for staff analysis, and the October 7th deadline to submit additional evidence to be incorporated into the Board's docket materials.

October 3, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Board Administrator, the Development Services Senior Transportation Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

STAFF ANALYSIS (related to the special exception):

- The Chief Arborist has provided his assessment as to whether there is a tree (or are trees) on the site worthy of preservation.

- The applicant has obtained support of the request from the property owner who is immediately west of the site and nearest the encroachment.
- If the Board were to grant the side yard special exception request, subject to the submitted site plan, the encroachment would be limited into the site's western side yard setback, a side yard on the site that is separated from the nearest property to the west by a 15'-wide alley. (No side yard encroachment would be granted into the site's northern side yard setback if the submitted site plan was imposed as a condition). Additionally if granted, subject to the submitted site plan, the area of encroachment would be limited to an area for a garage/bedroom addition with, according to the applicant's representative, the same building footprint as a carport that had been in this location since 1997, resulting in a 1' side yard setback on the west side of the site.
- As of October 7, 2005, the applicant's representative had not submitted any additional evidence or documentation to be incorporated into the board's docket.

STAFF ANALYSIS (related to the variance):

- The subject site is zoned R-16(A), is flat, rectangular in shape (138' x 119.5'), and approximately 16,500 square feet in area. The site has two, 35'-front yard setbacks and two 10'-side yard setbacks. A 15' alley separates the existing home and the house nearest the side yard encroachment on the west.
- The applicant has submitted a document indicating that the net land area of the subject site is 6,116 square feet (accounting for side and front yard setbacks) while the lots immediately north and west have net land areas of 8,448 square feet and 8,800 square feet, respectively.
- The applicant has obtained support of the request from the property owner who is immediately west of the site and nearest the encroachment.
- If the Board were to grant the side yard variance request, subject to the submitted site plan, the encroachment would be limited into the site's western side yard setback, a side yard on the site that is separated from the nearest property to the west by a 15'-wide alley. (No side yard encroachment would be granted into the site's northern side yard setback if the submitted site plan was imposed as a condition). Additionally if granted, subject to the submitted site plan, the area of encroachment would be limited to an area for a garage/bedroom addition with, according to the applicant's representative, the same building footprint as a carport that had been in this location since 1997, resulting in a 1' side yard setback on the west side of the site.
- As of October 7, 2005, the applicant's representative had not submitted any additional evidence or documentation to be incorporated into the board's docket.

BOARD OF ADJUSTMENT ACTION: August 16, 2005

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Wise**

I move that the Board of Adjustment in Appeal No. **BDA 045-283**, hold this matter under advisement until **September 20, 2005**.

SECONDED: **Gabriel**

AYES: 5 – White, Hill, Gabriel, Beikman, Wise

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: September 20, 2005

APPEARING IN FAVOR: Peter Kavanagh, 1620 Handley Dr., Dallas, TX
Ann Cope, 12115 Fieldwood, Dallas, TX

APPEARING IN OPOSITION: No one

MOTION#1: **Gabriel**

I move that the Board of Adjustment, in Appeal No. **BDA 045-283**, on application of Bradley Cope, **grant** the request to provide a one-foot side yard setback as a special exception to the minimum side yard requirements in the Dallas Development Code because our evaluation of the property and the testimony shows that the requested special exception is compatible with the character of the neighborhood, the value of the surrounding properties will not be adversely affected, and the tree is worthy of preservation. 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: **Wise**

AYES: 3 – White, Gabriel, Wise

NAYS: 1 - Beikman,

MOTION FAILED: 3– 1

***Since the motion to approve did not get four concurring votes, the motion failed and is therefore deemed denied with prejudice.**

MOTION#2: **Wise**

I move that the Board of Adjustment, in Appeal No. **BDA 045-283**, on application of Bradley Cope, **deny** the special exception to the side yard requirements **without prejudice**, because our evaluation of the property and the testimony shows that the special exception is not compatible with the character of the neighborhood, the value of the surrounding properties will be adversely affected, and the tree is not worthy of preservation.

SECONDED: **Beikman**

AYES: 0 –

NAYS: 4 - White, Gabriel, Beikman, Wise

MOTION FAILED: 4– 0

MOTION#3: **Beikman**

I move that the Board of Adjustment, in Appeal No. **BDA 045-283**, suspend the Board's Rules of Procedure pertaining to the time period required prior to the hearing to amend an application to allow for re-notification of this matter as a request for a variance to the side yard regulations.

SECONDED: **Wise**

AYES: 4 – White, Gabriel, Beikman, Wise

NAYS: 0 -

MOTION PASSED: 4– 0 (unanimously)

MOTION#4: **Wise**

I move that the Board of Adjustment, in Appeal No. **BDA 045-283**, hold this matter under advisement until **October 18, 2005** in order to allow the applicant to resubmit/re-file his application as a request for a variance to the side yard regulations.

SECONDED: **Gabriel**

AYES: 4 – White, Gabriel, Beikman, Wise

NAYS: 0 -

MOTION PASSED: 4– 0(unanimously)