

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
TUESDAY, FEBRUARY 14, 2006**

MEMBERS PRESENT AT BRIEFING: Rob Richmond, Chair, Peggy Hill, Panel Vice-Chair, Ben Gabriel, regular member, Jordan Schweitzer, regular member, and Johnny Jefferson, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Jennifer Hironoto, Senior Planner, Claire Swann, Asst. City Attorney, Danny Sipes, Development Code Specialist, Chau Nguyen, Traffic Engineer, and Trena Law, Board Secretary

MEMBERS PRESENT AT HEARING: Rob Richmond, Chair, Peggy Hill, Panel Vice-Chair, Ben Gabriel, regular member, Jordan Schweitzer, regular member, and Johnny Jefferson, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Jennifer Hironoto, Senior Planner, Claire Swann, Asst. City Attorney, Danny Sipes, Development Code Specialist, Chau Nguyen, Traffic Engineer, and Trena Law, Board Secretary

10:40 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **February 14, 2006** docket.

1:00 P.M.

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

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel A January 17, 2006 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 14, 2006

MOTION: Jefferson

I move to approve the Board of Adjustment January 17, 2006 public hearing minutes.

SECONDED: Hill

AYES: 5 – Richmond, Hill, Gabriel, Schweitzer, Jefferson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 056-086(J)

BUILDING OFFICIAL'S REPORT:

Application of Teodora Elorza for a variance to the front yard setback regulations at 4501 South Denley Drive. This property is more fully described as Lot 16 in City Block 23/4330 and is zoned R-7.5(A) which requires a front yard setback of 25 feet. The applicant proposes to construct a single family dwelling and provide a 5 foot front yard setback which would require a variance of 20 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 grant variances.

LOCATION: 4501 South Denley Drive

APPLICANT: Teodora Elorza

REQUEST:

- A variance to the front yard setback regulations of 20' is requested in conjunction with constructing a single family dwelling.

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 25'-front yard setback is required in the R-7.5(A) zoning district.
- The site is flat, rectangular in shape (50' x 196'), and approximately 9,800 square feet in area.
- A typical lot size in the R-7.5(A) zoning district is 7,500 square feet for single family structures.
- The request site has two front yards. The side of the site adjacent to Mentor Avenue requires a front yard setback due to the requirement in the front yard provisions that the continuity of the established setback along street frontage must be maintained.
- A site plan has been submitted that indicates the area of the addition to be located in the 25'-front yard setback is approximately 781 square feet (15'4" x 51').
- The submitted floor plan shows the portion of the single family structure proposed to be located in the front yard setback will be used for three bedrooms and two bathrooms.
- The floor plan indicates that the proposed single family dwelling will have a footprint of approximately 1,468 square feet with an approximate floor area of 1,048 square feet.
- DCAD records indicate that the site is undeveloped.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

There have been no recent Board of Adjustment requests in the immediate area.

Timeline:

January 3, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

January 19, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

January 25, 2006: Senior Planner Hiromoto 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 February 2nd deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the February public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

January 30, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Development

Services Transportation Engineer, Senior Planner Hiromoto, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The plat map indicates the request site is approximately 9,800 square feet.
- If the Board were to grant the request, imposing a condition whereby the applicant must comply with the submitted site plan and elevation, the amount of additional encroachment into the front yard setback would be limited in this case to an area of approximately 781 square feet.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance of 20' to the front yard setback will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The front yard setback variance of 20' is necessary to permit development of the subject site (that is flat, rectangular in shape (50' x 196'), and approximately 9,800 square feet in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.
 - The front yard setback variance of 20' would not to be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.
- Granting this variance would allow approximately 781 square feet of a single family dwelling unit to encroach 20' into the 25' front yard setback.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 14, 2006

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Gabriel

I move that the Board of Adjustment **grant** the following application listed on the uncontested docket because it appears, from our evaluation of the properties and all relevant evidence that the application satisfies all the requirements of the Dallas Development Code and are consistent with the general purpose and intent of the Code. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan and elevation is required.

SECONDED: Jefferson

AYES: 5 – Richmond, Hill, Gabriel, Schweitzer, Jefferson

NAYS: 0 -

MOTION PASSED: 5-0 (unanimously)

FILE NUMBER: BDA 056-082

BUILDING OFFICIAL'S REPORT:

Application of Cullum Interests Inc., for a variance to the off street parking regulations at 1234 Round Table Drive. This property is more fully described as Lot 3 in City Block 2/7941 and is zoned IR which requires parking to be provided for commercial uses. The applicant proposes to convert an office/warehouse to a commercial printing use and provide 40 of the required 81 off street parking spaces which would require a variance of 41 spaces. 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 grant variances.

LOCATION: 1234 Round Table Drive

APPLICANT: Cullum Interests Inc.

REQUEST:

- A variance to the off-street parking regulations of 41 spaces is requested in conjunction with converting an office/warehouse to a commercial printing use.

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 commercial printing use is classified in the Dallas Development Code as job or lithographic printing.
- The required parking for job or lithographic printing is a ratio of 1 space per 300 square feet of floor area.
- The building on the request site is approximately 24,381 square feet for the proposed job or lithographic printing use, which requires 81 spaces. The site provides 40 spaces
- The site is flat, rectangular in shape (200' x 246'), and approximately 49,200 square feet in area.
- A site plan has been submitted that indicates the number of off-street spaces is 40.
- The submitted site plan shows the floor plan of the building and space is labeled as either office or warehouse.
- DCAD records indicated that the site is developed with a 24,381 square foot storage warehouse structure built in 1964.

BACKGROUND INFORMATION:

Zoning:

Site: IR (Industrial Research)
North: IR (Industrial Research)
South: IR (Industrial Research)
East: IR (Industrial Research)
West: IR (Industrial Research)

Land Use:

The subject site is developed with an industrial use. The area to the north, south, east, and west are developed with industrial uses.

Zoning/BDA History:

There have been no recent Board of Adjustment requests in the immediate area.

Timeline:

Dec. 30, 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.

January 19, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

January 25, 2006: 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 February 3rd deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the February public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

January 30, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Development Services Transportation Engineer, Senior Planner Hiromoto, and the Assistant City Attorney to the Board.

Development Services Transportation Engineer Nguyen submitted a review comment sheet on this request.

February 3, 2006: The applicant submitted additional information to include a cover letter, seven exhibits, and photos (see Attachment A and photos in the photo file).

STAFF ANALYSIS:

- The plat map indicates the request site is approximately 49,200 square feet.
- The applicant submitted additional information to further explain the application and the proposed use (Attachment A).

- Transportation Engineer Nguyen has no objection to the variance request if certain conditions are met. He commented that 81 spaces are required, 40 spaces were provided, and the number of employees is between 20 and 25. He also indicated that if a fire lane is required, a turn-around may be required at the southern end of the access drive.
- The number of off-street parking spaces to be provided for the proposed job or lithographic printing use is 50.6% of the number of off-street parking spaces required by code for this use, a deficiency of 49.4%.
- An office/showroom/warehouse use has required parking ratios based on the area of each portion of use within the floor area. The office use portion requires 1 space per 333 square feet of floor area and the showroom and warehouse portion requires 1 space per 1,000 square feet of floor area.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance of 41 spaces to the off-street parking regulations 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 off-street parking variance of 41 spaces is necessary to permit development of the subject site (that is flat, rectangular in shape (200' x 246'), and approximately 49,200 square feet in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same IR zoning classification.
 - The off-street parking variance of 41 spaces would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same IR zoning classification.
- If the Board were to grant the request, imposing a condition whereby the applicant must comply with the submitted site plan, the amount of off-street parking would be limited to 40 spaces.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 14, 2006

APPEARING IN FAVOR: Allen Cullum, 5952 Lakehill Court, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Hill

I move that the Board of Adjustment in Appeal No. **BDA 056-082**, hold this matter under advisement until **March 14, 2006** to allow the applicant time to submit an application for a special exception.

SECONDED: Jefferson

AYES: 5 – Richmond, Hill, Gabriel, Schweitzer, Jefferson

NAYS: 0 -

MOTION PASSED: 5-0 (unanimously)

FILE NUMBER: BDA 056-072

BUILDING OFFICIAL'S REPORT:

Application of Briar Hannah for a special exception to the parking regulations 4848 Hatcher Street. This property is more fully described as a tract of land in City Blocks 4485, 4486, 4487, 4488, 4489 and is zoned PD-595 MF-1, which requires parking to be provided for new construction. The applicant proposes to construct a multi-family dwelling and provide 194 of the 258 required parking spaces which would require a special exception of 64 spaces or 25%. Referred to the Board of Adjustment in accordance with Section 51A-4.311 (a) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 4848 Hatcher Street

APPLICANT: Briar Hannah

REQUEST:

- A special exception to the off-street parking regulations of 64 spaces (or 25% of the required off-street parking) is requested in conjunction with constructing and maintaining a 116-unit, 128,985 square foot residential development (Mill City) on a site currently under development.

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

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

authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.

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

GENERAL FACTS:

- The Dallas Development Code requires the following parking requirements for the proposed use on the subject site:
 - 1 space is required for every 500 square feet of building area.The applicant proposes to provide 194 (or 75%) of the total required 258 off-street parking spaces on the site.

- On December 21, 2005, the applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included a revised site plan that amended the number of spaces to be provided on the site from 258 spaces to 194 spaces.
- On December 22, 2005, January 3 and January 6, 2006, the applicant's representative submitted information beyond what was submitted with the original application (see Attachment B). This information included a revised site plan that the applicant stated reflected the 75% parking provided, and letters and documentation to support why the request should be granted.
- The Board of Adjustment held a public hearing on this matter on January 17, 2006. The board delayed action on the appeal until February 14, 2006, in order to allow the applicant an opportunity to further substantiate why the request should be granted.
- On January 27 and 31, 2006, the applicant's representative submitted information beyond what was submitted with the original application and at the January 17th public hearing (see Attachment C and D). This information included the following:
 - parking counts at a similar DHA development;
 - a letter and documentation to support why the request should be granted; and
 - maps/graphics that indicated the location of DART bus lines, bus stops, and future rail station relative to the location of the subject site.

BACKGROUND INFORMATION:

Zoning:

- Site: PD No. 595 MF-1 (Planned Development District, multifamily)
- North: PD No. 595 MF-1 (Planned Development District, multifamily)
- South: PD No. 595 MF-1 (Planned Development District, multifamily)
- East: PD No. 595 MF-1 (Planned Development District, multifamily)
- West: PD No. 595 NC (Planned Development District, neighborhood commercial)

Land Use:

The subject site is under development. The areas to the north, east, south, and west appear to be either undeveloped or under development.

Zoning/BDA History:

1. BDA 056-073, 4838 Hatcher Street (the lot immediately south of the subject site)

On January 17, 2006, Board of Adjustment Panel A delayed action a request for a special exception to the parking regulations of 66 spaces until February 14, 2006. The appeal is requested in conjunction with constructing a 118-unit residential development and providing 201 of the required 267 spaces.

2. BDA 045-158, 4800 Hatcher Street (the lot immediately southwest of the subject site)

On April 19, 2003, Board of Adjustment Panel A granted a request for a variance to the front yard setback regulations of 14 feet and imposed the following condition: compliance with the submitted site plan showing that Monte Street will not have access to Lyon Street. The board also granted a request for a special exception to the off-street parking regulations of 42 spaces and imposed the following conditions: the special exception shall automatically and immediately terminate if and when the multifamily use on the site is changed or discontinued; and compliance with the submitted site plan showing that Monte Street will not have access to Lyon Street. The case report states that the requests were made in conjunction with constructing 76 townhouse units on the site.

Timeline:

- Dec. 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.
- Dec. 13, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Dec. 15, 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 December 23rd deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - the January 6th 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 January public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Dec. 21 & 22, 2005
January 3 & 6, 2006

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

Dec. 28, 2005:

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

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

Jan. 5, 2006

The Development Services Senior Engineer submitted an unmarked review comment sheet with the following comments:
- “The parking spaces for each unit proposed by the applicant for a) 072 (Mill City Frazier) is 1.67 (194 spaces, 116 units), and b) 073 (Wahoo Frazier) is 1.70 (201 spaces, 118 units) appear unreasonable because 70% of units in Mill City has 2 or 3 bedrooms and 74% of units in Wahoo has 2 or 3 bedrooms.”

Jan. 17, 2006

The Board of Adjustment conducted a public hearing on this appeal and delayed action until February, 14, 2006.

Jan. 19, 2006:

The Board Administrator wrote the applicant’s representative a letter that shared the following information:

- the public hearing date and panel that will consider the application;
- the January 27th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board’s docket; and
- the February 6th deadline to submit additional evidence to be incorporated into the Board’s docket materials.

January 27 & 31, 2006

The applicant’s representative submitted information beyond what was submitted with the original application and at the January 17th public hearing (see Attachments C and D).

Feb. 2, 2006 The Development Services Senior Engineer emailed the Board Administrator and indicated that he no longer had objections to the appeal.

STAFF ANALYSIS:

- 75 percent of the required off-street parking spaces are proposed to be provided in conjunction with constructing a 116-unit, 128,985 square foot residential development (Mill City) on a site currently under development.
- Granting this request, subject to the condition that the special exception of 64 spaces automatically and immediately terminates if and when the multifamily use on the site is changed or discontinued, would allow development of the multifamily complex on the site.
- The applicant has the burden of proof in establishing the following:
 - that the parking demand generated by the proposed multifamily use does not warrant the number of off-street parking spaces required, and
 - the special exception of 64 spaces (or 25% of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- Prior to the January 17th public hearing, the Development Services Senior Engineer had made the following comments on this request:
 - "The parking spaces for each unit proposed by the applicant for a) 072 (Mill City Frazier) is 1.67 (194 spaces, 116 units), and b) 073 (Wahoo Frazier) is 1.70 (201 spaces, 118 units) appear unreasonable because 70% of units in Mill City has 2 or 3 bedrooms and 74% of units in Wahoo has 2 or 3 bedrooms."
- However on February 2, 2006, the Development Services Senior Engineer forwarded an email to the Board Administrator indicating that he no longer had objections to the appeal.

BOARD OF ADJUSTMENT ACTION: JANUARY 17, 2006

APPEARING IN FAVOR: Lisa Lamkin, 3535 Travis St., Ste 250, Dallas, TX 75204

APPEARING IN OPPOSITION: No one

MOTION: **Richmond**

I move that the Board of Adjustment in Appeal No. **BDA 056-072**, hold this matter under advisement until **February 14, 2006**.

SECONDED: **Gomez**

AYES: 5 – Hill, Gabriel, Richmond, Gomez, Jefferson

NAYS: 0 -

MOTION PASSED: 5-0

BOARD OF ADJUSTMENT ACTION: FEBRUARY 14, 2006

APPEARING IN FAVOR: Lisa Lamkin, 3535 Travis St., Ste 250, Dallas, TX
75204

APPEARING IN OPPOSITION: No one

MOTION: **Hill**

I move that the Board of Adjustment in Appeal No. **BDA 056-072**, **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development code by **64** parking spaces, because our evaluation of the property and the testimony shows that the parking demand generated by the proposed use on the site does don't warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard nor increase traffic congestion on adjacent and nearby streets. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: **Gabriel**

AYES: 5 – Richmond, Hill, Gabriel, Schweitzer, Jefferson

NAYS: 0 -

MOTION PASSED: 5-0 (unanimously)

FILE NUMBER: BDA 056-073

BUILDING OFFICIAL'S REPORT:

Application of Briar Hannah for a special exception to the parking regulations at 4838 Hatcher Street (aka 4800 Hatcher Street). This property is more fully described as a tract of land in City Blocks B/2395, A/2395, B/2388, 2/2390, B/4483, A/4484, 4482, 4485, 4486, 4487, and is zoned PD-595 MF-1 which requires parking to be provided for new construction. The applicant proposes to construct a multi-family complex and provide 201 of the required 267 parking spaces which would require a special exception of 66 spaces or 25%. Referred to the Board of Adjustment in accordance with Section 51A-4.311(a) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 4838 Hatcher Street (aka 4800 Hatcher Street)

APPLICANT: Briar Hannah

REQUEST:

- A special exception to the off-street parking regulations of 66 spaces (or 25% of the required off-street parking) is requested in conjunction with constructing and maintaining a 118-unit, 133,246 square foot residential development (Wahoo Frazier) on a site currently under development.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
 - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
 - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
 - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
 - (E) The availability of public transit and the likelihood of its use.
 - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
 - (A) establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
 - (B) impose restrictions on access to or from the subject property; or
 - (C) impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:

- (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
- (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

GENERAL FACTS:

- The Dallas Development Code requires the following parking requirements for the proposed use on the subject site:
 - 1 space is required for every 500 square feet of building area.The applicant proposes to provide 201 (or 75%) of the total required 267 off-street parking spaces on the site.
- On December 21, 2005, the applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included a revised site plan that amended the number of spaces to be provided on the site from 258 spaces to 201 spaces.
- On December 22, 2005, January 3 and January 6, 2006, the applicant's representative submitted information beyond what was submitted with the original application (see Attachment B). This information included a revised site plan that the applicant stated reflected the 75% parking provided, and letters and documentation to support why the request should be granted.
- The Board of Adjustment held a public hearing on this matter on January 17, 2006. The board delayed action on the appeal until February 14, 2006, in order to allow the applicant an opportunity to further substantiate why the request should be granted.
- On January 27 and 31, 2006, the applicant's representative submitted information beyond what was submitted with the original application and at the January 17th public hearing (see Attachment C and D). This information included the following:
 - parking counts at a similar DHA development;
 - a letter and documentation to support why the request should be granted; and
 - maps/graphics that indicated the location of DART bus lines, bus stops, and future rail station relative to the location of the subject site.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 595 MF-1 (Planned Development District, multifamily)
North: PD No. 595 MF-1 (Planned Development District, multifamily)
South: PD No. 595 MF-1 (Planned Development District, multifamily)
East: PD No. 595 R-5 (Planned Development District, single family)
West: PD No. 595 MF-1 (Planned Development District, multifamily)

Land Use:

The subject site is under development. The areas to the north, east, south, and west appear to be either undeveloped or under development.

Zoning/BDA History:

1. BDA 056-072, 4838 Hatcher Street (the lot immediately north of the subject site)

On January 17, 2006, Board of Adjustment Panel A delayed action on a request for a special exception to the parking regulations of 64 spaces until February 14, 2006. The appeal is requested in conjunction with constructing a 116-unit residential development and providing 194 of the required 258 spaces.

2. BDA 045-158, 4800 Hatcher Street (the lot immediately southwest of the subject site)

On April 19, 2003, Board of Adjustment Panel A granted a request for a variance to the front yard setback regulations of 14 feet and imposed the following condition: compliance with the submitted site plan showing that Monte Street will not have access to Lyon Street. The board also granted a request for a special exception to the off-street parking regulations of 42 spaces and imposed the following conditions: the special exception shall automatically and immediately terminate if and when the multifamily use on the site is changed or discontinued; and compliance with the submitted site plan showing that Monte Street will not have access to Lyon Street. The case report states that the requests were made in conjunction with constructing 76 townhouse units on the site.

Timeline:

Dec. 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.

Dec. 13, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

Dec. 15, 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 December 23rd deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the January 6th 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 January public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Dec. 21 & 22, 2005
January 3 & 6, 2006

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

Dec. 28, 2005:

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

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

Jan. 5, 2006

The Development Services Senior Engineer submitted an unmarked review comment sheet with the following comments:

- "The parking spaces for each unit proposed by the applicant for a) 072 (Mill City Frazier) is 1.67 (194 spaces, 116 units), and b) 073 (Wahoo Frazier) is 1.70 (201 spaces, 118 units) appear unreasonable because 70% of units in Mill City has 2 or 3 bedrooms and 74% of units in Wahoo has 2 or 3 bedrooms."

- Jan. 17, 2006 The Board of Adjustment conducted a public hearing on this appeal and delayed action until February, 14, 2006.
- Jan. 19, 2006: The Board Administrator wrote the applicant's representative a letter that shared the following information:
- the public hearing date and panel that will consider the application;
 - the January 27th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket; and
 - the February 6th deadline to submit additional evidence to be incorporated into the Board's docket materials.
- January 27 & 31, 2006 The applicant's representative submitted information beyond what was submitted with the original application and at the January 17th public hearing (see Attachments C and D).
- Feb. 2, 2006 The Development Services Senior Engineer emailed the Board Administrator and indicated that he no longer had objections to the appeal.

STAFF ANALYSIS:

- 75 percent of the required off-street parking spaces are proposed to be provided in conjunction with constructing a 118-unit, 133,246 square foot residential development (Wahoo Frazier) on a site currently under development.
- Granting this request, subject to the condition that the special exception of 66 spaces automatically and immediately terminates if and when the multifamily use on the site is changed or discontinued, would allow development of the multifamily complex on the site.
- The applicant has the burden of proof in establishing the following:
 - that the parking demand generated by the proposed multifamily use does not warrant the number of off-street parking spaces required, and
 - the special exception of 66 spaces (or 25% of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- Prior to the January 17th public hearing, the Development Services Senior Engineer had made the following comments on this request:
 - "The parking spaces for each unit proposed by the applicant for a) 072 (Mill City Frazier) is 1.67 (194 spaces, 116 units), and b) 073 (Wahoo Frazier) is 1.70 (201 spaces, 118 units) appear unreasonable because 70% of units in Mill City has 2 or 3 bedrooms and 74% of units in Wahoo has 2 or 3 bedrooms."
- However on February 2, 2006, the Development Services Senior Engineer forwarded an email to the Board Administrator indicating that he no longer had objections to the appeal.

BOARD OF ADJUSTMENT ACTION: JANUARY 17, 2006

APPEARING IN FAVOR: Lisa Lamkin, 3535 Travis St., Ste 250, Dallas, TX 75204

APPEARING IN OPPOSITION: No one

MOTION: **Richmond**

I move that the Board of Adjustment in Appeal No. **BDA 056-073**, hold this matter under advisement until **February 14, 2006**.

SECONDED: **Gomez**

AYES: 5 – Hill, Gabriel, Richmond, Gomez, Jefferson

NAYS: 0 -

MOTION PASSED: 5-0

BOARD OF ADJUSTMENT ACTION: FEBRUARY 14, 2006

APPEARING IN FAVOR: Lisa Lamkin, 3535 Travis St., Ste 250, Dallas, TX 75204

APPEARING IN OPPOSITION: No one

MOTION: **Hill**

I move that the Board of Adjustment in Appeal No. **BDA 056-073**, **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development code by **66** parking spaces, because our evaluation of the property and the testimony shows that the parking demand generated by the proposed use on the site does don't warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard nor increase traffic congestion on adjacent and nearby streets. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: **Gabriel**

AYES: 5 – Richmond, Hill, Gabriel, Schweitzer, Jefferson

NAYS: 0 -

MOTION PASSED: 5-0 (unanimously)

MOTION: **Schweitzer**

I move to adjourn this meeting.

SECONDED: **Hill**

AYES: 5 – Richmond, Hill, Gabriel, Schweitzer, Jefferson
NAYS: 0 -
MOTION PASSED: 5 – 0 (Unanimously)

1:47 P.M. - Board Meeting adjourned for February 14, 2006.

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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