

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM
TUESDAY, FEBRUARY 15, 2005**

MEMBERS PRESENT AT BRIEFING: Randall White, Chair, Peggy Hill, Vice-Chair, Marla Beikman, regular member, Linda Wise, alternate member and Dave Neumann, alternate member

MEMBERS ABSENT FROM BRIEFING: Rev. H.J. Johnson, regular member and Ben Gabriel, regular member

STAFF PRESENT AT BRIEFING: Donnie Moore, Chief Planner, Steve Long, Board Administrator, Trena Law, Board Secretary, TJ Okwubanego, Asst. City Attorney, Danny Sipes, Development Code Specialist, and Chau Nguyen, Traffic Engineer and Michael Sultan, Chief Arborist

MEMBERS PRESENT AT HEARING: Randall White, Chair, Peggy Hill, Vice-Chair, Marla Beikman, regular member, Linda Wise, alternate member and Dave Neumann, alternate member

MEMBERS ABSENT FROM HEARING: Rev. H.J. Johnson, regular member and Ben Gabriel, regular member

STAFF PRESENT AT HEARING: Donnie Moore, Chief Planner, Steve Long, Board Administrator, Trena Law, Board Secretary, TJ Okwubanego, Asst. City Attorney, Danny Sipes, Development Code Specialist and Michael Sultan, Chief Arborist

10:13 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's February 15, 2005 docket.

1:15 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 18, 2005 public hearing minutes.

MOTION: Hill

I move to approve the Board of Adjustment January 18, 2005 public hearing minutes.

SECONDED: Neumann

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: Unassigned

REQUEST: To waive the filing fee to be submitted in conjunction with a potential Board of Adjustment application

LOCATION: 621 N. Madison Avenue

APPLICANT: Patricia and Javier Flores

STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:

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

GENERAL FACTS:

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waiver/s reimbursements:
 - The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.
 - The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board's miscellaneous docket for predetermination.

- If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.
- In making this determination, the board may require the production of financial documents.
- The applicant submitted a letter to staff requesting a waiver of a filing fee to the board pertaining to a carport violation (see Attachment A). No other documentation has been submitted.

Timeline:

- February 3, 2005 The applicant submitted a letter requesting a fee waiver for a Board of Adjustment application that may be requested at the address referenced above (see Attachment A).
- February 3, 2005: The Board of Adjustment Secretary randomly assigned this request to Board of Adjustment Panel A.
- February 3, 2005: The Board Administrator wrote the applicant a letter that conveyed the following information:
- the public hearing date and panel that will consider the request;
 - 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; and
 - the Board will take action on the matter at the February public hearing after all information/evidence and testimony presented by the applicant and all other interested parties.

BOARD OF ADJUSTMENT ACTION: February 15, 2005

APPEARING IN FAVOR: Patricia Flores, 612 N. Madison, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Hill

I move that the Board of Adjustment **grant** the request for a fee waiver for the above referenced case.

SECONDED: Wise

AYES: 3 – White, Hill, Wise,

NAYS: 2 –Beikman, Neumann

MOTION PASSED: 3– 2

FILE NUMBER: BDA 045-126

BUILDING OFFICIAL'S REPORT:

Application of Verlin D. Woods/Adams Consulting Engineers, represented by Verlin D. Woods, for a special exception to the landscape regulations at 9310 E. R.L.Thornton Freeway. This property is more fully described as Lot 12B in City Block A/8475 which is zoned RR-D-1 which requires landscaping to be installed with new construction. The applicant proposes to construct a building and provide an alternate landscape plan which would require a special exception. Referred to the Board of Adjustment in accordance with Section 51-3.102(d)(3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 9310 E. R.L.Thornton Freeway

APPLICANT: Verlin D. Woods/Adams Consulting Engineers

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with constructing an approximately 10,000 square foot, 1-story retail center.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

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

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

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

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

GENERAL FACTS:

- The Dallas Development Code requires full compliance with the Landscape Regulations with new construction.
- The applicant is proposing an alternate landscape plan that does not fully comply with the landscape regulations, specifically a landscape plan where the applicant is specifically requesting relief from the street tree requirements.
- The requirements that the applicant is seeking the special exception from are not imposed by a site-specific landscape plan approved by the city plan commission or city council.
- A plat map submitted with this appeal notes a 25'-wide water and sanitary easement that is located across the entire frontage of the site immediately adjacent to the eastbound service road of R.L. Thornton Freeway.
- The City of Dallas Chief Arborist identified the following way in which the revised alternate landscape plan does not comply with the landscape regulations:
 - The applicant is required to provide 1 street tree for each 50' of street frontage and located within 30' of the projected street curb (which on this site is 4 street trees).
The applicant is *proposing* to provide all 4 street trees but at a greater distance from the projected street curb. (Four street trees will be provided, however, 2 are located within 70' of the projected street curb, and 2 are located within 85' of the projected street curb).
- The applicant's representative submitted a revised landscape plan to staff (see Attachment A).

BACKGROUND INFORMATION:

Zoning:

Site: RR-D-1 (Regional retail, dry)
North: RR-D-1 (Regional retail, dry)
South: RR-D-1 (Regional retail, dry)
East: RR-D-1 (Regional retail, dry)
West: RR-D-1 (Regional retail, dry)

Land Use:

The 1.36-acre subject site is undeveloped. The area to the north is a freeway (R.L. Thornton Freeway); and the areas to the east, south, and west are developed with retail uses.

Zoning/BDA History:

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| <ol style="list-style-type: none"> 1. BDA 045-118, 9226 East R.L. Thornton Freeway (the lot immediately west of the subject site) | <p>On December 15, 2004, the Board of Adjustment Panel A followed the staff recommendation and granted an application for a landscape special exception requested</p> |
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in conjunction with obtaining a certificate of occupancy for a recently constructed retail/office structure (Bank of America). The board imposed a condition whereby the applicant had to fully comply with the Landscape Regulations with the exception of providing street trees in their required location.

Timeline:

- Nov. 5, 2004: 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. 15, 2004: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Dec. 16, 2004: 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 27th deadline to submit additional evidence for staff to factor into their recommendation; and
 - that the board will take action on the matter at the January public hearing after considering the staff recommendation that will be made at the staff review team meeting, and all other information/evidence and testimony presented to them by the applicant and all other interested parties.
- Dec. 27, 2004: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearings. Review team members in attendance included: the Development Services Department Assistant Director of Predevelopment, the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the Development Services Transportation Planner; the Assistant City

Attorney to the Board, and an Assistant City Attorney that will be substituting for him in the month of January.

Jan. 4, 2005: The applicant's representative requested that this appeal be delayed until Panel A's February 2005 public hearing.

Jan. 4, 2005: The Board Administrator wrote a letter to the applicant's representative to acknowledge his request for postponement, and to request that any additional information that he wanted the staff to factor into their analysis by January 31, 2005.

Jan. 26, 2005: The applicant's representative submitted a revised landscape plan to staff (see Attachment A).

January 31, 2005: 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 Development Services Department Assistant Director of Predevelopment, the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the Development Services Transportation 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).

STAFF ANALYSIS:

- The revised submitted landscape plan is only deficient from fully complying with the Landscape Regulations with regard to the *location* of the required number of street trees.
- Granting this request, subject to a condition that the applicant comply with the submitted revised landscape plan, will allow the development of the site that fully meets provisions of the Landscape Regulations other than providing the required number of street trees in their required location while respecting the 25'-wide water and sanitary easement.
- There are few or no street trees along R.L. Thornton Freeway.
- All 4 required street trees are accounted for on the revised landscape plan, and will be visible from R.L. Thornton Freeway service road.

BOARD OF ADJUSTMENT ACTION: February 15, 2005

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Wise**

I move that the Board of Adjustment **grant** application **BDA 045-126** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted revised landscape plan is required.

SECONDED: **Beikman**

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

NAYS: 0–

MOTIONPASSED: 5–0 (unanimously)

FILE NUMBER: BDA 045-146

BUILDING OFFICIAL'S REPORT:

Application of Happy Shel Weisman for a special exception to allow an additional dwelling unit at 6215 La Vista Drive. This property is more fully described as Lot 11 and part of Lot 10 in City Block 1/2143 and is zoned P.D. 63-H which limits the property to one dwelling unit per lot. The applicant proposes to construct an additional dwelling unit which would require a special exception. 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: 6215 La Vista Drive

APPLICANT: Happy Shel Weisman

REQUEST:

- A special exception to the single family use regulations is requested in conjunction with constructing a 2-story additional “dwelling unit” on a site developed with a single family home. The proposed “additional dwelling unit” in this appeal is a 2-story garage/gym/office/cabana structure.

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.

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 subject site is 10,620 square feet in area (approximately 177’ x 60’), and developed with, according to DCAD records, developed with the following:
 - a single family home that is in good condition, built in 1937 with 2,132 square feet of living area;
 - a 560 square foot detached garage; and
 - pool.
- The proposed 2-story additional “dwelling unit” (or garage/gym/office/cabana room structure) will replace an existing 1-story garage on the site.
- A revised site plan indicates that the proposed structure will be in the same location and have the same building footprint as the existing garage.
- The revised site plan indicates that the additional “dwelling unit” structure has a building footprint of approximately 29’ x 20’ or is about 580 square feet in area.
- The revised site plan indicates that the additional “dwelling unit” structure will be located 5’ from its closest point to any property line which in this case is site’s western side property line.
- The submitted elevation indicates that the 2-story additional “dwelling unit” structure will be approximately 23’ in height.
- Floor plans indicate the following spaces within the proposed detached 2-story additional “dwelling unit” structure on the site:
 - a 2-car garage, bath, and storage room on 1st floor; and
 - an office, bath, and storage closet on the 2nd floor.
- The Dallas Development Code defines “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 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.”
- The Board of Adjustment has seen an increased number in special exceptions for additional dwelling units since November of 2004. This increase is most likely somewhat attributable to a memo that the Building Official wrote to city plan reviewers in September in 2004 (see Attachment A). This memo requested that plan reviewers carefully review applications for an addition or accessory structure on a lot zoned single family with regard for compliance with code-provisions related to the definitions of “dwelling unit,” “ family,” and “single family.”
- Currently the City of Dallas is in the process of considering an amendment to the Development Code with regard to provisions related to single family accessory structures which are at times being interpreted as additional dwelling unit structures by Building Inspection due to a recent change in policy. The ZOAC (Zoning Ordinance Advisory Committee) formed a recommendation on this matter on February 3, 2005. This ZOAC recommendation will be considered by the CPC (City Plan Commission) on February 24th. Any official amendment to the Dallas Development Code would be made by the City Council.
- If this 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 a petition of 3 people who support the request (see Attachment B). One of these support signatures is from the owner immediately west of the site; another is from the owner immediately east of the site.
- According to DCAD records, the properties immediately east and west of the site have “detached servants quarters,” in addition to “detached garages,” “pools,” and single family homes.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 63-H (Planned Development District 63)
North: MF-2 (A) (Multifamily residential district)
South: PD No. 63-H (Planned Development District 63)
East: PD No. 63-H (Planned Development District 63)
West: PD No. 63-H (Planned Development District 63)

Land Use:

The subject site is developed with a single family home with a detached 1-story garage. The area to the north is developed with multifamily uses; and the areas to the 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:

- Dec. 30, 2004: 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 21, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- January 21, 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 January 28th deadline to submit additional evidence for staff to factor into their analysis;
 - 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 28, 2005: The applicant submitted a petition of 3 people who support the request (see Attachment B). One of these support signatures is from the owner immediately west of the site; another is from the owner immediately east of the site
- January 31, 2005: 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 Development Services Department Assistant Director of Predevelopment, the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the Development Services Transportation Planner; and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The proposed 2-story “dwelling unit” structure meets all setback, lot coverage, and height regulations.
- The proposed “dwelling unit” structure will be located in the same location and have the same building footprint as an existing detached garage on the site.
- According to DCAD, the properties immediately east and west of the site have “detached servants quarters.” Both of these property owners have indicated their support to this appeal.
- A field visit of the site and surrounding properties show that the properties immediately east and west of the site have 2-story detached accessory structures adjacent to the alley, and the site immediately north of the site is developed with a 3-story multifamily structure.
- If the Board were to approve the request, subject to imposing a condition that the applicant comply with the submitted elevation and revised site plan, the “dwelling unit” structure would be restricted to the specific location, size, and height shown on the plans, which in this case is a 2-story garage/gym/office/cabana room structure that is on the same footprint and location as an existing 1-story garage on the site.
- 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.

BOARD OF ADJUSTMENT ACTION: February 15, 2005

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Wise

I move that the Board of Adjustment **grant** application **BDA 045-146** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general

purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted site plan and elevations is required; and
- The property must be deed-restricted to prohibit the additional dwelling unit on the site from being used as rental accommodations.

SECONDED: Beikman

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

NAYS: 0–

MOTIONPASSED: 5–0 (unanimously)

FILE NUMBER: BDA 045-155

BUILDING OFFICIAL'S REPORT:

Application of Arbor Woods Housing L.P., represented by Karl A. Crawley, for a special exception to the fence regulations at 3030 Hampton Road. This property is more fully described as a tract of land in City Block 7129 and is zoned MF-2 (A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 9 foot 2 inch high fence in the required front yard setback which would require a special exception of 5 feet 2 inches. 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: 3030 Hampton Road

APPLICANT: Arbor Woods Housing L.P.
Represented by Karl A. Crawley

REQUESTS:

The following appeals have been made on a site that is being developed with a multifamily complex (The Arbor Woods):

1. A special exception to the fence height regulations of up to 4' is requested in conjunction with constructing the following in the 15' Hampton Road front yard setback:
 - an approximately 600'-long, 6' 4"-high ornamental open iron fence with 7' 2"-high stucco and stone columns to be located parallel to the street; and
 - an approximately 11'-long, 8'-high solid concrete screen wall to be located perpendicular to the street.
2. A special exception to the fence height regulations of 5' 2" is requested in conjunction with constructing an 8' 4"-high ornamental open iron fence with 9' 2"-high stucco and masonry columns in the 15' Dennison Street front yard setback.

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.

GENERAL FACTS:

- 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 Dallas Development Code states that in multifamily zoning districts, a fence located in the required front yard may be built to a maximum height of 6' above grade if all conditions in the following subparagraphs 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' from the back of the street curb.
 - No fence panel having less than 50% open surface area may be located less than 5' from the front lot line. For purposes of this subsection, fence panels are the portions of the fence located between the posts or columns.
- The site has 3 front yard setbacks: Dennison Street on the north, Hampton Road on the west, and Singleton Road on the south.
- The fence regulations provided in the Dallas Development Code described above restrict the fence heights on the MF-2-zoned subject site in the following ways:
 - the proposed open fence along Dennison Street is restricted to 4' in height since there is single family zoning in the same blockface of the site;
 - the proposed approximately 600'-long open fence parallel to Hampton Road is restricted to 6' in height since it is of open material and since there is *not* single family zoning in this blockface;
 - the proposed approximately 15'-long solid fence perpendicular to Hampton is restricted to 4' in height since the fence panel has less than 50% open surface and is located 4' from the front lot line; and
 - the proposed 8'-high ornamental fence on Singleton Road can be built without a special exception since it is proposed to be located behind the 15' front yard setback line.
- The fence proposal along Hampton Road has the following additional characteristics:
 - a fence that runs in a linear design with 2 recessed entry ways;
 - a fence that is located approximately 4' from the site's property line or 12' from the pavement line; and
 - located on a site with no single family home that would front the proposed fence.
- The fence proposal along Dennison Street has the following additional characteristics:
 - a fence that runs in a linear design parallel to the street;
 - a fence that is located on site's property line or about 6' from the pavement line; and

- located on a site with no single family home that would front the proposed fence.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences that appeared to exceed the fence height regulations in the immediate area (approximately 500 feet in each direction east and west from the site along Dennison, and approximately 500 feet in each direction north and south from the site along Hampton).
- The applicant’s representative submitted additional information to staff beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a color-coded site plan that detailed the location and materials of the proposed fence (that will be available for review upon request at the briefing and public hearing); and
 - a letter that further explains the scope and merits of the request.

BACKGROUND INFORMATION:

Zoning:

Site: MF-2 (A) (Multifamily district 2)
North: CR (Community retail)
South: IR (Industrial research)
East: R-5 (A) (Single family district 5,000 square feet)
West: CR (Community retail)

Land Use:

The subject site is being developed with a multifamily complex (The Arbor Woods). The area to the north is developed with commercial uses and undeveloped land; the area to the east is developed with single family uses; the area to the south is developed with warehouse use; and the area to the west is developed as a school (Pinkston Talented and Gifted Magnet School).

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:

- January 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.
- January 21, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

January 21, 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 January 28th deadline to submit additional evidence for staff to factor into their analysis;
- 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, 2005 The applicant submitted additional information to staff regarding the request (see Attachment A).

January 31, 2005: 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 Development Services Department Assistant Director of Predevelopment, the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the Development Services Transportation Planner; and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The proposed fence on the site will not "front" any residential use or zoning district. A public school is immediately adjacent to the proposed fence on Hampton Road, and commercial uses and undeveloped land are immediately adjacent to the proposed fence along Dennison Street.
- Granting these special exceptions with conditions imposed that the applicant complies with the submitted site/elevation would assure that the fence and columns

were constructed and maintained in the locations and materials as shown on the submitted documents which are:

- generally a 6'4"-high open iron fence along Hampton Road (a fence which is 4 inches higher than the 6' height allowed by right); and
 - a 8'-high open iron fence along Dennison Street (a fence that is 4 feet higher than the 4' height allowed by right since there is single family zoning in the same blockface, immediately east of the site).
- Granting the special exception to the fence regulations along Hampton Road as stated above yet conditioning the applicant to respect the 15'-front yard setback along Dennison Street would:
 - impose a 15'-front yard setback along the portion of the site where single family zoning exists within the same blockface; and
- allow the fence to be constructed with the same height and materials indicated on the submitted site/elevation plan without Board of Adjustment approval.

BOARD OF ADJUSTMENT ACTION: February 15, 2005

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Wise

I move that the Board of Adjustment **grant** application **BDA 045-155** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

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

SECONDED: Beikman

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

NAYS: 0–

MOTIONPASSED: 5–0 (unanimously)

FILE NUMBER: BDA 045-145

BUILDING OFFICIAL'S REPORT:

Application of Richard Brown for a request for a change of occupancy from one nonconforming use to another nonconforming use at 6312 Lake June Road. This property is more fully described as a tract of land in City Block 6241 and is zoned P.D. 533 which currently has a nonconforming vehicle, engine repair, or maintenance use. The applicant is requesting that the Board of Adjustment allow him to change the use to

a nonconforming vehicle display sales and service use. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(5) of the Dallas Development Code, as amended, which states the power of the Board to hear and decide requests for change of occupancy of a non-conforming use to another non-conforming use.

LOCATION: 6312 Lake June Road

APPLICANT: Richard Brown

February 15, 2005 Public Hearing Notes:

- The Board Administrator updated the Board of Adjustment on the following facts that materialized from when the dockets were mailed on February 9th:
 - On February 11th, the Building Inspection Development Code Specialist met with the applicant and determined that the site was for only a portion of the tract of land in City Block 6241, and determined that the applicant had been using the wrong address for the site: 6312 Lake June Road instead of 6326 Lake June Road.
 - On February 11th, the Board Administrator contacted the applicant and confirmed that the site was indeed located at 6326 Lake June Road, that the applicant understood that his mistaken property address would result in a delay of the case until March, and that the applicant would be amenable to paying the cost to re-notice the hearing with the correct address to the newspaper and the surrounding property owners.

REQUEST:

- An application has been made for the Board of Adjustment to hear and decide a request for a change of occupancy of a nonconforming “vehicle or engine repair or maintenance” use to another nonconforming “vehicle display, sales, and service” use. The subject site appears to be developed as a vacant vehicle sales lot.

STANDARD FOR CHANGING NONCONFORMING USES:

The Dallas Development Code specifies that the board may allow a change from one nonconforming use to another nonconforming use when:

- (A) the change does not prolong the life of the nonconforming use;
- (B) the change is to a use that would have been permitted in the zoning district where the current nonconforming use was first permitted by right;
- (C) the change is to a use that is similar in nature to the current use; and
- (D) the change is to a use that will not have a greater adverse effect on the surrounding area than the current use.

GENERAL FACTS:

- The site is zoned PD No. 533. This Planned Development (PD) zoning district was created by the City Council in February of 1999.
- The current CO (Certificate of Occupancy) on the site is for a “vehicle or engine repair or maintenance” use.
- According to information from Dallas Central Appraisal District (DCAD), the property at 6312 Lake June Road is developed with the following:
 - a “free standing retail store” that was built in 1962 with 1,280 square feet of area; and
 - an “automotive service” that was built in 1985 with 816 square feet of area.
- This application was originally submitted as an appeal for a special exception to the nonconforming use regulations to reinstate nonconforming use rights for what was believed to have been a nonconforming “vehicle display, sales and service” use on the site.
- On February 1, 2005, the application was amended whereby the applicant requested that the board consider an appeal to change one nonconforming “vehicle or engine repair or maintenance” use to another nonconforming “vehicle display, sales, and service” use.
- The Dallas Development Code defines “nonconforming use” as “a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time.”
- The Dallas Development Code defines a “vehicle or engine repair or maintenance” use as “a facility for the repair, maintenance, or restoration of motor vehicles, motor vehicle engines, electrical motors, or other similar items.”
- The Dallas Development Code defines a “vehicle display, sales, and service” use as “a facility for the display, service, and retail sale of new or used automobiles, boats, trucks, motorcycles, motor scooters, recreational vehicles, or trailers.”
- The “vehicle or engine repair or maintenance” use and “vehicle display, sales, and service” use that are at issue in this application are legal *nonconforming* uses. Prior to the creation of the PD No. 533 zoning district in 1999, these two uses were permitted as legal conforming uses in the IM (Industrial Manufacturing) zoning district. Given provisions set forth in PD No. 533, these uses can obtain “conforming use” status upon attaining an SUP (Specific Use Permit) from the City Council.
- Either nonconforming use on the site would be subject to termination by the Board of Adjustment as any other nonconforming use in the city.
- The Board Administrator has informed the applicant of the provisions set forth in the Dallas Development Code pertaining to nonconforming uses.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 533 (Planned Development District No. 533)
North: R-7.5 (A)-D-1 (Single family residential 7,500 square feet -dry)
South: PD No. 533 (Planned Development District No. 533)

East: PD No. 533 (Planned Development District No. 533)
West: PD No. 533 (Planned Development District No. 533)

Land Use:

The approximately 14,000 square foot subject site appears to be developed with a vacant vehicle sales lot. The area to the north is undeveloped; the areas to the east and south are developed with commercial uses; and the area to the west is a freeway (C.F. Hawn Freeway).

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:

- Dec. 15, 2004: 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 21, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- January 21, 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 January 28th deadline to submit additional evidence for staff to factor into their analysis;
 - 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 31, 2005: 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 Development Services Department Assistant Director of Predevelopment, the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the Development Services Transportation Planner; and the Assistant City Attorney to the Board.

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

February 1, 2005: The Building Inspection Development Code Specialist forwarded an amended appeal to the Board Administrator. The appeal was amended from a special exception to reinstate nonconforming use rights to a request for a change of occupancy of a nonconforming “vehicle or engine repair or maintenance” use to another nonconforming “vehicle display, sales, and service” use.

STAFF ANALYSIS:

- There was no documentation from the applicant at the time of the January 31st staff review team meeting to address the standard that the board considers for changing one nonconforming use to another since this applicant revised his original appeal as a result of issues discussed at the staff review team meeting.
- Granting this request would allow the change of one nonconforming use to another nonconforming use, and would not establish either use as a legal *conforming* use. The applicant would have to make application for and obtain an SUP from City Council in order to make either of these uses on the site legal conforming uses.
- Staff has established one of the four components of the standard for changing nonconforming uses: the requested change is to a use (“vehicle display, sales, and service” use) that would have been permitted in the zoning district where the current nonconforming use was first permitted by right.
- Granting the request would allow the applicant to obtain a CO (Certificate of Occupancy) for a nonconforming use (“vehicle display, sales and service” use).

BOARD OF ADJUSTMENT ACTION: February 15, 2005

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Beikman

I move that the Board of Adjustment in **Appeal No. BDA 045-145** hold this matter under advisement until **March 15, 2005**.

SECONDED: Wise

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

NAYS: 0–

MOTIONPASSED: 5–0 (unanimously)

FILE NUMBER: BDA 045-143

BUILDING OFFICIAL'S REPORT:

Application of Neighbors United for Quality Education Inc., represented by Coker Company, for a special exception for tree preservation to the rear and side yard setback regulations at 7100 Tenison Memorial Road. This property is more fully described as a tract of land in City Block D/2704 and is zoned CD-6 which requires a 20 foot rear and side yard setback. The applicant proposes to construct a school building and provide a 10 foot rear yard setback and a 10 foot side yard setback which would require a special exception for tree preservation of 10 feet to the rear yard and side yard setback 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 special exceptions.

LOCATION: 7100 Tenison Memorial Road

APPLICANT: Neighbors United for Quality Education Inc.
Represented by Coker Company

REQUESTS:

- Special exceptions to the side and rear yard setback regulations of 10' are requested in conjunction with constructing a 5-classroom school structure on a site that is currently developed with multifamily structures and related parking lots. The proposed structure is located on a site that is immediately east of an existing public charter elementary school (The Lindsley Park Community School).

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

The Dallas Development Code specifies that the board may grant a special exception to the minimum side and rear yard requirements to preserve an existing tree. In determining whether to grant the 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.
- 3) Whether the tree is worthy of preservation.

GENERAL FACTS:

- A 20' side setback is required for structures in the CD (Conservation District)-6 zoning district.
- A 20' rear setback is required for structures in the CD (Conservation District)-6 zoning district.
- A revised site/landscape plan has been submitted that indicates the area of the subject site, and the area immediately west of the subject site on which the existing Lindsley Park Community School is located.
- The revised site/landscape plan indicates that the site is/will be accessed from Tenison Memorial Road via a proposed access easement.
- The revised site/landscape plan indicates a "proposed building zone" of the proposal on the subject site rather than an exact building footprint of the proposed structure on the subject site.
- The revised site/landscape plan indicates that the "proposed tract" (or subject site) has a lot area of 38,749 square feet.
- The revised site/landscape plan indicates that the "exist. tract" (or the lot adjacent to the site on which the existing school is located) has a lot area of 58,989 square feet.
- The revised site/landscape plan indicates that the "proposed building zone" on the subject site encroaches 10' into the 20' side yard setbacks on north and south edges of the site, and encroaches 10' into the 20' rear yard setback on the east edge of the site.
- The "proposed building zone" is additionally described on the revised site/landscape plan as "building area = 50% of total lot area maximum" which, according to another note on the plan, is "19,826 S.F. MAX. "
- The site/landscape plan indicates that the existing school adjacent to the subject site has 7 classrooms, and that the proposed school addition on the subject site is proposed to have 5 classrooms.
- The revised site/landscape plan indicates the location of 3 Pecan trees (ranging in caliper from 18" – 30") in roughly the center of the subject site. The applicant contends that it is because of his intent to preserve these three trees (and provide a new open space play area), why the proposed classroom structure must be located 10' into the site's 20' side and rear yard setbacks.
- The City of Dallas Chief Arborist has stated that the 3 mature Pecan trees on the site that the applicant intends to preserve in conjunction with the structure are "healthy and worthy of preservation."
- The applicant's representative submitted additional information to staff beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a revised site/landscape plan; and

- a letter that further explains the scope and merits of the request.

BACKGROUND INFORMATION:

Zoning:

- Site: CD - 6 (Conservation District No. 6)
- North: CD - 6 (Conservation District No. 6)
- South: CD - 6 (Conservation District No. 6)
- East: CD - 6 (Conservation District No. 6)
- West: CD - 6, SUP 1374(Conservation District No. 6, Specific Use Permit for School)

Land Use:

The subject site is developed with low-rise apartment buildings (which the applicant intends to demolish) and related surface parking lots. The areas to the north and east are developed with multifamily uses; the area to the south is developed with single family uses; and the area to the west is developed as a school (Lindsley Park Community School).

Zoning/BDA History:

1. Z045-151, 7100 Tenison Memorial Road (the subject site) An application has been made to the City Plan Commission for an SUP (Specific Use Permit) for a school on the subject site. The City Plan Commission date will be scheduled once Board of Adjustment Panel A has rendered decisions on requests for special exceptions to the side and rear yard setback regulations on February 15, 2005.
2. BDA 001-195, 722 Tension Memorial Drive (the lot located west of the subject site) On April 24, 2001, the Board of Adjustment Panel A followed the staff recommendation and granted a request for a variance to the front yard setback regulations of 2' 10", subject to the submitted site plan, and that the addition not be permitted to be constructed until the sanitary sewer easement on the site was fully abandoned. The case report stated that the application was made in conjunction with constructing an approximately 700 square foot addition to an existing school (Lindsley Community School).
3. BDA 989-174, 722 Tension Memorial Drive (the lot located west of the subject site) On February 23, 1999, the Board of Adjustment Panel A followed the staff recommendation and granted requests for a variances to the front yard setback

regulations, subject to the submitted site plan and elevation. The case report states that the variances were needed in conjunction with maintaining a small portion of a one-story building and maintaining a covered drop-off area, and maintaining a 4'-high fence for a school to be developed on the site.

Timeline:

- Dec. 19, 2004: 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 21, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- January 21, 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 January 28th deadline to submit additional evidence for staff to factor into their analysis;
 - 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 27, 2005 The applicant's representative submitted additional information to staff regarding the request (see Attachment A).
- January 31, 2005: 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 Development Services Department Assistant Director of Predevelopment, the Board of Adjustment Chief Planner, the Board

Administrator, the Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the Development Services Transportation 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 forward a memo stating that the 3 mature Pecan trees on the site that the applicant intends to preserve in conjunction with the structure are “healthy and worthy of preservation.” (See Attachment B).

STAFF ANALYSIS:

- The information the applicant’s representative has submitted to address the standards for granting the special exceptions to the side and rear yard setback requirements is included on the application and in the one-page letter submitted January 27, 2005. (included in this case report).
- The City of Dallas Chief Arborist has stated that there are 3 mature Pecan trees on the site that are healthy and worthy of preservation.
- Granting the special exceptions subject to compliance with the submitted revised site/landscape plan would allow:
 - the applicant to construct a structure 10’ into the required 20’ side and rear yard setbacks in any form that falls inside the “proposed building zone” on this submitted plan, and
 - the applicant to construct structures in the “proposed building zone” at the potential risk of 140 caliper inches of existing trees.
- Granting the special exceptions subject to compliance with the submitted revised site/landscape plan, yet conditioning the applicant to respect the 20’ side yard setback on the southwest side of the site would:
 - impose a 20’ side yard setback to be maintained with residential adjacency, and a 10’ side and rear yard setback to be maintained with adjacency to multifamily uses and open space, and
 - limit construction within the “proposed building zone” to potentially cause less damage to an existing 36 caliper inch tree.

BOARD OF ADJUSTMENT ACTION: February 15, 2005

APPEARING IN FAVOR: Rudy Lopez, 1108 Valencia Street, Dallas, Tx
Santos Martinez, 1111 Cordova, Dallas, TX
Chuck Russell, 6008 Martel Avenue, Dallas, TX
Terry Ford, 9034 San Leandro Drive, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION#1: Neumann

I move that the Board of Adjustment in **Appeal No. BDA 045-143** on application of Neighbors United for Quality Education, Inc., **grant** the request of this applicant to preserve an existing tree as a special exception to the minimum rear yard requirements contained in the Dallas Development Code, because our evaluation of the property and testimony shows that the special exception is compatible with the character of the neighborhood; the value of surrounding properties will not adversely affected; and or the tress are 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 revised site/landscape plan is required.

SECONDED: Hill

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

NAYS: 0–

MOTIONPASSED: 5–0 (unanimously)

MOTION#2: Neumann

I move that the Board of Adjustment in **Appeal No. BDA 045-143** on application of Neighbors United for Quality Education, Inc., **grant** the request of this applicant to preserve existing tree as a special exception to the minimum side yard requirements contained in the Dallas Development Code, because our evaluation of the property and testimony shows that the special exception is compatible with the character of the neighborhood; the value of surrounding properties will not adversely affected; and or the tress are 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: 5 – White, Hill, Beikman, Neumann, Wise

NAYS: 0–

MOTION PASSED: 5–0 (unanimously)

MOTION: Neumann

I move to adjourn this meeting.

SECONDED: Wise

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

NAYS: 0 -

MOTION PASSED: 5 – 0 (Unanimously)

2:45 P.M. - Board Meeting adjourned for February 15, 2005.

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.

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