

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
TUESDAY, MARCH 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: Rev. H.J. Johnson, regular member

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Jennifer Hironoto, Senior Planner, Claire Swann, Asst. City Attorney, Donnie Moore, Chief Planner, 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: Rev. H.J. Johnson, regular member

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

10:03 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **March 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 February 14, 2006 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: MARCH 14, 2006

MOTION: Jefferson

I move to approve the Board of Adjustment February 14, 2006 public hearing minutes.

SECONDED: Hill

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: BDA 056-082

REQUEST: To reimburse the additional \$2,975.00 filing fee submitted in conjunction with a Board of Adjustment application for a special exception to the parking regulations

LOCATION: 1234 Round Table Road

APPLICANT: Allen E. Cullum

STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:

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

GENERAL FACTS:

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee 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 the Board Administrator requesting a reimbursement of the \$2,975.00 filing fee submitted in conjunction an appeal to the Board of Adjustment for a special exception to the parking regulations (see Attachment A). This letter contained some details on the applicant's finances.

Timeline:

- Feb. 14, 2006 The Board of Adjustment conducted a public hearing on a request for a variance to the parking regulations on the subject site. The board delayed action on this matter until March 14, 2006 whereby some of the panel members encouraged the applicant to seek a special exception to the parking regulations and request a reimbursement of the filing fee.
- March 2, 2006 The applicant submitted a letter requesting a fee reimbursement of \$2,975.00 submitted in conjunction with an appeal for a special exception to the parking regulations. The applicant noted in the letter that this amount was in addition to the \$5,010.00 that the applicant paid in order to file his request for a variance to the parking regulations.
- March 2, 2006: The Board Administrator wrote the applicant an email 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 noon, March 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 March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

BOARD OF ADJUSTMENT ACTION: MARCH 14, 2006

APPEARING IN FAVOR: Allen Cullum, 5952 Royal Ln., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Jefferson**

I move to **reimburse** the additional filing fee submitted in conjunction with a Board of Adjustment application for a special exception to the parking regulations.

SECONDED: **Hill**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 056-082

ORIGINAL 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.

REVISED BUILDING OFFICIAL'S REPORT:

Application of Cullum Interests Inc., for a special exception 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 64 of the required 81 off street parking spaces which would require a variance of 17 spaces. 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: 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.
- A special exception to the parking regulations of 17 spaces (or 20.9%) 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.

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

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

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

GENERAL FACTS:

- A 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 applicant has provided a remote parking agreement (Attachment D) indicating that 24 parking spaces will be provided on a lot within 425 feet of the request site. The remote parking lot is owned by a corporation belonging to the applicant.
- 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.
- There are 0 DART bus stops within 500 feet of the request site (see Attachment B). There are 3 DART bus stops less than 1,000 feet from the request site.
- 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).

February 28, 2006 The applicant submitted a remote parking agreement and applied for a special exception to the parking regulations.

March 2, 2006 The applicant submitted additional information related to the DART bus routes in the vicinity of the request site (Attachment C).

STAFF ANALYSIS (VARIANCE):

- 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 variance 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.

STAFF ANALYSIS (SPECIAL EXCEPTION):

- The applicant has submitted additional information regarding the DART bus line and stops in proximity to the request site. The map provided via email on March 2, 2006 (Attachment C) is from the DART website showing the 26 bus line. This map as well as Attachment B show a DART bus line and bus stops in close proximity to the request site.
- Regal Row is indicated in the Thoroughfare Plan as a divided Principle Arterial with 200 feet of right of way. This thoroughfare is located approximately 300 feet from the request site and is the primary route to access the request site via Governors Row.
- The applicant is proposing the following parking related to the request for a special exception of 17 parking spaces:
 - 40 spaces on-site;
 - 24 spaces to be located on a remote parking site approximately 425 feet walking distance as indicated on the remote parking agreement.
- The number of off-street parking spaces to be provided for the proposed job or lithographic printing use, including the remote parking spaces, is 79.0% of the number of off-street parking spaces required by code for this use, a deficiency of 21.0%. The maximum allowed by special exception is 25%.

- The remote parking agreement must be recorded by the Dallas County Records Office.
- Granting this request, subject to the condition that the special exception automatically and immediately terminates if and when job or lithographic printing use on the site is changed or discontinued, would allow the conversion of an office/warehouse.
- The applicant has the burden of proof in establishing the following as related to the request for a special exception of 17 parking spaces:
 - The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - The parking demand and trip generation characteristics of all uses for which the special exception is requested.
 - Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
 - The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
 - The availability of public transit and the likelihood of its use.
 - The feasibility of parking mitigation measures and the likelihood of their effectiveness.

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)

BOARD OF ADJUSTMENT ACTION: MARCH 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**, on application of Cullum Interests, Inc., **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development code by **17** 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 job or lithographic printing use on the site is changed or discontinued.

SECONDED: Jefferson

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 056-099

BUILDING OFFICIAL'S REPORT:

Application of Masterplan, represented by Karl A Crawley, for a special exception to re-establish the nonconforming use rights at 7229 Ferguson Road. This property is more fully described as a tract of land in city block 7024 and A/7024 and is zoned RR, which does not allow a multifamily use, and states that the right to operate a nonconforming use ceases if the nonconforming use is discontinued for 6 months or more. The applicant is requesting a special exception to the nonconforming use regulations to re-establish the nonconforming rights of a multifamily use that has been vacant for more than 6 months. Referred to the Board of Adjustment in accordance with Section 51A-4.704 (a) (2) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 7229 Ferguson Road

APPLICANT: Masterplan
Represented by Karl A Crawley

REQUEST:

- A special exception is requested in conjunction with reinstating nonconforming use rights for a “multifamily” use on the subject site even though this nonconforming use was discontinued for a period of six months or more. The site is currently developed with a vacant multifamily complex.

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

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

GENERAL FACTS:

- The nonconforming use regulations of the Dallas Development Code state that the right to operate a nonconforming use ceases if the nonconforming use is discontinued for six months or more. However, there is a provision in the code allowing the board to grant a special exception to operate a nonconforming use that has been discontinued for six months or more if the owner can show that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.
- 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.
- According to information from Dallas Central Appraisal District (DCAD), the property at 7229 Ferguson Road is developed with an “apartment” with 176,262 square feet that was constructed in 1970.
- In this case, the applicant has requested a special exception to reinstate nonconforming use rights since the property is zoned RR, a zoning district that does not allow a multifamily use as a permitted use.
- The multifamily use that existed on the site was a legal nonconforming use. Zoning maps dated July 11, 1986 indicated that the site had been zoned LC (Light Commercial). The LC zoning district allowed multifamily use as a permitted use but was one of several cumulative zoning districts that were eliminated during the city-wide zoning transition program in the late 80’s. Most likely, the multifamily use on the subject site became a legal *nonconforming* use upon the passing of the city-wide ordinance that created Chapter 51(A) in the late 80’s.
- The applicant’s representative submitted additional documentation to staff beyond that what was submitted with the original application (see Attachment A). This information includes the following information:
 - A letter that provides additional details about the request;
 - Copies of the receipts of moving expenses paid in the spring and summer of 2005 by the owner in order to help the occupants vacate their apartments;
 - A copy of Forward Commitment from the State of Texas Department of Housing and Community Affairs obtained by the owner in forward to rehab the existing complex;
 - A copy of a \$60,000.00 check the owner made as an initial payment to the State in September of 2005 (as a requirement for this commitment mentioned above);

- A copy of expenses incurred by the owner in order to secure and maintain the site and rehabilitate the existing units on the subject site.

BACKGROUND INFORMATION:

Zoning:

Site: RR (Regional Retail)
North: RR (Regional Retail)
South: RR (Regional Retail)
East: RR (Regional Retail)
West: RR (Regional Retail)

Land Use:

The subject site is developed as a vacant multifamily structure. The area to the north appears to be developed with office and multifamily uses; the areas to the east and south are developed with retail uses; and the area to the west is developed with a recreational use (Tenison Park Golf Course).

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:

- | | |
|----------------|--|
| Undated | The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report. |
| Feb. 15, 2006: | The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A. |
| Feb. 16, 2006: | <p>The Board Administrator contacted the applicant’s representative and shared the following information:</p> <ul style="list-style-type: none"> • 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 March 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 March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Feb. 27, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

March 6, 2006 The applicant’s representative submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

STAFF ANALYSIS:

- The multifamily use on the subject site is a nonconforming use that appears to have become a nonconforming use in 1989.
- The applicant’s representative submitted a letter that stated the following:
 - The current owner of the multifamily use on the subject site bought the use in February of 2005 by acquiring the existing mortgage note in default.
 - At the time of the acquisition, the apartments were occupied albeit in a state of disrepair.
 - The owner intended to upgrade the apartments in an on-going basis while still occupying the units, however, upon extensive investigation of the units, it was determined that the best if not only way to rehab the existing units was to vacate the premises and gut the units to the stud walls to start over with the foundations, exterior walls and roofs for the most part remaining intact.
 - During the spring and summer of 2005, the owner paid moving expenses for the residents to vacate the units, obtained a “Forward Commitment from the State of Texas Department of Housing and Community Affairs” in forward to rehab the existing complex, paid a \$60,000.00 commitment check that holds the commitment in place until development can begin, paid for environmental testing on the site, and paid an architectural firm to develop a plan to rehab the existing units.

- The amount of on-going expenses has continued to grow monthly, and because of vandalism, the water and power was turned off.
- The applicant's representative contends that the efforts mentioned above (and related expenses incurred on the site of over \$635,000.00) demonstrate how the applicant never intended to abandon the multifamily use on the site.
- The applicant has the burden of proof in establishing the following related to the special exception request:
 - There was a clear intent not to abandon the nonconforming multifamily use on the subject site even though the use was discontinued for six months or more.
- Granting this request would reinstate/restore the nonconforming use rights that were lost when the multifamily use was vacant for a period of six (6) months or more. Granting this request would restore the multifamily use as legal nonconforming use but not as a legal *conforming* use. The applicant would have to make application for a change in zoning and obtain approval from City Council in order to make the use on the site a legal conforming use.
- If restored/reinstated, the nonconforming use would be subject to termination by the Board of Adjustment as any other nonconforming use in the city. (The applicant's representative has been advised by staff of Section 51A-4.704 which is the provision in the Dallas Development Code pertaining to "Nonconforming Uses and Structures").

BOARD OF ADJUSTMENT ACTION: MARCH 14, 2006

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Hill

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:

- The special exception does not prevent the building official from revoking a certificate of occupancy if the use is discontinued for six months or more after today.

SECONDED: **Gabriel**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 056-105(J)

BUILDING OFFICIAL'S REPORT:

Application of Bill Bauman to enlarge a non-conforming use at 4110 W. Davis Street. This property is more fully described as Lot 1A in City Block 1/5947 and is zoned PD-631 MMU which requires a microwave tower to have a Specific Use Permit. The applicant proposes to add an antenna to an existing non-conforming microwave tower. Referred to the Board of Adjustment in accordance with Section 51A 3.102 (d) (6) of the Dallas Development Code, as amended, which states the power of the Board to grant the request to enlarge a non-conforming use.

LOCATION: 4110 W. Davis Street

APPLICANT: Bill Bauman

REQUEST:

- A request is made to enlarge a nonconforming use (microwave tower).

GENERAL STANDARD FOR THE BOARD OF ADJUSTMENT:

In general. The regulations in this chapter have been established in accordance with a comprehensive plan for the purpose of promoting the health, safety, morals, and general welfare of the city in order to:

- (A) lessen the congestion in the streets;
- (B) secure safety from fire, flooding, and other dangers;
- (C) provide adequate light and air;
- (D) prevent the overcrowding of land;
- (E) avoid undue concentration of population;
- (F) facilitate the adequate provision of transportation, water, sewage, schools, parks, and other public requirements;
- (G) promote the character of areas of the city;
- (H) limit the uses in areas of the city that are peculiarly suitable for particular uses;
- (I) conserve the value of buildings; and
- (J) encourage the most appropriate use of land throughout the city.

GENERAL FACTS:

- An elevation has been submitted indicating that the use will be enlarged by adding an additional antenna at a 100 foot height on an existing tower that has a total height of 163 feet.

- A site plan has been submitted indicating the location of the existing tower and cabinets, but the site plan is not to scale.
- The microwave tower use on the site could only become a conforming use once it has obtained a zoning classification from City Council that makes it a conforming use.
- A microwave tower use is a nonconforming use in PD 631, the West Davis Special Purpose District, Medium Mixed Use Subdistrict. PD 631 MMU zoning requires a Specific Use Permit for microwave towers.
- The structure on the site is a conforming structure.
- The Dallas Development Code states that the board has the power “to hear and decide requests for the enlargement of a nonconforming use.”
- The Dallas Development Code defines a nonconforming use as “a use that does not conform to the use regulations of this chapter, but was lawfully established under regulations in force at the beginning of operation and has been in regular use since that time.”
- The Dallas Development Code defines a nonconforming structure as “a structure that does not conform to the regulations (other than use regulations) of this chapter, but which was lawfully constructed under the regulations in force at the time of construction.”
- The Board Administrator mailed the applicant a copy of the section of the Dallas Development Code pertaining to “Nonconforming Uses and Structures” which fully explains the purpose of how the purpose of this section of the code “that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code; and how nonconforming uses can be brought to the Board of Adjustment for amortization where if the board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for that nonconforming use - a compliance date that is provided under a plan whereby the owner’s actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.
- The request to the board is to enlarge a nonconforming *use*. The request is not to enlarge a nonconforming *structure*. The expanded retail use would be in compliance with development code standards such as setbacks, coverage requirements, height requirements, and parking requirements.
- According to DCAD, the request site is developed with a 484 square foot utility building in good condition that was built in 1985 on 1.35 acres.
- The ordinance for PD 631 indicates that City Council approved the zoning on March 26, 2003. The zoning before PD 631 was CR Community Retail, which allows radio, television, or microwave tower by Specific Use Permit.

BACKGROUND INFORMATION:

Zoning:

Site: PD 631 (W. Davis Special Purpose District Medium Mixed Use)

North: PD 525 (Office, Commercial, and Industrial Uses)
South: PD 631 (W. Davis Special Purpose District Medium Mixed Use) and R-5 (A) (Single Family Residential 5,000 square feet)
East: PD 631 (W. Davis Special Purpose District Medium Mixed Use)
West: PD 631 (W. Davis Special Purpose District Medium Mixed Use)

Land Use:

The subject site is developed with a microwave tower use. The area to the north is developed with an industrial use; the area to the west is office and auto related sales; the areas to the east are a motel and mobile home park use; the areas to the south are an industrial use and single family residential.

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 20, 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.

February 16, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

February 17, 2006: The Board Administrator contacted the applicant via letter 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 March 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 March public hearing after considering the information/evidence and

testimony presented to them by the applicant and all other interested parties.

February 28, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Department Transportation Engineer, Senior Planner Hiromoto, Development Services Department Code Specialist, Chief Arborist, and the Assistant City Attorney to the Board.

No review comment sheets were received on this case.

STAFF ANALYSIS:

- An elevation has been submitted indicating that the use will be enlarged by adding an additional antenna that is 100 feet in height on an existing tower that has a total height of 163 feet.
- The applicant has verified the height of the proposed antenna, but not the existing height of the tower. The applicant has indicated that the elevations provided do not represent the existing tower in terms of shape and height. The elevations show a tower that goes to a point at a height of 163' and the photos show a tower that does not appear to be 163' tall and does not come to a point.
- A site plan has been submitted indicating the location of the existing tower and cabinets, but the site plan is not to scale. The site plan notes that the scale is accurate for a 22" x 34" sized sheet and it has been provided on a sheet that is 11" x 14".
- Granting this request would allow the existing microwave tower use to be expanded with an additional antenna.

BOARD OF ADJUSTMENT ACTION: MARCH 14, 2006

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Hill

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:

- Each antenna will be five feet tall and six inches wide.
- There will be six antennas in the antenna array.
- The one antenna array will be attached to the existing tower at 100 feet from grade.
- The tower will not exceed the current height of 163 feet.

SECONDED: Gabriel

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 056-087

BUILDING OFFICIAL'S REPORT:

Application of Mary Wright for a special exception to the side yard setback regulations at 723 N. Oak Cliff Blvd. This property is more fully described as Lot 3 in City Block 1/4703 and is zoned R-7.5(A) which requires a side yard setback of 5 feet. The applicant proposes to maintain a carport and provide a 3 foot side yard setback which would require a special exception of 2 feet. Referred to the Board of Adjustment in accordance with Section 51A-4.402 (c) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 723 N. Oak Cliff Blvd.

APPLICANT: Mary Wright

March 14, 2006 Public Hearing Notes:

- The Board Administrator explained the discrepancy between the dimensions shown on the submitted elevation (where the carport is/was 22" from the side property line) and the submitted site plan (where the carport is/was 3' from the side property line).

REQUEST:

- A special exception to the side yard setback regulations of 2' is requested in conjunction with modifying and maintaining an approximately 320 square foot carport (32' long and 10' 10" wide) on a site developed with a single family home.

STANDARD FOR A SPECIAL EXCEPTION TO ALLOW A CARPORT IN THE SIDE YARD:

The Board of Adjustment may grant a special exception to the minimum side yard requirements to allow a carport for a single family or duplex use when, in the opinion of the Board, the carport will not have a detrimental impact on surrounding properties. In determining whether to grant a special exception, the Board shall consider the following:

- (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) The suitability of the size and location of the carport.
- (4) The materials to be used in construction of the carport.

(Storage of items other than motor vehicles is prohibited in a carport for which a special exception is granted in this section of the Code).

GENERAL FACTS:

- A 5'-side yard setback is required in the R-7.5(A) zoning district.
- A site plan has been submitted that denotes a carport located 3' away from the site's northern side property line, a side of the site that immediately abuts a single family home.
- The Building Inspection Development Code Specialist stated at the February 27th staff review team meeting upon review of field slides taken by the Board Administrator, that the existing carport is not 3' away from the site's side property line. The code specialist stated that if the request for a special exception of 2' is granted, the applicant/owner will be required to modify the carport from its current location and configuration in order to comply with providing a 3' side yard setback as requested and as shown on the submitted site plan.
- The scaled site plan submitted in conjunction with the request denotes that the carport is 32' in length and 10' 10" in width. The site plan denotes that a house that is 1,514 square feet and a garage that is 180 square feet.
- The elevation submitted in conjunction with the request denotes that the carport ranges in height from 8' 9" – 16' in height. The elevation does not denote the

materials of the carport posts, however specifies that the roof is comprised of “shingles to match house.”

- A plat map has been submitted with the application that indicates that the subject site is 135’ x 60’ (or 8,100 square feet) in area.
- According to DCAD, the site is developed with the following:
 - a single family home in “good” condition built in 1940 with 1,514 square feet of living area;
 - a 180 square foot frame “detached garage;” and
 - a 240 square foot metal “detached carport.”
- Building Inspection states that no permit was issued by the City for the existing carport on this site.
- The Dallas Development Code provides for the Board of Adjustment to consider special exceptions for *carports* in the side yard with a specific basis for this type of appeal. (Note that the Dallas Development Code does not provide a definition of “carport” however Building Inspection interprets a “carport” to be a structure that would cover a vehicle and be open on at least one side. Building Inspection has recently been interpreting what would appear to a layperson to be a garage without a garage door as a “carport”).
- The Dallas Development Code provides for the Board of Adjustment to consider *variances for structures* in the side yard setback with a different basis for appeal than that of *special exceptions for carports* in the side yard setback.
- The Board Administrator noted no other carports attached to the sides of homes in the 700 block of W. North Oak Cliff Boulevard. The administrator was not able to determine from the field visit whether or not these two carports were located in required side yard setbacks.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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

Timeline:

- Jan. 20, 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.
- Feb. 15, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Feb. 16, 2006: The Board Administrator wrote the applicant a letter that conveyed 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 March 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 March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Feb. 27, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.

STAFF ANALYSIS:

- Granting this special exception of 2' would allow the existing carport to be modified and maintained 3' away from the site's northern side property line (or 2' into the required 5' side yard setback).
- The submitted site plan indicates that the carport will be modified where it will be located 3' away from the site property line, and where approximately 64 square feet (2' x 32') of its approximate 320 square feet (10' 10" x 32') will be located in the 5' side yard setback.
- No other carports were noted in the immediate area of the subject site.
- The submitted elevation specifies the materials of the roof of the carport ("shingles to match house") but does not specify the materials of the posts of the carport.
- The applicant has the burden of proof in establishing the following:
 - A 8' 9" – 16' -high, 32'-long, 10' 10"-wide carport (which will be located 2' into the 5' side yard setback) will not have a detrimental impact on surrounding properties. The applicant has the burden of proof in establishing the existing carport will not have a detrimental impact on surrounding properties by addressing:
 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. The suitability of the size and location of the carport.
 4. The materials to be used in construction of the carport.
- As of March 6, 2006, no letters have been submitted in opposition to the request and 10 letters have been submitted in support of the request.
- Typically, staff has suggested that certain conditions be imposed if the Board determines that this type of request is worthy of being granted. The following conditions would restrict the location and size of the carport in the side yard setback; would require the carport in the side yard setback to be modified and retained in the compliance with design, materials, and configuration indicated on the submitted site plan and elevation; and would require the applicant to mitigate any water drainage related issues that the carport may cause on the immediately adjacent lot:
 1. Compliance with the submitted site plan and elevation is required.
 2. The carport structure must remain open at all times.
 3. All applicable building permits are obtained.
 4. No item (other than a motor vehicle) may be stored in the carport.
 5. There is no lot-to-lot drainage in conjunction with this proposal.
- Granting this special exception of 2' with conditions imposed that the applicant complies with the submitted site plan and elevation would assure that the carport is modified and maintained as shown on these documents.

BOARD OF ADJUSTMENT ACTION: MARCH 14, 2006

APPEARING IN FAVOR: Mary Wright, 723 N. Oak Cliff Blvd., Dallas, TX

APPEARING IN OPPOSITION: Andy Lindblom, 727 N. Oak Cliff Blvd., Dallas, TX

MOTION: Hill

I move that the Board of Adjustment, in Appeal No. **BDA 056-087**, on application of Mary Wright, **deny** the special exception to the side yard requirements for a carport requested by this applicant **without prejudice**, because our evaluation of the property and testimony shows that the carport will have detrimental impact on surrounding properties.

SECONDED: Jefferson

AYES: 4– Richmond, Hill, Gabriel, Jefferson

NAYS: 1 - Schweitzer

MOTION PASSED: 4– 1

FILE NUMBER: BDA 056-090

BUILDING OFFICIAL'S REPORT:

Application of Gene Phillips, represented by Bill Ward for a special exception to the fence height regulations at 10058 Hollow Way Road. This property is more fully described as a tract of land in City Block 1/5517 and is zoned R-1ac(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 9 foot 7 inch fence in the required front yard setback which would require a special exception of 5 feet 7 inches. Referred to the Board of Adjustment in accordance with Section 51A-4.602 (a) (6) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 10058 Hollow Way Road

APPLICANT: Gene Phillips
Represented by Bill Ward

REQUEST:

- A special exception to the fence height regulations of 5' 7" is requested in conjunction with completing and maintaining an 8' 4" open wrought iron fence (atop an approximately 1.5' limestone base) with 9' 7" high limestone columns in the 40' Hollow Way Road front yard setback. The applicant's representative has stated that the owner intends to leave the subject site as open space which would be an extension of the owner's lawn and estate to the immediate north and west.

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 following additional information was gleaned from the submitted site plan/elevation:
 - The proposed fence located in the 40' front yard setback would be approximately 170' in length and staggered/stair-stepped back from Hollow Way Road. (An additional 30' of fence would be permitted by right since it is shown to be located at/or behind the 40' setback line).
 - The proposed fence would be located at a range of approximately 0' – 40' from the property line (or 21' – 41' from the Hollow Way pavement line).
- The submitted site plan/elevation denotes the location of 23 “existing trees” on the site inside and outside of the proposed fence.
- There is no single family home that has direct frontage to the existing fence given its location on the subject site, the curvature of Hollow Way Road (where the house immediately across from the subject site faces the lot to the west), and the lots to the south of the site that are oriented to face either east or west.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences that appeared to be above 4' in height and located in a front yard setback.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included the following information:
 - a conceptual rendering of the proposed fence; and
 - copies of letters from 12 neighbors/owners who support the request.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA 990-297, 10058 Hollow Way Road (the subject site) On June 27, 2000, the Board of Adjustment Panel A denied a request for a special exception to the fence height regulations of 5' 7" with prejudice, and denied a special exception to the single family regulations for an additional dwelling unit without prejudice. The case report states that the fence special exception was requested in conjunction with constructing and maintaining an 8' high combination limestone/wrought iron fence, and that the single family special exception was requested in conjunction with maintaining an approximately 576 square foot, 1-story "guest house"/ dwelling unit.

Timeline:

- Jan. 26, 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.
- Feb. 15, 2006: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."
- Feb. 16, 2006: The Board Administrator contacted with 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 February 24th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;

- the March 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 March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Feb. 24, 2006 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).

Feb. 27, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- A scaled site plan/elevation has been submitted that documents the location of the entire proposed fence/wall relative to the property line (at a range of approximately 0' – 40') and pavement line (at a range of 21' – 41').
- The site plan/elevation denotes the building materials and maximum height of the limestone-based fence/wall with wrought iron atop (8' 4") and limestone columns (9' 7").
- There is no single family home that has direct frontage to the existing fence given its location on the subject site, the curvature of Hollow Way Road (where the house immediately across from the subject site faces the lot to the west of the subject site), and the lots to the south of the site that are oriented to face either east or west.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences that appeared to be above 4' in height and located in a front yard setback.
- As of March 6th, no letters have been submitted in opposition to the special exception, and 12 letters have been submitted in support of the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 5' 7" (whereby the proposed fence/wall and columns that would exceed 4' in height) will not adversely affect neighboring property.

- Granting this special exception of 5' 7" with conditions imposed that the applicant complies with the submitted site plan/elevation would assure that the proposed fence/wall and columns would be constructed and maintained as shown on this document.

BOARD OF ADJUSTMENT ACTION: MARCH 14, 2006

APPEARING IN FAVOR: Bill Ward, 4620 Lawson Ct., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Jefferson

I move that the Board of Adjustment, in Appeal No. **BDA 056-090**, on application of Gene Phillips, **grant** the request of this applicant to construct a 9 foot, 7 inch fence on the property as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and testimony shows that this special exception will not adversely affect neighboring property. 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/elevation is required.
- There will be no removal of trees in conjunction with the construction of the fence/wall on the subject site.

SECONDED: Schweitzer

AYES: 5 – Richmond, Gabriel, Schweitzer, Jefferson

NAYS: 1 - Hill

MOTION PASSED: 4– 1

FILE NUMBER: BDA 056-093

BUILDING OFFICIAL'S REPORT:

Application of Skillman-Eastridge, LTD., represented by James Schnurr to appeal the decision of the administrative official at 6420 Skillman Street aka 6320 Eastridge Drive. This property is more fully described as Lot 1C in City Block C/5414 and is zoned CR. The applicant proposes to appeal the building official's decision concerning the replacement of a detached sign. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(1) of the Dallas Development Code, as amended, which states the power of the Board to hear an appeal of an administrative official decision.

LOCATION: 6420 Skillman Street aka 6320 Eastridge Drive

APPLICANT: Skillman-Eastridge, LTD.

March 14, 2006 Public Hearing Notes:

- The applicant's representative submitted information related to the costs of renovating the sign on the subject site, and the Building Official's representative submitted applicable code provisions related to the appeal.

REQUEST:

- An application has been made that requests that the Building Official's decision be reversed/overturned. The application states that "the applicant is appealing the decision of the Building Official that the extension of the pole of the existing sign, while maintaining the same face and height of the sign, constitutes the replacement of the sign." The application states that "the applicant will maintain the same existing sign faces, in the exact same location, at the same height."

BASIS FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:

Section 51A-3.102(d)(1) of the Dallas Development Code states that the Board of Adjustment has the power and duty to hear and decide appeals from decisions of Administrative Officials made in the enforcement of the Dallas Development Code.

GENERAL FACTS:

- On January 27, 2006, the applicant filed an appeal to the Board of Adjustment alleging that the Building Official erred in his determination that "an extension of the existing pole, while maintaining the same face and height of the sign, constitutes a replacement of the sign."
- A photograph of the sign on the site and a site plan indicating the sign's location on the site was submitted with the application. However, no elevation of the sign on the subject site as existing (or as proposed) was submitted with the original application.
- On February 17, 2006, the Building Inspection Development Code Specialist responded to the Board Administrator's inquiry as to the date in which the decision of the Building Official was made via an email establishing that "that the date of the bldg. official's decision is 1-25-06." (The date in which the decision is made by the Building Official is relevant since the Dallas Development Code states that an appeal to the board must be made within 15 days after notice of the decision of the official.)
- On February 27, 2006, the Building Inspection Development Code Specialist forwarded a copy of a "City of Dallas Building Inspection Application" (see Attachment A). This document provided the following information:
 - Date: 1/25/06
 - Address: 6420 Skillman/6320 Eastridge
 - Owner/Tenant: Home Depot USA, Inc.
 - Applicant: Skillman- Eastridge, Ltd.

- Description of Proposed Project: “Maintain existing detached premise sign @ same height & same location (substitute existing pole)”
- Remarks: “Denied – Sign will have to meet new setback reg’s if pole is removed.”
- The Board Administrator forwarded a copy of the “Outline of Procedure for Handling Appeals from Decisions of the Building Official by the Board of Adjustment of the City of Dallas” to the applicant’s representative (see Attachment B).
- The applicant’s representative submitted additional documentation to staff beyond that what was submitted with the original application (see Attachments C and D). This information includes the following information:
 - A letter that provides additional details about the request;
 - Photos of the site; and
 - An elevation of the existing/proposed sign.
- The applicant’s representative’s letter in Attachment C states the following:
 - The applicant is redeveloping the front portion of the Home Depot site along Skillman Street, where the applicant must lower the existing topography of the site in order to level the site with the street.
 - The Building Official has determined that a replacement of the sign support constitutes the erection of a “new sign. “
 - The sign is currently nonconforming under the current sign regulations that were recently revised within the past year and a half, and that in the event the applicant is required to comply with the new sign regulations, the existing sign would not be permitted in its current location because 1) it is located within 250’ of a non-business zoning district, and 2) it would exceed the maximum height provision (the existing sign is currently 41’ height as measured to the nearest travel lane which exceeds the 22’ maximum height allowed where there is a 30’ setback).

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail) (Deed Restricted Z912-124*)
North: MF-2 (A) (FP) (Multifamily residential district, Flood Plain)
South: MF-1 (A) (Multifamily residential district)
East: CR (Community Retail)
West: CR (Community Retail) (Deed Restricted Z912-124)

* The deed restrictions on this site were enacted on April 8, 1992. The deed restrictions limited prohibited specific uses on the subject site and imposed a right turn lane to be constructed on Skillman Street to provide right turn movement from Skillman Street onto Eastridge Drive.

Land Use:

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

- Jan. 20, 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.
- Feb. 15, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Feb. 16, 2006: 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 noon, March 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 March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Feb. 21, 2006: The Board Administrator forwarded a copy of the “Outline of Procedure for Handling Appeals from Decisions of the Building Official by the Board of Adjustment of the City of Dallas” to the applicant’s representative (see Attachment B).
- Feb. 27, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the

Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

March 6 & 9, 2006 The applicant's representative submitted information beyond what was submitted with the original application (see Attachments C and D).

STAFF ANALYSIS:

- A "City of Dallas Building Inspection Application" was denied on January 25, 2006, to "Maintain existing detached premise sign @ same height & same location (substitute existing pole)" because "Sign will have to meet new setback reg's if pole is removed."
- The applicant has the burden of proof in establishing the necessary facts to show that Building Official's decision of January 25th should be overturned/or reversed.
- If the Board were to overturn the decision of the Building Official, the applicant could lower the topography of the site 15' in order to level the site with the street, and locate the sign back in its current location with, according to the applicant's representative, the same effective area and at the same height.
- If the Board were to overturn the decision of the Building Official, the Board may impose a condition that compliance with the submitted site plan and sign elevation is required that would restrict the sign to its current location, and size and height as shown on the elevation.

BOARD OF ADJUSTMENT ACTION: MARCH 14, 2006

APPEARING IN FAVOR: James Schnurr, 5400 Renaissance Tower, Dallas, TX
Steve Gregory, 6618 Sondra, Dallas, TX 75214

APPEARING IN OPPOSITION: No one

APPEARING FOR THE CITY: Chris Caso, 1500 Marilla, 7BN, Dallas, TX
Danny Sipes, 320 E. Jefferson, Dallas, TX

MOTION: Jefferson

Having fully reviewed the decision of the building official of the City of Dallas in **Appeal No. BDA 056-093**, on application of Skillman-Eastridge, LTD, and having evaluated the evidence pertaining to the property and heard all testimony and facts supporting the application, I move that the Board of Adjustment **reverse** the decision of the building

official and **grant** the relief requested by this applicant. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.
- This relief does not affect the sign's non-conforming status.

SECONDED: Gabriel

AYES: 4 – Richmond, Hill, Gabriel, Jefferson

NAYS: 1 - Schweitzer

MOTION PASSED: 4– 1

FILE NUMBER: BDA 056-101

BUILDING OFFICIAL'S REPORT:

Application of CVS/Pharmacy, represented by Site Enhancement Services/ Kari Myers for a special exception to the sign regulations at 10666 E Northwest Highway. This property is more fully described as Lot 6 in City Block 1/7080 and is zoned CR, which requires non-monument signs to be located 250 feet from a non-business zoning district. The applicant proposes to construct a sign with a setback of 168 feet from a non-business zoning district which would require a special exception of 82 feet. Referred to the Board of Adjustment in accordance with Section 51A-7.304 (b) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 10666 E Northwest Highway

APPLICANT: CVS/Pharmacy
Represented by Site Enhancement Services/ Kari Myers

REQUEST:

- A special exception to the sign regulations of 82' is requested to locate a non-monument sign closer than 250 feet from private property in a non-business zoning district on a site developed as a retail use (CVS Pharmacy). The proposed non-monument sign would replace an existing non-monument sign on the subject site that was erected prior to the 2004 ordinance that created the provision that non-monument signs cannot be closer than 250 feet from private property in a non-business zoning district.

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

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

GENERAL FACTS:

- The Dallas Development Code states that non-monument signs are not allowed within 250' of either private property in a non-business zoning district or a public park of more than one acre.
The applicant proposes to locate a non-monument sign 168' from a non-business zoning district which in this case is an MF-1 (Multifamily) zoning district located south of the site. (The original Building Official's Report that had conveyed that the applicant was proposing to locate a non-monument sign 198' from a non-business zoning district was amended on February 28, 2006).
- The applicant's representative has stated that the proposed electronic message sign will be installed on the existing freestanding sign oriented to Northwest Highway, and that the new proposed 39.5 square foot sign will replace an existing 56 square foot sign (a sign that is 16.5 square feet larger than that what is proposed).
- A sign elevation had been submitted with the application. This elevation provides the following information:
 - One sign that is 11'- 4 ¼' x 7'-1' ¼" in size with text that reads as follows: "CVS pharmacy;"
 - Another sign that is 130" x 43 ½" in size with text that reads as follows: "ELECTRONIC MESSAGE CENTER."
- A site plan has been submitted that indicates the location of the sign on the site. The sign is oriented perpendicular to Northwest Highway where messages on the sign would be oriented to be read for travelers traversing east or west on Northwest Highway.
- On March 2, 2006, the applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a letter that provided further details about the request; and
 - a site plan/graphic that shows the location of the signs on the site.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail)
North: CR (Community Retail)
South: MF-1 (A) (Multifamily residential) & R-7.5 (A) (Single family residential)
East: CR (Community Retail)
West: CR (Community Retail)

Land Use:

The site is currently developed with a retail use (CVS Pharmacy). The areas to the north, east, and west are developed with retail uses; and the area to the south is developed with multifamily uses and land that is under development.

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:

- Jan. 30, 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.
- Feb. 15, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Feb. 16, 2006: 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 March 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 March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Feb. 28, 2006: The Building Inspection Development Code Specialist submitted a revised Building Official's Report. The amended report amended the distances and special exception need that was conveyed in the original report.

March 2, 2006 The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A).

STAFF ANALYSIS:

- A site plan has been submitted that identifies the location of the proposed replacement sign 168' from a non-business zoning district (which in this case is MF-1(A)-zoned property located to the south of the subject site). The site plan also denotes that orientation of the proposed replacement sign perpendicular to the residential use/residentially-zoned property to the south.
- A sign elevation has been submitted that identifies the size of the proposed replacement sign (approximately 40 square feet) and height of the sign.
- The applicant has the burden of proof in establishing the following:
 - Granting the special exception to the sign regulations of 82' to locate an approximately 40 square foot, non-monument sign 168' from the non-business (MF-1(A)) zoning district to the south of the subject site will not adversely affect neighboring property.
- Granting this special exception of 82' with conditions imposed that the applicant complies with the submitted site plan and sign elevation would allow the sign to be located on the site 168'(rather than 250") away from a non-business zoning district.
- In this particular case, the sign (if conditioned to the site plan and elevation) would not be visible from the apartments that are located in the non-business zoning district directly south given that the sign is oriented perpendicular to these structures, nor to the apartments that are located to the southwest given the existing retail structure on the subject site is located between the proposed replacement sign and the apartment structures.
- Granting the request with a condition imposed that the applicant complies with the submitted site plan and sign elevation (not to include text on the sign elevation) would assure that the proposed sign would be located and replaced/constructed as shown of these plans.

BOARD OF ADJUSTMENT ACTION: MARCH 14, 2006

APPEARING IN FAVOR: Kari Myers, 6001 Nimitz Parkway, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Schweitzer

I move that the Board of Adjustment, in **Appeal No. BDA 056-101**, on application of CVS/Pharmacy **grant** the special exception to the provisions of the Dallas Development Code, because our evaluation of the property and testimony presented to us, and the facts that we have determined show that this special exception will not adversely affect neighboring property. 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 sign elevation (not to include text on sign elevation) is required.

SECONDED: Hill

AYES: 4 – Richmond, Hill, Gabriel, Schweitzer

NAYS: 1 - Jefferson

MOTION PASSED: 4– 1

FILE NUMBER: BDA 056-104

BUILDING OFFICIAL'S REPORT:

Application of PC Village Apartments Dallas L.P., represented by Roger Albright for a variance to the height regulations and a special exception to the parking regulations at 6061 Village Glen Drive aka 6532 thru 6648 Shadybrook and 6001 thru 6089 Village Glen Drive. This property is more fully described as a tract of land in City Block A/5413 and is zoned MF-2(A) which limits the height of a multi-family dwelling to 36 feet, and requires parking to be provided with new construction . The applicant proposes to construct multi-family structures with a height of 37 feet, 6 inches which would require a variance of 1 foot 6 inches to the height regulations, and provide 735 of the 970 required parking spaces which would require a special exception of 235 spaces. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(10) and Section 51A-4.311 (a) of the Dallas Development Code, as amended, which states the power of the Board to grant variances and special exceptions.

LOCATION: 6061 Village Glen Drive aka 6532 thru 6648 Shadybrook and 6001 thru 6089 Village Glen Drive

APPLICANT: PC Village Apartments Dallas L.P.
Represented by Roger Albright

March 14, 2006 Public Hearing Notes:

- The applicant’s representative submitted a revised site plan at the public hearing. The applicant’s representative stated that the revised plan reduced the number of units on the site which in turn reduced the parking special exception request. The applicant’s representative established that 763 of the required 942 parking spaces would be provided on the site whereby a special exception of 179 spaces was now being requested.

REQUESTS:

- The following appeals have been made in this application:
 1. A variance to the height regulations of 1’ 6”; and

2. A special exception to the parking regulations of 235 spaces.

Both appeals are requested in conjunction with constructing and maintaining an apartment development where some of the structures would reach 37' 6" in height, and where 735 (or 76%) of the total required 970 off-street parking spaces would be provided. The site is currently under development.

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.

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 (related to the height variance):

- The maximum permitted height in the MF-2(A) zoning district is 36 feet.
- The applicant proposes to erect multifamily units on the site that would reach 37' 6".
- According an attachment document prepared by the applicant's representative (Attachment A), the complex will be comprised of 520 units with a total of 485,094 square feet of dwelling unit floor area within the building site.
- The site is sloped, irregular in shape, and according to the application, 18.8 acres in area.
- The applicant's representative has submitted a topographic map and letter that describes the site dropping from 581 feet to 566 feet over an approximate 500 foot length, a feature of the site that the applicant contends "requires that we "stair-step" the buildings." The applicant's representative states that the "stair-step" and the method whereby the City measures height (the distance from the average of the highest and lowest corners of the building at grade to the mid-pint of the highest ridge and the lowest attached eave (rather the lowest eave)) results in the need for the height variance.

- The applicant’s representative submitted information beyond what was submitted with the original application (see Attachment B). This information included the following:
 - A revised application that added a special exception to the parking regulations;
 - An attachment that provided additional details about the requests;
 - Letters that provide further details about the requests;
 - A topographic survey of the site;
 - A unit mix and breakdown of the project; and
 - A “parking study undertaken in furtherance of BDA Case No. 978-161,” a study that the applicant states analyzed the parking demand for the 14 individual apartment complexes which constitute “The Village” including the Corners complex at issue herein.

GENERAL FACTS (related to the parking special exception):

- The Dallas Development Code states that 1 space is required for each 500 square feet of dwelling unit floor area.
The applicant seeks a special exception of 235 spaces (or 24%) of the 970 spaces that are required for the proposed 485,094 square foot apartment complex.
- An attachment submitted with the revised application (Attachment A) states that the complex will have 485,094 square feet of dwelling unit floor area which would require the site to provide 970 spaces. The attachment states that the City recognizes only 735 spaces being provided on the site, while a total of 950 spaces will actually be provided on the site if one accounts for 215 tandem spaces to be provided on the site. (The City does not recognize “tandem spaces” as spaces to fulfill the off-street parking requirement).
- The applicant’s representative submitted information beyond what was submitted with the original application (see Attachment B). This information included the following:
 - A revised application that added a special exception to the parking regulations;
 - An attachment that provided additional details about the requests;
 - Letters that provide further details about the requests;
 - A topographic survey of the site;
 - A unit mix and breakdown of the project; and
 - A “parking study undertaken in furtherance of BDA Case No. 978-161,” a study that the applicant states analyzed the parking demand for the 14 individual apartment complexes which constitute “The Village” including the Corners complex at issue herein.

BACKGROUND INFORMATION:

Zoning:

Site: MF-2 (A) (Multifamily residential)
North: MF-2 (A) (Multifamily residential) & MU-3 (Mixed use)

South: MF-2 (A) (Multifamily residential)
East: MF-2 (A) (Multifamily residential)
West: MF-2 (A) (Multifamily residential)

Land Use:

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

Zoning/BDA History:

1. BDA 034-113, 6541 Shadybrook Drive (the lot immediately west of the subject site) On January 20, 2004, the Board of Adjustment Panel A granted a request for a variance to height regulations of 4'. The Board imposed the following conditions with this request: compliance with the submitted site plan is required. The case report stated that the request was made to build 3 story structures on a site developed with "run-down 2-story multifamily residential structures."
2. BDA 990-281, 6100 Northwest Highway (the lot immediately east of the subject site) On June 20, 2000, the Board of Adjustment Panel C denied a request for a variance to height regulations of 9.5' without prejudice, and granted a request for a special exception to the tree preservation regulations, subject to conditions. The case report stated that these requests were made to construct a 182-unit 3-4 story apartment complex and to remove protected trees on the site prior to the issuance of a building permit, and mitigate these trees in an extended time period and expanded radius.
3. BDA 978-161, 8603 Southwestern Boulevard (the lot southeast of the subject site) On April 28, 1998, the Board of Adjustment Panel A granted a request for a variance to height regulations of 11' (subject to compliance with the submitted site plan and elevation); granted a request for a special exception to the parking regulations of 101 parking spaces or 13% of the parking requirement (subject to the condition that the special exception automatically and immediately terminates if and when the multifamily use is changed or discontinued); and granted a request for a special exception to the tree preservation regulations (subject

to conditions that mitigation must be completed by April 28, 2001, and that protected trees may be removed prior to the issuance of a building permit). The case report states these requests were made to construct a 390-unit multifamily complex where structures would reach 47 feet in height; where 650 of 751 parking spaces would be provided; and where protected trees were to be removed prior to the issuance of a building permit and would not be mitigated within 30 days of removal.

Timeline:

- Jan. 31, 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.
- Feb. 15, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Feb. 16, 2006: 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 March 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 March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Feb. 27, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the

Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

- Feb. 28, 2006: The Building Inspection Development Code Specialist submitted a revised Building Official's Report. The amended report added a request for a special exception to the parking regulations.
- March 1, 2006: The Building Inspection Development Code Specialist forwarded a revised application and related attachment prepared by the applicant's representative to the Board Administrator (see Attachment A). The application was revised by adding or a special exception to the parking regulations.
- Feb. 21 & March 2, 2006 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment B).
- March 1, 2006 The Development Services Senior Engineer forwarded a Review Comment Sheet to the Board Administrator. The engineer made the following comment: "Neither request nor info is submitted with regard to parking."

STAFF ANALYSIS (related to the height variance):

- The site is sloped (581 feet to 566 feet over an approximate 500 foot length), irregular in shape, and according to the application, 18.8 acres in area.
- A topographic map has been submitted along with a letter that describes the site's slope as a feature of the site that the applicant contends "requires that we "stair-step" the buildings." The applicant's representative states that the "stair-step" and the method whereby the City measures height (the distance from the average of the highest and lowest corners of the building at grade to the mid-point of the highest ridge and the lowest attached eave (rather the lowest eave)) results in the need for the height variance.
- The applicant has the burden of proof in establishing the following related to the height variance request:
 - That granting the variance to the height regulations of 1' 6" to construct and maintain apartment structures some of which will reach 37' 6" in height will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance to the height regulations of 1' 6" to construct and maintain apartment structures some of which will reach 37' 6" in height is necessary to

permit development of the subject site 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 MF-2 (A) zoning classification.

- The variance to the height regulations of 1' 6" to construct and maintain apartment structures some of which will reach 37' 6" in height 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 MF-2 (A) zoning classification.
- If the Board were to grant the height variance of 1' 6", imposing a condition whereby the applicant must comply with the submitted elevations and site plan, the result would be structures that would be allowed to exceed the 36' maximum height permitted in MF-2(A) zoning by 1' 6".

STAFF ANALYSIS (related to the parking special exception):

- 76 percent of the required off-street parking spaces are proposed to be provided in conjunction with constructing and maintaining a 485,094 square foot apartment complex.
- 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 235 spaces (or 24% of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- 973 total parking spaces are proposed to be provided on the site but 218 of these spaces are "tandem parking" spaces that the City does not recognize as parking spaces to fulfill the off-street parking requirements.
- The applicant states that even if the "tandem-spaces" are not counted, the proposal would provide 1.45 spaces per unit and over 1 space per bedroom which is greater than the actual demand ratios of 1.38 spaces per unit and 0.98 spaces per bedroom that were assessed in a parking study done in 1998 for the 14 apartment complexes that constitute "The Village" which includes the subject site.
- Granting this request, subject to the condition that the special exception of 235 spaces automatically and immediately terminates if and when the multifamily use on the site is changed or discontinued, would allow the development of the site with an approximately 485,000 square foot apartment complex with 24% less than the required number of City-recognized off-street parking spaces.
- On March 1, 2006, the Development Services Senior Engineer forwarded a Review Comment Sheet making the following comment: "Neither request nor info is submitted with regard to parking."

BOARD OF ADJUSTMENT ACTION: MARCH 14, 2006

APPEARING IN FAVOR:

Roger Albright, 3301 Elm, Dallas, TX

Jeff Courtwright, 6758 Avalon, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION#1: Hill

I move that the Board of Adjustment in Appeal No. **BDA 056-104**, on application of PC Village Apartments Dallas L.P., **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development code by **179** 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:

- Compliance with the submitted revised site plan.
- 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#2: Hill

I move that the Board of Adjustment in Appeal No. **BDA 056-104**, on application of PC Village Apartments Dallas L.P., **grant** the 1 foot, 6 inch variance to the height regulations because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan and elevations is required.

SECONDED: Gabriel

AYES: 4– Richmond, Hill, Gabriel, Jefferson

NAYS: 1 - Schweitzer

MOTION PASSED: 4– 1

MOTION: Schweitzer

I move to adjourn this meeting.

SECONDED: Hill

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

NAYS: 0 -

MOTION PASSED: 5 – 0 (Unanimously)

3:01: P.M. - Board Meeting adjourned for March 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.