

NOTICE FOR POSTING
MEETING OF
BOARD OF ADJUSTMENT, PANEL B
WEDNESDAY, OCTOBER 19, 2005

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

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

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

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

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10-19-2005

ZONING BOARD OF ADJUSTMENT, PANEL B
WEDNESDAY, OCTOBER 19, 2005
AGENDA

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

Donnie Moore, Chief Planner
Steve Long, Board Administrator

MISCELLANEOUS ITEMS

	Approval of the Wednesday, September 21, 2005 Board of Adjustment Public Meeting Minutes	M1
Unassigned	6010 Velasco Avenue REQUEST: Application of Chris Hewett to waive the filing fee to be submitted in conjunction with a potential board of adjustment application	M2
BDA 045-115	3028 & 3032 Bryan Street REQUEST: Application of William E. Cothrum of Masterplan to waive the two year limitation on a request for a special exception for the handicapped	M3

UNCONTESTED CASES

BDA 056-002	4814 Kelsey Road REQUEST: Application of Peter and Elaine Wittmann, represented by Jose Gonzalez, for a special exception to the fence regulations	1
BDA 056-006	4611 Travis Street REQUEST: Application of Duncan T. Fulton for a special exception to the front yard setback regulations	2
BDA 056-008	1111 S. Akard Street REQUEST: Application of Zad Roumaya, represented by Will Pinkerton for a special exception to the parking regulations	3
BDA 056-013	3636 McKinney Avenue	4

REQUEST: Application of FF Realty, LLC represented by Jackson Walker L.L.P. for variances to the front yard setback regulations, a variance to the height regulations, and a special exception to the landscape regulations

BDA 056-015

14207-09 Haymeadow Drive

5

REQUEST: Application of Diana Zugg for a change from one non-conforming use to another non-conforming use

EXECUTIVE SESSION NOTICE

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

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

(Rev. 6-24-02)

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel B September 21, 2005 public hearing minutes.

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: Unassigned

REQUEST: To waive the \$900.00 filing fee to be submitted in conjunction with a potential Board of Adjustment application

LOCATION: 6010 Velasco Avenue

APPLICANT: Chris Hewett

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 staff requesting a waiver of the \$900.00 filing fee to be submitted in conjunction with a possible Board of Adjustment issue (see Attachment A).
- The Board of Adjustment conducted a hearing on this matter on August 17, 2005. The Board Administrator forwarded a copy of an email written by the applicant to the

board at the August 17th briefing (see Attachment B). This email documented the applicant's potential conflict of being able to attend the August 17th public hearing due to "having to go out of town for business." The board delayed action on the matter until September 21, 2005.

- On September 21, 2005, the Board of Adjustment delayed action on this matter until October 19th. The board strongly encouraged the applicant to provide specific financial documents/records either before or at the October hearing that would demonstrate how payment of the filing fee would result in substantial financial hardship to him. The applicant provided testimony that he felt that he understood what type of information he would need to submit to warrant favorable action from the board.
- On September 26, 2005, the Board Administrator wrote the applicant a letter that conveyed the following information:
 - that the board delayed action on the matter until October 19th;
 - the September 30th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - the October 7th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that the standard by which the board will waive the filing fee will be his demonstration (through testimony and financial documents) of how payment of the filing fee results in substantial financial hardship to the applicant.
- As of October 7th, no additional information has been submitted by the applicant.

Timeline:

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| July 22, 2005 | The applicant submitted a letter requesting a fee waiver for a Board of Adjustment application that may be requested at the address referenced above (see Attachment A). |
| July 28, 2005: | The Board of Adjustment Secretary randomly assigned this request to Board of Adjustment Panel B. |
| July 28, 2005: | The Board Administrator wrote the applicant a letter that conveyed the following information: <ul style="list-style-type: none">• the public hearing date and panel that will consider the request (where his attendance is strongly encouraged);• the criteria/standard that the Board will use in their decision to approve or deny the request; and• 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. |
| August 17, 2005: | The Board of Adjustment conducted a hearing on this matter and delayed action until September 21, 2005. |
| August 25, 2005: | The Board Administrator wrote the applicant a letter that conveyed the following information: |

- the delay of action on this matter until September 21, 2005; and
- that any additional evidence that he wanted staff to include in the board's docket to be submitted by September 9th with the standard by which the board would waive the filing fee being his demonstration (through testimony and financial documents) of how payment of the filing fee results in substantial financial hardship to the applicant.

Sept. 21, 2005: The Board of Adjustment conducted a hearing on this matter and delayed action until October 19, 2005.

Sept. 26, 2005: The Board Administrator wrote the applicant a letter that conveyed the following information:

- the delay of action on this matter until October 19, 2005; and
- that any additional evidence that he wanted staff to include in the board's docket to be submitted by October 7th with the standard by which the board would waive the filing fee being his demonstration (through testimony and financial documents) of how payment of the filing fee results in substantial financial hardship to the applicant.

BOARD OF ADJUSTMENT ACTION: August 17, 2005

APPEARED IN FAVOR: No one

APPEARED IN OPPOSITION: No one

MOTION: **Jaffe**

I move that the Board of Adjustment Public hold this matter under advisement until **September 21, 2005.**

SECONDED: Brannon

AYES: 4–Cox, Brannon, Wise, Jaffe

NAYS: 0 - None

MOTION PASSED 4 – 0 (Unanimously)

BOARD OF ADJUSTMENT ACTION: September 21, 2005

APPEARED IN FAVOR: Chris Hewitt, 6010 Velasco Avenue, Dallas, TX
Joshua Lacomte, 5827 Velasco Ave., Dallas, TX

APPEARED IN OPPOSITION: No one

MOTION: **Brannon**

I move that the Board of Adjustment Public hold this matter under advisement until **October 19, 2005.**

SECONDED: **Gillespie**

AYES: 5–Cox, Brannon, Gillespie, Wise, Jaffe

NAYS: 0 - None

MOTION PASSED 5 – 0 (Unanimously)

MISCELLANEOUS ITEM NO. 3

FILE NUMBER: BDA 045-115

REQUEST: To waive the two year limitation on a request for a special exception for the handicapped of 12 feet that was granted, subject to conditions, on January 19, 2005

LOCATION: 3028 & 3032 Bryan Street

APPLICANT: William E. Cothrum of Masterplan

STANDARD FOR WAIVING THE TWO YEAR TIME LIMITATION:

The Dallas Development Code states that the board may waive the two year time limitation on a final decision reached by the board if there are changed circumstances regarding the property sufficient to warrant a new hearing.

GENERAL FACTS:

- The Dallas Development Code states the following with regard to board action:
 - Except as provided below, after a final decision is reached by the board, no further request on the same or related issues may be considered for that property for two years from the date of the final decision.
 - If the board renders a final decision of denial without prejudice, the two year limitation is waived.
 - The applicant may apply for a waiver of the two year limitation in the following manner:
 - The applicant shall submit his request in writing to the director. The director shall inform the applicant of the date on which the board will consider the request and shall advise the applicant of his right to appear before the board.
 - The board may waive the two year time limitation if there are changed circumstances regarding the property sufficient to warrant a new hearing. A simple majority vote by the board is required to grant the waiver. If a rehearing is granted, the applicant shall follow the process outline in the code.
- On September 30, 2005, the applicant's representative submitted a letter to the Board Administrator requesting that he place a request for a waiver of the two year limitation imposed on the special exception of 12 feet for an elevator penthouse (BDA 045-115). (See Attachment A).
- The applicant's representative seeks a waiver of the two year time limitation on a special exception for the handicapped of 12' that was granted by Board of Adjustment Panel B on January 19, 2005. The special exception was requested in conjunction with constructing and maintaining a 62' high elevator penthouse for a proposed 4-story, 38-unit multifamily structure. The applicant's representative has

written in his September 30th letter that “it has been discovered that the elevator being use is actually 12 inches taller. This necessitates a need to have the special exception increased from 12 feet to 13 feet.”

- On October 3, 2005, the Board Administrator wrote the applicant’s representative a letter on this matter (see Attachment B). The letter and enclosures conveyed the following information:
 - A copy of the January 25th action letter documenting the action of the board on a series of appeals made in BDA045-115;
 - the public hearing date that the board will consider the request;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the October 7th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the October public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- On October 7, 2005, the applicant’s representative forwarded a letter to the Board Administrator (see Attachment C).

**BOARD OF ADJUSTMENT
CITY OF DALLAS, TEXAS**

WEDNESDAY, OCTOBER 19, 2005

FILE NUMBER: BDA 056-002

BUILDING OFFICIAL'S REPORT:

Application of Peter and Elaine Wittmann, represented by Jose Gonzalez, for a special exception to the fence regulations at 4814 Kelsey Road. This property is more fully described as a tract of land in City Block D/5532 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 6 foot 8 inch fence in the required front yard setback which would require a special exception of 2 feet 8 inches. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 4814 Kelsey Road

APPLICANT: Peter and Elaine Wittmann,
Represented by Jose Gonzalez

REQUEST:

- A special exception to the fence height regulations of 2' 8" is requested in conjunction with constructing and maintaining the following in the 40' Kelsey Road front yard setback on a site developed with a single family home:
 - a 6' 6" high open steel fence;
 - a 6' 6" high combination stucco wall/ open steel fence;
 - 6' 8" high open steel entry gates; and
 - 6' 6" high stucco columns.

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 elevation:
 - an open steel fence that is approximately 95' long;
 - a combination open steel/stucco wall that totals approximately 78' in length;
 - two approximately 13' wide gates.
- The following additional information was gleaned from the originally submitted site plan:
 - The fence is to be located about 22' 7" from the street (no property line was shown on this site plan).
 - The recessed gates are to be located about 33' from the street (no property line was shown on the site plan).
- The applicant's representative submitted a letter and revised site plan on September 30, 2005 (see Attachment A). The letter referenced the revised site plan that reflected the property line on the site that, according to the applicant's representative, been identified on the original plan as a "boundary line." The following additional information was gleaned from the revised submitted site plan:
 - The fence is to be located on property line.
 - The recessed gates are to be located about 8' from the property line.
- A landscape plan has not been submitted in conjunction with the application. The submitted site plan indicates symbols that appear to be trees adjacent to the proposal, however, no specifications or labels are provided.
- The proposed fence would be located on a site where one single family home would have direct frontage to the proposal. The home immediately north has no fence in the front yard.
- The Board Administrator conducted a field visit of the site and surrounding area along Kelsey Road (approximately 500 feet north and south of the site) and noted the following fence/walls:

- an approximately 6' open wrought iron fence located immediately east of the site (which is a result of Board action on BDA93-063);
 - an approximately 6' solid wood fence located immediately northeast of the site; and
 - an approximately 6' high open wrought iron fence with 7' high columns and 9' high entry columns located immediately west of the site.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment B). This information included the following:
 - copies of the elevation and site plans for the proposed fence; and
 - a notebook of information including information about neighboring fences in the area, neighborhood property values, and Dallas Police Department reports.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. BDA 93-063, 10349 Strait Lane (the lot immediately east of the subject site) | <p>On April 27, 1993, the Board of Adjustment granted a request to the fence height special regulations of 4' 3". The board imposed no conditions with this request but specified the following details in their motion: a fence special exception was granted to maintain a 6 foot wrought iron fence with an 8 foot gate and columns of 6.5 feet.</p> |
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Timeline:

<p>August 12, 2005</p>	<p>The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report. Part of this information includes photos of the site with the proposed fence superimposed across the photos. This document will be available for review at the briefing/public hearing.</p>
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- Sept. 22, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Sept. 23, 2005: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the September 30th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - the October 7th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the October public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Sept. 30, 2005 The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A).
- October 3, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Board Administrator, the Development Services Senior Transportation Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- October 7, 2005 The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment B).

STAFF ANALYSIS:

- A scaled revised site plan has been submitted that document the locations of the proposed fence, columns, and gates relative to their proximity to the property line and pavement line. The site plan also clearly shows the length of the proposed fence relative to the lot.
- A scaled elevation plan has been submitted that documents the height of the proposed fence (6' 6"), columns (6' 6"), gates (6' 8"), and entry gates. The elevation plan also documents the building materials of the fence and walls (steel, combination open wrought iron with stucco base, and solid stucco), columns (stucco), and gates (open steel).
- The proposed fence, wall, columns, and gates are to be constructed of durable material.
- The proposed fence would be located immediately across from a single family home that has no fence in the front yard setback.
- As of October 7th, no letters had been submitted to staff either in support or in opposition to the proposed fence.
- Granting this special exception of 2' 8" with conditions imposed that the applicant complies with the submitted revised site plan and elevation plan would assure that the proposed fence, wall, columns, and gates are constructed and maintained as shown on these documents.

FILE NUMBER: BDA 056-006

BUILDING OFFICIAL'S REPORT:

Application of Duncan T. Fulton for a special exception to the front yard setback regulations at 4611 Travis Street. This property is more fully described as Lot 5A in City Block S/1538 is zoned Planned Development 193 (LC), which requires a 10 foot front yard setback. The applicant proposes to construct a covered walkway in the required front yard and provide a 0 foot setback which would require a special exception of 10 feet. Referred to the Board of Adjustment in accordance with Section 51-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 4611 Travis Street

APPLICANT: Duncan T. Fulton

REQUEST:

- A special exception to the front yard setback regulations of 10' is requested to construct and maintain an approximately 300 square foot walkway that would attach to an existing multi-story residential building.

STANDARD FOR A SPECIAL EXCEPTION TO THE FRONT YARD REQUIREMENTS FOR A PORTE-COCHERE, COVERED WALKWAY, OR CANOPY:

The board of adjustment may allow a special exception to the front yard requirements of Section 51P-193.125 to permit the erection of a permanently constructed porte-cochere, covered walkway, or canopy in the multiple-family, MH, A, office, commercial, central area, and industrial subdistricts if the structure is rectilinear in shape and does not exceed 25 feet in width at the building line, and if the board finds that the structure will not adversely affect neighboring property.

GENERAL FACTS:

- A 10'-front yard setback is required in the PD No. 193 (LC Subdistrict) zoning district.
The applicant is proposing an approximately 300 square foot (or 25' x 12') walkway where about half of it would be located in the 10' Travis Street front yard setback beginning on the site's front property line. (The other half of the walkway is proposed to be located in the Travis Street public right-of-way).
The board does not have jurisdiction to consider any special exception to the front yard regulations for the portion of this walkway in public right-of-way. The section of the walkway proposed to be located in the public right-of-way would be a matter for

the applicant to pursue with the City of Dallas Development Services Real Estate Division. According to the information submitted with this case, the applicant is in the process of having the walkway licensed. If the walkway is licensed, it would be subject to being removed by either the property owner/licensee or the City at the property owner/licensee's expense.

- For purposes of this request, Building Inspection has stated that the 10'-front yard setback line (dictated by the underlying zoning district) is also the site's building line.
- A "concept site plan" that was submitted with the original application indicated that the walkway was in compliance with two characteristics that are specified in the applicable special exception provision of PD No. 193:
 1. The proposed walkway is rectilinear in shape; and
 2. The proposed walkway does not exceed 25 feet in width at the building line. (The structure is 12' wide at the building line).(On October 7, 2005, the applicant submitted a document entitled "site plan" that indicated the proposed walkway in the same location and with the same dimensional characteristics as the walkway that was indicated on the originally submitted "concept site plan.")
- The submitted "concept elevation" indicates that the walkway is 10' high and 12' wide.
- On October 7, 2005, the applicant submitted a booklet of information that included the following information (see Attachment A);
 - a letter that provided additional details about the request;
 - a site plan illustrating the proposed location and size of the canopy;
 - an entry canopy perspective illustrating the general design of the canopy;
 - an overall perspective of the building's Travis Street frontage; and
 - illustrations of representative examples of similar pedestrian canopies.

BACKGROUND INFORMATION:

Site: PD No. 193 (LC Subdistrict) (Planned Development District, Light Commercial)
North: PD No. 193 (MF-3 Subdistrict) (Planned Development District, Multifamily)
South: PD No. 193 (LC Subdistrict) (Planned Development District, Light Commercial)
East: PD No. 193 (LC Subdistrict) (Planned Development District, Light Commercial)
West: City of Highland Park

Land Use:

The approximately 27,000 square foot subject site is developed as a multi-story residential structure. The areas to the north and west are developed with multifamily uses; and the areas to the east and south are developed with retail uses.

Zoning/BDA History:

1. BDA 989-307, 4611 – 4619
Travis Street (the subject site) On October 26, 1999, Board of Adjustment Panel A granted the following requests, subject to compliance with the submitted site plan and elevation:

1. a variance to the front yard regulations of 9.5' (requested to maintain a portion of a building over 36' in height along Travis);
2. a variance to the front yard regulations of 2' (requested to construct pilasters and cornices) along Travis Street);
3. a variance to the front yard regulations of 2' (requested to allow balconies along Travis);
4. a variance to the side yard setback regulations of 36.5' (to maintain a portion of a building over 36' in height along the northeastern side of the site);
5. a variance to the side yard setback regulations of 5' is needed to construct and maintain a portion of a building under 36' in height (a stairwell which is 20' wide) on the northeastern side of the site.

These requests were requested in conjunction with constructing/maintaining an approximately 121,000 square foot, 17-story multifamily tower.

Timeline:

- Sept. 1, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Sept. 22, 2005 The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Sept. 27, 2005: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the September 30th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;

- the October 7th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the October public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

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

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

October 7, 2005 The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).

STAFF ANALYSIS:

- The proposed walkway shown on the submitted site plan and concept elevation is rectilinear in shape and does not exceed 25 feet in width at the building line. (The structure is 12' wide at the building line).
- If the Board were to grant the front yard special exception request, subject to the submitted site plan and concept elevation, there would be an assurance that the encroachment into the site's front yard setback would be limited to an approximately 300 square foot walkway structure that is located on the site's Travis Street front property line. In addition, if the Board were to condition the request to the submitted site plan and concept elevation, the structure in the setback would be restricted to that what is shown on these documents.

FILE NUMBER: BDA 056-008

BUILDING OFFICIAL'S REPORT:

Application of Zad Roumaya, represented by Will Pinkerton for a special exception to the parking regulations at 1111 S. Akard Street. This property more fully described as Lot 1A in City Block A/441 and is zoned PD 317 which requires parking to be provided for new construction. The applicant proposes to construct a new multi-family dwelling and provide 72 of the required 95 parking spaces which would require a special exception of 23 parking spaces or 24.2%. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 1111 S. Akard Street

APPLICANT: Zad Roumaya, represented by Will Pinkerton

REQUEST:

- A special exception to the off-street parking regulations of 23 spaces (or 24% of the required off-street parking) is requested in conjunction with a 4-level, 49-unit condominium and providing 72 (or 76%) of the total required 95 off-street parking spaces.

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

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

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

GENERAL FACTS:

- The Dallas Development Code requires that the following parking requirements for uses in the proposed residential use:
 - 1 space is required for every 500 square feet of retail floor area use.
 The applicant is proposing to construct a 49-unit condominium with a total of 48,779 square feet and provide only 72 of the required 95 spaces.
- The applicant has stated the following:
 - the subject site is within a quarter mile of both the Cedars and Convention Center DART light-rail stations;
 - the site fronts onto Akard Street which is a main DART bus route;
 - each buyer of a condo unit receives an electric moped;
 - the proposal will have 13 tandem parking spaces which are not recognized by the city as provided "off-street parking spaces;"
 - there will also be 13 parallel parking spaces available on the street.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 317(Planned Development District)
North: PD No. 317(Planned Development District)
South: PD No. 317(Planned Development District)
East: PD No. 317(Planned Development District)
West: PD No. 317(Planned Development District)

Land Use:

The subject site is undeveloped. as a shopping center (The Preston Forest Shopping Center). The areas to the north, east, south, and west are developed with a mix of uses including hotel, office, and 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:

- 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.
- Sept. 29, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Sept. 29, 2005: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the September 30th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - the October 7th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the October public hearing after considering the information/evidence and

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

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

October 7, 2005 The Development Services Senior Engineer submitted a review comment sheet and made the following comments:

- "The site plan appears to provide the maximum number of parking spaces for the site.
- Mitigation measures of moped, proximity to DART light rail stations, and bus route appears reasonable for the 24.2% parking exception."

STAFF ANALYSIS:

- 76 percent of the required off-street parking spaces are proposed to be provided in conjunction with constructing and maintaining the 4-level, 49-unit condominium on the site.
- Granting this request, subject to the condition that the special exception of 23 spaces automatically and immediately terminates if and when the multifamily use on the site is changed or discontinued, would allow development of an approximately 49,000 square foot condominium on an undeveloped site with 24% less than the required number of off-street parking spaces.
- The Development Services Transportation Engineer made the following comments on this request:
 - "The site plan appears to provide the maximum number of parking spaces for the site.
 - Mitigation measures of moped, proximity to DART light rail stations, and bus route appears reasonable for the 24.2% parking exception."

FILE NUMBER: BDA 056-013

BUILDING OFFICIAL'S REPORT:

Application of FF Realty, LLC represented by Jackson Walker L.L.P. for a variance to the front yard setback regulations, a variance to the height regulations, and a special exception to the landscape regulations at 3636 McKinney Avenue. This property is more fully described as a tract of land in City Block A/977 and is zoned P.D. 305 which requires a 10 foot front yard setback, limits the height of a structure to 240 feet, and requires landscaping to be provided with new construction. The applicant proposes to construct a building and provide a 5 foot front yard setback and a height of 265 feet, and provide an alternate landscape plan. This would require a variance of 5 feet to the front yard setback regulations, a variance of 25 feet to the height regulations, and a special exception to the landscape regulations. Referred to the Board of Adjustment in accordance with Section 51-3.102 (d) (3) and (10) of the Dallas Development Code, as amended, which states the power of the Board to special exceptions and variances.

LOCATION: 3636 McKinney Avenue

APPLICANT: FF Realty, LLC
Represented by Jackson Walker L.L.P.

REQUESTS:

- The following appeals have been made in this application to the Board of Adjustment:
 1. variances to the front yard setback regulations of 5’;
 2. a variance to the height regulations of 25’; and
 3. a special exception to the landscape regulations.

These appeals are made in conjunction with constructing and maintaining the following on the subject site:

- a 19-story retail/office/residential tower,
- a 12-story retail/residential tower,
- a 7-story retail/office/residential tower,
- a 2.5-story parking tower, and
- a restaurant.

The subject site is currently developed as a recreation use (The Hank Haney Golf driving range).

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 LANDSCAPE REQUIREMENTS IN PD No. 305:

The board may grant a special exception to the landscaping requirements of this section, if in the opinion of the board, the special exception will not compromise the spirit and intent of this section. When feasible, the board shall require that the applicant submit and that the property comply with a landscape plan as a condition to granting a special exception under this subsection.

GENERAL FACTS (related to the front yard variance requests):

- The front yard setback in PD No. 305 is 10 feet.
According to the submitted “Architectural Site Plan,” the applicant is providing a 5’ front yard setback along the site’s four front yards (Blackburn Street, Noble Avenue, Cityplace West Avenue, and McKinney Avenue), with specific notations on this plan stating “Proposed 5’ Max. Architectural Element Projections Into Req’d Setback.”
According to the application, 5’ variances have been requested on all four frontages of the site for “certain awning and signage projections only.”
- The site zoned PD No. 305, and is flat, rectangular in shape (approximately 360’ x 330’) and according to the submitted application, 3.083 acres in area.
- 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 provides additional information on the requests and why they should be granted; and
 - copies of a site plan, elevations, a “landscape variance plan,” and photographs of the site and surrounding area.

GENERAL FACTS (related to the height variance request):

- The maximum permitted height in the PD No. 305 is 240 feet.
The applicant had originally requested a 20’ variance to the height regulations to construct a structure that would reach 260’. But on September 29th, the applicant submitted a letter requesting a variance of 25’ “to be certain to be able to accommodate the mechanical equipment and architectural features on the roof of the building.”

- The submitted “Architectural Site Plan” and revised elevations indicate a proposed structure that will only reach the proposed maximum 265’ in certain areas of the site. According to the applicant’s representative, the height of the building where the variance is requested is concentrated on the McKinney Avenue side and extends only approximately 70’ deep on that side with the remainder of the development being “substantially lower, well under the maximum allowable height, no more than approximately 110’ out of 240 feet.”
- The site zoned PD No. 305, and is flat, rectangular in shape (approximately 360’ x 330’) and according to the submitted application, 3.083 acres in area.
- 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 provides additional information on the requests and why they should be granted; and
 - copies of a site plan, elevations, a “landscape variance plan,” and photographs of the site and surrounding area.

GENERAL FACTS (related to the landscape special exception request):

- The Dallas Development Code requires full compliance with the Landscape Regulations with new construction.
- On September 29, 2005, the applicant’s representative added a request for a special exception to the landscape regulations to the original application that had been for variances to the front yard setback regulations and a variance to the height regulations.
- 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 provides additional information on the requests and why they should be granted; and
 - copies of a site plan, elevations, a “landscape variance plan,” and photographs of the site and surrounding area.
- The applicant’s representative wrote in his September 30th letter that a PD No. 305 requires that 10% of the total site be landscaped, and that a total of 5.7% of the site area will be provided as conventional landscaping on site, and that their request is that the remaining 4.3% of landscaping will be provided via a combination of a pool deck and rooftop garden and a dedicated corner park feature at the southeast corner of McKinney Avenue and Blackburn Avenue.
- On October 10, 2005, the City of Dallas Chief Arborist informed the Board Administrator that he planned to meet with the applicant’s landscape architect on the afternoon of October 11th. The administrator informed the arborist that dockets would be assembled prior to this meeting, and encouraged the arborist to forward his assessment on this request when completed which in turn would be forwarded to the board at the October 19th briefing/public hearing.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 305 (Planned Development District)
North: PD No. 305 (Planned Development District)
South: PD No. 305 (Planned Development District)
East: PD No. 305 (Planned Development District)
West: PD No. 305 (Planned Development District)

Land Use:

The subject site is developed as a recreation use (The Hank Haney Golf driving range). The areas to the north, south, and west are developed with mixed uses (residential, office, and retail uses) and the area to the east is developed as a recreation use (Hank Haney Golf driving range).

Zoning/BDA History:

1. BDA 989-189, 3665 McKinney (the lot immediately west of the subject site)

On April 19, 1999, Board of Adjustment Panel C granted the following requests:

1. variances to the front yard setback regulations of 10' (for awnings, balconies, and bay windows);
2. a variance to the off-street parking regulations of 8' (to locate 2 parking spaces in the 30' setback);
3. a special exception to the landscape regulations
4. a special exception to the tree preservation regulations; and
5. a special exception to the visibility obstruction regulations.

The requests were made in conjunction with constructing and maintaining a six-structure, 4-story mixed use project (West Village). The board imposed the following conditions with these requests:

1. compliance with the submitted site plan is required;
2. temporary CO's must be issued for each particular building on the site as completed;
3. landscaping for each building must be completed within 6 months of the issuance of the temporary CO's;
4. mitigation for the removal of protected trees must be mitigated within 6 months of the issuance of the temporary CO's for the last building

- on the site;
- 5. replacement inches may be planted on other property in the city within 2 miles of the site; and
- 6. protected trees should not be removed until after the issuance of building permits needed in conjunction with this site.

2. BDA 023-075, 3810 McKinney (the lot immediately north of the subject site)

On May 27, 2003, Board of Adjustment Panel A granted variances to the front yard setback regulations of up to 5'. The board imposed the following condition: compliance with the submitted site plan is required. The case report states that the requests were made to construct and maintain stoops in the Noble Avenue, McKinney Avenue, and Street "A" front yard setbacks.

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.
- Sept. 22, 2005: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- Sept. 23, 2005: The Board Administrator contacted the applicant's representative's assistant and shared the following information:
 - the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the September 30th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - the October 7th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure

pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and

- that the board will take action on the matter at the October public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Sept. 30, 2005 The applicant’s representative amended the original application by increasing the height variance by 5’ and adding a landscape special exception. The representative also submitted information beyond what was submitted with the original application (see Attachment A).

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

October 10, 2005: The City of Dallas Chief Arborist informed the Board Administrator of his plans to meet with the applicant’s landscape architect on October 11, 2005, and of his intent to forward his assessment of the landscape special exception request after this meeting.

STAFF ANALYSIS (related to the front yard variances):

- The subject site is zoned PD No. 305, and is flat, rectangular in shape (approximately 360’ x 330’) and according to the submitted application, 3.083 acres in area.
- If the Board were to grant the front yard variance requests of 5’, subject to the submitted “architectural site plan,” the site could be developed with the mixed use development whereby the encroachments in the site’s four front yard setbacks would be limited to that which is described and shown on this plan: “Proposed 5’ Max. Architectural Element Projection Into Req’d Setback,” resulting in 5’ front yard setbacks along McKinney Avenue, Blackburn Street, Noble Avenue, and CityPlace West Avenue.

STAFF ANALYSIS (related to the height variance):

- The subject site is zoned PD No. 305, and is flat, rectangular in shape (approximately 360’ x 330’) and according to the submitted application, 3.083 acres in area.
- If the Board were to grant the height variance request of 25 feet (or 10% higher than what is permitted in PD No. 305), subject to the submitted “architectural site plan” and revised elevations, the site could be developed with a 265’ high tower that would concentrated on the McKinney Avenue side of the site that extends about 70’ deep on that side with the remainder of the development being under the maximum

allowable height. (The applicant's representative estimated that even on the McKinney Avenue frontage of the site, only about 50% of the building would exceed the maximum height of 240' permitted in the zoning district).

STAFF ANALYSIS (related to the landscape special exception):

- The applicant's representative has stated that PD No. 305 requires that 10% of the total site be landscaped. The applicant's representative has state that his alternate landscape proposal in this case is for a total of 5.7% of the site area to be provided as conventional landscaping on site, and that the remaining 4.3% of landscaping be provided via a combination of a pool deck and rooftop garden and a dedicated corner park feature at the southeast corner of McKinney Avenue and Blackburn Avenue.
- On October 10, 2005, the City of Dallas Chief Arborist informed the Board Administrator of his plans to meet with the applicant's landscape architect prior to the October 19th public hearing, and to forward his assessment of this request after this meeting. The City Arborist's assessment of this request will be forwarded to the Board of Adjustment at the October 19th briefing/hearing.
- If the Board chooses to grant this request, upon the applicant having addressed the applicable standard, staff suggests that the board impose as a condition to this request, compliance with the submitted "Landscape Variance Plan." This would assure that the applicant would be "excepted" only certain specific landscape provisions set forth in PD No. 305.

FILE NUMBER: BDA 056-015

BUILDING OFFICIAL'S REPORT:

BDA 056-015 - Application of Diana Zugg for a change from one non-conforming use to another non-conforming use at 14207-09 Haymeadow Drive. This property is more fully described as Lot 9 in City Block 1/8041 and is zoned CR which currently has a non-conforming Duplex use. The applicant is requesting to change the use to a non-conforming single family dwelling use. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(5) of the Dallas Development Code, as amended, which states the power of the Board to hear and decide requests for change of occupancy of a non-conforming use to another non-conforming use.

LOCATION: Diana Zugg

APPLICANT: 14207-09 Haymeadow Drive

REQUEST:

- An application has been made for the Board of Adjustment to change the existing nonconforming "duplex" use on the CR-zoned site to another nonconforming use: a "single family" use.

STANDARD FOR CHANGING NONCONFORMING USES:

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

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

GENERAL FACTS:

- The site is zoned CR (Community Retail). This zoning district appears to have been created by the City Council in 1989 when the entire city was rezoned from Chapter 51 to Chapter 51(A). According to research of archived zoning maps conducted by the Board Administrator, the subject site had been zoned SC Shopping Center that allowed "duplex" and "single family" uses by right.
- According to information from Dallas Central Appraisal District (DCAD), the property at 14207 Haymeadow is developed with a structure built in 1972 in "fair" condition with 1,018 square feet of living area. The property at 14209 Haymeadow is

developed with a structure built in 1972 in “fair” condition with 3,250 square feet of living area.

- Two documents were forwarded in this file to the Board Administrator from Building Inspection. One document is a “survey plat” which delineates the building footprint of the structure on the site, and labels it as a “1-story brick duplex.” The other document forwarded from Building Inspection is a full-scale document that is not titled or labeled (even with a north arrow or street name). This document is a floor plan that appears to be the structure on the subject site. A portion of this document has been highlighted with a marker with no legend that describes what the highlighted area may be signifying. (A copy of this full scale plan will be available for review at the briefing/public hearing).
- The Dallas Development Code defines “nonconforming use” as “a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time.”
- The “duplex” use and “single family” uses that are at issue in this application are legal *nonconforming* uses. Prior to the creation of the CR zoning district in 1989, these two uses were permitted as legal conforming uses in the SC (Shopping Center) zoning district. Given provisions set forth in the Dallas Development Code, these uses can obtain “conforming use” status upon attaining a different zoning district from the City Council.
- Either nonconforming use on the site (duplex or single family) would be subject to the possibility of an application that may be brought to the Board of Adjustment requesting that the board establish a compliance date for either use as is the case with any other nonconforming use in the city.
- The Board Administrator has informed the applicant of the provisions set forth in the Dallas Development Code pertaining to nonconforming uses.
- The Building Inspection Development Code Specialist commented at the October 3, 2005 staff review team meeting that the site is currently developed with a duplex use that may be partially being used as a day care under provisions set forth in the Dallas Development Code for home occupations.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a letter that provides further details about the request;
 - a copy of the survey plat of the site (that appears to be a duplication of the survey plat submitted with the original application); and
 - a copy of a color-coded floor plan of the site. (According to the letter submitted by the applicant, the two colors on the floor plan delineate “daycare use is allowed in this area” and “a home and I am requesting that you change the use to a single family home.”)
- On October 5, 2005, the applicant informed the Board Administrator that this request to the board was driven largely because of her plan to transition the existing day care (allowed in the zoning district under Dallas Development Code home occupation provisions) into a “child care facility” use. The applicant’s plan to transition a portion of the existing structure from day care to a “child care facility” use on the site (which is a use permitted by right in CR zoning) would allow the applicant to have more children in the structure, however, would require the applicant to obtain

a CO (Certificate of Occupancy). This request to the board that would allow the change of the existing nonconforming “duplex” use (which requires 4 off-street parking spaces) to a nonconforming “single family” use (which requires 2 off-street parking spaces) would allow the applicant to fulfill the off-street parking requirement for the conforming “child care facility” use proposed for the structure on the site.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail)
North: CR (Community Retail)
South: CR (Community Retail)
East: SUP No. 318 (Specific Use Permit)
West: R-10 (A) (Single family residential 10,000 square feet)

Land Use:

The subject site is developed with a nonconforming “duplex” use. The areas to the north, south and west are developed with residential uses; and the area to the east is developed with commercial uses.

Zoning/BDA History:

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

Timeline:

- Sept. 6, 2005: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- Sept. 22, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Sept. 23, 2005: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the September 30th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board’s docket;

- the October 7th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the October public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

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

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

October 5, 2005 The applicant submitted information beyond what was submitted with the original application (see Attachment A).

STAFF ANALYSIS:

- Granting this request would allow the change of one nonconforming use (duplex) to another nonconforming use (single family).
- Granting the request would not establish either use as a legal *conforming* use. The applicant would have to make application for and obtain a change in zoning from City Council in order to make either of these uses (duplex or single family) on the site legal conforming uses.
- Staff has established that this request meets one of the four components of the standard for changing nonconforming uses: the requested change is to a use ("single family" use) that would have been permitted in the SC (Shopping Center) zoning district where the current nonconforming use was permitted by right.
- Granting the request would allow the applicant to transition the structure from its current use as a nonconforming "duplex" use (with a home occupation day care) to a nonconforming "single family" use/ potential *conforming* "child care facility" use.