

NOTICE FOR POSTING
MEETING OF
BOARD OF ADJUSTMENT, PANEL C
MONDAY, DECEMBER 14, 2009

Briefing: 9:30 A.M. **5/E/S**
Public Hearing: 1:00 P.M. **COUNCIL CHAMBERS**

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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12-14-2009

ZONING BOARD OF ADJUSTMENT, PANEL C
MONDAY, DECEMBER 14, 2009
AGENDA

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| BRIEFING | 5ES | 9:30 A.M. |
| LUNCH | | |
| PUBLIC HEARING | COUNCIL CHAMBERS | 1:00 P.M. |

Donnie Moore, Chief Planner
Steve Long, Board Administrator
Kyra Blackston, Senior Planner

MISCELLANEOUS ITEMS

| | | |
|------------|--|----|
| | Approval of the Monday, November 16 , 2009 Board of Adjustment Public Hearing Minutes | M1 |
| Unassigned | 2541 Jennings Avenue REQUEST: Of George Adams to waive the filing fee to be submitted in conjunction with potential board of adjustment appeals | M2 |
| Unassigned | 2536 Jennings Avenue REQUEST: Of Debbie Adams to waive the filing fee to be submitted in conjunction with potential board of adjustment appeals | M3 |
| Unassigned | 1646 Bar Harbor Drive REQUEST: Of Melvin D. Simpson to waive the filing fee to be submitted in conjunction with a potential board of adjustment appeal | M4 |

UNCONTESTED CASES

| | | |
|-------------|--|---|
| BDA 090-005 | 6009 Rose Grove Court REQUEST: Application of Edward Fearon, represented by Rob Baldwin, for a special exception to the fence height regulations | 1 |
| BDA 090-006 | 1434 Kings Highway | 2 |

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|-------------|---|---|
| | REQUEST: Application of Stuart Harvel for a special exception to the fence height regulations | |
| BDA 090-007 | 32 Pinnacle Park Boulevard REQUEST: Application of Susan Mead and Jonathan Vinson of Jackson Walker, LLP for a special exception to the parking regulations | 3 |
| BDA 090-010 | 4319 Bowser Avenue REQUEST: Application of David Espedal for a special exception to the landscape regulations | 4 |
| BDA 090-011 | 3363 Park Lane REQUEST: Application of Tommy Mann of Winstead PC for a special exception to the parking regulations | 5 |
| BDA 090-013 | 2731 Lemmon Avenue REQUEST: Application of Robert Reeves for a variance to the parking regulations | 6 |

HOLDOVER CASE

| | | |
|-------------|---|---|
| BDA 089-125 | 8070 Park Lane REQUEST: Application of Barry Knight and Tommy Mann of Winstead PC, for a special exception to the tree preservation regulations | 7 |
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REGULAR CASES

| | | |
|----------------|--|----|
| BDA 090-001 | 2644 Walnut Hill Lane (aka 2642 Walnut Hill Lane) REQUEST: Application of Pyong Dean, represented by William A. Bratton III, to appeal the decision of the administrative official | 8 |
| BDA 090-002 | 2051 W. Northwest Highway, Suite 65 REQUEST: Application of William J. Killpack, represented by Peter Schulte and William Kortemeir, to appeal the decision of the administrative official | 9 |
| BDA 090-003(K) | 525 E. Jefferson Boulevard REQUEST: Application of Elias Rodriguez for a special exception to the landscaping regulations | 10 |
| BDA 090-004 | 3802 Gaston Avenue | 11 |

REQUEST: Application of Steven E. Stoner, represented by Deshazo Tang & Associates, for a special exception to the parking regulations

| | | |
|----------------|--|----|
| BDA 090-009 | 9925 Garland Road REQUEST: Application of Charlene Carleton for a variance to the parking regulations | 12 |
| BDA 090-012(K) | 6210 Marvin D. Love Freeway REQUEST: Application of Mohammad Habash represented by Moose Construction for a special exception to the landscaping regulations | 13 |

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 C November 16, 2009 public hearing minutes.

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: Unassigned

REQUEST: To waive the \$1,200.00 filing fee to be submitted in conjunction with potential Board of Adjustment appeals

LOCATION: 2541 Jennings Avenue

APPLICANT: George Adams

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 waivers/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's daughter submitted a letter and a spreadsheet of "monthly financials" related to the request of the board to waive the \$1,200.00 filing fee to be submitted with a potential board of adjustment application (see Attachment A).

Timeline:

Nov. 10, 2009 The applicant's daughter submitted a letter requesting a waiver of the filing fee for a Board of Adjustment application that may be submitted/requested at the address referenced above (see Attachment A).

Nov. 11, 2009: The Board of Adjustment Secretary assigned this request to Board of Adjustment Panel C.

Nov. 11, 2009: The Board Administrator emailed the applicant's daughter information about the request (see Attachment B).

MISCELLANEOUS ITEM NO. 3

FILE NUMBER: Unassigned

REQUEST: To waive the \$1,200.00 filing fee to be submitted in conjunction with potential Board of Adjustment appeals

LOCATION: 2536 Jennings Avenue

APPLICANT: Debbie Adams

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 waivers/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 and a spreadsheet of "monthly financials" related to the request of the board to waive the \$1,200.00 filing fee to be submitted with a potential board of adjustment application (see Attachment A).

Timeline:

Nov. 10, 2009 The applicant submitted a letter requesting a waiver of the filing fee for a Board of Adjustment application that may be submitted/requested at the address referenced above (see Attachment A).

Nov. 11, 2009: The Board of Adjustment Secretary assigned this request to Board of Adjustment Panel C.

Nov. 11, 2009: The Board Administrator emailed the applicant information about the request (see Attachment B).

MISCELLANEOUS ITEM NO. 4

FILE NUMBER: Unassigned

REQUEST: To waive the \$600.00 filing fee to be submitted in conjunction with a potential Board of Adjustment appeal

LOCATION: 1646 Bar Harbor Drive

APPLICANT: Melvin D. Simpson

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 waivers/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 related to the request of the board to waive the \$600.00 filing fee to be submitted with a potential board of adjustment application (see Attachment A).

Timeline:

Nov. 19, 2009 The applicant submitted a letter requesting a waiver of the filing fee for a Board of Adjustment application that may be submitted/requested at the address referenced above (see Attachment A).

Nov. 23, 2009: The Board of Adjustment Secretary assigned this request to Board of Adjustment Panel C.

Nov. 23, 2009: The Board Administrator wrote the applicant a letter that contained information about the request (see Attachment B).

FILE NUMBER: BDA 090-005

BUILDING OFFICIAL'S REPORT:

Application of Edward Fearon, represented by Rob Baldwin, for a special exception to the fence height regulations at 6009 Rose Grove Court. This property is more fully described as Lot 27 in City Block A/ 8207 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 an 8 foot 9 inch fence in the required front yard setback which will require a special exception of 4 feet 9 inches.

LOCATION: 6009 Rose Grove Court

APPLICANT: Edward Fearon
Represented by Rob Baldwin

REQUEST:

- A special exception to the fence height regulations of 4' 9" is requested in conjunction with constructing and maintaining (according to the submitted elevation) the following in the site's 40' front yard setback on a site being developed with a single family home:
 - a 6' 6" high open wrought iron fence with 8' high cast stone columns; and
 - an 8' 9" high open wrought iron gate flanked by two 7' 6" high solid cast stone curved entry wing walls (each about 15' in length).

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to the fence height regulations since the basis for this type of appeal is *when in the opinion of the board*, the special exception will not adversely affect neighboring property.

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 applicant has submitted a site plan and an elevation document indicating a fence/column/gate proposal that would be located in the site's front yard setback and would reach a maximum height of 8' 9".

- The following information was gleaned from the submitted site plan:
 - The proposal would be approximately 60' in length along the curved cul-de-sac Rose Grove Court, and approximately 32' in length perpendicular to Rose Grove Court in the front yard setback on the south and east "sides" of the site in the front yard setback.
 - The proposal is shown to be located at a range of approximately 7.5' – 12' from the front property line or about 15' – 20' from the pavement line.
 - The proposed gate is shown to be located approximately 12' from the front property line or about 20' from the pavement line.
- The proposal is located on a site where no single family homes would have direct frontage; and four homes on the cul-de-sac would have indirect frontage to the proposal given that the proposal is on a lot at the end of the cul-de-sac.
- The Board Administrator conducted a field visit of the site and surrounding area (the whole length of Rose Grove Court) and noted one other fence/wall in a front yard setback located two lots southeast of the subject site: an approximately 6' high solid open wrought iron fence with approximately 6.5' high columns – a "fence" which appears to have been "excepted" by the board in 1989- BDA89-029.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA 89-029, Property at 6014 Rose Grove Court (two lots southeast of the subject site)

On April 11, 1989, the Board of Adjustment Panel C considered requests for special exceptions to the fence height regulations of 6' 8" and to the visual obstruction regulations. The board granted the fence height special exception and imposed the following condition: That the applicant erect the fence in accordance with the revised fence elevation plan marked Exhibit "A" showing that the fence in compliance with all visibility obstruction regulations; and denied

the visual obstruction special exception. The case report stated that the bulk of the ornamental iron fence will be 6' 4" high with masonry pilasters 6' 8" high.

Timeline:

- Oct. 22, 2009: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Nov. 17, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- Nov. 18, 2009: The Board Administrator emailed the applicant's representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the November 30th deadline to submit additional evidence for staff to factor into their analysis; and the December 4th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- Dec. 1, 2009 The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the December public hearing. Review team members in attendance included: the Assistant Director of Sustainable Development Department's Current Planning Division, the Board of Adjustment Chief Planner, the Board Administrator, the Chief Arborist, the Sustainable Development Department Project Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.
- Dec. 4, 2009 The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments: "Comply with C.O.D. visibility triangle requirements."

STAFF ANALYSIS:

- The request focuses on constructing and maintaining a 6' 6" high open wrought iron fence with 8' high cast stone columns; with an 8' 9" high open wrought iron gate flanked by two 7' 6" high solid cast stone curved entry wing walls (each about 15' in length) on a site being developed with a single family home.
- A site plan and an elevation document have been submitted indicating the location of the proposed fence/gate/columns in the front yard setback relative to their

- The proposal is located on a site where no single family homes would have direct frontage; and four homes on the cul-de-sac would have indirect frontage to the proposal given that the proposal is on a lot at the end of the cul-de-sac.
- One other fence/wall higher than 4' which appeared to be located in a front yard setback was noted by the Board Administrator in a field visit of the site and surrounding area (the whole length of Rose Grove Court) that being an approximately 6' high solid open wrought iron fence with approximately 6.5' high columns – a “fence” which appears to have been “excepted” by the board in 1989-BDA89-029.
- As of December 7, 2009, no letters had been submitted to staff in support or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal that would reach 8' 9” in height) will not adversely affect neighboring property.
- Granting this special exception of 4' 9” with a condition imposed that the applicant complies with the submitted site plan and elevation document would assure that the proposal would be constructed and maintained in the location and of the heights and materials as shown on these documents.

FILE NUMBER: BDA 090-006

BUILDING OFFICIAL'S REPORT:

Application of Stuart Harvel for a special exception to the fence height regulations at 1434 Kings Highway. This property is more fully described as Lot 9 in City Block 19/3468 and is zoned CD 1 which limits the height of a fence in the front yard to 3 feet. The applicant proposes to maintain an 8 foot fence in the required front yard setback which will require a special exception of 5 feet.

LOCATION: 1434 Kings Highway

APPLICANT: Stuart Harvel

REQUEST:

- A special exception to the fence height regulations of 5' is requested in conjunction with maintaining an 8' high cedar wood board-over-board fence/wall in the site's Windomere Avenue front yard setback on a site developed with a single family home.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to the fence height regulations since the basis for this type of appeal is *when in the opinion of the board*, the special exception will not adversely affect neighboring property.

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 subject site is located at the south corner of Kings Highway and Windomere Avenue. Even though the Windomere Avenue "side" of the subject site functions as its side yard and the Kings Highway "side" functions as its front yard, the subject site has front yard setbacks along both streets – each front yard setback of no fewer than 25 feet. The site's Kings Highway frontage is deemed a front yard since it is the shorter of the two frontages on the corner lot, and the Windomere Avenue frontage is deemed a front yard (even though it is the longer of the frontages which usually is deemed a side yard) since continuity of the established setback along the Windomere Avenue frontage must be maintained (i.e. the front yard setback must be

- The subject site is located in Conservation District No. 1 which states that fences in the front yard may not exceed 36 inches in height. Conservation District No. 1 states that the minimum front yard setback in this portion of the CD is 25 feet, and that the front yard setback must be within five feet of the average setback of the nearest three main uses within the blockface.
- The applicant has submitted a site plan and an elevation indicating that the existing fence/wall in the Windomere Avenue front yard setback reaches a maximum height of 8'. (No fence is proposed to be constructed/to be maintained in the subject site's Kings Highway front yard setback). Although the location of the fence on the submitted site plan encroaches approximately 7' into the 20' visibility triangle at the drive approach into the site from Windomere Avenue, the applicant has chosen to only seek a special exception to the fence height regulations whereby he will either bring the existing fence into compliance with the visual obstruction regulations or seek a request for a special exception to the visual obstruction regulations at a later date filed as a separate application.
- The following additional information was gleaned from the submitted site plan:
 - The existing fence/wall located in the Windomere Avenue front yard setback over 36" or 3' in height is approximately 48' in length parallel to the street and approximately 6' in length *perpendicular* to the street.
 - The existing fence/wall is located on the site's Windomere Avenue front property line or about 10' from the curb line.
- No single family home "fronts" to the existing fence/wall on the subject site since the home immediately west of the site faces/"front" northeast to Kings Highway.
- The Board Administrator conducted a field visit of the site and surrounding area (the area along Windomere Avenue between Taft Street and Kings Highway) and noted one other fence above the maximum three (3) feet allowed in the Conservation District which appeared to be located in a front yard setback. There appears to be an approximately 4' – 5' high open chain link fence immediately west of the subject site.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included a letter from the Kings Highway Neighborhood Association stating "they take no exception" to the request.

BACKGROUND INFORMATION:

Zoning:

Site: CD No. 1 (Conservation District)
North: CD No. 1 (Conservation District)
South: CD No. 1 (Conservation District)
East: CD No. 1 (Conservation District)
West: CD No. 1 (Conservation District)

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:

- Oct. 27, 2009: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- Nov. 17, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- Nov. 18, 2009: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the November 30th deadline to submit additional evidence for staff to factor into their analysis; and the December 4th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”
- Nov. 20, 2009 The applicant forwarded additional information beyond what was submitted with the original application (see Attachment A).
- Dec. 1, 2009 The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the December public hearing. Review team members in attendance included: the Assistant Director of Sustainable Development Department’s Current Planning Division, the Board of Adjustment Chief Planner, the Board Administrator, the Chief Arborist, the Sustainable Development Department Project Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.
- The Building Inspection Development Code Specialist raised his concern regarding the portion of the fence as shown on the submitted site plan being in violation with the Code’s visual obstruction regulations. The Board Administrator contacted the applicant to explain his options of either adding a request for a special exception to the visual obstruction regulations in order to possibly keep the fence located in the visibility triangle, or to bring the fence into compliance with these regulations. The applicant

chose to only seek a special exception to the fence height regulations whereby he stated that he would either bring the existing fence into compliance with the visual obstruction regulations or seek a request for a special exception to the visual obstruction regulations at a later date filed as a separate application.

Dec. 4, 2009

The Sustainable Development Department Project Engineer submitted a review comment sheet marked “Has no objections if certain conditions are met” with the following comments: “Comply with C.O.D. visibility triangle requirements.”

STAFF ANALYSIS:

- This request focuses on maintaining an 8’ high cedar wood board-over-board fence/wall in the site’s Windomere Avenue front yard setback on a site developed with a single family home.
- The fence that is the issue of this request is located on a site that has two front yard setbacks – one front yard setback on Kings Highway (where no fence is existing over 3’ in height or proposed); the other front yard setback on Windomere Avenue (where the existing fence is located that is the issue of this request – a fence that reaches 8’ at its highest point).
- Regardless of the way the subject site’s Windomere Avenue frontage functions as the site’s side yard, this frontage is technically deemed a front yard setback since continuity of the established setback along the Windomere Avenue frontage must be maintained (i.e. the front yard setback must be maintained along Windomere Avenue between Taft Street on the south and Kings Highway on the north since four homes immediately south of the subject site face/front west onto Windomere Avenue).
- A revised site plan and a revised elevation document have been submitted documenting the location, height, and material of the fence over 3’ in height in the Windomere Avenue front yard setback. The site plan shows the fence to be approximately 48’ in length parallel to Windomere Avenue and approximately 6’ in length *perpendicular* to the street. The revised elevation document shows that the fence is comprised of cedar wood board-over-board material at a maximum height of 8’.
- No single family home “fronts” to the existing fence/wall on the subject site since the home immediately west of the site faces/“front” northeast to Kings Highway.
- One other fence/wall higher than the 3’ which appeared to be located in a front yard setback was noted by the Board Administrator in a field visit of the site and surrounding area (the area along Windomere Avenue between Taft Street and Kings Highway) that being an approximately 4’ – 5’ high open chain link fence immediately west of the subject site.
- As of December 7, 2009, one letters had been submitted by the Kings Highway Neighborhood Association stating “they take no exception” to the applicant’s request and no letter had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 5’ (whereby the existing solid cedar wood board-over-

- Granting this special exception of 5' with a condition imposed that the applicant complies with the submitted revised site plan and revised elevation document would assure that the existing fence exceeding 3' in height would be maintained in the location (as it relates to the portion of it being located in compliance with the required visual obstruction regulations) and of the height and material as shown on these documents.
- Granting the applicant's requested fence height special exception would not provide any exception or relief to the City's visual obstruction regulations since the applicant has not made application to address any violation to these specific regulations.

FILE NUMBER: BDA 090-007

BUILDING OFFICIAL'S REPORT:

Application of Susan Mead and Jonathan Vinson of Jackson Walker, LLP for a special exception to the parking regulations at 32 Pinnacle Park Boulevard. This property is more fully described as a 4.972 acre tract in City Block 7212 and is zoned MF-3(A) which requires parking to be provided. The applicant proposes to construct structures for multifamily use and provide 265 of the required 310 parking spaces which will require a special exception of 45 spaces.

LOCATION: 32 Pinnacle Park Boulevard

APPLICANT: Susan Mead and Jonathan Vinson of Jackson Walker, LLP

REQUEST:

- A special exception to the off-street parking regulations of 45 parking spaces (or a 15 percent reduction of the required off-street parking) is requested in conjunction with constructing and maintaining an approximately 155,000 square foot, 160 unit multifamily development on the subject site that is currently undeveloped. The applicant proposes to provide 265 of the required 310 off-street parking spaces.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The special exception of 45 spaces automatically and immediately terminates if and when the multifamily use on the site is changed or discontinued.

Rationale:

- The Sustainable Development Department Project Engineer supports the request based on the information submitted by the applicant dated December 6, 2009 which references the Tax Credit Family Housing Parking Demand.
- The applicant has substantiated how the parking demand generated by the multifamily 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.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds,

after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.

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

GENERAL FACTS:

- The Dallas Development Code requires the following off-street parking requirement:

- Multifamily: 1 space per 500 square feet of dwelling unit floor area within a building site.

The application materials and Building Official's Report state that 265 (or 85 percent) of the required 310 spaces are proposed to be provided.

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

BACKGROUND INFORMATION:

Zoning:

Site: MF-3 (A) (Multifamily)
North: PD No. 811 (Planned Development)
South: PD No. 811 (Planned Development)
East: PD No. 811 (Planned Development)
West: PD No. 525 (Planned Development)

Land Use:

The subject site is undeveloped. The areas to the north, east, and south are undeveloped; and the area to the west is partially developed with office/warehouse use, and partially undeveloped.

Zoning/BDA History:

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. Z089-220, East side of Pinnacle Park Boulevard, north of Fort Worth Avenue (the subject site) | <p>On June 24, 2009, the City Council created an ordinance that changed the zoning classification on the site from IR Industrial Research to MF-3(A) Multifamily.</p> |
|--|---|

Timeline:

- | | |
|-----------------------|---|
| <p>Oct. 27, 2009:</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.</p> |
| <p>Nov. 17, 2009:</p> | <p>The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.</p> |
| <p>Nov. 18, 2009:</p> | <p>The Board Administrator emailed the applicant the following information:</p> <ul style="list-style-type: none"> • an attachment that provided the public hearing date and panel that will consider the application; the November 30th deadline to submit additional evidence for staff to factor into their analysis; and the December 4th deadline to submit additional evidence to be incorporated into the Board's docket materials; |

- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

Nov. 30, 2009 The applicant submitted additional information to the Board Administrator to be discussed at the staff review team meeting.

Dec. 1, 2009 The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the December public hearing. Review team members in attendance included: the Assistant Director of Sustainable Development Department’s Current Planning Division, the Board of Adjustment Chief Planner, the Board Administrator, the Chief Arborist, the Sustainable Development Department Project Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

Dec. 6, 2009 The applicant submitted additional information to the Board Administrator to be forwarded to the board members (see Attachment A).

Dec. 8, 2009 The Sustainable Development Department Project Engineer emailed the Board Administrator that he support the request “based solely on the updated information, dated December 6, 2009, received from Jonathan Vinson and Steve Stoner P.E., that references the Tax Credit Family Housing Parking Demand.”

STAFF ANALYSIS:

- This request focuses on the applicant’s proposal to construct and maintain an approximately 155,000 square foot, 160 unit multifamily development on the subject site that is currently undeveloped, and provide 265 of the required 310 off-street parking spaces.
- The Sustainable Development Department Project Engineer supports the request based on the information submitted by the applicant dated December 6, 2009 which references the Tax Credit Family Housing Parking Demand.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the multifamily use does not warrant the number of off-street parking spaces required, and
 - The special exception of 45 spaces (or 15 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, subject to the condition that the special exception of 45 spaces automatically and immediately terminates if and when the multifamily use is changed or discontinued, the applicant would be allowed to develop/maintain the site with this specific use and with providing 265 of the 310 off-street parking spaces required by the code.

FILE NUMBER: BDA 090-010

BUILDING OFFICIAL'S REPORT:

Application of David Espedal for a special exception to the landscape regulations at 4319 Bowser Avenue. This property is more fully described as Lot 15A in City Block 1/1581 and is zoned PD-193 (MF-2 Subdistrict) which requires mandatory landscaping. The applicant proposes to maintain a structure and provide an alternate landscape plan which will require a special exception.

LOCATION: 4319 Bowser Avenue

APPLICANT: David Espedal

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with obtaining a final building permit and Certificate of Occupancy for according to DCAD records an 18-unit condominium/multifamily development on the subject site constructed in 2006 and not fully complying with the landscape regulations of PD No. 193.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan* is required.

* Note that if the Board of Adjustment chooses to grant/impose the submitted alternate landscape plan as a condition, the applicant will be required to alter existing sidewalk and street tree conditions/features on the site to match what is shown on this plan before he is able to obtain a final building permit and Certificate of Occupancy on a multifamily/condominium development. Although the City Arborists have encouraged the applicant to create and submit a landscape plan that represents the existing conditions on the site (which they would support) so no adjustments to existing noncompliant conditions/features on the site would be required, as of December 8, 2009, no such plan has been submitted to staff.

Rationale:

- If the board were to grant this request with the staff suggested condition imposed, the site would only be minimally "excepted" from sidewalk and street tree location provisions while the remaining part of the site would be in compliance with all other PD No. 193 landscape requirements.
- The City's Chief Arborist recommends approval of this request whereby if the alternate landscape plan were imposed as a condition, the special exception would

**STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS
IN OAK LAWN:**

Section 26(a)(4) of Ordinance No. 21859, which establishes PD No. 193, specifies that 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 the special exception.

GENERAL FACTS:

- PD No. 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind.
- The applicant has submitted an alternate landscape plan that, according to the City of Dallas Chief Arborist, is seeking relief from the landscaping requirements of PD No. 193, specifically to requirements pertaining to sidewalk width/location and street tree location requirements of this ordinance (Section 51P-193.126(b)(4) and (5)).
- The City of Dallas Chief Arborist has submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner pertaining to the submitted landscape plan (see Attachment A). The memo stated the following:
 - The special exception request is triggered by the new construction.
 - Deficiencies:
 1. The mandatory sidewalk along Bowser Avenue is required to be a minimum of 4' in width and between 5' – 10' from back of curb – the sidewalk is placed 13' – 17' from back of curb.
 2. The street trees along Bowser Avenue are required to be planted in a zone 2.5' – 5' from back of curb – the trees are planted approximately 6' – 7' from back of curb.
 - Factors for consideration:
 - The sidewalks along the adjacent properties match the locations of the sidewalk as constructed.
 - The planting area width is highly appropriate for the size and species of trees planted.
 - The property conforms to all other PD No. 193 landscape requirements.
 - Recommendation:

- Approval, subject to alternate landscape plan.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (MF-2) (Planned Development District, Multifamily)
North: PD No. 193 (MF-2) (Planned Development District, Multifamily)
South: PD No. 193 (GR) (Planned Development District, General Retail)
East: PD No. 193 (MF-2) (Planned Development District, Multifamily)
West: PD No. 193 (MF-2) (Planned Development District, Multifamily)

Land Use:

The subject site is developed with a multifamily development. The areas to the north, east, and west are developed with residential uses; and the area to the south is 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:

October 28, 2009: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

Nov. 17, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

Nov. 18, 2009: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the November 30th deadline to submit additional evidence for staff to factor into their analysis; and the December 4th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

Dec. 1, 2009 The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the December public hearing. Review team members in attendance included: the Assistant Director of Sustainable Development Department’s Current Planning Division, the Board of Adjustment

Chief Planner, the Board Administrator, the Chief Arborist, the Sustainable Development Department Project Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

- Dec. 4, 2009 The Sustainable Development Department Project Engineer submitted a review comment sheet marked “Has no objections if certain conditions are met” with the following comments: “Comply with C.O.D. visibility triangle requirements.”
- Dec. 7, 2009 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment A).

STAFF ANALYSIS:

- This request focuses on obtaining a final building permit and Certificate of Occupancy on a multifamily/condominium development on the site that according to DCAD records was constructed in 2006, and not fully complying with landscape regulations.
- Approval of this landscape special exception request would allow the issuance of a final building permit and Certificate of Occupancy for the multifamily development on the site – a site that is in noncompliance with the sidewalk and tree/tree planting zone requirements of PD No. 193.
- An alternate landscape plan has been submitted whereby the applicant seeks an exception from the landscape requirements in the following ways:
 - Maintaining a portion of the sidewalk on Bowser Avenue that is 13’ – 17’ from back of curb (as opposed to the required 5 – 10’ from back of curb); and
 - Maintaining street trees along Bowser Avenue that are planted 6’ – 7’ from back of curb (as opposed to the required 2.5’ – 5’ from back of curb).The alternate landscape plan meets all other mandatory landscape provisions.
- The City of Dallas Chief Arborist supports the request with the stipulation that the submitted alternate landscape plan is imposed as a condition – an alternate plan that the Chief Arborist states is not an accurate representation of the existing conditions on the site that are in noncompliance with the PD No. 193 landscape regulations.
- The applicant has the burden of proof in establishing the following:
 - The special exception (where an alternate landscape plan has been submitted that is deficient the sidewalk and street tree requirements) will not compromise the spirit and intent of the section of the ordinance (Section 26: Landscape, streetscape, screening, and fencing standards).
- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted alternate landscape plan, the site would be minimally “excepted” from compliance to the sidewalk and street tree location requirements of the Oak Lawn PD landscape ordinance while conforming to all other PD No. 193 landscape requirements.
- Note that if the Board of Adjustment chooses to grant the request, and impose the submitted alternate landscape plan as a condition, the applicant will be required to alter existing sidewalk and street tree conditions/features on the site to match what

FILE NUMBER: BDA 090-011

BUILDING OFFICIAL'S REPORT:

Application of Tommy Mann of Winstead PC for a special exception to the parking regulations at 3363 Park Lane. This property is more fully described as Lot 1 and 2 in City Block A/6449 and is zoned D(A) which requires parking to be provided. The applicant proposes to construct a structure for a church use and provide 54 of the required 60 parking spaces which will require a special exception of 6 spaces.

LOCATION: 3363 Park Lane.

APPLICANT: Tommy Mann of Winstead PC

REQUEST:

- A special exception to the off-street parking regulations of 6 parking spaces (or a 10 percent reduction of the required off-street parking) is requested in conjunction with, according to the submitted site plan, constructing/maintaining an approximately 12,000 square foot church (Christ Foundry United Methodist Church) with a seating area in sanctuary of approximately 1,700 square feet on a site that is currently undeveloped. The applicant proposes to provide 54 of the required 60 off-street parking spaces.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The special exception of 6 spaces automatically and immediately terminates if and when the church use on the site is changed or discontinued.

Rationale:

- The Sustainable Development Department Project Engineer has no objections to this request based on the following: local attendees; two bus stops available; primarily only a use on Sundays; and only a 10 percent reduction.
- The applicant has substantiated how the parking demand generated by the church 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.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not

warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.

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

GENERAL FACTS:

- The Dallas Development Code requires the following off-street parking requirement:

- Church: 1 space for each four fixed seats in the sanctuary or auditorium. If fixed benches or pews are provided, each 18 inches of length of the fixed bench or pew constitutes one fixed seat for purposes of this paragraph. If portions of seating areas in the sanctuary or auditorium are not equipped with fixed seats, benches, or pews, the parking requirement for those portions is one space per each 28 square feet of floor area.

The application materials and Building Official's Report state that 54 (or 90 percent) of the required 60 spaces are proposed to be provided.

BACKGROUND INFORMATION:

Zoning:

Site: D(A) (Duplex)
North: R-10(A) (Single family residential 10,000 sq ft)
South: D(A) (Duplex)
East: R-7.5(A) (Single family residential 7,500 sq ft)
West: D(A) (Duplex)

Land Use:

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

- Oct. 30, 2009: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Nov. 17, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- Nov. 18, 2009: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the November 30th deadline to submit additional evidence for staff to factor into their analysis; and the December 4th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and

- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

Dec. 1, 2009

The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the December public hearing. Review team members in attendance included: the Assistant Director of Sustainable Development Department’s Current Planning Division, the Board of Adjustment Chief Planner, the Board Administrator, the Chief Arborist, the Sustainable Development Department Project Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

Dec. 4, 2009

The Sustainable Development Department Project Engineer submitted a review comment sheet marked “Has no objections” with the following comments: “local attendees, 2 bus stops available, primarily on Sundays, only a 10% reduction.”

STAFF ANALYSIS:

- This request focuses on constructing and maintaining an approximately 12,000 square foot church (Christ Foundry United Methodist Church) with a seating area in sanctuary of approximately 1,700 square feet on a site that is currently undeveloped, and providing 54 of the required 60 off-street parking spaces.
- The Sustainable Development Department Project Engineer has no objections to this request based on the following: local attendees; two bus stops available; primarily only a use on Sundays; and only a 10 percent reduction.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the church use does not warrant the number of off-street parking spaces required, and
 - The special exception of 6 spaces (or 10 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, subject to the condition that the special exception of 6 spaces automatically and immediately terminates if and when the church use is changed or discontinued, the applicant would be allowed to develop/maintain the site with this specific use and provide only 54 of the 60 code required off-street parking spaces.

FILE NUMBER: BDA 090-013

BUILDING OFFICIAL'S REPORT:

Application of Robert Reeves for a variance to the parking regulations at 2731 Lemmon Avenue. This property is more fully described as Lot 4A in City Block 1/634 and is zoned PD 375 which requires parking to be provided. The applicant proposes to construct a structure for a hospital use and provide 47 of the required 126 parking spaces which will require a variance of 79 spaces.

LOCATION: 2731 Lemmon Avenue

APPLICANT: Robert Reeves

REQUEST:

- A variance to the off-street parking regulations of 79 spaces (or a 63 percent reduction of the required off-street parking) is requested in conjunction with replacing an existing vacant office structure on the subject site with a new 24-bed, approximately 63,000 square foot hospital structure (Mary Sheils Hospital). The applicant proposes to provide 47 (or 37%) of the 126 off-street parking spaces required in PD No. 375.

STAFF RECOMMENDATION:

Approval

Rationale:

- The subject site's irregular/virtually triangular shape precludes the applicant from developing it in a manner commensurate with the development on other PD No. 375 zoned lots.
- Granting the variance would not be contrary to the public interest since the applicant is proposing to provide almost twice the number of required off-street parking spaces for the proposed 24-bed hospital if the site were located on property with any zoning classification listed in Chapter 51(A) that permits "hospital" use rather than located on property zoned PD No. 375 – a "tailor-made" zoning district that was recently amended to include "hospital" use but a PD zoning district that provides no specific off-street parking requirement for "hospital" use.
- The Sustainable Development Department Project Engineer has no objections to this request.

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 for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that:

- (A) the variance is not 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;
- (B) the variance is necessary to permit development of a specific parcel of land that 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 with the same zoning; and
- (C) the variance is not 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 with the same zoning.

GENERAL FACTS:

- The subject site is located in PD No. 375 – a planned development zoning district that lists specific off-street parking requirements for 1) office-related uses, 2) retail-related uses, 3) multifamily uses, and 4) “all other permitted uses.” The application involves constructing and maintaining a structure as a hospital use that would be categorized in the inventory of uses described in PD No. 375 as “all other permitted uses” where one off-street parking space must be provided for every 500 square feet of floor area unlike the off-street parking requirement of one space for each patient bed for the “hospital” use listed in Chapter 51(A).

The submitted site plan denotes a building area with 62,910 GSF which would require the provision of 126 off-street parking spaces given the off-street parking requirement in PD No. 375. The applicant proposes to provide 47 of the PD-required 126 spaces. (If the site were located in a zoning district listed in Chapter 51A, with as represented on the submitted application, a “new 24 bed Mary Shiels Hospital” then only 24 off-street parking spaces would be required.)

According to application and Building Official’s Report, the applicant proposes to provide 47 (or 37%) of the required 125 parking spaces that would be required for a structure with 62,910 square feet of hospital use or in this case since the site is located in PD No. 375 with no such specific category: “all other permitted uses.”

- This board of adjustment parking reduction request of 63 percent must be “varied” rather than “special excepted” - the option where the parking reduction is less than 25 percent of the required parking.
- The subject site is flat, virtually triangular in shape (234’ x 301’ x 244’) and, according to the application, 0.95 acres in area. The site is zoned PD No. 375.
- DCAD records indicate that the site is developed with an “office building” with 23,040 square feet built in 1970.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a narrative that provided additional details and information about the request;

- a rendering of the proposed hospital structure;
- a zoning map of the site and surrounding area;
- an aerial of the site and surrounding area; and
- a site plan entitled "Proposed Parking Plan."

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 375 (Planned Development)
North: PD No. 375 (Planned Development)
South: PD No. 225 (Planned Development)
East: PD No. 375 (Planned Development)
West: PD No. 193 (O-2) (Planned Development Office)

Land Use:

The subject site is developed with a vacant structure that appears to have been a hospital use. The area to the north is undeveloped; the area to the east is North Central Expressway; the area to the south is a cemetery (Freedman’s Memorial Cemetery); and the area to the west appears to be developed with medical/hospital use.

Zoning/BDA History:

- | | |
|---|--|
| <p>1. BDA 045-260, Property at 2731 Lemmon Avenue (the subject site).</p> | <p>On July 29, 2005, the applicant withdrew a request for a variance to the FAR regulations.</p> |
| <p>2. Z089-150, Area generally bounded by Lemmon Avenue East, the eastern half of the abandoned portion of Howell Street, and Lemmon Avenue West. (A site that includes tracts of land including the subject site).</p> | <p>On August 10, 2009, the City Council created an ordinance that amended the conceptual plan and conditions for the Tract II portion of Planned Development District No. 375 for Retail, Office, and Residential Uses – a tract of land that is the subject site of this board of adjustment application.</p> |

Timeline:

- November 4, 2009: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Nov. 17, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

- Nov. 18, 2009: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the November 30th deadline to submit additional evidence for staff to factor into their analysis; and the December 4th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”
- Nov. 30, 2009 The applicant submitted additional information to the Board Administrator to be discussed at the staff review team meeting.
- Dec. 1, 2009 The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the December public hearing. Review team members in attendance included: the Assistant Director of Sustainable Development Department’s Current Planning Division, the Board of Adjustment Chief Planner, the Board Administrator, the Chief Arborist, the Sustainable Development Department Project Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.
- Dec. 3, 2009 The applicant submitted additional information to the Board Administrator to be forwarded to the board members (see Attachment A).
- Dec. 4, 2009 The Sustainable Development Department Project Engineer submitted a review comment sheet marked “Has no objections.”

STAFF ANALYSIS:

- This request focuses constructing and maintaining an approximately 63,000 square foot hospital structure on a site developed with a vacant office structure, and providing almost twice the number of off-street parking spaces that would be required for a 24-bed hospital if the site was located in a zoning classification listed in Chapter 51(A) that permits “hospital” use – the applicant proposes to provide 47 spaces and the 24-bed hospital in a Chapter 51(A) zoning district would require only 24 parking spaces or 1 parking space per bed.
- The applicant seeks a variance to the PD No. 375 parking requirement of 1 space per 500 square feet of floor area (where 126 spaces would be required for the approximately 63,000 square foot hospital structure) since PD No. 375 has no specific parking requirement for the permitted “hospital” use.
- The request to reduce the number of the PD No. 375 required 126 parking spaces on the site by 79 spaces as opposed to a *special exception* to the parking regulations since the amount of reduction being requested is more than 25% of the total number of parking spaces required.

- The subject site is flat, virtually triangular in shape (234' x 301' x 244') and, according to the application, 0.95 acres in area. The site is zoned PD No. 375.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the parking regulations of 79 spaces 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 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 PD No. 375 zoning classification.
 - The variance 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 PD No. 375 zoning classification.
- The Sustainable Development Department Project Engineer has no objections to this request.

FILE NUMBER: BDA 089-125

BUILDING OFFICIAL'S REPORT:

Application of Barry Knight and Tommy Mann of Winstead PC, for a special exception to the tree preservation regulations at 8070 Park Lane. This property is more fully described as Lot 1C in City Block A/5456 and is zoned MU-3(SAH) which requires mandatory landscaping and tree mitigation. The applicant proposes to complete and maintain structures and provide an alternate plan for tree mitigation which will require a special exception.

LOCATION: 8070 Park Lane

APPLICANT: Barry Knight and Tommy Mann of Winstead PC

REQUEST:

- A special exception to the tree preservation regulations is requested in conjunction with not fully mitigating protected trees removed on a site that is currently being developed with a mixed use office/residential/dining/shopping project (Park Lane).

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- All protected trees, as defined by Article X, that remain on the Property following the date of the hearing, are considered to be protected and subject to the Article X tree preservation ordinance. Any protected tree that is determined to be removed, based on conditions as defined in Article X, may be subject to replacement.

Rationale:

- The applicant has substantiated:
 - how strict compliance with the requirements of this article (The Landscape and Tree Preservation Regulations) will unreasonably burden the use of the property; and
 - that the special exception will not adversely affect neighboring property, particularly considering: 1) the extent to which "landscaping" exists on the site for which no credit is given including but not limited to the cost incurred by the applicant to retain protected trees on the property- nearly 45 percent of all protected trees at a cost of more than 10 times the cost to have removed the trees and mitigated in another accepted method, and 2) the extent to which other existing or proposed amenities including but not limited to various "tree preservation," "landscaping and streetscape," and "urban design and energy conservation" components of the project compensate for the reduction of "landscaping" on the site; and

- that the requirements are not imposed by a site specific landscape plan approved by the city plan commission or city council.
- The City’s Chief Arborist approval of the request, subject to the condition mentioned above.

STANDARD FOR A SPECIAL EXCEPTION TO THE TREE PRESERVATION REGULATIONS:

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

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

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

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

GENERAL FACTS:

- The Dallas Development Code states that the Tree Preservation, Removal, and Replacement Regulations apply to all property in the city except for: a) lots smaller than two acres in size that contain single family or duplex uses; and b) lots in a planned development district with landscaping and tree preservation regulations that vary appreciably from those in the provisions set forth in Chapter 51A.
- The Dallas Development Code states that if a tree removal application is approved, one or more healthy replacement trees must be planted in accordance with the following requirements:
 1. Quantity. The total caliper of replacement trees must equal or exceed the total caliper of the protected trees removed or seriously injured.
 2. Species. A replacement tree must be one of the specific “approved replacement trees” listed, and no one species of tree may constitute more than 30 percent of the replacement trees planted on a lot or tract.
 3. Location. The replacement trees must be planted on the lot from which the protected tree was removed or seriously injured, except as otherwise allowed by the code as an “alternate method of compliance with tree replacement requirements.” Replacement trees may not be planted within a visibility triangle, a water course, or an existing or proposed street or alley.
 4. Minimum size. A replacement tree must have a caliper of at least two inches.
 5. Timing. Except as otherwise provided in the code, all replacement trees must be planted within 30 days after the removal or serious injury of the protected trees.

If the property owner provides the building official with an affidavit that all replacement trees will be planted within six months, the building official shall permit the property owner to plant the replacement trees during the six-month period.

If the property owner provides the building official with a performance bond or letter of credit in the amount of the total cost of purchasing and planting replacement trees, the building official may permit the property owner up to 18 months to plant the replacement trees with the following restrictions:

- For single family or multifamily developments, at least 50 percent of the total caliper of replacement trees must be planted before 65 percent of the development has received a final building inspection or a certificate of occupancy, and all replacement trees must be planted prior to the completion of the development; and
- In all other cases, the replacement trees must be planted prior to the issuance of a certificate of occupancy.

A replacement tree that dies within two years of the date it was planted must be replaced by another replacement tree that complies with the tree preservation regulations.

- The Dallas Development Code provides the following “alternate methods of compliance with tree replacement requirements” if the building official determines that, due to inhospitable soil conditions or inadequate space, it would be impracticable or imprudent for the responsible party to plant a replacement tree on the lot where the protected tree was removed or seriously injured (the “tree removal property”):
 1. Donate the replacement tree to the city’s park and recreation department.
 2. Plant the replacement tree on other property in the city that is within one mile of the tree removal property.
 3. Make a payment into the Reforestation Fund.
 4. Grant a conservation easement to the city.
- The applicant has stated on his application that a request has been made for a special exception “to the tree replacement requirements of Section 51A-10.134(1) of 2722.75 caliper inches.” The applicant has stated in his submitted narrative about the application that “before development, there were 397 trees (2,963 caliper inches) on site. To date, 180 trees (1,884 caliper inches) have been relocated or saved. Over half of the caliper inches of original trees have been saved in this urban development. However, in accordance with standard Article X tree mitigation requirements 2,739 caliper inches of tree mitigation are required as a result of the original tree removal.”
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a narrative that provided additional details and information about the request; and
 - photographs of the subject site.
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Chief Board of Adjustment Planner (see Attachment B). The memo stated the following:
 - The applicant is seeking a special exception to Sections 51A-10.134 (Replacement of Removed Trees) and 51A-10.135 (Alternate Methods of Compliance) of the ordinance.

- Trigger:
 - New construction of a 33.5-acre development with mixed uses
- Deficiencies:
 - Required mitigation: The City's analysis identifies 215 protected trees removed for a total of 2,966 caliper inches. The applicant states this to be 217 trees at 2,963 inches. There were originally 395 "protected trees" on the Property of which 215 were subject to mitigation (due to removal) that were based on tree health, species, size or other limiting factors.
 - Reduction (Article X); The City recognizes that 56 new trees were planted that provides 241 caliper inches into the landscaping. These trees are counted toward tree replacement under Article X. After planting these trees, the actual mitigation requirement is leveled at 2,725 caliper inches.
 - Neutral: The City recognizes that 103 mature trees (1,129.5 caliper inches) were maintained in their original locations while allowing for the development. These protected trees are not counted as mitigation credit by ordinance.
 - The Property is still subject to final landscape and tree mitigation final inspections. Currently the deficiencies from Article X include:
 - 2,725 caliper inches of trees (after what has already been planted for landscaping) are due for replacement prior to final inspection, to be either planted on the site, or to be provided through one of more of the alternative methods of compliance found in Article X including: planting trees within one mile of the property; donating trees to the Park Department; making a payment into the Reforestation Fund, and granting a conservation easement to the City.
 - The applicant seeks to resolve mitigation by practices currently implemented, namely harvesting and retention of trees on the Property.
- Factors for consideration:
 - The applicant has presented a request to the board to "grant a special exception to the tree mitigation requirements and not require the mitigation of 2,739 caliper inches..." The arborist believes this to mean that they seek an exemption from the requirement of tree replacement of all trees removed from the property with the exception of the trees that have been currently planted (in compliance with Article X) into the required landscaping for the property.
 - The arborist and the applicant disagree as to the number of caliper inches required for mitigation. The applicants stated the mitigation requirement is for 2,739 inches while we submit the amount is 2,725 inches. I recommend that staff accounting was determined for final inspection, and for the time of this hearing, be considered to be factual for this case to avoid confusion. The amounts are related in the attached exhibit.
 - Protected trees were "harvested" and replanted (77 trees) on Property, and the protected trees that were maintained (103 trees) in their original locations do not have any additional credits provided under Article X. In that they were NOT removed, the trees do not require replacement and therefore no charge is placed against them; but no additional credit is provided for their maintenance, except in conditions for site tree credits for required landscaping per code. The applicant is not seeking a special exception to the landscaping standards.

- The Property is a pedestrian-oriented infill redevelopment near a public transit center and not an application that impacts on wooded undeveloped properties.
- The applicant has supplied various “tree preservation,” “landscaping and streetscape,” and “urban design and energy conservation” criteria to be considered by the board in their request. Although the arborist recognizes many of these attributes to the Property, there is currently no mechanism in the ordinance to provide the arborist with a quantitative value to these considerations. However, the arborist office supports the significant efforts to provided for “green development” as presented in the request and will endeavor to be ready to discuss any element of the request during the board’s briefing.
- A separate tabulation for exhibit has been presented to give some comparison of the mitigation accounting.
 - The “Equivalent Values for Tree Preservation” section identifies the required mitigation and their equivalent replacement values, based upon the Reforestation Fund formulation. The “Trees Harvested” and “Trees Retained” are listed to show the Replacement Value for information purposes only. The total would be the potential mitigation cost if all trees had been removed.
 - The “Cost of Operation” section takes into account the applicant’s estimation of cost for harvesting and maintaining trees (approximately \$950,000.00) as compared to the final cost for mitigating (replacing) the trees under Article X. The “rate difference” indicates the ration of the two processes based on “cost per tree.”
 - The “Comparison of Trees Retained Versus Removed” attempts to provide numbers that give a percentage equivalent of trees harvested and preserved as compared to those removed. The original tree count (519 trees) provides for all trees that were on the original 100 percent tally survey including non-protected trees (124 trees) that were not made subject to mitigation. Nearly half of all protected trees were retained for use on the Property.
- Recommendation
 - Approval, subject to a condition. The Chief Arborist believes the request for exemption of mitigation is not satisfactory, but that approval should be based upon an “alternative method of compliance” that includes: 1) the preservation of mature trees; 2) the transplantation of mature trees; 3) additional landscaping and streetscape; and 4) sustainable urban design and energy conservation credit. This would act as a replacement of all alternative methods of mitigation stated in 51A-10.135.
 - If the Board reasons that strict compliance with the conditions of Article X will unreasonably burden the use of the Property, the Chief Arborist believes the request meets the criteria to indicate “the extent to which landscaping exists for which no credit was given and the extent to which other existing or proposed amenities will compensate for the reduction of “landscaping” as presented by the applicant.
 - In addition, the Chief Arborist has not confirmed the total cost issues, as stated by the applicant, for the harvesting and maintenance of trees on site.

- The Chief Arborist believes that the spirit and intent of this request consorts with the purposes of the Article X ordinance. The primary purpose of the Tree Replacement ordinance, that was added to the others in 1994, states “to encourage the preservation of large trees which, once removed, can be replaced only after generations.” – Section 51A-10.102(7).
- If the Board chooses to approve the request, with the exception of mitigation of trees currently planted on site (per Article X), the Chief Arborist recommends that the following conditions be applied:
 - All protected trees, as defined by Article X, that remain on the Property following the date of the hearing, are considered to be protected and subject to the Article X tree preservation ordinance. Any protected tree that is determined to be removed, based on conditions as defined in Article X, may be subject to replacement.
- The Board of Adjustment conducted a public hearing on this application on November 16, 2009 where the Board Administrator circulated an additional table prepared by the Chief Arborist entitled “Equivalent Values for Tree Preservation” to the board members at the morning briefing (see Attachment C). The board moved to delay action on the matter until their December 14th hearing.
- The applicant submitted additional information beyond what was submitted prior to the November 16th hearing (see Attachment D). This information was a letter that provided additional details about the request.

BACKGROUND INFORMATION:

Zoning:

Site: MU-3(SAH) (Deed restricted)* (Mixed Use, Standard Affordable Housing)
North: RR (Regional Retail)
South: GO(A) (General Office)
East: MU-3 (Mixed Use)
West: RR (Regional Retail)

* Note that the applicant acknowledged in an email to the Board Administrator on October 27, 2009 of the deed restrictions on the property. The applicant stated that these deed restrictions regulate density and do not create a conflict with the tree preservation special exception requested to the board of adjustment.

Land Use:

The subject site is currently under development as a mixed use development. The areas to the north, south, east and west are development with mostly retail and office uses.

Zoning/BDA History:

1. BDA067-052, Property at 8070
Park Lane (the subject site)

On May 14, 2007, the Board of Adjustment Panel C granted a request for a special exception to the off-street parking regulations of 374 spaces (or 5.67% of the required off-street parking) and imposed the following conditions: The special exception shall automatically and immediately terminate if and when the office uses on the site are changed or discontinued to have less than 125,000 square feet of office use; and the applicant or property owner must submit a parking analysis of the site to the Department of Development Services engineer no later than December 31, 2011. Should the parking analysis show any parking deficiency, the applicant or property owner must immediately mitigate that deficiency as may be agreed between the applicant or property owner and the Department of Development Services. The case report stated that the request was made in conjunction with developing a 33-acre site with mixed-uses.

Timeline:

- Sept. 25, 2009: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- October 22, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- October 22, 2009: The Board Administrator spoke with the applicant and emailed him the following information:
- an attachment providing the public hearing date and panel that will consider the application; the November 2nd deadline to submit additional evidence for staff to factor into their analysis; the November 6th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- Nov. 2, 2009 The applicant submitted additional information to the Board Administrator (see Attachment A).

- Nov. 3, 2009 The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the November public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Chief Arborist, the Sustainable Development Department Project Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- Nov. 9, 2009 The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment B).
- Nov. 16, 2009 The Board of Adjustment conducted a public hearing on this request and delayed action until their December 14th public hearing.
- Nov. 19, 2009: The Board Administrator emailed the applicant the following information:
- an attachment providing the public hearing date; the November 30th deadline to submit additional evidence for staff to factor into their analysis; the December 4th deadline to submit additional evidence to be incorporated into the Board’s docket materials; and
 - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”
- Nov. 30, 2009 The applicant submitted a letter to staff that provided additional details about the request (see Attachment D).
- Dec. 1, 2009 The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the December public hearing. Review team members in attendance included: the Assistant Director of Sustainable Development Department’s Current Planning Division, the Board of Adjustment Chief Planner, the Board Administrator, the Chief Arborist, the Sustainable Development Department Project Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

STAFF ANALYSIS:

- The request focuses on 2,725 caliper inches of trees that are due for replacement prior to the final inspection on the site being developed as a mixed use office/residential/dining/shopping project (Park Lane). The 2,725 caliper inches of trees are required to either be planted on site, or provided through one or more of the alternate methods of compliance provided in Article X: The Landscape and Tree Preservation Regulations of the Dallas Development Code – options including

- The applicant has the burden of proof in establishing the following:
 - Strict compliance with the requirements of the Tree Preservation Regulations of the Dallas Development Code will unreasonably burden the use of the property (in this case, a site that is currently under development as a mixed use development).
 - The special exception will not adversely affect neighboring property.
- The City of Dallas Chief Arborist recommends approval of the request, subject to the following condition being imposed:
 - All protected trees, as defined by Article X, that remain on the Property following the date of the hearing, are considered to be protected and subject to the Article X tree preservation ordinance. Any protected tree that is determined to be removed, based on conditions as defined in Article X, may be subject to replacement.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 16, 2009

APPEARING IN FAVOR: Barry Knight, 5400 Renaissance Tower, Dallas, TX
Blaine Lee, 8070 Park Lane, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Gaspard

I move that the Board of Adjustment, in Appeal No. **BDA 089-125**, on application of Barry Knight and Tommy Mann, **grant** the request of this applicant to provide an alternate tree mitigation plan as a special exception to the tree preservation requirements in the Dallas Development Code because our evaluation of the property and the testimony shows that strict compliance with the requirements will unreasonably burden the use of the property, the special exception will not adversely affect neighboring property; and the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- All protected trees, as defined by Article X that remain on the Property following the date of the hearing, are considered to be protected and subject to the Article X tree preservation ordinance. Any protected tree that is determined to be removed, based on conditions as defined in Article X, must be subject to replacement.

SECONDED: Moore

AYES: 3–Boyd, Moore, Gaspard

NAYS: 1– Maten,

MOTION FAILED: 3 – 1

MOTION #3: **Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 089-125**, on application of Barry Knight and Tommy Mann, **deny** the special exception to the tree preservation requirements requested by this applicant **without prejudice**, because our evaluation of the property and testimony shows that strict compliance with the requirements will not unreasonably burden the use of the property; and the special exception will adversely affect neighboring property.

SECONDED: **No One**

MOTION FAILED: **FOR LACK OF SECOND**

MOTION #3: **Moore**

I move that the Board of Adjustment in Appeal No. **BDA 089-125**, hold this matter under advisement until **December 14, 2009**.

SECONDED: **Moore**

AYES: 3–Boyd, Moore, Gaspard

NAYS: 1– Maten

MOTION PASSED: 3 – 1

FILE NUMBER: BDA 090-001

BUILDING OFFICIAL'S REPORT:

Application of Pyong Dean, represented by William A. Bratton III, to appeal the decision of the administrative official at 2644 Walnut Hill Lane (aka 2642 Walnut Hill Lane). This property is more fully described as tract 10 in City Block A/6469 and is zoned IR which requires a certificate of occupancy for its use. The building official shall revoke a certificate of occupancy if the building official determines that the certificate of occupancy was issued on the basis of false, incomplete, or incorrect information; the use is being operated in violation of the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations; or a required license to operate the use has not been issued. The applicant proposes to appeal the decision of an administrative official in the revocation of a certificate of occupancy.

LOCATION: 2644 Walnut Hill Lane (aka 2642 Walnut Hill Lane)

APPLICANT: Pyong Dean
Represented by William A. Bratton III

REQUEST:

- An appeal has been made requesting that the Board of Adjustment reverse/overturn the Building Official's September 11, 2009 revocation of certificate of occupancy no. 0604121114 for a personal service use (Dupond Studio) at 2644 Walnut Hill Lane. The applicant states that "the premise is not being operated as a massage establishment and this application for the certificate of occupancy was not false, incomplete or contain false information."

The Board of Adjustment should determine if the applicant complied with the Dallas Development Code provision related to the posting of the notification sign on the subject site with the findings that: 1) no notification sign was posted on the site when the Board Administrator conducted his field visit on November 6th -36 days after the application was submitted on October 1st, and 2) that the notification sign was not picked up/purchased at Dallas City Hall until November 16th – 46 days after the application was submitted on October 1st.

The Dallas Development Code states that "The applicant shall post the required number of notification signs on the property within 14 days after an application is filed. The signs must be legible and remain posted until a final decision is made on the application. For tracts with street frontage, signs must be evenly spaced over the length of every street frontage, posted at a prominent location adjacent to a public street, and be easily visible from the street. For tracts without street frontage, signs must be evenly posted in prominent locations most visible to the public." The code

additionally states “If the city plan commission, landmark commission, or board of adjustment determines that the applicant has failed to comply with the provisions of this section, it shall take no action on the application other than to postpone the public hearing for at least four weeks, or deny the applicant’s request, with or without prejudice. If the hearing is postponed, the required notification signs must be posted within 24 hours after the case is postponed and comply with all other requirements of this section.”

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:

- Section 51A-4.703(2) of the Dallas Development Code provides that any aggrieved person, or an officer, department, or board of the city may appeal a decision of an administrative official to the board when that decision concerns issues within the jurisdiction of the board. The code provides that an appeal to the board must be made within 15 days after notice of the decision of the official; that the appellant shall file with the official a written notice of appeal on a form approved by the board; and that the official shall forward the notice of appeal and the record upon which the appeal is based to the director of development services.
- The Building Official’s September 11th letter to Kevin K. Kim and Pyong Dean states the following:
 - This Dallas Police Department has informed me that you are operating a massage establishment at the Property and are engaged in an illegal business under other state penal laws. A state issued massage establishment license is required to legally operate a massage establishment. Further, an application for a City of Dallas certificate of occupancy must include a detailed description of the use that will be operated; the services offered; and whether a city, county, state, or federal license, permit, or registration is required to operate the use. Your application for this certificate of occupancy did not state that the use would be operated as a massage establishment.
 - The building official is required to revoke a certificate of occupancy if the building official determines that the certificate of occupancy is issued on the basis of false, incomplete, or incorrect information; the use is being operated in violation of the Dallas Development Code, other city ordinances, or any state laws or regulations; or a required license to operate the use has not been issued.
 - Your certificate of occupancy is hereby revoked unless you furnish my office with a valid state massage establishment license for the Property by September 28, 2009.
 - Any determination made by the building official shall be final unless appealed within 15 days after you receive this letter. Questions about the appeal process should be directed to the building official at 214-948-4320.

BACKGROUND INFORMATION:

Zoning:

Site: IR (Industrial Research)
North: IR (Industrial Research)
South: IR (Industrial Research)
East: IR, SUP 709(Industrial Research, Specific Use Permit - cemetery)
West: IR (Industrial Research)

Land Use:

The subject site is developed as a commercial structure with a use doing business as Dupond Studio. The areas to the north, south, and west appear to be developed with a mix of commercial and office uses; and the area to the east is developed as a cemetery.

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:

- October 1, 2009: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Nov. 17, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- Nov. 18, 2009: The Board Administrator emailed the applicant's representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the November 30th deadline to submit additional evidence for staff to factor into their analysis; and the December 4th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the outline of procedure for appeals from decisions of the building official to the board of adjustment; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- Dec. 1, 2009 The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the December public hearing. Review team members in attendance included: the Assistant Director of Sustainable Development Department's Current Planning Division, the Board of Adjustment Chief Planner, the Board Administrator, the Chief Arborist, the Sustainable Development Department Project Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The applicant is requesting that the Building Official's revocation of certificate of occupancy no. 0604121114 for a personal service use (Dupond Studio) at 2644 Walnut Hill Lane on September 11, 2009 be overturned/reversed.
- The Board of Adjustment should determine if the applicant complied with the Dallas Development Code provision related to the posting of the notification sign on the subject site with the findings that: 1) no notification sign was posted on the site when the Board Administrator conducted his field visit on November 6th -36 days after the application was submitted on October 1st, and 2) that the notification sign was not picked up/purchased at Dallas City Hall until November 16th – 46 days after the application was submitted on October 1st.
- If the Board of Adjustment were to determine that the applicant did not comply with the Dallas Development Code provision related to the posting of the notification sign, it shall take no action on the application other than to postpone the public hearing for at least four weeks, or deny the applicant's request, with or without prejudice.
- If the Board of Adjustment were to determine that the applicant complied with the Dallas Development Code provision related to the posting of the notification sign on the site and upholds the Building Official's September 11th decision, the certificate of occupancy no. 0604121114 for a personal service use (Dupond Studio) at 2644 Walnut Hill Lane will remain revoked.
- If the Board of Adjustment were to determine that the applicant complied with the Dallas Development Code provision related to the posting of the notification sign on the site and reverses the Building Official's September 11th decision, the certificate of occupancy no. 0604121114 for a personal service use (Dupond Studio) at 2644 Walnut Hill Lane will be reinstated.

FILE NUMBER: BDA 090-002

BUILDING OFFICIAL'S REPORT:

Application of William J. Killpack, represented by Peter Schulte and William Kortemeir, to appeal the decision of the administrative official at 2051 W. Northwest Highway, Suite 65. This property is more fully described as Lot 2 in City Block B/ 6489 and is zoned IR which requires a certificate of occupancy for its use. The building official shall revoke a certificate of occupancy if the building official determines that the certificate of occupancy was issued on the basis of false, incomplete, or incorrect information; the use is being operated in violation of the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state or federal laws or regulations; or a required license to operate the use has not been issued. The applicant proposes to appeal the decision of an administrative official in the revocation of a certificate of occupancy.

LOCATION: 2051 W. Northwest Highway, Suite 65

APPLICANT: William J. Killpack
Represented by Peter Schulte and William Kortemeir

REQUEST:

- An appeal has been made requesting that the Board of Adjustment reverse/overturn the Building Official's September 11, 2009 revocation of certificate of occupancy no. 0708081096 for a personal service use (Ocean Side Studio) at 2051 W. Northwest Highway, Suite 65. The applicant states that "the property is being used only as described on the Certificate of Occupancy and was not being uses as a massage establishment as alleged by the Dallas Police Department."

The Board of Adjustment should determine if the applicant complied with the Dallas Development Code provision related to the posting of notification signs on the subject site with the finding that the two required notification signs were posted on the storefront of Suite 65 on the site when the Board Administrator conducted his field visit on November 6th (32 days after the application was submitted on October 5, 2009) - the storefront of the use doing business as Ocean Side Studio - a location that the board should determine whether was in compliance with the Dallas Development Code - that being in a prominent location adjacent to a public street, and be easily visible from the street. The signs posted virtually side by side on the approximately 25' wide storefront of Suite 65 doing business as Ocean Side Studio on November 6th were located (according to a scale aerial photograph prepared by the City) approximately 220' from the pavement line of Northwest Highway and approximately 400 feet from the pavement line of Newkirk Street.

The Dallas Development Code states that “The applicant shall post the required number of notification signs on the property within 14 days after an application is filed. The signs must be legible and remain posted until a final decision is made on the application. For tracts with street frontage, signs must be evenly spaced over the length of every street frontage, posted at a prominent location adjacent to a public street, and be easily visible from the street. For tracts without street frontage, signs must be evenly posted in prominent locations most visible to the public.” The code additionally states “If the city plan commission, landmark commission, or board of adjustment determines that the applicant has failed to comply with the provisions of this section, it shall take no action on the application other than to postpone the public hearing for at least four weeks, or deny the applicant’s request, with or without prejudice. If the hearing is postponed, the required notification signs must be posted within 24 hours after the case is postponed and comply with all other requirements of this section.”

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:

- Section 51A-4.703(2) of the Dallas Development Code provides that any aggrieved person, or an officer, department, or board of the city may appeal a decision of an administrative official to the board when that decision concerns issues within the jurisdiction of the board. The code provides that an appeal to the board must be made within 15 days after notice of the decision of the official; that the appellant shall file with the official a written notice of appeal on a form approved by the board; and that the official shall forward the notice of appeal and the record upon which the appeal is based to the director of development services.
- The Building Official’s September 11th letter to CHA Associates LTD, Yong H. Cha, Registered Agent, and William J. Killpack states the following:
 - This letter is to inform you that certificate of occupancy no. 0708081096 is hereby revoked, and any use operating on the Property without a certificate of occupancy is an illegal land use that must immediately cease operating.
 - An application for a certificate of occupancy must include a detailed description of the use that will be operated; the services offered; and whether a city, county, state, or federal license, permit, or registration is required to operate the use. The Dallas Police Department has informed me that you are operating a massage establishment at the Property without a license. A license is required to operate a massage establishment. Your application for this certificate of occupancy did not state that the use would be operated as a massage establishment, not did you supply a copy of a massage establishment license.
 - Therefore, the application for this certificate of occupancy provided false, incomplete, and incorrect information about the use being operated and the requirements of a massage establishment license. The building official is required to revoke a certificate of occupancy if the building official determines that the certificate of occupancy is issued on the basis of false, incomplete, or incorrect

information; the use is being operated in violation of the Dallas Development Code, other city ordinances, or any state laws or regulations; or a required license to operate the use has not been issued.

- Any determination made by the building official shall be final unless appealed within 15 days after you receive this letter. Questions about the appeal process should be directed to the building official at 214-948-4320.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is a suite within a strip center doing business as Ocean Side Studio. The areas to the north, south, and west appear to be developed with a mix of retail and 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:

- October 5, 2009: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Nov. 17, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- Nov. 18, 2009: The Board Administrator emailed the applicant's representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the November 30th deadline to submit additional evidence for staff to factor into their analysis; and the December 4th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the outline of procedure for appeals from decisions of the building official to the board of adjustment; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

Dec. 1, 2009

The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the December public hearing. Review team members in attendance included: the Assistant Director of Sustainable Development Department's Current Planning Division, the Board of Adjustment Chief Planner, the Board Administrator, the Chief Arborist, the Sustainable Development Department Project Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The applicant is requesting that the Building Official's September 11th revocation of certificate of occupancy no. 0708081096 for a personal service use (Ocean Side Studio) at 2051 W. Northwest Highway, Suite 65 be overturned/reversed.
- The Board of Adjustment should determine if the applicant complied with the Dallas Development Code provision related to the posting of notification signs on the subject site with the finding that the two required notification signs were posted on the storefront of Suite 65 on the site when the Board Administrator conducted his field visit on November 6th (32 days after the application was submitted on October 5, 2009) - the storefront of the use doing business as Ocean Side Studio - a location that the board should determine whether was in compliance with the Dallas Development Code - that being in a prominent location adjacent to a public street, and be easily visible from the street. The signs posted virtually side by side on the approximately 25' wide storefront of Suite 65 doing business as Ocean Side Studio on November 6th were located (according to a scale aerial photograph prepared by the City) approximately 220' from the pavement line of Northwest Highway and approximately 400 feet from the pavement line of Newkirk Street.
- If the Board of Adjustment were to determine that the applicant did not comply with the Dallas Development Code provision related to the posting of notification signs, it shall take no action on the application other than to postpone the public hearing for at least four weeks, or deny the applicant's request, with or without prejudice.
- If the Board of Adjustment were to determine that the applicant complied with the Dallas Development Code provision related to the posting of notification signs on the site and upholds the Building Official's September 11th decision, the certificate of occupancy no. 0708081096 for a personal service use (Ocean Side Studio) at 2051 W. Northwest Highway, Suite 65 will remain revoked.
- If the Board of Adjustment were to determine that the applicant complied with the Dallas Development Code provision related to the posting of notification signs on the site and reverses the Building Official's September 11th decision, the certificate of occupancy no. 0708081096 for a personal service use (Ocean Side Studio) at 2051 W. Northwest Highway, Suite 65 will be reinstated.

FILE NUMBER: BDA 090-003(K)

BUILDING OFFICIAL'S REPORT:

Application of Elias Rodriguez for a special exception to the landscaping regulations at 525 E. Jefferson Boulevard. This property is more fully described as Lot 5 in City Block 108/3091 and is zoned RR, which requires mandatory landscaping. The applicant proposes to construct a nonresidential structure and provide an alternate landscape plan which will require a special exception.

LOCATION: 525 E. Jefferson Boulevard

APPLICANT: Elias Rodriguez

REQUESTS:

A special exception to the landscape regulations is requested to develop the property with non-residential uses.

STAFF RECOMMENDATION (landscape regulations):

Denial

Rationale:

The Chief Arborist has reviewed the submitted alternate landscape plan and recommends denial (see attachment). The Chief Arborist sites many deficiencies in the alternate landscape plan particularly along Jefferson Boulevard.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

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

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

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

- the extent to which there is residential adjacency;
- the topography of the site;
- the extent to which landscaping exists for which no credit is given under this article;
- and

- the extent to which other existing or proposed amenities will compensate for the reduction of landscaping.

GENERAL FACTS:

- The applicant proposes to construct and maintain a non-residential, retail and restaurant uses in the RR zoning.
- The Dallas Development Code, Article X requires landscaping to be installed and maintained at this site.
- The property is located at the northwest corner of E Jefferson Blvd. and S Denver St.

BACKGROUND INFORMATION:

Zoning:

Site: RR (Regional Retail)
North: D(A) (Duplex)
South: RR (Regional Retail)
East: RR (Regional Retail)
West: RR (Regional Retail)

Land Use:

The site is developed with vacant non-residential uses. The properties to the north, are developed with residential uses; the property to the south is developed with an institutional use; the properties to the east and west are developed with non-residential commercial uses.

Zoning/BDA History:

BDA 078-064 (501 E Jefferson St), On June 23, 2008 The Board of Adjustment, Panel C granted a special exception to the landscape regulations.

BDA 045-101 (101-107 S Denver), on November 16, 2004, the Board of Adjustment, Panel A granted a variance to the front yard setback for off-street parking regulations.

Timeline:

October 15, 2009: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

November 19 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

November 20, 2009: The Board Senior Planner contacted the applicant by telephone and conveyed the following information

- the public hearing date and panel that will consider the application;
- the criteria and standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the December 1st deadline to submit additional evidence for staff to factor into their analysis and recommendation;
- the December 4th 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 December public hearing after considering the information, evidence and testimony presented to them by the applicant and all other interested parties.

December 2, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

December 4, 2009 The Chief Arborist submitted a memorandum referencing the submitted alternate landscape plan (attachment A).

STAFF ANALYSIS:

- The site is developed with vacant, non-residential uses. The applicant proposes to construct and maintain restaurant and retail uses on the site.
- The submitted site plan and alternate landscape plan illustrate the following:
 1. three retail suites totaling approximately 3,942 square feet in floor area;
 2. one restaurant suite with approximately 1,475 square feet of floor area;
 3. no landscaping provided along Jefferson Boulevard
 4. 30 Dwarf Buford Hollies planted along S. Denver Street
 5. 1 Crepe Myrtle planted along S. Denver Street
 6. 4 Live Oak tree planted along S. Denver Street and the alley access.
- The applicant has submitted an alternate landscape plan and is requesting a special exception to the landscape regulations. The Chief Arborist has reviewed the submitted revised alternate landscape plan and recommends denial. The Chief Arborist submitted a memorandum with an analysis of this request. The proposed

- The applicant has the burden of proof in establishing the following:
 1. that granting the special exception to the landscape regulations is necessary because strict compliance with the requirements of this article will unreasonably burden the use of the property; the special exception will not adversely affect neighboring property; and the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council;
- If the Board were to grant the special exception to the landscape regulations staff recommends compliance with the submitted revised alternate landscape plan.

FILE NUMBER: BDA 090-004

BUILDING OFFICIAL'S REPORT:

Application of Steven E. Stoner, represented by Deshazo Tang & Associates, for a special exception to the parking regulations at 3802 Gaston Avenue. This property is more fully described as Lot 1A in City Block A/777 and is zoned PD 298 which requires parking to be provided. The applicant proposes to obtain a special exception to the off-street parking regulations to construct a structure for a restaurant use with drive-through service and provide 27 of the required 35 parking spaces, which will require an 8 space to the parking regulations.

LOCATION: 3802 Gaston Avenue

APPLICANT: Steven E. Stoner
Represented by Deshazo Tang & Associates

REQUEST:

- A special exception to the off-street parking regulations of 8 parking spaces (or a 23 percent reduction of the required off-street parking) is requested in conjunction with adding and maintaining an approximately 580 square foot addition to an existing approximately 2,900 square foot "restaurant with drive-in or drive-through service" use (McDonald's) on the subject site. The applicant proposes to provide 27 of the required 35 off-street parking spaces in conjunction with converting the existing outdoor patio dining area to indoor restaurant dining space.

STAFF RECOMMENDATION:

Denial

Rationale:

- The Sustainable Development Department Project Engineer recommends that this request be denied, specifically stating that "we asked to see old and new parking layouts, which supposedly adds 4 additional spaces; the only drawing provided was totally inadequate, without dimensions. Granting the exception would only make this bad situation worse."
- The applicant has not substantiated how the parking demand generated by the expanded restaurant with drive-in or drive-through service 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.

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 subject site is located in Subarea 12 of PD No. 298 – a planned development zoning district that defers parking provisions for the existing and to-be-expanded “restaurant with drive-in or drive-through service” use to Chapter 51A: The Dallas Development Code.
- The Dallas Development Code requires the following off-street parking requirement:
 - Restaurant with drive-in or drive-through service: 1 space per 100 square feet of floor area.

The application materials and Building Official’s Report state that 27 (or 77 percent) of the required 35 spaces are proposed to be provided.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 298 (Planned Development)
North: PD No. 298 (Planned Development)
South: PD No. 298 (Planned Development)
East: PD No. 298 (Planned Development)
West: PD No. 298 (Planned Development)

Land Use:

The subject site is developed with a “restaurant with drive-in or drive-through service” use (McDonald’s). The areas to the north, east, south, and west are developed with a mix of uses including primarily office and retail uses.

Zoning/BDA History:

1. BDA94-032, Property at 3802 Gaston Avenue (the subject site)

On March 8, 1994, the Board of Adjustment granted a request for a variance to the front yard setback of 71.6 feet, a request for a special exception to the off-street parking regulations of 6 spaces, and a request for a special exception to the landscape regulations. The case report stated that the requests were made in conjunction with the construction of a 2,900 square foot restaurant (McDonald’s) on a site that (at the time) was vacant.

Timeline:

- Oct. 21, 2009: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Nov. 17, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- Nov. 18, 2009: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the November 30th deadline to submit additional evidence for staff to factor into their analysis; and the December 4th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- Dec. 1, 2009 The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the December public hearing. Review team members in attendance included: the Assistant Director of Sustainable Development Department's Current Planning Division, the Board of Adjustment Chief Planner, the Board Administrator, the Chief Arborist, the Sustainable Development Department Project Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.
- Dec. 4, 2009 The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" with the following comments: "We asked to see old and new parking layouts, which supposedly adds 4 additional spaces; the only drawing provided was totally inadequate, without dimensions. Granting the exception would only make this bad situation worse."

STAFF ANALYSIS:

- This request focuses on the applicant's proposal to convert and maintain an approximately 580 square foot outdoor patio dining space to indoor restaurant dining spaces on a site currently developed with an approximately 2,900 square foot restaurant with drive-in or drive through use (McDonald's), and provide 27 (or 77 percent) of the required 35 parking spaces.
- The Sustainable Development Department Project Engineer recommends that this request be denied specifically commenting that "We asked to see old and new parking layouts, which supposedly adds 4 additional spaces; the only drawing

- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the restaurant with drive-in or drive through use does not warrant the number of off-street parking spaces required, and
 - The special exception of 8 spaces (or 23 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, subject to the condition that the special exception of 8 spaces automatically and immediately terminates if and when the restaurant with drive-in or drive through use is changed or discontinued, the applicant would be allowed to convert/maintain the site's outdoor patio dining space to indoor restaurant dining space and provide 27 of the 35 off-street parking spaces required by the code.

FILE NUMBER: BDA 090-009

BUILDING OFFICIAL'S REPORT:

Application of Charlene Carleton for a variance to the parking regulations at 9925 Garland Road. This property is more fully described as a 0.6308 acre Tract 7 in City Block 5370 and is zoned CR which requires parking to be provided. The applicant proposes to maintain a structure with uses described in Chapter 51(A) as retail and personal service uses requiring 1 parking space per 200 square feet or less and provide 43 of the required 51 off-street parking spaces which will require a variance of 8 spaces.

LOCATION: 9925 Garland Road

APPLICANT: Charlene Carleton

REQUEST:

- A variance* to the off-street parking regulations of 8 parking spaces (or a 16 percent reduction of the required off-street parking) is requested in conjunction with, according to the submitted application, having "enough parking for the original retail zoning of this space" on a site developed as a strip center. The applicant proposes to provide 43 of the required 51 off-street parking spaces in the existing center that, according to the submitted site plan, has 10,218 square feet of space, and according to DCAD, was constructed in the 1950's. The applicant has stated that there are no proposed plans to increase the size of the strip's existing building footprint, only plans to lease all five suites within the strip with retail or personal services uses that require 1 parking space per 200 square feet of floor area or less.

- * Although the application was originally submitted as a parking *special exception* request, staff determined at the December 1st staff review team meeting that the parking reduction requested on the site must be considered as a variance given: 1) that the Dallas Development Code states that the maximum reduction authorized by this section (whereby the board may grant a special exception to authorize a reduction in the number of off-street parking spaces required) is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights; and 2) that 12 of the 43 parking spaces provided are from existing nonconforming rights (or delta credits).

STAFF RECOMMENDATION:

Denial

Rationale:

- The applicant had not substantiated how granting the variance would not be contrary to the public interest. The Sustainable Development Department Project Engineer recommends that this request be denied, specifically stating that “12 of the 43 available spaces are head-in grandfathered on street parking which is no longer acceptable. Inadequate documentation – no hardship described. Torn since this is an ongoing existing situation.”
- In addition, the applicant had not substantiated how the variance to the parking regulations requested to lease/occupy the suites within an existing strip center with specific uses that generate more required off-street parking than can be provided is necessary to permit development of the site which is different from other CR-zoned lots by its restrictive size, shape, or slope. Neither the site’s area, shape, nor slope preclude the applicant from complete utilization of all five suites within the structure on the site with uses that would not generate more than the required number of parking spaces that can be provided on the site.

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 for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that:

- (D) the variance is not 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;
- (E) the variance is necessary to permit development of a specific parcel of land that 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 with the same zoning; and
- (F) the variance is not 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 with the same zoning.

GENERAL FACTS:

- According to the Building Officials’ Report, the applicant proposes “retail and personal services” uses for the center requiring 1 space per 200 square feet or less. This would include approximately most of the 31 specific “retail and personal service” uses listed in the Dallas Development Code but would NOT include the alcoholic beverage establishments, and restaurant with/without drive-in or drive through services which require 1 space per 100 square feet of floor area. The application materials and Building Official’s Report state that 43 (or 84 percent) of the required 51 off-street parking spaces are proposed to be provided.
- The subject site is flat, virtually rectangular in shape (approximately 150’ x 160’) and, according to the application, 0.63 acres in area. The site is zoned CR.
- DCAD records indicate that the site is developed with the following:
 - a “retail strip” with 4,400 square feet built in 1959;
 - a “retail strip” with 2,310 square feet built in 1951;

- a “retail strip” with 1,680 square feet built in 1950; and
- a “retail strip” with 1,750 square feet built in 1947.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail)
North: CR (Community Retail)
South: CR (Community Retail)
East: R-10(A) (Single family residential 10,000 sq ft)
West: R-7.5(A) (Single family residential 7,500 sq ft)

Land Use:

The subject site is developed. The areas to the north and south are developed with retail uses; and the areas to the east 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:

- Oct. 29, 2009: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- Nov. 17, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- Nov. 19, 2009: The Board Administrator spoke with the applicant and emailed the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the November 30th deadline to submit additional evidence for staff to factor into their analysis; and the December 4th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”
- Dec. 1, 2009 The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the December public hearing. Review team members in attendance included: the Assistant Director of Sustainable Development Department’s Current Planning Division, the Board of Adjustment

Chief Planner, the Board Administrator, the Chief Arborist, the Sustainable Development Department Project Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

Dec. 4, 2009

The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" with the following comments: "12 of the 43 available spaces are head-in grandfathered on street parking which is no longer acceptable. Inadequate documentation – no hardship described. Torn since this is an ongoing existing situation."

STAFF ANALYSIS:

- This request focuses on providing 84 percent of the required off-street parking in conjunction with transitioning/leasing all five suites within an existing approximately 10,200 square foot 1950's strip center with retail or personal services uses that require 1 parking space per 200 square feet of floor area or less.
- The request to reduce the number of the required 51 parking spaces on the site by 8 spaces must be considered by the board as a *variance* request given: 1) that the Dallas Development Code states that the maximum reduction authorized by this section (whereby the board may grant a special exception to authorize a reduction in the number of off-street parking spaces required) is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights; and 2) that 12 of the 43 parking spaces provided are from existing nonconforming rights (or delta credits).
- The subject site is flat, virtually rectangular in shape (approximately 150' x 160') and, according to the application, 0.63 acres in area. The site is zoned CR.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the parking regulations of 8 spaces requested in conjunction with transitioning/leasing all five suites within an existing approximately 10,200 square foot 1950's strip center with retail or personal services uses that require 1 parking space per 200 square feet of floor area or less 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 is necessary to permit development of the subject site (a subject site that is developed with five suite existing approximately 10,200 square foot 1950's strip center, and is flat, virtually rectangular in shape, and approximately 0.63 acres 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 CR zoning classification.
 - The variance 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 CR zoning classification.

- The Development Department Project Engineer has commented that this request should be denied since 12 of the 43 available spaces are head-in grandfathered on street parking which is no longer acceptable, and inadequate documentation has been submitted whereby no hardship has been described.

FILE NUMBER: BDA 090-012(K)

BUILDING OFFICIAL'S REPORT:

Application of Mohammad Habash represented by Moose Construction for a special exception to the landscaping regulations at 6210 Marvin D. Love Freeway. This property is more fully described as Lot 3 in City Block 5/6047 and is zoned RR, which requires mandatory landscaping. The applicant proposes to construct a nonresidential structure and provide an alternate landscape plan which will require a special exception.

LOCATION: 6210 Marvin D. Love Freeway

APPLICANT: Mohammad Habash
Represented by Moose Construction

REQUESTS:

The applicant seeks to develop the property with a non-residential use and seeks a special exception to the landscape regulations.

STAFF RECOMMENDATION (landscape regulations):

Denial

Rationale:

The Chief Arborist has reviewed the submitted landscape plan and recommends denial to the alternate plan submitted (see attachment). The Chief Arborist sites the submitted alternate plan does fully comply with any of the mandatory requirements of Article X.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

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

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

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

- the extent to which there is residential adjacency;
- the topography of the site;

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

GENERAL FACTS:

- The applicant proposes to construct and maintain a non-residential, auto-repair shop. The applicant proposes to construct an addition onto the existing building.
- The Dallas Development Code, Article X requires landscaping to be installed and maintained at this site.
- The property is located at the southeast corner of Marvin D Love Freeway and Red Bird Lane.

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 site is developed with an auto-repair service shop. The property to the north is undeveloped. The property to the south is developed with retail uses. The property to the east is developed with a McDonalds, and the property to the west is developed with the Marvin D Love Freeway.

Zoning/BDA History:

There is neither any zoning history nor Board of Adjustment history for this property or properties in the surrounding area.

Timeline:

October 28, 2009: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

November 19 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

November 20, 2009: The Board Senior Planner contacted the applicant by telephone and conveyed the following information

- the public hearing date and panel that will consider the application;
- the criteria and standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the December 1st deadline to submit additional evidence for staff to factor into their analysis and recommendation;
- the December 4th 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 December public hearing after considering the information, evidence and testimony presented to them by the applicant and all other interested parties.

December 2, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

December 7, 2009 The Chief Arborist submitted a memorandum referencing the submitted alternate landscape plan (attachment A).

STAFF ANALYSIS:

- The site is developed with a Quaker State auto repair center. The applicant proposes to construct and maintain a two story addition. The addition will be approximately 3,000 square feet and will include shop and office uses.
- The submitted site plan and alternate landscape plan illustrate the following:
 1. existing shop that is 1, 725 square feet;
 2. 305 square foot storage building;
 3. 2 story addition approximately 3,000 square feet
 4. 456 square foot office;
 5. 2 Cypress trees, 2 Crepe Myrtles, and 12 Dwarf Buford Hollies along Red Bird Drive;
 6. 1 Crepe Myrtle and 13 Dwarf Buford Hollies along Marvin D Love Freeway.
- The applicant has submitted an alternate landscape plan and is requesting a special exception to the landscape regulations. The Chief Arborist has reviewed the

- The applicant has the burden of proof in establishing the following:
 1. that granting the special exception to the landscape regulations is necessary because strict compliance with the requirements of this article will unreasonably burden the use of the property; the special exception will not adversely affect neighboring property; and the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council;
- If the Board were to grant the special exception to the landscape regulations staff recommends compliance with the submitted alternate landscape plan.