

**BOARD OF ADJUSTMENT, PANEL A  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, COUNCIL CHAMBERS  
TUESDAY, MARCH 20, 2007**

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

MEMBERS ABSENT FROM BRIEFING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Casey Burgess, Asst. City Attorney, Claire Swann, Asst. City Attorney, Donnie Moore, Chief Planner, Todd Duerksen, Development Code Specialist, and Trena Law, Board Secretary

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

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Casey Burgess, Asst. City Attorney, Claire Swann, Asst. City Attorney, Donnie Moore, Chief Planner, Todd Duerksen, Development Code Specialist, and Trena Law, Board Secretary

**11:05 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **March 20, 2007** docket.

\*\*\*\*\*

**1:00 P.M.**

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

\*\*\*\*\*

**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel A February 13, 2007 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: MARCH 20, 2007**

**MOTION: Schweitzer**

I move to **approve** the Board of Adjustment Panel A February 13, 2007 public hearing minutes as amended.

**SECONDED: Gabriel**

**AYES: 5 – Richmond, Gabriel, Schweitzer, Griggs, Jefferson**

**NAYS: 0 -**

**MOTION PASSED: 5– 0 (unanimously)**

\*\*\*\*\*

**FILE NUMBER: BDA 067-033**

**BUILDING OFFICIAL’S REPORT:**

Application of Metro Code Analysis, represented by Nat Martinez, for a special exception to the fence height regulations at 5030 Park Lane. This property is more fully described as Lot 7 in City Block 10/5583 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 11 foot 6 inch fence in the required front yard setback which would require a variance of 7 feet 6 inches.

**LOCATION: 5030 Park Lane**

**APPLICANT: Metro Code Analysis  
Represented by Nat Martinez**

**REVISED REQUEST:**

- A special exception to the fence height regulations of 6’ is requested in conjunction with constructing and maintaining the following in the site’s 40’ front yard setback on Park Lane:
  - A 7’ high combination solid masonry/open wrought iron fence/wall with 8’ high columns;
  - Two arched open wrought iron gates (10’ at their highest point) flanked by 9’ high entry gate columns.

The site is developed with a single family home.

Originally, a request had been made for a special exception to the fence height regulations of 6’ requested in conjunction with constructing/maintaining an 8’ high

masonry wall with 9' 1 1/2" high columns; and two approximately 5' – 8' high gates (of unspecified materials) flanked by 10' high entry gate columns. Prior to March 19<sup>th</sup> when the applicant submitted a revised site plan/section/elevation (see Attachment C), the proposed gates were shown to have reached a maximum 9' in height creating a special exception need of 5 feet.

**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 submitted a series of documents with the original application including one sheet that includes a site plan, a typical column section, a wall section, a wall elevation, and a partial site plan showing wall location (see Attachment A), another document that is entitled "wall elevation, and another document entitled "site plan." These documents indicated a fence/wall and gate proposal that would be located in the site's Park Lane front yard setback and would reach a maximum height of 10'. On March 1, 2007, the applicant submitted a revised elevation/section and site plan (see Attachment B). The revised elevation/section denoted the maximum height of the proposal to be 9 feet.
- The originally submitted site plan indicated the location of the "proposed new masonry wall and gates at the front property line" in the Park Lane front yard setback. The following additional information was gleaned from this site plan:
  - The proposed fence/wall would be approximately 180' in length parallel to Park Lane.
  - The proposed fence/wall and gates are to be located on the site's front property line (or approximately 24' from the Park Lane pavement line).The revised site plan submitted on March 1<sup>st</sup> indicates the same dimensions as the originally submitted site plan.
- The following additional information was gleaned from the originally submitted wall elevation:
  - A notation of "Proposed new masonry wall and gates at the front property line."
  - A notation of "10'-0" at 30' x 24' gate columns."

The revised elevation/section submitted on March 1<sup>st</sup> indicates a fence/wall that is comprised of a 4' high masonry base with a 3' high open wrought iron fence atop.

- The applicant's representative explained at the February 13<sup>th</sup> hearing on this matter that the elevation of the proposal shows that two entry columns will reach a maximum height of 10'. The applicant's representative established at the February hearing that the revised Building Official's Report denoting a 7' 6" high special exception need was incorrect – that the submitted elevation reflected a proposal where nothing is higher than 10' (see Attachment A).
- The proposed fence/wall would be located on a site where one single family home would have direct frontage. This home immediately west of the site with direct frontage to the proposal has its own combination fence/wall at approximately 9' in height (which appears to be a result of BDA 94-094).
- The Board Administrator conducted a field visit of the site and surrounding area along Park Lane (approximately 500 feet north and south of the site) and noted one additional fence/wall beyond that which was described above which appeared to be located in the front yard setback: an approximately 5' high open metal fence located immediately north of the subject site.
- The Board of Adjustment conducted a public hearing on this matter on February 13, 2007 where the applicant's representative clarified that the highest component of his fence proposal was 10 feet in height, hence a special exception request of 6 feet rather than 7 feet 6 inches. The board delayed action on this request until March in order to allow the applicant to address concerns raised by a neighboring property owner who was in opposition to the request.
- On March 1, 2007, the applicant's representative submitted additional information to the Board Administrator (see Attachment B). This information included a revised elevation/section and site plan that reduced the overall height of the proposal and altered the proposed fence/wall material from an entirely solid 8' high wall to a combination solid masonry/open metal 7' high fence/wall.
- On March 19, 2007, the applicant's representative submitted additional information to the Board Administrator (see Attachment C). This information included a revised elevation/section/site plan that reduced the overall height of the proposal and altered the proposed fence/wall material from an entirely solid 8' high wall to a combination solid masonry/open metal 7' high fence/wall. The revised elevation specified that a 10' high fence which created a need for a special exception of 6 feet.

## **BACKGROUND INFORMATION:**

### **Zoning:**

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

**Land Use:**

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

**Zoning/BDA History:**

- |                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                     |
|------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. BDA 94-094, 5001 Park Lane<br>(the lot immediately west of the<br>subject site) | On August 9, 1994, the Board of Adjustment granted a request for a special exception to the fence height regulations of 4' 6" and imposed the following condition in conjunction with the approval: Compliance with the submitted elevation, site plan, and landscape plan is required. The case report stated that a request was made to construct and maintain an 8' 6" high open metal fence with brick columns. |
|------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**Timeline:**

- Dec. 29, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Jan. 19, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Jan. 23, 2007: The Board Administrator left the applicant's representative an extended voice message that conveyed the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the January 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis/recommendation;
  - the February 2<sup>nd</sup> 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 February public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Jan. 25, 2007: The Board Administrator left a message with the applicant's representative requesting an account as to how high of height was actually needed in conjunction with the appeal: were the entry gate columns a maximum 10' in height or 11' in height.

Jan. 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Interim Chief Arborist, and the Assistant City Attorney to the Board.

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

Feb. 13, 2007: The Board of Adjustment held a public hearing on this matter where the board delayed action until their next hearing to be held on March 20, 2007.

Feb. 16, 2007: The Board Administrator wrote the applicant's representative a letter that conveyed the following information:

- the board delayed action on the request until March 20<sup>th</sup>;
- the March 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis/recommendation; and
- the March 9<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials.

March 1, 2007 The applicant's representative submitted additional information to the Board Administrator (see Attachment B).

March 5, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, Development Services Senior Engineers, the Building Inspection Development Code Specialist, the Interim Chief Arborist, and the Assistant City Attorney to the Board.

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

- March 14, 2007      The applicant submitted a letter stating his authorization for his case to be co-represented by Steve Jenkins and Robert Reeves.
- March 19, 2007      The applicant's representative submitted additional information to staff (see Attachment C).

**STAFF ANALYSIS:**

- A revised scaled elevation/section/site plan was submitted on March 19<sup>th</sup> indicating the location of the proposed fence/wall, columns, and gates relative to their proximity to the property line and pavement line (the proposal is shown to be about 180' in length parallel to Park Lane, located approximately on the front property line or about 24' from the Park Lane pavement line).
- A revised scales elevation/section was submitted that indicated the heights and materials of the proposal (7' high combination solid masonry/open wrought iron fence/wall with 8' columns with two 10' high gates flanked by 9' high columns).
- The proposed fence/wall would be located on a site where one single family home would have direct frontage. This home immediately west of the site with direct frontage to the proposal has its own combination fence/wall at approximately 9' in height (which appears to be a result of BDA 94-094).
- One additional fence/wall which appeared to be located in the front yard setback beyond that which was described above was noted in a staff field visit of the area along Park Lane (approximately 500 feet north and south of the site): an approximately 5' high open metal fence located immediately north of the subject site.
- As of March 12, 2007, three letters had been submitted to staff in support of the proposal and one 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 6' (whereby the fence/wall, columns, and gates, that are proposed to exceed 4' in height) will not adversely affect neighboring property.
- Granting this special exception of 6' with conditions imposed that the applicant complies with the submitted revised site plan/elevation/section would assure that the proposal would be constructed and maintained in the location and of the heights and materials as shown on this document.

**BOARD OF ADJUSTMENT ACTION:      **FEBRUARY 13, 2007****

**APPEARING IN FAVOR:**                      Nat Martinex, 2630 W. Freeway, Ste 200, Dallas, TX

**APPEARING IN OPPOSITION:**      Barry Knight, 5400 Renaissance Tower, Dallas, TX

**MOTION #1:      **Griggs****

I move that the Board of Adjustment, in Appeal No. **BDA 067-033**, on application of Metro Code Analysis, represented by Nat Martinez, **deny** the special exception requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: No one

AYES: 0

NAYS: 0 -

MOTION FAILED FOR LACK OF A SECOND

MOTION #2: **Jefferson**

I move that the Board of Adjustment, in Appeal No. **BDA 067-033**, on application of Metro Code Analysis, represented by Nat Martinez, **grant** the request of this applicant to construct a 10 foot-high fence on the property as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: No one

AYES: 0

NAYS: 0 -

MOTION FAILED FOR LACK OF A SECOND

MOTION #3: **Gabriel**

I move that the Board of Adjustment in Appeal No. **BDA 067-033**, hold this matter under advisement until **April 17, 2007**.

SECONDED: **Jefferson**

AYES: 4 – Richmond, Gabriel, Schweitzer, Jefferson

NAYS: 1 - Griggs

MOTION PASSED: 4– 1

**BOARD OF ADJUSTMENT ACTION: MARCH 20, 2007**

APPEARING IN FAVOR: Robert Reeves, 900 Jackson St., #160, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Jefferson**

I move that the Board of Adjustment, in Appeal No. **BDA 067-033**, on application of Metro Code Analysis, represented by Nat Martinez, **grant** the request of this applicant to construct a 10 foot-high fence on the property as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the revised site plan/section/elevation dated 3/19/07 is required.

**SECONDED: Gabriel**

**AYES: 5** – Richmond, Gabriel, Griggs, Schweitzer, Jefferson

**NAYS: 0** -

**MOTION PASSED** – 5-0 (unanimously)

\*\*\*\*\*

**FILE NUMBER:** BDA 067-043

**BUILDING OFFICIAL’S REPORT:**

Application of Warren Reynolds, represented by James Schnurr, to restore a nonconforming use at 4921 S. Lancaster Road. This property is more fully described as Lot 1 in City Block L/4363 and is zoned CR which limits the legal uses in a zoning district. The applicant proposes to restore a nonconforming vehicle display, sales, and service use.

**LOCATION:** 4921 S. Lancaster Road

**APPLICANT:** Warren Reynolds  
Represented by James Schnurr

**REQUEST:**

- A special exception is requested in conjunction with obtaining a Certificate of Occupancy (CO) by reinstating nonconforming use rights for a “vehicle display, sales, and service” use on the subject site even though this nonconforming use was discontinued for a period of six months or more.

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to operate a nonconforming use if that use is discontinued for six months or more since the basis for this type of appeal is based on whether the board determines that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

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

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

**GENERAL FACTS:**

- A “vehicle display, sales, and service” use is not a permitted use on lots zoned CR (Community Retail).  
The subject site is zoned CR whereby an application has been made to “restore variance for used car lot.”
- The nonconforming use regulations of the Dallas Development Code state that the right to operate a nonconforming use ceases if the nonconforming use is discontinued for six months or more. However, there is a provision in the code allowing the board to grant a special exception to operate a nonconforming use that has been discontinued for six months or more if the owner can show that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.
- The Dallas Development Code defines “nonconforming use” as “a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time.
- According to information from Dallas Central Appraisal District (DCAD), the property at 4921 S. Lancaster Road is developed with a “sales office” with 280 square feet that was constructed in 1960.
- The “vehicle display, sales, and service” use that existed on the site was a legal nonconforming use. Zoning maps dated July 31, 1986 indicated that the site had been zoned LC (Light Commercial). The LC zoning district allowed “auto or motorcycle display, sales and service” use as a permitted use but was one of several cumulative zoning districts that were eliminated during the city-wide zoning transition program in the late 80’s. Most likely, the “vehicle display, sales, and service” use on the subject site became a legal *nonconforming* use upon the passing of the city-wide ordinance that created Chapter 51(A) in the late 80’s.
- Given provisions set forth in the Dallas Development Code, a “vehicle display, sales, and service” use can obtain “conforming use” status upon attaining a different zoning district from the City Council.
- The nonconforming “vehicle display, sales, and service” use on the site would be subject to the possibility of an application that may be brought to the Board of Adjustment requesting that the board establish a compliance date as is the case with any other nonconforming use in the city.
- The Board Administrator has informed the applicant (and his representative) of the provisions set forth in the Dallas Development Code pertaining to nonconforming uses.

- The applicant’s representative submitted additional documentation to staff beyond that submitted with the original application (see Attachments A and B). This information included the following:
  - letters that provided additional details about the request;
  - copies of various Certificates of Occupancy issued on the site since 1960;
  - an affidavit from the son of man who had owned and operated the use car lot on the site from 1973 to his death in 2000;
  - photographs of the site; and
  - a petition signed by neighboring property owners and business owners.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: CR (Community Retail)  
North: CR (Community Retail)  
South: CR (Community Retail)  
East: MF-2 (A)(SUP 181) (Multifamily residential, armory)  
West: R-7.5 (A) (Single family residential 7,500 square feet)

**Land Use:**

The subject site is developed as a vacant car lot. The areas to the north and south are developed with commercial uses; the area to the east appears to be developed with an institutional/office use; and the area to the west is developed with single family uses.

**Zoning/BDA History:**

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

**Timeline:**

- Jan. 25, 2007      The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- Feb. 15, 2007:      The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Feb. 15, 2007:      The Board Administrator contacted the applicant and shared the following information:
  - the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;

- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the March 2nd deadline to submit additional evidence for staff to factor into their analysis/recommendation;
- the March 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

March 2, 2007      The applicant's representative submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

March 5, 2007:      The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, Development Services Senior Engineers, the Building Inspection Development Code Specialist, the Interim Chief Arborist, and the Assistant City Attorney to the Board.

The Code District Manager submitted a review comment sheet marked "Has no objections."

March 8, 2007      The applicant's representative submitted additional information to staff beyond what was submitted with the original application and discussed at the staff review team meeting (see Attachment B).

**STAFF ANALYSIS:**

- The "vehicle display, sales, and service" use on the subject site is a nonconforming use that appears to have become a nonconforming use in 1989 during the city-wide zoning transition program.
- The applicant's representative submitted a letter that stated the following:
  - The site has been a used car lot since 1960, and became vacant in 2003 upon the passing of the owner who willed the property to his seven children who in turn encountered leasing problems, overdue payments, and non-payments from a person who had entered into a lease-to-buy contract with the owners.

- The current owners of the “vehicle display, sales, and service” use on the subject site put the property up for sale in 2003 and have marketed it as a used car lot with a real estate firm. Until recently, the property has remained vacant with no interested buyers.
- The applicant has the burden of proof in establishing the following related to the special exception request:
  - There was a clear intent not to abandon the nonconforming “vehicle display, sales, and service” use on the subject site even though the use was discontinued for six months or more.
- Granting this request would reinstate/restore the nonconforming use rights that were lost when the “vehicle display, sales, and service” use was vacant for a period of six (6) months or more. Granting this request would restore the “vehicle display, sales, and service” use as legal nonconforming use but not as a legal *conforming* use. The applicant would have to make application for a change in zoning and obtain approval from City Council in order to make the use on the site a legal conforming use.
- If restored/reinstated, the nonconforming use would be subject to compliance to use regulations of the Dallas Development Code by the Board of Adjustment as any other nonconforming use in the city. (The applicant’s representative has been advised by staff of Section 51A-4.704 which is the provision in the Dallas Development Code pertaining to “Nonconforming Uses and Structures”).

**BOARD OF ADJUSTMENT ACTION:    MARCH 20, 2007**

APPEARING IN FAVOR:                    Jimmy Schnurr, 3400 Carlisle St., #400, Dallas, TX

APPEARING IN OPPOSITION:        No one

**MOTION #1:    Griggs**

I move that the Board of Adjustment, in Appeal No. **BDA 067-043**, on application of Warren Reynolds, represented by James Schnurr, **deny** the special exception to re-establish nonconforming rights for the vehicle display, sales, and service use located at 4921 South Lancaster Road because the applicant failed to show there was a clear intent not to abandon the use.

SECONDED: No one  
MOTION FAILED FOR LACK OF A SECOND

**MOTION #2:    Jefferson**

I move that the Board of Adjustment, in Appeal No. **BDA 067-043**, on application of Warren Reynolds, represented by James Schnurr, **grant** the special exception to re-

establish nonconforming rights for the vehicle display, sales, and service use located at 4921 South Lancaster Road because our evaluation of the property and testimony shows there was a clear intent not to abandon the use even though the use was discontinued for six months or more.

SECONDED: Gabriel

AYES: 4 – Richmond, Gabriel, Schweitzer, Jefferson

NAYS: 1 - Griggs,

MOTION PASSED: 4– 1

\*\*\*\*\*

FILE NUMBER: BDA 067-047

**BUILDING OFFICIAL’S REPORT:**

Application of Fairway 05 Housing LP, represented by Karl A. Crawley, to restore a nonconforming use at 7229 Ferguson Road. This property is more fully described as Lot 5 in City Block 7024 and is zoned RR which limits the legal uses in a zoning district. The applicant proposes to restore a nonconforming multifamily use.

LOCATION: 7229 Ferguson Road

APPLICANT: Fairway 05 Housing LP  
Represented by Karl A. Crawley

**March 20, 2007 Public Hearing Notes:**

- The applicant’s representative submitted a document at the public hearing: the owner/buyer of the subject site’s authorization for a representative/consultant to pursue a zoning change on the subject site for a Planned Development District for multifamily and retail uses.

**REQUEST:**

- A special exception is requested in conjunction with obtaining a Certificate of Occupancy (CO) by reinstating nonconforming use rights for a “multifamily” use on the subject site even though this nonconforming use was discontinued for a period of six months or more.

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to operate a nonconforming use if that use is discontinued for six months or more since the basis for this type of appeal is based on whether the board determines that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

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

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

**GENERAL FACTS:**

- A “multifamily” use is not a permitted use on lots zoned RR (Regional Retail). The subject site is zoned RR whereby an application has been made to “reestablish the non-conforming rights for an existing multifamily complex.”
- The nonconforming use regulations of the Dallas Development Code state that the right to operate a nonconforming use ceases if the nonconforming use is discontinued for six months or more. However, there is a provision in the code allowing the board to grant a special exception to operate a nonconforming use that has been discontinued for six months or more if the owner can show that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.
- The Dallas Development Code defines “nonconforming use” as “a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time.
- The applicant was granted a special exception to reinstate the same nonconforming use rights for the multifamily use on the subject site (that also included the subject site of BDA067-056). The applicant’s representative stated that the owner did not begin renovation in the required 180 days and therefore, the previous board action lapsed.
- According to information from Dallas Central Appraisal District (DCAD), the property at 7229 Ferguson Road is developed with an “apartment” with 176,262 square feet that was constructed in 1970.
- The “multifamily” use that existed on the site was a legal nonconforming use. Zoning maps dated July 11, 1986 indicated that the site had been zoned LC (Light Commercial). The LC zoning district allowed multifamily use as a permitted use but was one of several cumulative zoning districts that were eliminated during the city-wide zoning transition program in the late 80’s. Most likely, the multifamily use on the subject site became a legal *nonconforming* use upon the passing of the city-wide ordinance that created Chapter 51(A) in the late 80’s.
- Given provisions set forth in the Dallas Development Code, a “multifamily” use can obtain “conforming use” status upon attaining a different zoning district from the City Council. (The applicant is currently pursuing a change in zoning on the site in order to make the use a conforming use: Z067-151).
- The nonconforming “multifamily” use on the site would be subject to the possibility of an application that may be brought to the Board of Adjustment requesting that the

board establish a compliance date as is the case with any other nonconforming use in the city.

- The Board Administrator has informed the applicant's representative of the provisions set forth in the Dallas Development Code pertaining to nonconforming uses.
- The applicant's representative submitted additional documentation to staff beyond that what was submitted with the original application and beyond what was discussed at the staff review team meeting (see Attachment A). This information includes the following information:
  - a letter that provides additional details about the request; and
  - a copy of the printout form the owner showing the expenses incurred for the site since the last board hearing – the majority of the expenses associated with maintaining security on the premises.

### **BACKGROUND INFORMATION:**

#### **Zoning:**

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

#### **Land Use:**

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

#### **Zoning/BDA History:**

1. BDA067-056, 7207 Valley Glen Drive (the lot immediately south of the subject site) On March 20, 2007, the Board of Adjustment Panel A will consider a request for a special exception to reinstate nonconforming use rights for a "multifamily" use that has been discontinued for a period of six months or more.
2. BDA056-099, 7229 Ferguson Road (the subject site) On March 14, 2006, the Board of Adjustment Panel A granted a request for a special exception to reinstate nonconforming use rights for a "multifamily" use that had been discontinued for a period of six months or more. The board imposed the following condition with this request: The special

3. Z067-151, property located at the southwest corner of Ferguson Road and Valley Glen Drive (the subject site and the lot immediately south of the subject site)

exception does not prevent the building official from revoking a certificate of occupancy if the use is discontinued for six months or more after March 14, 2006.

On March 22, 2007, the City Plan Commission will consider a request for a Planned Development District for retail and multifamily uses on property zoned RR. (Staff is recommending a MU-2 District on the subject site).

**Timeline:**

- Feb. 9, 2007            The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- Feb. 15, 2007:        The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, “If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case.”
- Feb. 15, 2007:        The Board Administrator contacted the applicant’s representative and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the March 2nd deadline to submit additional evidence for staff to factor into their analysis/recommendation;
  - the March 9th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the March public hearing after considering the information/evidence and

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

March 5, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, Development Services Senior Engineers, the Building Inspection Development Code Specialist, the Interim Chief Arborist, and the Assistant City Attorney to the Board.

The District Manager of Code Compliance submitted a Review Comment Sheet marked "Has no objections."

March 9, 2007 The applicant's representative submitted additional information to staff beyond what was submitted with the original application and beyond what was discussed at the staff review team meeting (see Attachment A).

#### **STAFF ANALYSIS:**

- The multifamily use on the subject site is a nonconforming use that appears to have become a nonconforming use in 1989.
- The applicant was granted a special exception to reinstate the same nonconforming use rights for the multifamily use on the subject site (that also included the subject site of BDA067-056). The applicant's representative stated that the owner did not begin renovation in the required 180 days and therefore the previous board action lapsed.
- The applicant's representative states that the current owner has the site under contract to a developer who has begun the process of rehabbing the existing units; that discussions are underway with Building Inspection to determine the requirements; that the architect is awaiting approval to complete the required construction documents; and that they anticipate, based on receiving all required approvals, to begin construction within 90 – 120 days.
- The applicant has the burden of proof in establishing the following related to the special exception request:
  - There was a clear intent not to abandon the nonconforming multifamily use on the subject site even though the use was discontinued for six months or more.
- Granting this request would reinstate/restore the nonconforming use rights that were lost when the multifamily use was vacant for a period of six (6) months or more. Granting this request would restore the multifamily use as legal nonconforming use but not as a legal *conforming* use. The applicant currently has an application for a change in zoning (Z067-151) on the subject site, and will need to garner the approval of City Council on this zoning change application in order to make the use on the site a legal conforming use.

- If restored/reinstated, the nonconforming multifamily use would be subject to compliance with the use regulations of the Dallas Development Code by the Board of Adjustment as any other nonconforming use in the city. (The applicant's representative has been advised by staff of Section 51A-4.704 which is the provision in the Dallas Development Code pertaining to "Nonconforming Uses and Structures").

**BOARD OF ADJUSTMENT ACTION: MARCH 20, 2007**

APPEARING IN FAVOR: Karl Crawley, 900 Jackson St., #640, Dallas, TX

APPEARING IN OPPOSITION: No one

**MOTION #1: Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 067-047**, on application of Fairway 05 Housing, LP, represented by Karl A. Crawley, **deny** the special exception to re-establish nonconforming rights for the multifamily use located at 7229 Ferguson Road because the applicant failed to show there was a clear intent not to abandon the use.

**SECONDED: Griggs**

**AYES: 2 – Schweitzer, Griggs**

**NAYS: 3 - Richmond, Gabriel, Jefferson**

**MOTION FAILED: 2– 3**

**MOTION #2: Jefferson**

I move that the Board of Adjustment, in Appeal No. **BDA 067-047**, on application of Fairway 05 Housing, LP, represented by Karl A. Crawley, **grant** the special exception to re-establish nonconforming rights for the multifamily use located at 7229 Ferguson Road because our evaluation of the property and testimony shows there was a clear intent not to abandon the use even though the use was discontinued for six months or more.

**SECONDED: Gabriel**

**AYES: 3 – Richmond, Gabriel, Jefferson**

**NAYS: 2 - Schweitzer, Griggs**

**MOTION FAILED: 3– 2**

**MOTION #3: Griggs**

I move that the Board of Adjustment in Appeal No. **BDA 067-047**, hold this matter under advisement until **April 17, 2007**.

**SECONDED: NO ONE**

MOTION FAILED FOR LACK OF A SECOND

MOTION #4: **Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 067-047**, on application of Fairway 05 Housing, LP, represented by Karl A. Crawley, **grant** the special exception to re-establish nonconforming rights for the multifamily use located at 7229 Ferguson Road because our evaluation of the property and testimony shows there was a clear intent not to abandon the use even though the use was discontinued for six months or more.

SECONDED: **Gabriel**

AYES: 4 – Richmond, Gabriel, Schweitzer, Jefferson

NAYS: 1 - Griggs

MOTION PASSED: 4– 1

\*\*\*\*\*

FILE NUMBER: BDA 067-056

**BUILDING OFFICIAL’S REPORT:**

Application of Fairway 05 Housing LP represented by Karl A. Crawley to restore a nonconforming use at 7207 Valley Glen Drive. This property is more fully described as Lot 1 in City Block A/7024 and is zoned RR which limits the legal uses in a zoning district. The applicant proposes to restore a nonconforming multifamily use.

LOCATION: 7207 Valley Glen Drive

APPLICANT: Fairway 05 Housing LP  
Represented by Karl A. Crawley

**March 20, 2007 Public Hearing Notes:**

- The applicant’s representative submitted a document at the public hearing: the owner/buyer of the subject site’s authorization for a representative/consultant to pursue a zoning change on the subject site for a Planned Development District for multifamily and retail uses.

**REQUEST:**

- A special exception is requested in conjunction with obtaining a Certificate of Occupancy (CO) by reinstating nonconforming use rights for a “multifamily” use on the subject site even though this nonconforming use was discontinued for a period of six months or more.

### **STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to operate a nonconforming use if that use is discontinued for six months or more since the basis for this type of appeal is based on whether the board determines that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

**STANDARD FOR A SPECIAL EXCEPTION TO OPERATE A NONCONFORMING USE IF THAT USE IS DISCONTINUED FOR SIX MONTHS OR MORE:** The Dallas Development Code specifies that the Board may grant a special exception to operate a nonconforming use that has been discontinued for six months or more if the owner can show that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

### **GENERAL FACTS:**

- A “multifamily” use is not a permitted use on lots zoned RR (Regional Retail). The subject site is zoned RR whereby an application has been made to “reestablish the non-conforming rights for an existing multifamily complex.”
- The nonconforming use regulations of the Dallas Development Code state that the right to operate a nonconforming use ceases if the nonconforming use is discontinued for six months or more. However, there is a provision in the code allowing the board to grant a special exception to operate a nonconforming use that has been discontinued for six months or more if the owner can show that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.
- The Dallas Development Code defines “nonconforming use” as “a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time.
- The applicant was granted a special exception to reinstate the same nonconforming use rights for the multifamily use on the subject site (that also included the subject site of BDA067-047). The applicant’s representative stated that the owner did not begin renovation in the required 180 days and therefore the previous board action lapsed.
- According to information from Dallas Central Appraisal District (DCAD), the property at 7207 Valley Glen Drive is developed with an “apartment” with 113,640 square feet that was constructed in 1971.
- The “multifamily” use that existed on the site was a legal nonconforming use. Zoning maps dated July 11, 1986 indicated that the site had been zoned LC (Light Commercial). The LC zoning district allowed multifamily use as a permitted use but was one of several cumulative zoning districts that were eliminated during the city-wide zoning transition program in the late 80’s. Most likely, the multifamily use on the

subject site became a legal *nonconforming* use upon the passing of the city-wide ordinance that created Chapter 51(A) in the late 80's.

- Given provisions set forth in the Dallas Development Code, a “multifamily” use can obtain “conforming use” status upon attaining a different zoning district from the City Council. (The applicant is currently pursuing a change in zoning on the site in order to make the use a conforming use: Z067-151).
- The nonconforming “multifamily” use on the site would be subject to the possibility of an application that may be brought to the Board of Adjustment requesting that the board establish a compliance date as is the case with any other nonconforming use in the city.
- The Board Administrator has informed the applicant’s representative of the provisions set forth in the Dallas Development Code pertaining to nonconforming uses.
- The applicant’s representative submitted additional documentation to staff beyond that what was submitted with the original application and beyond what was discussed at the staff review team meeting (see Attachment A). This information includes the following information:
  - a letter that provides additional details about the request; and
  - a copy of the printout form the owner showing the expenses incurred for the site since the last board hearing – the majority of the expenses associated with maintaining security on the premises.

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

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

**Zoning/BDA History:**

- |                                                                                   |                                                                                                                                                                                |
|-----------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. BDA067-047, 7229 Ferguson Road (the lot immediately north of the subject site) | On March 20, 2007, the Board of Adjustment Panel A will consider a request for a special exception to reinstate nonconforming use rights for a “multifamily” use that has been |
|-----------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

- |                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. BDA056-099, 7229 Ferguson Road (the subject site)                                                                                                              | discontinued for a period of six months or more.<br>On March 14, 2006, the Board of Adjustment Panel A granted a request for a special exception to reinstate nonconforming use rights for a “multifamily” use that had been discontinued for a period of six months or more. The board imposed the following condition with this request: The special exception does not prevent the building official from revoking a certificate of occupancy if the use is discontinued for six months or more after March 14, 2006. |
| 3. Z067-151, property located at the southwest corner of Ferguson Road and Valley Glen Drive (the subject site and the lot immediately north of the subject site) | On March 22, 2007, the City Plan Commission will consider a request for a Planned Development District for retail and multifamily uses on property zoned RR. (Staff is recommending a MU-2 District on the subject site).                                                                                                                                                                                                                                                                                                |

**Timeline:**

- |                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Feb. 9, 2007   | The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Feb. 15, 2007: | The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, “If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case.”                                                                                                                                                                                                                                                                                                                                                        |
| Feb. 15, 2007: | The Board Administrator contacted the applicant’s representative and shared the following information: <ul style="list-style-type: none"> <li>• the public hearing date and panel that will consider the application;</li> <li>• the criteria/standard that the board will use in their decision to approve or deny the request;</li> <li>• 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;</li> <li>• the March 2nd deadline to submit additional evidence for staff to factor into their analysis/recommendation;</li> </ul> |

- the March 9th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

March 5, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, Development Services Senior Engineers, the Building Inspection Development Code Specialist, the Interim Chief Arborist, and the Assistant City Attorney to the Board.

The District Manager of Code Compliance submitted a Review Comment Sheet marked “Has no objections.”

March 9, 2007 The applicant’s representative submitted additional information to staff beyond what was submitted with the original application and beyond what was discussed at the staff review team meeting (see Attachment A).

**STAFF ANALYSIS:**

- The multifamily use on the subject site is a nonconforming use that appears to have become a nonconforming use in 1989.
- The applicant was granted a special exception to reinstate the same nonconforming use rights for the multifamily use on the subject site (that also included the subject site of BDA067-047). The applicant’s representative stated that the owner did not begin renovation in the required 180 days and therefore the previous board action lapsed.
- The applicant’s representative states that the current owner has the site under contract to a developer who has begun the process of rehabbing the existing units; that discussions are underway with Building Inspection to determine the requirements; that the architect is awaiting approval to complete the required construction documents; and that they anticipate, based on receiving all required approvals, to begin construction within 90 – 120 days.
- The applicant has the burden of proof in establishing the following related to the special exception request:
  - There was a clear intent not to abandon the nonconforming multifamily use on the subject site even though the use was discontinued for six months or more.

- Granting this request would reinstate/restore the nonconforming use rights that were lost when the multifamily use was vacant for a period of six (6) months or more. Granting this request would restore the multifamily use as legal nonconforming use but not as a legal *conforming* use. The applicant currently has an application for a change in zoning (Z067-151) on the subject site, and will need to garner the approval of City Council on this zoning change application in order to make the use on the site a legal conforming use.
- If restored/reinstated, the nonconforming multifamily use would be subject to compliance with the use regulations of the Dallas Development Code by the Board of Adjustment as any other nonconforming use in the city. (The applicant's representative has been advised by staff of Section 51A-4.704 which is the provision in the Dallas Development Code pertaining to "Nonconforming Uses and Structures").

**BOARD OF ADJUSTMENT ACTION:    MARCH 20, 2007**

APPEARING IN FAVOR:                    Karl Crawley, 900 Jackson St., #640, Dallas, TX

APPEARING IN OPPOSITION:        No one

MOTION:    **Jefferson**

I move that the Board of Adjustment, in Appeal No. **BDA 067-056**, on application of Fairway 05 Housing, LP, represented by Karl A. Crawley, **grant** the special exception to re-establish nonconforming rights for the multifamily use located at 7229 Ferguson Road because our evaluation of the property and testimony shows there was a clear intent not to abandon the use even though the use was discontinued for six months or more.

SECONDED:    **Gabriel**

AYES: 4 – Richmond, Gabriel, Schweitzer, Jefferson

NAYS: 1 - Griggs

MOTION PASSED: 4–1

\*\*\*\*\*

**FILE NUMBER:**    BDA 067-041

**BUILDING OFFICIAL'S REPORT:**

Application of Victor R. Aves for a variance to the front yard setback regulations at 1122 Kings Highway. This property is more fully described as Lot 6 in City Block 7/3461 and is zoned CD-1, Subarea 3, which requires a front yard setback of 25 feet. The applicant proposes to maintain a multifamily structure and provide an 18 foot front yard setback which would require a variance of 7 feet.

**LOCATION:**                    1122 Kings Highway

**APPLICANT:** Victor R. Aves

**REQUEST:**

- A variance to the front yard setback regulations of 7' is requested in conjunction with maintaining a porch addition on a multifamily structure.

**STAFF RECOMMENDATION:**

Denial

Rationale:

- The site is flat and rectangular in shape, and its 7,500 square foot area appears to be of no narrower width or lesser length than other lots immediately adjacent/in the same CD No. 1 zoning district. There is no physical site constraint that precludes this lot from being developed in a manner commensurate with other developments found on other lots in the same zoning district, and in compliance with all development standards including the front yard setback requirement.
- The applicant had not substantiated how the site's restrictive area, shape and/or slope warranted the recently constructed porch structure to encroach into the sites' 25' front yard setback.

**STANDARD FOR A VARIANCE:**

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area ratios, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations that will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done. The variance must be necessary to permit development of a specific parcel of land which differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same zoning classification. A variance may not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land in districts with the same zoning classification.

**GENERAL FACTS:**

- Lots located in Subarea III of the CD (Conservation District) No. 1 zoning district are required to provide a 25' front yard setback.

A revised site plan has been submitted that denotes a “new porch” structure located 18’ from the front property line (or 7’ into the 25’ front yard setback). According to an email from the Building Inspection Development Code Specialist, the applicant has an 8.5’ wide porch on the front of his building whereby a 7’ variance is required since the front of the building is setback 1.5’ behind the building line.

- According to calculations taken from the submitted revised site plan by the Board Administrator, about 126 square feet of the 162 square foot “new porch” structure is located in the 25’ front yard setback.
- The site is flat, rectangular in shape (150’ long, 50’ wide), and 7,500 square feet in area. The lot is zoned CD No. 1.
- The applicant has submitted materials with the application including an approved Conservation District Work Review Form of March 11, 2005.
- The Building Inspection Development Code Specialist stated that no exterior or additions permits have been issued on the site.
- DCAD records indicate that the site is developed with an apartment built in 1926 with a total area of 4,960 square feet.

### **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 an apartment. The areas to the north, east, south, and west are developed with apartment uses.

#### **Zoning/BDA History:**

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

#### **Timeline:**

- Jan. 24, 2007: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- Feb. 15, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

Feb. 15, 2007: The Board Administrator contacted the applicant and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the March 2nd deadline to submit additional evidence for staff to factor into their analysis/recommendation;
- the March 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Jan. 23, 2007: The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).

March 5, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, Development Services Senior Engineers, the Building Inspection Development Code Specialist, the Interim Chief Arborist, and the Assistant City Attorney to the Board.

The District Manager of Code Compliance submitted a Review Comment Sheet marked "Has no objections."

### **STAFF ANALYSIS:**

- The site is flat, rectangular in shape (150' long, 50' wide), and 7,500 square feet in area. The lot is zoned CD No. 1 which prior to its creation in 1988 had been zoned MF-2 where the front yard setback was 10'.
- According to calculations taken from the submitted revised site plan by the Board Administrator, about 126 square feet of the 162 square foot "new porch" structure is located in the 25' front yard setback.

- The applicant has the burden of proof in establishing the following related to the front yard variance request:
  - That granting the variance to the front yard setback regulations of 7' requested in conjunction with maintaining a porch addition attached to multifamily structure 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 site that is developed with a multifamily structure, and is flat, rectangular in shape, and 7,500 square feet in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same CD No. 1 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 CD No. 1 zoning classification.

If the Board were to grant the front yard variance request of 7', imposing a condition whereby the applicant must comply with the submitted revised site plan, the structure that would be allowed to encroach into the front yard setback would be limited to what is shown on this plan – which in this case is a porch structure addition that is located 18' from the site's front property line (or 7' into the site's 25' front yard setback).

**BOARD OF ADJUSTMENT ACTION:    MARCH 20, 2007**

APPEARING IN FAVOR:                      Victor Aves, 5942 Lewis, Dallas, TX

APPEARING IN OPPOSITION:        No one

**1:45 P.M.: Casey Burgess, Asst. City Attorney recused himself on this case and left the room.**

**MOTION:    Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 067-041**, on application of Victor R. Aves, **deny** the variance requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

**SECONDED:    Griggs**

**AYES: 5 – Richmond, Gabriel, Schweitzer, Griggs, Jefferson**

**NAYS: 0 -**

**MOTION PASSED: 5– 0 (unanimously)**

\*\*\*\*\*

**MISCELLANEOUS ITEM NO. 2**

**FILE NUMBER:** Unassigned

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

**LOCATION:** 4103 David Phillips Street

**APPLICANT:** Jorge and Maria Castillo

**March 20, 2007 Public Hearing Notes:**

- The applicant submitted additional financial documentation at the public hearing.

**STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:**

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

**GENERAL FACTS:**

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waiver/s reimbursements:
  - The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.
  - The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board's miscellaneous docket for predetermination.
  - If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.
  - In making this determination, the board may require the production of financial documents.
- The applicant submitted a letter to the Board Administrator requesting a waiver of the \$610.00 filing fee to be submitted in conjunction with a potential appeal to the Board of Adjustment (see Attachment A).

**Timeline:**

- Feb. 9, 2007           The applicant submitted a letter requesting a waiver of the \$610.00 filing fee for a Board of Adjustment application that may be submitted/requested at the address referenced above.
- Feb. 9, 2007:           The Board of Adjustment Secretary randomly assigned this request to Board of Adjustment Panel A.
- Feb. 9, 2007:           The Board Administrator wrote the applicant a letter that conveyed the following information:
- the public hearing date and panel that will consider the request;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the March 9th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

**BOARD OF ADJUSTMENT ACTION:    MARCH 20, 2007**

APPEARING IN FAVOR:                Fermin Rodriquez, 4103 David Phillips, Dallas, TX

APPEARING IN OPPOSITION:        No one

MOTION:   **Jefferson**

I move to **deny** the waiver of the filing fee to be submitted in conjunction with a potential board of adjustment appeal.

SECONDED:   **Schweitzer**

AYES: 4 – Richmond, Gabriel, Schweitzer, Jefferson

NAYS: 1 - Griggs

MOTION PASSED: 4– 1

\*\*\*\*\*

**MOTION: Schweitzer**

I move to adjourn this meeting.

**SECONDED: Gabriel**

**AYES: 5– Richmond, Gabriel, Schweitzer, Griggs, Jefferson**

**NAYS: 0 -**

**MOTION PASSED: 5– 0 (Unanimously)**

**2:13 P.M.** - Board Meeting adjourned for March 20, 2007.

\_\_\_\_\_  
CHAIRPERSON

\_\_\_\_\_  
BOARD ADMINISTRATOR

\_\_\_\_\_  
BOARD SECRETARY

\*\*\*\*\*

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