

**BOARD OF ADJUSTMENT, PANEL A  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, 6ES  
TUESDAY, NOVEMBER 15, 2005**

MEMBERS PRESENT AT BRIEFING: Randall White, Chair, Peggy Hill, Panel Vice-Chair Ben Gabriel, regular member, Dovie Jaffe, alternate member and Scott Griggs, alternate member

MEMBERS ABSENT FROM BRIEFING: Rev. H.J. Johnson, regular member and Marla Beikman, regular member

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

MEMBERS PRESENT AT HEARING: Randall White, Chair, Peggy Hill, Panel Vice-Chair Ben Gabriel, regular member, Dovie Jaffe, alternate member and Scott Griggs, alternate member

MEMBERS ABSENT FROM HEARING: Rev. H.J. Johnson, regular member and Marla Beikman, regular member

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

**10:06 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's November 15, 2005 docket.**

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**12:13 P.M. Member Dovie Jaffe recused herself and left the briefing on the following cases: BDA045-257 and BDA056-005.**

**12:41 P.M. Executive Session**  
**12:55 P.M. Executive Session Ends**

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**1:22 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.

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel A October 18, 2005 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: November 15, 2005**

**MOTION: Gabriel**

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

**SECONDED: Hill**

**AYES: 5 – White, Hill, Gabriel, Jaffe, Griggs**

**NAYS: 0 -**

**MOTION PASSED: 5– 0 (unanimously)**

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**MISCELLANEOUS ITEM NO. 2**

To approve the Board of Adjustment Panel A's 2006 Public Hearing Schedule.

**BOARD OF ADJUSTMENT ACTION: November 15, 2005**

**MOTION: Gabriel**

I move to approve the Board of Adjustment Panel C's 2006 Public Hearing Schedule, Proposal Number One.

**SECONDED: Hill**

**AYES: 5 – White, Hill, Gabriel, Jaffe, Griggs**

**NAYS: 0 -**

**MOTION PASSED: 5– 0 (unanimously)**

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**FILE NUMBER: BDA 056- 020**

**BUILDING OFFICIAL'S REPORT:**

Application of Cal N. Marsh for a special exception to the fence regulations at 5946 Park Lane. This property is more fully described as Lot 2 in City Block A/5615 and is zoned R-1 Ac (A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct an 8 foot 6 inch fence in the front yard setback which would require a special exception of 4 feet 6 inches. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

**LOCATION:** 5946 Park Lane

**APPLICANT:** Cal N. Marsh

**REQUEST:**

- A special exception to the fence height regulations of 4' 6" is requested in conjunction with constructing and maintaining the following in the 40' Park Lane front yard setback on a site developed with a single family home:
  - an approximately 8' 2" rough cedar wall; and
  - "brick columns approximately 8' 6" tall\* and 20" x 20" wide."

\* The applicant has elected to proceed with a 4' 6" special exception with the understanding that, if granted, no part of the fence or columns can exceed 8' 6" in height in the front yard setback even though the submitted elevation indicates a "rough cedar" fence that is 1" x 8" with columns that are "8' 6" +/-" in height.

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:**

Section 51A-4.602 of the Dallas Development Code states that the board may grant a special exception to the height requirement for fences when in the opinion of the board, the special exception will not adversely affect neighboring property.

**GENERAL FACTS:**

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
- The following additional information was gleaned from the submitted elevation that depicts a partial view of the proposed fence/wall and columns:
  - A notation stating "new fence would match this existing fence"
  - A notation stating "brick columns approx 8' 6" tall and 20" x 20"
  - A notation stating "1 x 8 rough cedar boards with 1' x 3" batten style"
  - A partial elevation indicating a 20"-wide brick column that is "8' 6" +/-"

- A “rough cedar” fence that is 1” x 8” and “8’ 6” +/-“
- The following additional information was gleaned from the submitted site plan:
  - The proposed fence that is to exceed 4’ in height and to be located in the 40’ front yard setback along Park Lane on the approximately 170’ long site is about 15’ long oriented diagonally from Park Lane, and another approximately 25’ in length perpendicular to Park Lane and parallel to Preston Road.
  - Dimensions pertaining to the fence’s distance from the pavement line can not be given since neither the Park Lane nor Preston Road pavement lines have been shown on the submitted site plan. The site plan does include the following notation at the Park Lane/Preston Road intersection: “45’ view clip from corner point of origin.” The applicant has informed the Board Administrator that the proposal will be located outside the visibility triangle at the intersection of Park Lane and Preston Road, and is fully aware that if any component is deemed to be the visibility triangle upon completion that the elements in the triangle will be required to comply with the visibility obstruction regulations, or the applicant will be required to seek a special exception to these regulations from the Board of Adjustment with a new application and filing fee.
- Neither a site plan that notes landscape materials nor a landscape plan has been submitted in conjunction with the application.
- The proposed approximately 15’-long fence that would be located parallel/diagonal to Park Lane would be located on a site where one single family home would have direct frontage to the proposal. This home is located immediately north of the site on Park Lane and has no fence in its front yard.
- The Board Administrator conducted a field visit of the site and surrounding area at the intersection of Park Lane and Preston Road and noted no other fences that appeared to be located in a front yard setback.

**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 978-127, 5934 Park Lane  
(the lot immediately west of the  
subject site)

On April 28, 1998, the Board of Adjustment Panel A granted requests to the visibility obstruction and fence height special regulations of 3'. The board imposed the following condition to these requests: Compliance with the submitted site/elevation plan is required. The case report states the requests were made in conjunction with constructing a 7' high open picket fence and solid columns in the front yard and visibility triangles.

**Timeline:**

- Sept. 28, 2005      The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report. (This information included photographs of the site and surrounding area that will be available for review at the briefing/public hearing).
- Oct. 20, 2005:      The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Oct. 21, 2005:      The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the October 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
  - the November 4<sup>th</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 November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

October 31, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Subdivision and Plats Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

### **STAFF ANALYSIS:**

- A scaled site plan has been submitted that documents the location of the proposed fence and columns relative to the property line. The site plan also clearly shows the length of the proposed fence that will exceed 4' in height in the site's Park Lane front yard setback. The site plan does not provide a pavement line on Park Lane or Preston Road for staff to assess whether or not the fence is located outside the visibility triangle at the Park Lane/Preston Road intersection.
- An elevation plan has been submitted that documents the height of the proposed columns (8' 6" +/-), and a fence/wall that is slightly lower in height. The elevation plan documents the building materials of the fence/wall (rough cedar) and columns (brick).
- The proposed fence/wall (that would be about 15' in length parallel to Park Lane) would be located immediately across from a single family home that has no fence in the front yard setback.
- The proposed fence/wall would be a continuation of a fence/wall that is on the subject site located in the Preston Road side yard. (A fence in the side yard can reach 9' in height by right). This special exception is made to continue the fence allowed by right in the site's Preston Road side yard into the site's Park Lane front yard setback.
- As of November 7<sup>th</sup>, no letters had been submitted to staff either in support or in opposition to the proposed fence.
- Granting this special exception of 4' 6" would limit all/any fence or columns located in the front yard setback to a height not to exceed 8' 6" regardless of a notation on the submitted elevation that indicates brick columns that are 8' 6" +/- . (The applicant has been fully informed of this and has chosen to keep his request as originally submitted: a 4' 6" fence special exception). If the Board were to impose conditions to the request (that the applicant complies with the submitted site plan and elevation) there is an assurance that the proposed fence/wall and columns are constructed and maintained as shown on these documents.
- Granting this fence height special exception request subject to the site plan and elevation does not provide any relief to the applicant pertaining to the City's visibility obstruction regulations.

**BOARD OF ADJUSTMENT ACTION: November 15, 2005**

**APPEARING IN FAVOR:** No one

**APPEARING IN OPPOSITION:** No one

**MOTION:** Hill

I move that the Board of Adjustment **grant** the following application listed on the uncontested docket because it appears, from our evaluation of the properties and all relevant evidence that the application satisfies all the requirements of the Dallas Development Code and are consistent with the general purpose and intent of the Code. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

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

**SECONDED:** Gabriel

**AYES:** 5 – White, Hill, Gabriel, Jaffe, Griggs

**NAYS:** 0 -

**MOTION PASSED:** 5– 0 (unanimously)

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**FILE NUMBER:** BDA 056-024

**BUILDING OFFICIAL'S REPORT:**

Application of R. Leck Heflin/Waterside Properties for a special exception to the fence regulations at 5833 Woodland Drive. This property is more fully described as a tract of land in City Block 5615 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 fence in the front yard setback which would require a special exception of 7 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

**LOCATION:** 5833 Woodland Drive

**APPLICANT:** R. Leck Heflin/Waterside Properties

**REQUEST:**

- A special exception to the fence height regulations of 7' is requested in conjunction with constructing and maintaining the following in the 40' Woodland Drive front yard setback on a site that is undeveloped:

- an 8' high wrought iron and stone fence/wall with 8' 4" high columns; and
- two, 11' high arched wrought iron entry gates with 11' high entry columns.

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:**

Section 51A-4.602 of the Dallas Development Code states that the board may grant a special exception to the height requirement for fences when in the opinion of the board, the special exception will not adversely affect neighboring property.

**GENERAL FACTS:**

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
- The following additional information was gleaned from the submitted site plan/elevation:
  - The fence/wall is to be approximately 275 in length parallel to Woodland Drive with two recessed entryways.
  - Of the fence/wall's approximately 275' length, about 100' will be of open wrought iron material and about 175 will be of solid stone material.
  - The fence/wall is to be located approximately 10' from the property line (or approximately 21' from the pavement line).
  - The gates are to be located approximately 21' from the property line (or approximately 32' from the pavement line).
- Neither a site plan with landscape materials nor a landscape plan has been submitted in conjunction with the application.
- Two single family homes will have direct frontage to the proposed fence/wall one of which does not have a fence in its front yard, the other which appears to have a 4' high fence in its front yard.
- The Board Administrator conducted a field visit of the site and surrounding area and noted one other fence that appeared to be above 4' in height and located in a 40' front yard setback in this block of Woodland Drive from Douglas Avenue to Preston Road: an approximately 6.5 high open wrought fence and solid brick wall (located behind significant landscape materials) immediately west of the site (and what appears to be the result of board action made in conjunction with BDA 86-197).

**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 undeveloped. The areas to the north, east, south, and west are developed with single family uses.

**Zoning/BDA History:**

- |   |  |
|---|--|
| 1. BDA 86-197, 9006 Douglas Avenue (the lot immediately west of the subject site) | On September 9, 1986, the Board of Adjustment granted a request to the fence height special regulations of 3' 10". The board imposed the following conditions with the request: compliance with notations on a site plan marked "Exhibit A" is required and "that the landscape submitted the Board be used." The case report discusses in its "Staff Comments" section that the fence along Woodland Drive to be setback 8' from the property line to allow for landscaping (which would reduce the impact of the solid fence on the street" with the remainder of the fence along Woodland Drive and Douglas Avenue "should be wrought iron to reduce the "solidness" of the fence." |
|---|--|

**Timeline:**

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|----------------|--|
| Sept. 29, 2005 | The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.   |
| Oct. 20, 2005: | The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.  |
| Oct. 21, 2005: | 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 October 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;</li></ul> |

- the November 4<sup>th</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 November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

October 31, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Subdivision and Plats Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

**STAFF ANALYSIS:**

- A scaled site plan/elevation has been submitted that document the locations of the proposed fence/wall, columns, and gates relative to the property line and pavement line. The site plan also clearly shows the length of the proposed fence/wall relative to the lot.
- A scaled site plan/elevation has been submitted that documents the height of the proposed fence/wall (8'), columns (8' 4"), entry gates and entry gate columns (11'). The site plan/elevation also documents the building materials of the fence/wall (stone and wrought iron).
- The proposal would be located immediately across from two single family homes one of which does not have a fence in its front yard, the other which appears to have a 4' high fence in its front yard.
- As of November 7<sup>th</sup>, no letters had been submitted to staff either in support or in opposition to the proposed fence.
- Granting this special exception of 7' with conditions imposed that the applicant complies with the submitted site plan/elevation would assure that the proposed fence/wall, columns, and gates are constructed and maintained as shown on these documents.

**BOARD OF ADJUSTMENT ACTION: November 15, 2005**

APPEARING IN FAVOR: Leck Heflin, 1009 Shadow Ridge, Azle, TX 76020  
Stephen H Collins, 6114 Northwood, Dallas, TX 75225

APPEARING IN OPPOSITION: Lani Geiger, 11017 Turtle Creek, Frisco, TX 75035

MOTION: **Jaffe**

I move that the Board of Adjustment in Appeal No. **BDA 056-024**, hold this matter under advisement until **December 13, 2005**.

SECONDED: **Gabriel**

AYES: 5 – White, Hill, Gabriel, Jaffe, Griggs

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

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FILE NUMBER: BDA 056-031

**BUILDING OFFICIAL'S REPORT:**

Application of Lincoln Property Co. Commercial, Inc. a Texas Corp., represented by Susan Mead and Jonathan Vinson, Jackson Walker, L.L.P., for a variance to the height regulations and a special exception to the landscape regulations at 2133 Olive Street aka 2112 N. Harwood Street. This property is more fully described as a tract of land in City Block 525 and is zoned P.D. 193 HC which limits the height of a structure to 240 feet and requires landscaping to be provided for new construction. The applicant proposes to construct a building with a height of 325 feet which would require a variance of 85 feet, and to provide an alternate landscape plan which would require a special exception to the landscape regulations. Referred to the Board of Adjustment in accordance with Section 51-3.102 (d) (3) and (10) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions and variances.

LOCATION: 2133 Olive Street aka 2112 N. Harwood Street

APPLICANT: Lincoln Property Co. Commercial, Inc. a Texas Corp.  
Represented by Susan Mead and Jonathan Vinson, Jackson Walker, L.L.P.

**REQUESTS:**

- The following appeals have been made in this application:
  1. a variance to the height regulations of 85; and
  2. a special exception to the landscape regulations.

Both appeals are requested in conjunction with constructing and maintaining a 325'-high, 20-story office tower on a site that is partially undeveloped and partially developed with office uses.

**STANDARD FOR A VARIANCE:**

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

**STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS IN 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 finding 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 (related to the height variance):**

- The maximum permitted height in the PD No. 193 (HC Subdistrict) is 240 feet.
- The applicant proposes to erect an office tower on the site that would reach 325 feet.
- The submitted site plan indicates that the site will be developed with a 7-level garage (for 1,525 cars), two “roof gardens,” and a “20-story office building 507,000 GSF.”, 507,000 square foot, 370'-high office building. The originally submitted site plan indicated that only about 20% of the site would be devoted to the tower.
- The site is flat, irregular in shape (171' on the south, 737' on the east, 226' on the north, and 644' on the west), and approximately 2.90 acres in area.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
  - a letter that provides further details about this request and why it should be granted;

- copies of a site plan and elevations; and
- aerial views of the site and surrounding area.

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

- The Dallas Development Code requires full compliance with the Landscape Regulations with new construction.
- The applicant’s representative has amended the original application by adding a landscape special exception of PD No. 193 “to reduce the permeable area. (see Attachment B). The applicant’s representative has informed the Board Administrator that:
  - a separate alternate landscape plan has not been submitted;
  - the submitted site plan shows the special exception request: eight-foot sidewalks which will require a two foot encroachment into the ten foot landscape buffer adjacent to the garage; and
  - an assumption is made that the proposal will be in accordance with PD 193 since no relief is being asked form the type and quantity of plant materials.
- On November 4, 2005, the City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner (see Attachment C). The memo stated the following:
  - The special exception request is triggered by new construction.
  - Deficiencies:
    1. The applicant is required to provide a 6’ wide sidewalk located between 5’- 12’ from the back of the curb.  
The applicant is proposing to provide an 8’ wide sidewalk located between 5’ - 13’ from the back of the curb.
    2. The applicant is required to provide one 3.5” diameter street tree for each 25’ of street frontage (which in this case is 68 trees).  
The applicant is proposing 41 street trees (the plan does not identify size or species).
    3. The applicant is required to provide a 10’ wide landscape buffer strip with one tree for each 25’ of frontage and evergreen shrubs 3’ on center, immediately adjacent to any above ground parking structure where it fronts a public right-of-way (which in this case is 17 trees).  
The applicant is proposing a 10’ wide landscape buffer strip but with 2’ of the 8’ wide sidewalk extending into portions of the required buffer and no shrubs on the plan but providing the 17 trees.
  - Factors for consideration:
    - The applicant is proposing a second row of trees (41) and a third row of trees (6 along Woodall Rogers only) that functions like a second row of street trees.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD No. 193 HC (Planned Development District, Heavy Commercial)  
North: PD No. 334 (Planned Development District)  
South: PD No. 145 (Planned Development District)  
East: PD No. 193 HC (Planned Development District, Heavy Commercial)  
West: PD No. 193 HC (Planned Development District, Heavy Commercial)

**Land Use:**

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

**Zoning/BDA History:**

1. BDA 045-196, 2133 Olive Street/2112 N. Harwood Street (the subject site) On August 16, 2005, the Board of Adjustment Panel A denied a request for a variance to height regulations of 85' without prejudice. The case report on this request stated that the application was made to construct a 325' high office tower (which was reduced on August 5, 2005 from a variance of 130' to build a 370' high tower).
2. Z 056-114, 2133 Olive Street/2112 N. Harwood Street (the subject site) On December 1, the City Plan Commission will consider a PD Subdistrict (PDS) on property currently zoned PD No. 193 (HC Subdistrict).
3. BDA 967-292, 2100 McKinney Avenue (the lot northeast of the subject site) On September 15, 1997, the Board of Adjustment Panel C granted a request for a variance to height regulations of 40' in conjunction with constructing a 280' high office tower.

**Timeline:**

- Sept. 30, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- October 20, 2005: 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."

October 20, 2005: The Board Administrator contacted the applicant's representative and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the October 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the November 4<sup>th</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 November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

October 28, 2005 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).

October 31, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Subdivision and Plats Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

No review comment sheets were submitted in conjunction with this appeal, however, the City of Dallas Chief Arborist submitted a memo regarding this appeal (see Attachment C).

November 1, 2005 The applicant's representative amended the original application by adding a special exception to the landscape regulations of PD No. 193 (see Attachment B).

**STAFF ANALYSIS (related to the height variance):**

- The site is flat and approximately 2.90 acres in area.

- If the Board were to grant the height variance request of 85 feet (or 35% higher than what is permitted in PD No. 193 HC Subdistrict), subject to the submitted site plan and elevation, the site could be developed with a 20-story, 325'-high office tower.
- Should the height variance be denied, the applicant has the option to continue with an already submitted application for a Planned Development District on this site that can be designed to achieve essentially the same result with the City's legislative board (the City Plan Commission) and the City Council.

**STAFF ANALYSIS (related to the landscape special exception):**

- The applicant has submitted a site plan that the City of Dallas Chief Arborist states is deficient in meeting the sidewalk location requirements, the street tree requirement, and the landscape buffer requirement adjacent to above ground parking structures. (Note that the applicant's representative had informed the Board Administrator via an email on November 1<sup>st</sup> that he had assumed that "plant materials, etc. would be provided in type and quantity in accordance with PD 193, since we are not asking for any relief from those specific requirements.")
- If the board chooses to grant this landscape special exception request upon the applicant demonstrating that the special exception will not compromise the spirit and intent of the Oak Lawn Special Purpose District landscape regulations, subject to compliance with the submitted *site* plan (since no landscape plan has been submitted), the applicant would be "excepted" from meeting the following landscape regulations:
  1. The applicant could provide the required 8' wide sidewalk between 5' -13' from the back of the curb (verses 5' -12' from the back of the curb).
  2. The applicant could provide 41 street trees without any specification in terms of their species and sizes (when 68, 3.5" trees are required).
  3. The applicant could provide the required 10' wide landscape buffer strip adjacent to the above ground parking garage but with 2' of the 8' wide sidewalk extending into the buffer and with no shrubs (when evergreen shrubs are to be provided 3' on center).
- Should the landscape special exception be denied, the applicant has the option to continue with an already submitted application for a Planned Development District on this site that can be designed to achieve essentially the same results with the City's legislative board (the City Plan Commission) and the City Council.

**BOARD OF ADJUSTMENT ACTION: November 15, 2005**

APPEARING IN FAVOR: Jonathan Vinson, 901 Main St., Dallas, TX  
Owen McCrory, 9510 Rockbrook, Dallas, TX

APPEARING IN OPPOSITION: Yolanda Eisenstein, 1999 McKinney Ave # 2006,  
Dallas, TX  
Richard Brink, 1999 McKinney Ave #1207, Dallas, TX

MOTION #1: Griggs

I move that the Board of Adjustment, in Appeal No. **BDA 056-031**, on application of Lincoln Properties, Inc., **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: Hill

AYES: 4 – White, Hill, Gabriel, Griggs

NAYS: 1 - Jaffe

MOTION PASSED: 4– 1

MOTION #2: Griggs

I move that the Board of Adjustment, in Appeal No. **BDA 056-031**, on application of Lincoln Properties, Inc., **deny** the special exception to the landscape requirements requested by this applicant **without prejudice**, because our evaluation of the property and the testimony presented to us, and the facts that we have determined show that granting the application would compromise the spirit and intent of Section 26 of PD 193.

SECONDED: Hill

AYES: 4 – White, Hill, Gabriel, Griggs

NAYS: 1 - Jaffe

MOTION PASSED: 4– 1

\*\*\*\*\*

FILE NUMBER: BDA 056-033

**BUILDING OFFICIAL'S REPORT:**

Application of Consilient Restaurant Group, represented by Ed Simons, Masterplan for a variance to the front yard setback regulations at 2912 N. Henderson Avenue. This property is more fully described as Lot 1A in City Block 9/1971 and is zoned PD 462 which requires a 15 foot front yard setback. The applicant proposes to construct an addition and provide a 0 foot front yard setback which would require a variance of 15

feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

**LOCATION:** 2912 N. Henderson Avenue

**APPLICANT:** Consilient Restaurant Group  
Represented by Ed Simons, Masterplan

**REQUEST:**

- A variance to the front yard setback regulations of 15' is requested in conjunction with constructing an addition for a porch.

**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:**

- A 15'-front yard setback is required in the PD 462 Subdistrict 1 zoning district.
- The area of the addition to be located in the 15'-front yard setback is approximately 720 square feet or 15' x 48' in area.
- The site is flat, slightly irregular in shape, and approximately 20,000 square feet in area.
- DCAD records indicate that the site is developed with a retail strip that was built in 1947 in good condition, with 6,838 square feet of lease area. There are two buildings on the DCAD records. The building of the addition request is approximately 50' x 100' in area.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 462 Subdistrict 1  
North: PD 462 Subdistrict 1 and CS Commercial Service  
South: PD 462 Subdistrict 1  
East: CR-D Community Retail Dry Liquor Control Overlay and MF-2 (A)  
Multifamily  
West: PD 462 Subdistrict 1

**Land Use:**

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

**Zoning/BDA History:**

1. BDA 989-187  
2822 N Henderson Avenue  
On April 20, 1999, the Board of Adjustment Panel B granted a variance to the front yard regulations, a variance to the off-street parking regulations for screening, special exceptions to the landscape regulations, special exceptions to the tree preservation regulations, and a special exception to the visibility regulations in conjunction with constructing an addition to a nonconforming structure and a parking structure.
2. BDA 967-267  
2831 N. Henderson Avenue  
On August 18, 1997 the Board of Adjustment granted a variance to the front yard setback regulations of 15 feet in conjunction with maintaining a dumpster for an existing retail use.
3. BDA 967-216  
2847 N. Henderson Avenue  
On April 22, 1997 the Board of Adjustment granted a variance to the front yard setback regulations of 15 feet and a special exception to the visibility regulations in conjunction with maintaining an existing patio.

**Timeline:**

October 4, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

October 20, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

October 24, 2005: The Board Administrator contacted the applicant and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the November 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

October 31, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, Senior Planner Hiromoto, and the Assistant City Attorney to the Board.

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

#### **STAFF ANALYSIS:**

- If the Board were to grant the request, imposing a condition whereby the applicant must comply with the submitted site plan, the amount of encroachment into the front yard setback would be limited in this case to an area of approximately 720 square feet for a porch addition.
- Granting this variance would allow a porch to encroach 15' into the 15' front yard setback.

#### **BOARD OF ADJUSTMENT ACTION: November 15, 2005**

APPEARING IN FAVOR: Ed Simons, 900 Jackson St., Dallas, TX

APPEARING IN OPPOSITION: Larry Armstrong, 1720 Norwood Dr., Dallas, TX

MOTION: **Jaffe**

I move that the Board of Adjustment, in Appeal No. **BDA 056-033**, on application of Consilient Restaurant Group, **grant** the 15 foot variance to the front yard setback regulations, because our evaluation of the property and testimony shows that the physical character of this property is such that literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: **Hill**

AYES: 5 – White, Hill, Gabriel, Jaffe, Griggs

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

\*\*\*\*\*

FILE NUMBER: BDA 056-034

**BUILDING OFFICIAL'S REPORT:**

Application of Boulevard Builders, represented by Karl A. Crawley, Masterplan for a variance to the front yard setback regulations at 3815 Cole Avenue. This property is more fully described as Lot 12 in City Block 2/983 and is zoned P.D. 305 which requires a 15 foot front yard setback. The applicant proposes to construct a single family dwelling and provide an 11 foot front yard setback (for steps) which would require a variance of 4 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

LOCATION: 3815 Cole Avenue

APPLICANT: Boulevard Builders  
Represented by Karl A. Crawley, Masterplan

**REQUEST:**

- A variance to the front yard setback regulations of 4' is requested in conjunction with constructing stairs on a single family townhouse structure.

**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:**

- A 15'-front yard setback is required in the PD 305 Subdistrict B1, West Residential subzone zoning district.
- The site is flat, generally rectangular in shape (56' x 180'), and approximately 2.83 acres (123,402 square feet) in area. The site is currently under construction. No restrictive or impairing slopes were observed.
- The area located in the 25'-front yard setback is approximately 20 square feet or 5' x 4' in area for stairs.
- DCAD records indicate that the site is undeveloped.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 305 Subdistrict B1, West Residential Subzone  
North: PD 193 MF-2 Multiple Family  
South: PD 193 GR General Retail  
East: PD 193 MF-2 Multiple Family  
West: PD 305 Subdistrict B1, West Residential Subzone

**Land Use:**

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

**Zoning/BDA History:**

- |  |   |
|--|---|
| 1. BDA 990-253<br>3900 Travis Street         | On April 25, 2000 the Board of Adjustment granted a variance to the side yard setback regulations of 15 feet in conjunction with maintaining a dumpster for an existing retail use. |
| 2. BDA 956-201<br>3302-3314 Blackburn Street | On June 25, 1996 the Board of Adjustment granted a special exception to the landscape regulations to provide an alternate landscape plan.   |

**Timeline:**

- October 4, 2005: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- October 20, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- October 24, 2005: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the November 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board’s docket;
  - that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- October 31, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the

Board Administrator, the Building Inspection Development Code Specialist, Senior Planner Hiromoto, and the Assistant City Attorney to the Board.

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

November 4, 2005 The applicant provided additional information regarding his variance request (see Attachment A).

**STAFF ANALYSIS:**

- The site plan shows two groups of townhouses that front Cole Avenue. There are six variance requests within these groups of townhouses. It appears that there are seven townhouses that are not seeking variances and meet the front setback.
- If the Board were to grant the request, imposing a condition whereby the applicant must comply with the submitted site plan, the amount of encroachment into the front yard setback would be limited in this case to an area approximately 20 square feet.
- Granting this variance would allow stairs for a townhouse to encroach 4' into the 25' front yard setback.

**BOARD OF ADJUSTMENT ACTION: November 15, 2005**

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

APPEARING IN OPPOSITION: No one

**MOTION: Gabriel**

I move that the Board of Adjustment, in Appeal No. **BDA 056-034**, on application of Boulevard Builders, **grant** the 4 foot variance to the front yard setback regulations, because our evaluation of the property and testimony shows that the physical character of this property is such that literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

**SECONDED: Hill**

**AYES:** 2 – Hill, Gabriel

**NAYS:** 3 – White, Jaffe, Griggs

**MOTION FAILED:** 3– 2

**\*Since the motion to grant did not get four concurring votes, the motion failed and is therefore deemed denied with prejudice.**

\*\*\*\*\*

**FILE NUMBER:** BDA 056-035

**BUILDING OFFICIAL'S REPORT:**

Application of Boulevard Builders, represented by Karl A. Crawley, Masterplan for a variance to the front yard setback regulations at 3819 Cole Avenue. This property is more fully described as Lot 10 in City Block 2/983 and is zoned P.D. 305 which requires a 15 foot front yard setback. The applicant proposes to construct a single family dwelling and provide an 11 foot front yard setback (for steps) which would require a variance of 4 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

**LOCATION:** 3819 Cole Avenue

**APPLICANT:** Boulevard Builders  
Represented by Karl A. Crawley, Masterplan

**REQUEST:**

- A variance to the front yard setback regulations of 4' is requested in conjunction with constructing stairs on a single family townhouse structure.

**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:**

- A 15'-front yard setback is required in the PD 305 Subdistrict B1, West Residential subzone zoning district.

- The site is flat, generally rectangular in shape (56' x 180'), and approximately 2.83 acres (123,402 square feet) in area. The site is currently under construction. No restrictive or impairing slopes were observed.
- The area located in the 25'-front yard setback is approximately 20 square feet or 5' x 4' in area for stairs.
- DCAD records indicate that the site is undeveloped.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 305 Subdistrict B1, West Residential Subzone  
North: PD 193 MF-2 Multiple Family  
South: PD 193 GR General Retail  
East: PD 193 MF-2 Multiple Family  
West: PD 305 Subdistrict B1, West Residential Subzone

**Land Use:**

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

**Zoning/BDA History:**

- |  |   |
|--|---|
| 1. BDA 990-253<br>3900 Travis Street         | On April 25, 2000 the Board of Adjustment granted a variance to the side yard setback regulations of 15 feet in conjunction with maintaining a dumpster for an existing retail use. |
| 2. BDA 956-201<br>3302-3314 Blackburn Street | On June 25, 1996 the Board of Adjustment granted a special exception to the landscape regulations to provide an alternate landscape plan.   |

**Timeline:**

- October 4, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- October 20, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

October 24, 2005: The Board Administrator contacted the applicant and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the November 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

October 31, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, Senior Planner Hiromoto, and the Assistant City Attorney to the Board.

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

November 4, 2005 The applicant provided additional information regarding his variance request (see Attachment A).

### **STAFF ANALYSIS:**

- The site plan shows two groups of townhouses that front Cole Avenue. There are six variance requests within these groups of townhouses. It appears that there are seven townhouses that are not seeking variances and meet the front setback.
- If the Board were to grant the request, imposing a condition whereby the applicant must comply with the submitted site plan, the amount of encroachment into the front yard setback would be limited in this case to an area approximately 20 square feet.

- Granting this variance would allow stairs for a townhouse to encroach 4' into the 25' front yard setback.

**BOARD OF ADJUSTMENT ACTION: November 15, 2005**

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

**APPEARING IN OPPOSITION:** No one

**MOTION: Gabriel**

I move that the Board of Adjustment, in Appeal No. **BDA 056-035**, on application of Boulevard Builders, **grant** the 4 foot variance to the front yard setback regulations, because our evaluation of the property and testimony shows that the physical character of this property is such that literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

**SECONDED: Hill**

**AYES:** 2 – Hill, Gabriel

**NAYS:** 3 – White, Jaffe, Griggs

**MOTION FAILED:** 3– 2

**\*Since the motion to grant did not get four concurring votes, the motion failed and is therefore deemed denied with prejudice.**

\*\*\*\*\*

**FILE NUMBER:** BDA 056-036

**BUILDING OFFICIAL'S REPORT:**

Application of Boulevard Builders represented by Karl A. Crawley, Masterplan for a variance to the front yard setback regulations at 3823 Cole Avenue. This property is more fully described as Lot 8 in City Block 2/983 and is zoned P.D. 305 which requires a 15 foot front yard setback. The applicant proposes to construct a single family dwelling and provide an 11 foot front yard setback (for steps) which would require a variance of 4 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

**LOCATION:** 3823 Cole Avenue

**APPLICANT:** Boulevard Builders  
Represented by Karl A. Crawley

**REQUEST:**

- A variance to the front yard setback regulations of 4’ is requested in conjunction with constructing stairs on a single family townhouse structure.

**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:**

- A 15’-front yard setback is required in the PD 305 Subdistrict B1, West Residential subzone zoning district.
- The site is flat, generally rectangular in shape (56’ x 180’), and approximately 2.83 acres (123,402 square feet) in area. The site is currently under construction. No restrictive or impairing slopes were observed.
- The area located in the 25’-front yard setback is approximately 20 square feet or 5’ x 4’ in area for stairs.
- DCAD records indicate that the site is undeveloped.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 305 Subdistrict B1, West Residential Subzone  
North: PD 193 MF-2 Multiple Family  
South: PD 193 GR General Retail  
East: PD 193 MF-2 Multiple Family  
West: PD 305 Subdistrict B1, West Residential Subzone

**Land Use:**

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

**Zoning/BDA History:**

- |  |   |
|--|---|
| 1. BDA 990-253<br>3900 Travis Street         | On April 25, 2000 the Board of Adjustment granted a variance to the side yard setback regulations of 15 feet in conjunction with maintaining a dumpster for an existing retail use. |
| 2. BDA 956-201<br>3302-3314 Blackburn Street | On June 25, 1996 the Board of Adjustment granted a special exception to the landscape regulations to provide an alternate landscape plan.   |

**Timeline:**

- October 4, 2005: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- October 20, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- October 24, 2005: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the November 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board’s docket;
  - that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

October 31, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, Senior Planner Hiromoto, and the Assistant City Attorney to the Board.

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

November 4, 2005 The applicant provided additional information regarding his variance request (see Attachment A).

**STAFF ANALYSIS:**

- The site plan shows two groups of townhouses that front Cole Avenue. There are six variance requests within these groups of townhouses. It appears that there are seven townhouses that are not seeking variances and meet the front setback.
- If the Board were to grant the request, imposing a condition whereby the applicant must comply with the submitted site plan, the amount of encroachment into the front yard setback would be limited in this case to an area approximately 20 square feet.
- Granting this variance would allow stairs for a townhouse to encroach 4' into the 25' front yard setback.

**BOARD OF ADJUSTMENT ACTION: November 15, 2005**

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

APPEARING IN OPPOSITION: No one

MOTION: **Gabriel**

I move that the Board of Adjustment, in Appeal No. **BDA 056-036**, on application of Boulevard Builders, **grant** the 4 foot variance to the front yard setback regulations, because our evaluation of the property and testimony shows that the physical character of this property is such that literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: **Hill**

AYES: 2 – Hill, Gabriel

NAYS: 3 – White, Jaffe, Griggs

MOTION FAILED: 3– 2

**\*Since the motion to grant did not get four concurring votes, the motion failed and is therefore deemed denied with prejudice.**

\*\*\*\*\*

**FILE NUMBER:** BDA 056-037

**BUILDING OFFICIAL'S REPORT:**

Application of Boulevard Builders represented by Karl A. Crawley, Masterplan for a variance to the front yard setback regulations at 3831 Cole Avenue. This property is more fully described as Lot 5 in City Block 2/983 and is zoned P.D. 305 which requires a 15 foot front yard setback. The applicant proposes to construct a single family dwelling and provide an 11 foot front yard setback (for steps) which would require a variance of 4 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

**LOCATION:** 3831 Cole Avenue

**APPLICANT:** Boulevard Builders  
Represented by Karl A. Crawley, Masterplan

**REQUEST:**

- A variance to the front yard setback regulations of 4' is requested in conjunction with constructing stairs on a single family townhouse structure.

**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:**

- A 15'-front yard setback is required in the PD 305 Subdistrict B1, West Residential subzone zoning district.
- The site is flat, generally rectangular in shape (56' x 180'), and approximately 2.83 acres (123,402 square feet) in area. The site is currently under construction. No restrictive or impairing slopes were observed.
- The area located in the 25'-front yard setback is approximately 20 square feet or 5' x 4' in area for stairs.
- DCAD records indicate that the site is undeveloped.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 305 Subdistrict B1, West Residential Subzone  
North: PD 193 MF-2 Multiple Family  
South: PD 193 GR General Retail  
East: PD 193 MF-2 Multiple Family  
West: PD 305 Subdistrict B1, West Residential Subzone

**Land Use:**

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

**Zoning/BDA History:**

1. BDA 990-253  
3900 Travis Street  
On April 25, 2000 the Board of Adjustment granted a variance to the side yard setback regulations of 15 feet in conjunction with maintaining a dumpster for an existing retail use.
2. BDA 956-201  
3302-3314 Blackburn Street  
On June 25, 1996 the Board of Adjustment granted a special exception to the landscape regulations to provide an alternate landscape plan.

**Timeline:**

October 4, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

October 20, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

October 24, 2005: The Board Administrator contacted the applicant and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the November 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

October 31, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, Senior Planner Hiromoto, and the Assistant City Attorney to the Board.

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

November 4, 2005 The applicant provided additional information regarding his variance request (see Attachment A).

**STAFF ANALYSIS:**

- The site plan shows two groups of townhouses that front Cole Avenue. There are six variance requests within these groups of townhouses. It appears that there are seven townhouses that are not seeking variances and meet the front setback.

- If the Board were to grant the request, imposing a condition whereby the applicant must comply with the submitted site plan, the amount of encroachment into the front yard setback would be limited in this case to an area approximately 20 square feet.
- Granting this variance would allow stairs for a townhouse to encroach 4' into the 25' front yard setback.

**BOARD OF ADJUSTMENT ACTION: November 15, 2005**

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

APPEARING IN OPPOSITION: No one

MOTION: **Gabriel**

I move that the Board of Adjustment, in Appeal No. **BDA 056-037**, on application of Boulevard Builders, **grant** the 4 foot variance to the front yard setback regulations, because our evaluation of the property and testimony shows that the physical character of this property is such that literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: **Hill**

AYES: 2 – Hill, Gabriel

NAYS: 3 – White, Jaffe, Griggs

MOTION FAILED: 3– 2

**\*Since the motion to grant did not get four concurring votes, the motion failed and is therefore deemed denied with prejudice.**

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FILE NUMBER: BDA 056-038

**BUILDING OFFICIAL'S REPORT:**

Application of Boulevard Builders represented by Karl A. Crawley, Masterplan for a variance to the front yard setback regulations at 3835 Cole Avenue. This property is more fully described as Lot 3 in City Block 2/983 and is zoned P.D. 305 which requires a 15 foot front yard setback. The applicant proposes to construct a single family dwelling and provide an 11 foot front yard setback (for steps) which would require a variance of 4 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

LOCATION: 3835 Cole Avenue

**APPLICANT:** Boulevard Builders  
Represented by Karl A. Crawley, Masterplan

**REQUEST:**

- A variance to the front yard setback regulations of 4' is requested in conjunction with constructing stairs on a single family townhouse structure.

**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:**

- A 15'-front yard setback is required in the PD 305 Subdistrict B1, West Residential subzone zoning district.
- The site is flat, generally rectangular in shape (56' x 180'), and approximately 2.83 acres (123,402 square feet) in area. The site is currently under construction. No restrictive or impairing slopes were observed.
- The area located in the 25'-front yard setback is approximately 20 square feet or 5' x 4' in area for stairs.
- DCAD records indicate that the site is undeveloped.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 305 Subdistrict B1, West Residential Subzone  
North: PD 193 MF-2 Multiple Family  
South: PD 193 GR General Retail  
East: PD 193 MF-2 Multiple Family

West: PD 305 Subdistrict B1, West Residential Subzone

**Land Use:**

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

**Zoning/BDA History:**

- |  |   |
|--|---|
| 1. BDA 990-253<br>3900 Travis Street         | On April 25, 2000 the Board of Adjustment granted a variance to the side yard setback regulations of 15 feet in conjunction with maintaining a dumpster for an existing retail use. |
| 2. BDA 956-201<br>3302-3314 Blackburn Street | On June 25, 1996 the Board of Adjustment granted a special exception to the landscape regulations to provide an alternate landscape plan.   |

**Timeline:**

- October 4, 2005: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- October 20, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- October 24, 2005: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the November 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board’s docket;
  - that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and

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

October 31, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, Senior Planner Hiromoto, and the Assistant City Attorney to the Board.

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

November 4, 2005 The applicant provided additional information regarding his variance request (see Attachment A).

**STAFF ANALYSIS:**

- The site plan shows two groups of townhouses that front Cole Avenue. There are six variance requests within these groups of townhouses. It appears that there are seven townhouses that are not seeking variances and meet the front setback.
- If the Board were to grant the request, imposing a condition whereby the applicant must comply with the submitted site plan, the amount of encroachment into the front yard setback would be limited in this case to an area approximately 20 square feet.
- Granting this variance would allow stairs for a townhouse to encroach 4' into the 25' front yard setback.

**BOARD OF ADJUSTMENT ACTION: November 15, 2005**

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

APPEARING IN OPPOSITION: No one

**MOTION: Gabriel**

I move that the Board of Adjustment, in Appeal No. **BDA 056-038**, on application of Boulevard Builders, **grant** the 4 foot variance to the front yard setback regulations, because our evaluation of the property and testimony shows that the physical character of this property is such that literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

**SECONDED: Hill**

**AYES: 2 – Hill, Gabriel**

**NAYS: 3 – White, Jaffe, Griggs**

**MOTION FAILED: 3– 2**

**\*Since the motion to grant did not get four concurring votes, the motion failed and is therefore deemed denied with prejudice.**

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**FILE NUMBER:** BDA 056-039

**BUILDING OFFICIAL'S REPORT:**

Application of Boulevard Builders represented by Karl A. Crawley, Masterplan for a variance to the front yard setback regulations at 3839 Cole Avenue. This property is more fully described as Lot 1 in City Block 2/983 and is zoned P.D. 305 which requires a 15 foot front yard setback. The applicant proposes to construct a single family dwelling and provide an 11 foot front yard setback (for steps) which would require a variance of 4 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

**LOCATION:** 3839 Cole Avenue

**APPLICANT:** Boulevard Builders  
Represented by Karl A. Crawley, Masterplan

**REQUEST:**

- A variance to the front yard setback regulations of 4' is requested in conjunction with constructing stairs on a single family townhouse structure.

**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:**

- A 15'-front yard setback is required in the PD 305 Subdistrict B1, West Residential subzone zoning district.
- The site is flat, generally rectangular in shape (56' x 180'), and approximately 2.83 acres (123,402 square feet) in area. The site is currently under construction. No restrictive or impairing slopes were observed.
- The area located in the 25'-front yard setback is approximately 20 square feet or 5' x 4' in area for stairs.
- DCAD records indicate that the site is undeveloped.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 305 Subdistrict B1, West Residential Subzone  
North: PD 193 MF-2 Multiple Family  
South: PD 193 GR General Retail  
East: PD 193 MF-2 Multiple Family  
West: PD 305 Subdistrict B1, West Residential Subzone

**Land Use:**

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

**Zoning/BDA History:**

1. BDA 990-253  
3900 Travis Street  
On April 25, 2000 the Board of Adjustment granted a variance to the side yard setback regulations of 15 feet in conjunction with maintaining a dumpster for an existing retail use.
2. BDA 956-201  
3302-3314 Blackburn Street  
On June 25, 1996 the Board of Adjustment granted a special exception to the landscape regulations to provide an alternate landscape plan.

**Timeline:**

- October 4, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- October 20, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- October 24, 2005: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the November 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
  - that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- October 31, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, Senior Planner Hiromoto, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- November 4, 2005 The applicant provided additional information regarding his variance request (see Attachment A).

**STAFF ANALYSIS:**

- The site plan shows two groups of townhouses that front Cole Avenue. There are six variance requests within these groups of townhouses. It appears that there are seven townhouses that are not seeking variances and meet the front setback.
- If the Board were to grant the request, imposing a condition whereby the applicant must comply with the submitted site plan, the amount of encroachment into the front yard setback would be limited in this case to an area approximately 20 square feet.
- Granting this variance would allow stairs for a townhouse to encroach 4' into the 25' front yard setback.

**BOARD OF ADJUSTMENT ACTION: November 15, 2005**

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

APPEARING IN OPPOSITION: No one

MOTION: **Gabriel**

I move that the Board of Adjustment, in Appeal No. **BDA 056-039**, on application of Boulevard Builders, **grant** the 4 foot variance to the front yard setback regulations, because our evaluation of the property and testimony shows that the physical character of this property is such that literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: **Hill**

AYES: 2 – Hill, Gabriel

NAYS: 3 – White, Jaffe, Griggs

MOTION FAILED: 3– 2

**\*Since the motion to grant did not get four concurring votes, the motion failed and is therefore deemed denied with prejudice.**

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FILE NUMBER: BDA 045-257

**REVISED BUILDING OFFICIAL'S REPORT:**

Application of Carolyn E. Roberts for a special exception to allow a second dwelling unit and a variance to the side yard, rear yard, height, and floor area ratios regulations at 6535 Winton Street. This property is more fully described as Lot 7 in City Block 12/2971 and is zoned R 7.5 (A) which allows only 1 dwelling unit per lot, and requires a 5 foot side and rear yard setback, limits the height of this accessory building to 17 feet 6 inches, and limits the floor area of an accessory structure (excluding floor area used for

parking) to 25% of the floor area of the main structure or 391 square feet. The applicant proposes to construct an addition as a second dwelling unit and provide a 2 foot side yard setback, a 2 foot rear yard setback, a height of 23 feet 6 inches, and a floor area of 678 square feet or 43% of the floor area of the main structure. This requires a special exception to allow a second dwelling unit, and a variance of 3 feet to the side yard setback regulations, 3 feet to the rear yard setback regulations, 6 feet to the height regulations, and a variance of 287 square feet or 18% to the floor area ratio limitation. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) and (10) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions and variances.

**LOCATION:** 6535 Winton Street

**APPLICANT:** Carolyn E. Roberts

**REQUESTS:**

- A number of appeals have been made in this application in conjunction with replacing an existing detached 1-story garage with a 2-story garage/fitness room/office/dwelling unit structure on a site developed with a single family home. The appeals in this application are as follows:
  1. a special exception to the single family use regulations for an additional “dwelling unit” structure;
  2. a variance to the side yard regulations of 3’ (amended from 2’);
  3. a variance to the rear yard regulations of 3’ (amended from 2’);
  4. a variance to the height regulations of 6’ (amended from 4’); and
  5. a variance to the floor area ratios regulations of 287 square feet (or 18%).

**STANDARD FOR A SPECIAL EXCEPTION TO THE SINGLE FAMILY USE REGULATIONS TO AUTHORIZE AN ADDITIONAL DWELLING UNIT IN A SINGLE FAMILY ZONING DISTRICT:**

The board may grant a special exception within the single family use regulations to authorize an additional dwelling unit in any single family zoning district when, in the opinion of the board, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties. In granting a special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

**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:**

- “Single family” use is defined in the Dallas Development Code as “one dwelling unit located on a lot,” however, the code allows the Board of Adjustment to grant a special exception to this provision to allow an additional dwelling unit when, in their opinion, the additional dwelling unit will not:
  - 1) be used as rental accommodations; or
  - 2) adversely affect neighboring properties.
- The applicant has submitted a revised site plan that indicates a “Proposed 2 story garage/office” that will have the same building footprint (28’ 4” x 20’ 4”) and be in the same location as an existing “one story wood garage” shown on the same plan.
- The applicant has submitted a floor plan document that indicates the following four drawings:
  - a “Demo Plan – First Floor”
  - a “New First Floor Plan” indicating spaces allocated for a garage, a storage room, and a work room;
  - a “New Second Floor Plan” indicating spaces allocated for a storage room, a fitness room, an open room, an office, a bathroom, a closet, and a vestibule;
  - A “New Second Floor Plan” that provides other details specifically pertaining to location for a treadmill, tankless water heater, and glass block wall.
- The floor plan document establishes that the proposed structure will be 28’ x 20’ in area.
- The applicant has submitted an elevation document that indicates a north, south, east, and west elevation of the proposed structure. The elevations note the maximum height of the 2-story structure from the ground line to the top of the roof pitch to be 21’ 5”. However, an amended “Building Official’s Report” has been forwarded that indicates that the applicant proposes to construct an addition with a height of 23’ 6”.
- The elevation document indicates that the west elevation of the structure has no windows and that the north elevation adjacent to the alley has only a small band of windows on the 2<sup>nd</sup> floor.
- The Dallas Development Code requires a 5’-side yard setback for structures accessory to a residential use above 15’ in height on lots zoned R-7.5(A).

The applicant is proposing to provide a 2'-side yard setback on the western side of the site for the approximately 21.5'-high structure which would require a variance of 3' to the side yard setback regulations.

- The Dallas Development Code requires a 5'-rear yard setback for structures accessory to a residential use above 15' in height and adjacent to an alley on lots zoned R-7.5(A).

The applicant is proposing to provide a 2'-rear yard setback on the northern side of the site for the approximately 21.5'-high structure which would require a variance of 3' to the rear yard setback regulations.

- The Dallas Development Code requires that the height of an accessory structure can not exceed the height of the main building on lots zoned R-7.5(A).

According the Building Official's Report and plans submitted by the applicant, the height of the accessory structure on this site is limited to 17' 6".

The applicant is proposing to construct (according to the revised Building Official's Report) a structure that is 23' 6" that would require a variance of 6' to the height regulations. (Note that the submitted elevation indicates that the structure is 21' 5" in height).

- The Dallas Development Code requires that the total floor area of any individual accessory structure on a lot, excluding floor area used for parking, may not exceed 25% of the floor area for the main building on lots zoned R-7.5(A).

According the Building Official's Report, the floor area of the proposed accessory structure on this site is limited to 25% of the floor area of the main structure or 391 square feet.

The applicant is proposing to construct an accessory structure with a floor area of (according the Building Official's Report) 678 square feet or 43% of the floor area of the main structure which (according to the Building Official's Report) would require a variance of 18% or 287 square feet to the floor area ratio limitation.

- The subject site is zoned R-7.5(A), flat, rectangular in shape (125' x 60'), 7,500 square feet in area, and according to DCAD records, developed with the following:
  - a single family home built in 1952 that is in "average" condition with 1,544 square feet of living area; and
  - a 560 square foot detached garage.
- The Dallas Development Code defines "family" as "individuals living together as a single housekeeping unit in which not more than four individuals are unrelated to the head of the household by blood, marriage, or adoption."
- The Dallas Development Code defines "single family" use as "one dwelling unit located on a lot."
- On May 11, 2005, the City Council adopted an ordinance that amended the provisions set forth in the Dallas Development Code regarding single family accessory structures.
- The Dallas Development Code had defined "dwelling unit" as "one or more rooms designed to accommodate one family and containing only one kitchen plus living, sanitary, and sleeping conditions." The Dallas Development Code *now* defines "dwelling unit" as "one or more rooms designed to be a single housekeeping unit to

accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms.”

- If this special exception request is granted, a completed deed restriction stating that the additional dwelling unit on the site will not be used for rental accommodations must be submitted to the Board Administrator, approved by the City Attorney’s Office as to form, and filed in the deed records of the applicable county (in this case, Dallas County) before the applicable permits for this additional dwelling unit can be issued by the City.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
  - photos of what the applicant states are houses larger than hers with detached garages in the area (which will be shown in the staff’s power point show at the briefing);
  - petitions signed by neighbors in support of the requests;
  - an elevation that shows the height of the existing single family home on the site;
  - a table showing other properties that are one story and have detached garages with additions;
  - a letter that explained in further detail why the requests should be granted;
  - a revised site plan/survey plat for the site where the applicant has shown that the proposed 2-story garage/office will be on the same location and sized as the existing 1-story garage; and
  - a revised elevation that inverts the originally submitted “north elevation” of the proposed accessory structure.
- The Board Administrator identified a discovery made by staff on the morning of September 16<sup>th</sup> that precluded the Board’s ability to take action on this matter at their September 20<sup>th</sup> public hearing: the address for this case on the posted agenda was incorrect. (The address on the posted agenda indicated 6335 Winton Street when the correct address for the subject site was 6535 Winton Street). The administrator informed the board that the address had been correctly conveyed in the notices sent to property owners and in the newspaper advertisement, therefore would not require renotece/readvertisement.
- However on October 4, 2005, the Building Inspection Development Code Specialist forwarded a revised “Building Official’s Report” that increased the side and rear yard variances requests from 2’ to 3’, and the height variance request from 4’ to 6’. These amendments reflected amendments sought by the applicant and required renotece to property owners and readvertisement in the newspaper.
- As of November 7<sup>th</sup>, no additional information had been submitted by the applicant.

## **BACKGROUND INFORMATION:**

### **Zoning:**

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

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

**Land Use:**

The subject site is developed with a 1-story single family home with a 1-story detached garage. 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:**

June 17, 2005: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

July 28, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

July 28, 2005: The Board Administrator contacted the applicant and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the August 5<sup>th</sup> deadline to submit additional evidence for staff to incorporate into the board’s docket;
- 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 August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

August 15-  
Sept. 8, 2005

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

- August 29, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Transportation Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; and the Assistant City Attorneys to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- Sept. 20, 2005: The Board of Adjustment was unable to hold a public hearing on this matter due to a posting error. The board delayed action on these matters until October 18, 2005.
- October 3, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Board Administrator, the Development Services Senior Transportation Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.
- October 4, 2005 The Building Inspection Development Code Specialist forwarded a revised "Building Official's Report" to the Board Administrator that increased the variances to the side and rear yard setbacks from 2' to 3' and increased the variance to the height regulations from 4' to 6'.
- October 18, 2005 The Board of Adjustment conducted a public hearing on this application and delayed action until November 15, 2005.
- October 21, 2005: The Board Administrator wrote the applicant a letter that conveyed the following information:
- that the board delayed action until November 15<sup>th</sup>;
  - the October 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket; and
  - the November 4<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials.
- October 31, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Development Services Department Current Planning Division

Assistant Director, the Board of Adjustment Chief Planner, the Subdivision and Plats Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

**STAFF ANALYSIS (regarding the dwelling unit special exception request):**

- The 2-story “dwelling unit” structure will additionally require variances to rear and side yard setback, floor area ratios, and height regulations.
- If the Board were to approve this request (along with the requests for variances to the rear yard, side yard, height, floor area ratios regulations), subject to imposing a condition that the applicant comply with the submitted revised elevation and revised site plan, the “dwelling unit” structure would be restricted to the specific location, size, and height shown on the submitted site/floor plan and elevation, which in this case is a 2-story structure that includes a “garage,” a “work room;” two “storage rooms,” an “open room,” an office, a “fitness room;” bathroom, closet, and vestibule.
- The Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.
- As of November 7<sup>th</sup>, staff had received no letters in opposition of this request, and several petitions signed by 20 neighbors/owners in support of the second dwelling unit; by 3 neighbors/owners in support of the second dwelling unit with side, rear, height and floor area ratio variances; by 3 neighbors/owners in support of the rear and side yard variance requests; and by 3 neighbors/owners in support of the height variance and floor area ratio variance.

**STAFF ANALYSIS (related to the variance requests):**

- The subject site is flat, rectangular in shape (125' x 60') or 7,500 square feet in area on a parcel of land zoned R-7.5(A) – a zoning district where lots that are typically 7,500 square feet in area.
- If the Board were to grant the rear yard variance request (along with the requests for variances to the side yard, height, floor area ratios regulations, and the request for a special exception to the single family regulations for an additional dwelling unit), subject to the submitted revised site plan and revised elevations, the site could be retained with a 1-story single family home that has about 1,500 square feet of living area and further developed with a 2-story garage/fitness room/office/dwelling unit structure that has a building footprint of about 560 square feet. In addition, if the conditions were imposed, the encroachment into the site’s 5'-rear yard setback for the accessory structure would be limited to an area that is 28' long and 2' wide (or 56 square feet), resulting in a 2'-rear yard setback.

- If the Board were to grant the side yard variance request (along with the requests for variances to the rear yard, height, floor area ratios regulations, and the request for a special exception to the single family regulations for an additional dwelling unit), subject to the submitted revised site plan and revised elevations, the site could be retained with a 1-story single family home that has about 1,500 square feet of living area and further developed with a 2-story garage/fitness room/office/dwelling unit structure that has a building footprint of about 560 square feet. In addition, if the conditions were imposed, the encroachment into the site's 5'-side yard setback for the accessory structure would be limited to an area that is 20' long and 2' wide (or 40 square feet), resulting in a 2'-side yard setback.
- If the Board were to grant the height variance request (along with the requests for variances to the rear yard, side yard, floor area ratios regulations, and the request for a special exception to the single family regulations for an additional dwelling unit), subject to the submitted revised site plan and revised elevations, the site could be retained with a 1-story single family home that has about 1,500 square feet of living area and further developed with a 2-story garage/fitness room/office/dwelling unit structure that has a building footprint of about 560 square feet. In addition, if these conditions were imposed, there would be a small discrepancy between the height of the proposed garage/fitness room/office/dwelling unit structure shown on the submitted elevations (at 21' 5") and the requested to be "varied" and conveyed in the revised "Building Official's Report" that would result in a structure that is 23' 6" in height, resulting in a 6' height variance (or an accessory structure 6' higher than the height of the main structure).
- If the Board were to grant the floor area ratios variance request (along with the requests for variances to the rear yard, side yard, height regulations, and the request for a special exception to the single family regulations for an additional dwelling unit), subject to the submitted revised site plan and revised elevations, the site could be retained with a 1-story single family home that has about 1,500 square feet of living area and further developed with a 2-story garage/fitness room/office/dwelling unit structure that has a building footprint of about 560 square feet. In addition, if the conditions were imposed, the floor area (excluding floor area used for parking) of the proposed garage/fitness room/office/dwelling unit structure could not exceed beyond 678 square feet, resulting in a 287 square foot floor area ratios variance (or an accessory structure that is 18% beyond the 25% of floor area limitation permitted for an accessory structure relative to the main structure).
- As of November 7<sup>th</sup>, staff had received no letters in opposition of this request, and several petitions signed by 20 neighbors/owners in support of the second dwelling unit; by 3 neighbors/owners in support of the second dwelling unit with side, rear, height and floor area ratio variances; by 3 neighbors/owners in support of the rear and side yard variance requests; and by 3 neighbors/owners in support of the height variance and floor area ratio variance.

**BOARD OF ADJUSTMENT ACTION: September 19, 2005**

APPEARING IN FAVOR:                      No one

APPEARING IN OPPOSITION: No one

- **Due to an administrative error, the board lacked jurisdiction to hear this case and it was therefore held over to October 18, 2005.**

**BOARD OF ADJUSTMENT ACTION: October 18, 2005**

APPEARING IN FAVOR: Carolyn Roberts, 6535 Winton, Dallas, TX

APPEARING IN OPPOSITION: No one

**MOTION#1: Hill**

I move that the Board of Adjustment, in Appeal No. **BDA 045-257** on application of Carolyn E. Roberts, **grant** the request of this applicant to maintain an additional dwelling unit on the property, because our evaluation of the property and testimony shows that the additional dwelling unit will not be used as rental accommodations nor adversely affect neighboring properties. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

SECONDED: **Wise**

AYES:

NAYS:

**\*There was no vote called for on this motion to approve.**

**MOTION#2: Hill**

I move to withdraw my previous motion to approve.

SECONDED: **Gabriel**

AYES:4 – White, Hill, Gabriel, Beikman

NAYS: 1 - Wise

MOTION PASSED: 4– 1

**MOTION#3: Hill**

I move that the Board of Adjustment, in Appeal No. **BDA 045-257** on application of Carolyn E. Roberts, **deny** the request of this applicant to maintain an additional dwelling unit on the property, **without prejudice**, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that the additional dwelling unit on the site will adversely affect neighboring properties.

SECONDED: No one

AYES:

NAYS: **\*Motion failed for lack of a second.**

**Break: 3:30**  
**Resumed: 3:35**

**MOTION #4: Hill**

I move that the Board of Adjustment, in Appeal No. **BDA 045-257**, hold this matter under advisement until **November 15, 2005**.

**SECONDED: Wise**

**AYES:** 5 – White, Hill, Gabriel, Beikman, Wise

**NAYS:** 0 -

**MOTION PASSED:** 5–1

**BOARD OF ADJUSTMENT ACTION: November 15, 2005**

**APPEARING IN FAVOR:** Carolyn Roberts, 6535 Winton, Dallas, TX  
Peter Kavanagh, 1620 Handley Dr., Dallas, TX

**APPEARING IN OPPOSITION:** No one

**\*Member Dovie Jaffe recused herself and left the meeting.**

**MOTION#1: Hill**

I move that the Board of Adjustment, in Appeal No. **BDA 045-257** on application of Carolyn E. Roberts, **deny** the request of this applicant to maintain an additional dwelling unit on the property **without prejudice**, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that the additional dwelling unit will adversely affect neighboring properties.

**SECONDED: Griggs**  
**AYES:** 4 - White, Hill, Gabriel, Griggs  
**NAYS:** 0 -  
**MOTION PASSED:**4-0 (unanimously)

**MOTION#2: Hill**

I move that the Board of Adjustment, in Appeal No. **BDA 045-257** on application of Carolyn E. Roberts, **deny** the variances 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: Gabriel**  
**AYES:** 4 - White, Hill, Gabriel, Griggs  
**NAYS:** 0 -  
**MOTION PASSED:**4-0 (unanimously)

\*\*\*\*\*

**FILE NUMBER:** BDA 056-005

**BUILDING OFFICIAL'S REPORT:**

Application of Greenberg Farrow Architecture, Inc., represented by Jackson Walker L.L.P., for a special exception to the parking regulations at 11700 Preston Road. This property is more fully described as a tract of land in City Block 6378 and is zoned CR which requires parking to be provided for new construction. The applicant proposes to construct an addition to an existing retail building and provide 943 of the required 1,154 parking spaces which would require a special exception of 211 parking spaces or 18.3%. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

**LOCATION:** 11700 Preston Road

**APPLICANT:** Greenberg Farrow Architecture, Inc.  
Represented by Jackson Walker L.L.P.

**REQUEST:**

- A special exception to the off-street parking regulations of 211 (or 18% of the required off-street parking) is requested in conjunction with providing 943 (or 82% of the total required 1,154 off-street parking spaces. The request is made to:
  - accommodate the move of the Whole Foods Market location from the west side of Preston Road to the former Minyard's location in the subject site: the Preston

Forest Shopping Center at the southeast corner of Preston Road and Forest Lane; and

- allow the existing approximately 42,500 square foot vacant grocery store space to be expanded by approximately 8,300 square feet. (With the proposed supermarket, the center would provide about 227,000 square feet of retail, restaurant, and office uses).

**Note:** The proposed approximately 8,300 square foot expansion to one of the tenants/spaces in the shopping center accounts for 42 of the 211 spaces sought in this special exception request. The remaining 169 parking spaces sought to be “excepted” in this request appears to reflect an existing shopping center that is “underparked.”

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
  - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
  - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
  - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
  - (D) The current and probable future capacities of adjacent and nearby streets based on the city’s thoroughfare plan.
  - (E) The availability of public transit and the likelihood of its use.
  - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:

- (A) establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
  - (B) impose restrictions on access to or from the subject property; or
  - (C) impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
  - 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
    - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
    - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

**GENERAL FACTS:**

- A table in the originally submitted parking analysis/study of August of 2005 (which will be available for review upon request at the briefing/public hearing) detailed the Dallas Development Code parking requirements for what were originally deemed to be uses in the existing shopping center:
  - 1 space is required for every 200 square feet of retail floor area use.
  - 1 space is required for every 100 square feet of restaurant floor area use.
  - 1 space is required for every 333 square feet of office floor area use.
  - 1 space is required for every 1,000 square feet of warehouse floor area use.
 The table in the originally submitted parking study documented the following parking requirements for the spaces/uses in the existing shopping center:
 

- Retail parking spaces required:	706
- Retail supermarket spaces required:	254
- Restaurant spaces required:	83
- Office spaces required:	32
- Warehouse spaces required:	12
- Total:	1,087
- Provided:	943
- Surplus (Deficiency):	(144)
- The site plan originally submitted with the application made the following notations:
  - Existing Minyards -  $\pm$  42,500 SF
  - Expansion areas of  $\pm$  5,280 SF and  $\pm$ 3,021 SF
- On September 29, 2005, the applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
  - a revised site plan;
  - a revised parking analysis/study dated September 2005; and

- a letter that provides further details about the request (stating that the items have been changed to reflect a corrected calculation as the Code-required parking for the area of request but do not change the number of spaces provided nor materially change the analysis of the request with regard to the applicable standard).

The table in the revised submitted parking study documents the following parking requirements for the spaces/uses in the existing shopping center:

- Retail parking spaces required: 785
- Retail supermarket spaces required: 254
- Restaurant spaces required: 83
- Office spaces required: 32
- Total: 1,154
- Provided: 943
- Surplus (Deficiency): (211)

The revised site plan makes notations that adjust parking space numbers to reflect the parking statistics above however has not altered the following notations made on the originally submitted site plan:

- Existing Minyards -  $\pm$  42,500 SF
- Expansion areas of  $\pm$  5,280 SF and  $\pm$  3,021 SF
- On September 30, 2005, the applicant's representative submitted information beyond what was submitted with the original application (see Attachment B). This information included the following:
  - a letter that provides further details about the request; and
  - documents from the revised parking analysis/study dated September 2005.
- As of November 7<sup>th</sup>, no additional information had been submitted by the applicant's representative.

## **BACKGROUND INFORMATION:**

### **Zoning:**

- Site: CR (Community Retail)
- North: CR (Community Retail)
- South: R-16(A) (Single family 16,000 square feet)
- East: R-16(A) (Single family 16,000 square feet)
- West: CR (Community Retail)

### **Land Use:**

The subject site is developed as a shopping center (The Preston Forest Shopping Center). The areas to the north and west are developed with retail and commercial uses, and the areas to the east and south are developed with single family uses.

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

1. BDA 978-121, 11661 Preston Road (the site at the southwest corner of Preston and Forest, immediately west of the subject site)

On June 15, 1998, Board of Adjustment Panel C denied a request for a special exception to the off street parking regulations of 32 spaces and a variance to the off street parking regulations without prejudice. The case report stated that the applicant had requested a parking special exception request whereby 845 of 877 required spaces would be provided, and had requested a variance to the parking regulations (related to aisle width). Both appeals were requested in conjunction with transitioning retail space to restaurant space in an existing shopping center (Preston Forest Village).

### **Timeline:**

- Sept. 1, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Sept. 22, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Sept. 23, 2005: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the September 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
  - the October 7<sup>th</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 October public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Sept. 29 & 30, 2005

The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A and B).

October 3, 2005:

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

October 7, 2005

The Development Services Senior Engineer forwarded the comments on this appeal. The engineer commented with no objections, and made the following comments on the appeal as originally submitted (where the special exception was for 144 spaces since the applicant was proposing to provide 943 of the required 1,087 spaces required):

- "Three different studies performed,
- Three other city's parking requirement comparison yield that the 943 proposed parking space is adequate, the maximum is for City of Plano in which requires 899,
- *Urban Land Institute (ULI) Shared Parking Study* parking demand is 919 parking spaces for weekday and 921 parking spaces for Saturday,
- *Urban Land Institute (ULI) requirements for Shopping Centers* parking recommendation yields 890 parking spaces less than the 943 proposed parking space,
- *Institute of Transportation Engineers (ITE) Parking Generation* peak parking demand yields 707 parking spaces weekday and 797 parking spaces for Saturday,
- *Institute of Transportation Engineers (ITE) Parking Generation* time-of-day parking demand yields 686 parking spaces weekday and 786 parking spaces for Saturday."

October 10, 2005

The Development Services Senior Engineer forwarded an email to the Board Administrator stating that he felt the amended request (where the special exception was for 211 spaces since the applicant was proposing to provide 943 of the required 1,154 spaces required) was "reasonable."

- October 18, 2005 The Board of Adjustment conducted a public hearing on this application and delayed action until November 15, 2005.
- October 21, 2005: The Board Administrator wrote the applicant's representative a letter that conveyed the following information:
- that the board delayed action until November 15<sup>th</sup>;
  - the October 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket; and
  - the November 4<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials.
- October 31, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Subdivision and Plats Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

### **STAFF ANALYSIS:**

- 82 percent of the required off-street parking spaces for a shopping center are proposed to be provided in conjunction with expanding an approximately 42,500 square foot vacant grocery store space to be expanded by approximately 8,300 square feet.
- The proposed approximately 8,300 square foot expansion to one of the tenants/spaces in the shopping center accounts for 42 of the 211 spaces sought in this special exception request. The remaining 169 parking spaces sought to be "excepted" in this request appears to reflect a shopping center that is "underparked" without any additional space added or expanded.
- Granting this request, subject to the condition that the special exception of 211 spaces automatically and immediately terminates if and when the retail, restaurant, and office uses on the site is changed or discontinued, would allow an approximately 8,300 square foot expansion on an existing approximately 42,500 square foot vacant retail use with 18% less than the required number of off-street parking spaces for the entire shopping center.
- On October 7, 2005, the Development Services Senior Engineer forwarded comments on the request as it was originally submitted as a parking special exception of 144 spaces (when 943 of the required 1,087 spaces were to be provided). The engineer indicated that he had no objections and made the following additional comments:

- "Three different studies performed,
  - Three other city's parking requirement comparison yield that the 943 proposed parking space is adequate, the maximum is for City of Plano in which requires 899,
  - *Urban Land Institute (ULI) Shared Parking Study* parking demand is 919 parking spaces for weekday and 921 parking spaces for Saturday,
  - *Urban Land Institute (ULI) requirements for Shopping Centers* parking recommendation yields 890 parking spaces less than the 943 proposed parking space,
  - *Institute of Transportation Engineers (ITE) Parking Generation* peak parking demand yields 707 parking spaces weekday and 797 parking spaces for Saturday,
  - *Institute of Transportation Engineers (ITE) Parking Generation* time-of-day parking demand yields 686 parking spaces weekday and 786 parking spaces for Saturday."
- On October 10, 2005, the Development Services Senior Engineer forwarded an email to the Board Administrator stating that he felt the amended request (where the special exception was for 211 spaces since the applicant was proposing to provide 943 of the required 1,154 spaces required) was "reasonable."

**BOARD OF ADJUSTMENT ACTION: October 18, 2005**

**APPEARING IN FAVOR:**

Bill Dahlstrom, 901 Main St., #6000, Dallas, TX  
 Scott Johnson, 12700 Park Centry, Dallas, TX  
 Robert Ginsburg, 11215 Cinderella Ln, Dallas, Tx

APPEARING IN OPPOSITION: Candy Thompson, 11527 Royalshire Dr., Dallas, TX  
Mike Courtney, 6057 Preston Ave., Dallas, TX  
Owen Curry, 6035 Preston Haven Dr., Dallas, TX  
Paul Hamilton, 6034 Del Roy Dr., Dallas, TX

APPEARING IN OPPOSITION: Susan Boucher, 6025 Preston Haven, Dallas, TX  
Nancy E. Bronson, 11516 Royalshire Dr., Dallas, TX

MOTION: **Beikman**

I move that the Board of Adjustment, in Appeal No. **BDA 056-005**, hold this matter under advisement until **November 15, 2005**.

SECONDED: **Wise**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

**BOARD OF ADJUSTMENT ACTION: November 15, 2005**

APPEARING IN FAVOR: Jonathan Vinson, 901 Main St., #6000, Dallas, TX  
Robert Ginsburg, 11215 Cinderella Ln, Dallas, TX  
Maria Curry, 6035 Preston Haven, Dallas, TX  
Nona Evans, 2945 Sussex Gardens, Austin, TX

APPEARING IN OPPOSITION: Candy Thompson, 11527 Royalshire Dr., Dallas, TX  
Mike Courtney, 6057 Preston Ave., Dallas, TX

MOTION: **Griggs**

I move that the Board of Adjustment, in Appeal No. **BDA 056-005**, on application of Greenberg Farrow Architecture, Inc., **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development Code by 211 parking spaces, because our evaluation of the property and the testimony shows that the parking demand generated by the proposed uses on the site does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard nor increase traffic congestion on adjacent and nearby streets. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception shall automatically and immediately terminate if and when the retail, restaurant, and office uses on the site are changed or discontinued;
- That there will be a reassessment in 3 years to determine whether the special exception is still warranted;
- Between 2 years 9 months and 2 years 11 months, the owner shall commission at the owner's expense, a parking impact study and a traffic impact study;

- At 2 years 11 months, the owner shall submit at the owner's expense the parking impact study and the traffic impact study to the Engineering Division of Development Services for review;
- At 3 years the Engineering Division of Development Services shall recommend to the applicant (owner) whether reassessment is necessary. If reassessment is recommended, the owner shall immediately at the owner's expense, submit this matter for reassessment to the Board of Adjustment.

**SECONDED: Gabriel**

**AYES:** 4 – White, Hill, Gabriel, Griggs

**NAYS:** 0 -

**MOTION PASSED:** 4– 0 (unanimously)

\*\*\*\*\*

**MOTION: Hill**

I move to adjourn this meeting.

**SECONDED: Griggs**

**AYES:** 4 – White, Hill, Gabriel, Griggs

**NAYS:** 0 -

**MOTION PASSED:** 4 – 0 (Unanimously)

**5:33 P.M.** - Board Meeting adjourned for November 15, 2005.

\_\_\_\_\_  
CHAIRPERSON

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

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

\*\*\*\*\*

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