



# CITY OF BELLAIRE TEXAS

## BOARD OF ADJUSTMENT

AUGUST 6, 2014

Council Chamber

Special Event

7:00 PM

7008 S. RICE AVENUE  
BELLAIRE, TX 77401

### 1. CALL TO ORDER

Chairman Sharp called the meeting to order at 7:09 PM.

### 2. PLEDGE TO THE FLAG (US AND TEXAS)

**Texas Pledge: Honor the Texas Flag: I pledge allegiance to thee, Texas one state under God, one and indivisible.**

Chairman Sharp led the Board in the pledges to both flags.

### 3. CERTIFICATION OF A QUORUM

Chairman Sharp certified that a quorum was present, consisting of the following members:

Attendee Name	Title	Status	Arrived
Patty McGinty	Board Member	Present	
Amar Raval	Board Member	Present	
Tom Ligh	Vice Chairman	Present	
Aashish Shah	Board Member	Present	
Debbie Sharp	Chairman	Present	
Debbie Karakowsky	Board Member	Present	
Seth A. Miller	Board Member	Present	
John McDonald	Director	Present	
Shawn Cox	Development Services Manager	Present	
Ashley Parcus	Secretary	Present	

### 4. APPROVAL OF MINUTES

- Board of Adjustment - Regular Session - Jul 17, 2014 7:00 PM

**Motion:** a motion was made by Board Member McGinty and seconded by Board Member Miller to accept the minutes as written.

**Vote:** the motion carried on unanimous vote of 7-0.

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>MOVER:</b>	Patty McGinty, Board Member
<b>SECONDER:</b>	Seth A. Miller, Board Member
<b>AYES:</b>	McGinty, Raval, Ligh, Shah, Sharp, Karakowsky, Miller

### 5. REPORTS FROM OFFICERS, COMMITTEES, SUB-COMMITTEES AND COMMUNICATIONS BOARD MEMBERS HAVE HAD OUTSIDE THE MEETING

There were no reports.

## 6. UNFINISHED BUSINESS

There was no unfinished business.

## 7. NEW BUSINESS

### A. Public Hearings

1. Docket # BOA-2014-03-Consideration and possible action on a request for a variance to allow for a Planned Development site width of 120 feet in lieu of the 150 feet minimum required by Section 24-536 C. (2)e 2) of the City of Bellaire Code of Ordinances at 4301 Bellaire Boulevard

Chairman Sharp introduced the item and the hearing process to the public.

### Presentation by the Applicant

**Bruce Frankel, Principal of Frankel Development Group**-Mr. Frankel informed the Board that the applicant, Sloan Properties, LLC, is a privately held, local real estate investment development company that is a holder of properties. He added that Sloan currently has the property at 4301 Bellaire Boulevard under contract. Mr. Frankel explained that rezoning of the site from R-5 to CMU (Corridor Mixed-Use) is pending with the Planning and Zoning Commission, and that they are concurrently seeking a planned development (PD) to limit what is developed on this site. He stated that the public hearing was held before the Commission on July 8th, and consideration of the applications will be at their August 12th meeting. Mr. Frankel pointed out that the CMU permits several commercial uses, but a PD commits to a specific project. He added that a PD within the CMU requires that the site be a minimum of 150 feet in width, and that this property is only 120 feet wide due to the taking by Center Point Energy. He noted that other than the 30 feet that the site is lacking in width, it is compliant with the PD regulations, if rezoned to CMU. Mr. Frankel then reviewed the four standards for which a variance may be granted:

**1. Such modifications of the height, yard, area, lot width, lot depth, off-street loading, screening wall, coverage, parking and sign regulations are necessary to secure appropriate development of a parcel of land which materially differs from other parcels in the district because of a special condition unique to and inherent in the parcel itself, such as restricted area, shape or slope, such that the parcel cannot be appropriately developed without modification;**

Mr. Frankel explained that there are many elements that make this site unique to the city, including:

- power lines
- railroad tracks
- bar to the east
- town houses to the west
- only access to property is busy Bellaire Boulevard
- oddly shaped site, 120 feet wide X 409 feet deep

He stated that access, location, and value of the land severely limits the development options for the site. Mr. Frankel added that the city requires residential lots to face a public street, and that the development of a single family house on this site is not marketable. He pointed out that if it were, there would

be a house under construction on that site right now under what is considered to be one of the hottest real estate markets Houston has experienced in decades. Mr. Frankel explained that the construction of town homes would require the installation of a public street, consisting of 60 feet, which is half the width of this site. He stated that creating lots that are 60 feet deep makes a town home development un-marketable, and that this site is not suitable for anything other than what is being proposed, or something similar.

**2.A literal enforcement of the zoning ordinance from which the variance is requested would result in unnecessary hardship not self-created or personal, nor solely financial in nature;**

Mr. Frankel reiterated that the dimensions of the site create a hardship, and that this variance is not self-created, as the utility company took the rest of the site. He added that this request is not financial in nature, it is simply the site configuration, or the width specifically, that creates the hardship. He mentioned that each of the Board Members had received a letter from the former president of Dallas Christian College, who owns the site, stating that the construction of another church or school on this site is impractical.

**3. The granting of the variance will not be materially detrimental or injurious to other property or improvements in the neighborhood in which the subject property is located, nor impair an adequate supply of light or air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public health, safety and well-being, or substantially diminish or impair property values within the neighborhood; and**

Mr. Frankel stated that a variance for 30 feet would not be materially detrimental or injurious to other properties in the area. He added that the drainage and detention that is required for the project will actually solve the site's current flooding problems as well as those of the adjacent property owners. He noted that the granting of a variance will not impair adequate light or air to adjacent properties, and that the building will be 35 feet from the nearest residential dwelling and 19 feet under the allowable height. Mr. Frankel stated that approval of the variance will not increase the street congestion, Bellaire Boulevard is already a busy thoroughfare with over 25,000 vehicles per day. He stated that the project will not draw additional traffic or cause traffic problems, but will tap the traffic that already exists on this street. Additionally, the size and make up of this development is not big enough to create any traffic problems, and the proposed ingress and egress will keep traffic moving on Bellaire Boulevard. He added that the variance will not increase fire or endanger the public health, safety, or well-being, and that the project itself and the landscaping will serve as a buffer for nearby property owners by reducing the noise of the adjacent railway, the unsightly electrical wires, and the bar in un-zoned Houston. Lastly, the granting of this variance will not substantially impair neighborhood values, if anything, the property in its current state presents a detriment or nuisance to the city of Bellaire and adjacent property owners. He added that given the quality of the design and materials used in the proposed development the project will match the level of residential investment made in the adjacent properties, and across the rest of the community. Mr. Frankel explained that the use of a PD, if the Planning and Zoning Commission approves the re-zoning, limits development options and protects the public interest.

In conclusion, Mr. Frankel stated that the variance is to permit a PD application, not project approval. He explained that the Planning and Zoning Commission and the City Council will approve the decision on the project itself. He reiterated that the narrow site width due to taking by the utility company is a hardship, and that re-zoning with a PD as an option benefits the public by restricting land use and providing structure to address any perceived negative impacts of the project. He ended by saying that the variance request is due to the physical characteristics of the property, not owner action, and that it is not self-created nor financial in nature. The site simply is unique with adverse conditions.

**Reid Wilson, Attorney with Wilson, Cribbs, and Goren-** Mr. Wilson reiterated that this application is somewhat unusual because the Board is not being asked to approve a particular site condition, it is simply being asking to allow an additional tool in the land use tool box to be used by the Planning & Zoning Commission and the City Council. He explained that the only issue is that when the city permits a PD it requires a minimum size and depth, which the site satisfies, as well as a minimum width, of which the site is 30 feet short. He pointed out that the applicant is just asking the Board to give that option to the Planning and Zoning Commission and City Council, and is not asking them to approve the project. Mr. Wilson added that they simply want to let the Planning and Zoning Commission and City Council present this as a project that would be very specific and very defined, which is what a PD does. He asked the Board to approve the application so that the Commission and Council will have the option of a PD available to them.

### **Staff Findings**

Mr. McDonald informed the Board that this application is a request for a variance at 4301 Bellaire Boulevard, which is currently located within the R-5 Zoning District and the Bellaire Boulevard Estate Overlay District. He stated that legal notices were published in the paper and mail outs were sent out in both June and July, due to the postponement of the items at the last meeting. Mr. McDonald added that the residents in attendance to speak at the last meeting were specifically notified of the rescheduling. He then explained that the question before the Board is regarding the parcel, and not the project. Mr. McDonald stated that all four standards must be met for the granting of the variance, and reviewed each one with the Board. He added that it is staff's opinion, with the interpretation of these four criteria, the application does meet the requirements and therefore staff does not oppose the granting of the variance.

### **Public Comments**

The following residents spoke in opposition of the application:

**Joy Hall**  
**Charles Hall**  
**Vic Gelsomino**  
**Joy Puzon**  
**Lynn McBee**  
**Nancy Haskins**

The residents cited the following reasons for their opposition:

- The site is not conducive for a business;
- Concerns that this would be spot zoning;

- Would create traffic hazards/congestion;
- The site is developable with current zoning (town homes, single-family residence, church or school); and
- There is nothing unique about this site
- Concerns of property devaluation with regards to surrounding residential homes

### **Rebuttal by the Applicant**

Mr. Frankel mentioned all the work that the city had done on the Comprehensive Plan and that an important aspect of that plan was to ensure that the gateway properties to the city are aesthetically pleasing. He felt that there is nothing uglier than what exists there today. Mr. Frankel explained that DCC is asking 2 millions dollars for this site and that they will let it sit until they get their money. He also emphasized that Houston is currently experiencing the most incredible real estate market ever, both commercially and residentially, and that if this site was desirable by a home builder it would have already been snatched up. He then mentioned, and applauded Mr. Gelsomino's comment regarding the construction of town homes on this property, but pointed out that this is not a feasible option. Mr. Frankel showed a diagram of the site if town homes were to be constructed on it, and explained that a 60 foot R.O.W., which is half the width of this site, would be required. After the addition of the street and cul-de-sac, and the subdivision of the lot, the cost of each town home unit was between \$783,000 and \$906,000. He added that the size of the town homes range from 1800 square feet to 2900 square feet. Mr. Frankel then read the letter from the former president of DCC explaining that the college wished to see the property sold to construct something other than a church. He quoted the letter in saying, "The combination of the old building, the narrow lot width, the railroad tracks, and the high power electric lines would discourage a strong, growing church from purchasing this property. This is a difficult unique site, not ideal for a church or school."

### **Questions by the Board**

Board Member Shah stated that he doesn't agree with the statement that this site cannot be developed. He mentioned that given the right amount of marketing and interest this site could be purchased as a residential property. He then asked what the rationale is for the requirement of 150 foot width versus 120 feet width of the site. He also pointed out that this easement has been there and questioned why someone would buy this property with an easement already there and then ask for a variance claiming that it is un-developable. Finally, Board Member Shah asked how the granting of this variance would not be considered spot zoning.

Mr. Frankel explained that this site is inherently un-developable, and reiterated that there are many characteristics making this site unique. He then informed the Board that the re-zoning of this property into the CMU District would leave the door open to many commercial uses, but in also asking for a planned development it limits the options and requires the applicant to build the specific project that is presented to the Commission and City Council. Mr. Frankel added that in doing this they are showing their word and commitment to the city and residents of Bellaire. He then stated that for the site to qualify for a PD within the CMU Zoning District it must have 150 feet of width, which is why the applicant is asking for the variance. Mr. Frankel mentioned that the site was wider at one point, but was made narrower with the taking by Center Point. He stated that this is the smallest site on the south side of Bellaire Boulevard.

Board Member Raval pointed out that there was an issue raised regarding how/if the site had been marketed, and asked if it had ever been listed as residential.

Mr. Frankel stated that he is not sure if it was actually listed as residential, but did say that there has been a sign up on the property for 18 months.

Board Member Karakowsky mentioned that Mr. Frankel continues to throw out monetary values and asked how this application is not related to a financial hardship.

Mr. Frankel explained that there is no financial hardship on his part, and that he is the one that's paying the price. He added that this land was a donation from the church to DCC. Mr. Frankel also pointed out that there was another individual who was looking to redevelop on this site prior to Sloan Properties and that they were proposing to construct the same thing.

Board Member Karakowsky asked Mr. Frankel if he could speak to the lot across the street that the Board was informed by a resident is the same size and has a residential property located on it.

Mr. Frankel stated that he has not taken a look at that property and could not speak to that.

Board Member Miller asked if the granting of the variance is premature until the Planning & Zoning Commission makes a decision on the re-zone and planned development applications.

Mr. McDonald explained that they have submitted three applications at one time. The re-zone is necessary for the construction of a commercial property on this site, and the applicant felt it beneficial to ask for this re-zone under the constraints of a planned development. He added that the the planned development requires the variance in order to be granted.

Board Member Miller asked Mr. Frankel if they have conducted any traffic studies.

Mr. Frankel confirmed that a Traffic Impact Analysis has been done, and was included in the applications submitted to the Planning & Zoning Commission. He stated that according to the study there will be no material impact on traffic in that area.

Board Member Miller asked if this study was ever submitted to the Board of Adjustment.

Mr. Frankel explained that it was not required as part of the application for a variance.

Mr. Wilson reminded the Board that they are not here to approve the project, they are simply being asked to approve the variance of 30 feet and let this option be available to the Planning & Zoning Commission and City Council.

Vice Chairman Ligh asked if this property has been appraised.

Mr. Frankel stated that it has not been appraised yet.

Vice Chairman Ligh asked if the trees that are currently on the property will stay.

Mr. Frankel informed the Board that most of the trees will remain.

Chairman Sharp stated that she is having trouble wrapping her head around how the Board is supposed to apply the 4 standards to a zoning requirement that doesn't exist.

Chairman Sharp asked Attorney Petrov if the way that this is taking place is legally correct.

Attorney Petrov agreed that it is somewhat of a confusing process, but explained that in order for the planned development to be constructed, the applicant must also be granted the variance. He added that it doesn't matter which comes first, just that they must have the variance to move forward with a PD. He explained that the question before the Board is, assuming the re-zoning request is granted, would the Board grant the variance. Attorney Petrov pointed out that the answer may be no, but that the members just have to assume that the property is going to be located in the CMU Zoning District and apply the standards to that.

Board Member Miller asked Mr. McDonald to explain his basis in finding that the granting of this variance would not oppose the spirit and intent of the ordinance.

Mr. McDonald stated that assuming the re-zone and PD applications are granted, the 30 foot difference in width would not negatively impact the neighborhood and/or be against the spirit of the code.

Board Member Miller asked Mr. McDonald if he had reviewed the Traffic Impact Analysis.

Mr. McDonald informed the Board that the city's traffic consultant has reviewed the study. He added that there will have to be changes to the intersection with the cut through at Bellaire Boulevard and the turn lane, but that the level of service will not be negatively impacted.

Chairman Sharp mentioned that the Board's Rules of Procedure had recently been changed to require a parking demand analysis with the submission of a variance request, and asked why it was not included as part of the application.

Mr. McDonald explained that the requirement of that study is with regard to a reduction in the number of parking spaces, and because they are not requesting a reduction of parking that clause did not kick in.

Board Member Miller asked if public safety was considered as part of the traffic study.

Mr. McDonald stated that generally the traffic engineers are required to take safety into consideration.

**Motion:** a motion was made by Board Member Shah to approve the variance.

**The motion failed for lack of a second. The variance was not approved.**  
(Requested by John McDonald, Community Development)

**RESULT: FAILED NO VOTE**

2. Docket # BOA-2014-04-Consideration and possible action on a request for a special exception to allow a parking lot located on the utility easement to be counted towards the on-site parking requirements, as well as a reduction in the total number of required spaces set forth in Section 24-514a of the City of Bellaire Code of Ordinances at 4950 Terminal, legally described as TRS 45A thru 49A Terminal.

**Presentation by the Applicant**

**Billye Joe Sanders, owner of Multi-Sport Health Center (MSHC)**-Mrs. Sanders informed the Board that she is no longer asking for a parking reduction, as a new parking plan was submitted to the city that has sufficient parking, simply that parking on the utility easement be allowed to count towards the onsite parking requirement. She pointed out that the parking lot located on the utility easement has been historically used to satisfy the parking requirement at 4950 Terminal. Mrs. Sanders explained that her and her husband are in the due diligence phase of purchase of the property from Mr. James Dubose, owner of J&R Medical. She mentioned that under the new zoning regulations within the UV-T, this is considered a non-conforming use. Mrs. Sanders stated that while the current use is grand fathered, they are proposing a significant remodel and division into a mixed-use property within the current building. She also mentioned that a letter from Center Point Energy was included in the documents submitted explaining that they do have intent to transfer the remaining commercial parking license, as well as extent it. She added that in speaking with Center Point there is no foreseeable change in the location of the utility easement. Mrs. Sanders informed the Board that there is zero onsite parking available within the property boundaries, and that part of the building is also located on the utility easement. She added that there are two primary utility easements that run through the entire UV-T District that are currently being utilized as parking lots by other buildings within the district. Mrs. Sanders gave the Board some background information stating that MSHC is family owned, started in 2001, and moved into Bellaire in 2006. She explained that it is a sports medicine facility that provides evidence based quality care, and then mentioned each additional business that would be located within the building:

**Zenith Fitness and Performance**-would also be owned by Mrs. Sanders, will provide one-on-one, or small group training, solely based on providing evidentiary medical training.

**Thrive**-High quality fitness center out of Boston.

**DoxCo Pitching Academy**-Certified pitching coach, evidence of science based training in order to prevent injury.

**Owner/Employee fitness area**-training and work out area specifically for employees of MSHC.

Mrs. Sanders stated that they would like to better serve their current patient base by adding much needed services to help reduce injury risk and for their patients and patrons to be able to maintain a pain free lifestyle. She then informed the Board that she had provided them with a packet of the Bellaire Village Vision Plan, of which the same pictures were used for the Comprehensive



Plan. Mrs. Sanders pointed out that a lot of things have changed over the last five years on the City of Houston side, but nothing has changed on the Bellaire side. She then quoted the City Manager regarding the current status of the UV-T by saying, "Physical access to the UV-T, draining for the UV-T, and the issue of numerous property owners within the UV-T, are all factors that present additional challenges for development of the site." Additionally, she noted that the City Council priorities for the period of 2012 to 2014, as adopted on March 19, 2012 stated that, "It is a priority of this Council to encourage new business development, facilitate business expansion, and provide a diverse basis of business opportunity for residents." Mrs. Sanders explained that she had met with Mr. McDonald and Mr. Cox on July 25th and that Mr. McDonald stated that if a parking lot had been attached to the property then there would be no need for a special exception. She informed the Board that he also mentioned that these are exactly the kinds of businesses that the city wants to see in the UV-T, but that his preference was to see it going into a five-story building instead. Mrs. Sanders stated that unfortunately they cannot afford a 5 story building, and there is not one in the UV-T District.

The Board granted Mrs. Sanders an additional 5 minutes to speak.

Mrs. Sanders felt that what she is presenting is a positive interim choice between the current building as it is and the future vision of the UV-T. She added that the proposed businesses do qualify within the permitted uses laid out in the Section 24-547 B. (1) of the Code of Ordinances. Mrs. Sanders stated that the business will have negative zero impact on the neighboring residential area, and will not create any additional on-street parking. She informed the Board that this is the smallest parcel of land within the UV-T District, and contains a significant aerial easement that runs the entire eastern side of the parcel. She pointed out that for these reasons she feels that it would most likely be developed last within the UV-T. Mrs. Sanders also mentioned that they plan to improve the aesthetics over the current use, including exterior improvements and upgrades, in the intent to make it look less like a warehouse and more like a loft-style office building, as well as to remove the unsightly fence around the utility easement. She pointed out that nowhere within the municipal does it say that every building has to be grazed and started afresh, nor does it say that in the Comprehensive Plan. Mrs. Sanders stated that this building is perfect for their business and asked the Board to allow them the opportunity to stay in Bellaire because the community feel is very important to her and her family.

### **Staff Findings**

Mr. Cox informed the Board that the property in question is located at 4950 Terminal, and is within the Urban Village Transit Oriented District. He added that staff sent mail outs on June 30th and July 24th, and published the legal notice in the Southwest New on July 1st and July 29th. He explained that the applicant is requesting a special exception to allow off-site parking to be counted towards their required parking numbers, and pointed out that the application originally included a request for a reduction in the number of required parking spaces, but since then a new parking plan has been created providing more than enough parking for this site. Mr. Cox stated that the applicants, Dr. And Mrs. Sanders, are in the process of purchasing the property at 4950 Terminal to develop a mixed-use space comprised of Multi-Sport Health Center, Zenith Fitness and Performance, and DoxCo Pitching Academy. He explained that currently the building is used by J&R Medical, a medical supply company, which is considered a warehouse use. He pointed out that as long as that use remains this would be

allowed without the need of a special exception, however, the changing of the uses and the redevelopment of the building requires that a special exception be granted. Mr. Cox explained that the property does not have any parking on site, and that J&R Medical currently has an agreement with Center Point Energy, owner of the lot next to the property at 4950 Terminal, to utilize their site for parking. He stated that based on the proposed uses, the development will require 55 parking spaces. Mr. Cox added that there are currently 23 parking spots available and additional parking will be added to bring the total to 64. He informed the Board that it is staff's opinion, based on review of the application and materials submitted, that the application does not meet the standards for a special exception as outlined in Article V, Division 2, Section 24-718. The Comprehensive Plan outlines specific design characteristics for the UV-T District, and this district provides for the most intensive site development in the city, focusing on mixed-use commercial and high-density residential. Mr. Cox added that the development proposed does not meet the character of the UV-T District as outlined in Section 24-547, and therefore may be materially detrimental or injurious to other property or improvements within the neighborhood by limiting future development in the area. He stated that the Community Development Department does not recommend approval of this special exception application.

### **Public Comments**

**James Dubose, owner of J&R Medical**-Mr. Dubose informed the Commission that he and his wife started J&R Medical 8 years ago in their living room, and as the business began to grow they purchased the property at 4950 Terminal street. He added that as the time went by, changes in the industry and cut backs with Medicare caused the closing of the complex rehab division. Before this time, their business required the entire 22,000 square foot space, but since the closing of that division they only require around 2500 square feet. Mr. Dubose stated that the building has been on the market for 3 years and there has only been one offer, the offer from Dr. And Mrs. Sanders. He added that if this sale goes through, he and his family will finally be able to get out from under the burden of payment and taxes. Mr. Dubose mentioned that they are planning on staying in the Bellaire area, in a smaller office across the street, on Loop 610. He pointed out that Without the note and monthly expenses they will be able to hire more employees. He stated that he will respect whatever decision is made, and simply asked the Board to think outside of the box a little bit. Mr. Dubose reminded the Board that the decision is going to impact his family, as well as other hard-working people of the community.

**Lynn McBee**-Ms. McBee mentioned that she has not seen the new parking plan that was submitted to the city since the last Board meeting. She then spoke against the special exception application stating that off-site parking has never been allowed to count towards parking count, and that Center Point parking has always been assumed off-limits for off-site parking. She added that the granting of this application will throw the whole zoning code into array, and that this proposal does not fit the shared parking concept in any way.

### **Applicant Rebuttal**

Mrs. Sanders explained that in talking with Mr. Cox it was her understanding that there are agreements within Bellaire for buildings to have off-site parking that do not constitute part of their actual property. She added that historically this property, as well as other properties within this district, have always used these easements to satisfy their parking requirements, without them there would be no

parking at all. Mrs. Sanders also pointed out that there are parts of the municipal code for the UV-T District that address parking on the utility easements. She asked the Board why language would be written into the code if the city did not intend for utility easements to be used. She mentioned that other than Ms. McBee there are no other property owners that felt the need to speak out against this request. Mrs. Sanders asked the Board to take that into account when making their decision. She reiterated that this building works perfectly for their proposal and asked the Board that they grant this special exception in her favor.

### **Questions by the Board**

Vice Chairman Ligh asked if the easement is right next to the property.

Mrs. Sanders confirmed that it is abutting the property.

Vice Chairman Ligh asked if there were two easements, on the Westpark side and another in front of the building.

Mrs. Sanders stated that there are two easements, but the only one that the building has association with is in the one in front of the building.

Vice Chairman Ligh asked for clarification that with the agreement from Center Point there are an adequate number of spaces.

Mrs. Sanders confirmed that there are actually 9 more spaces than what is required by the city.

Board Member Karakowsky mentioned that she doesn't have her mind wrapped around why the city is opposing the special exception. She stated that her understanding behind staff's opposition is that the building, as it currently exists, is not within the vision of what the city wants for the UV-T District. She asked how that is relevant to the standards that the Board must consider in order to approve a special exception application.

Mr. Cox explained that the case the city is making is that the special exception will create a situation that is materially detrimental to surrounding property or improvements, and that future improvements of the city, based on the UV-T and the Comprehensive plan, could be halted if this property is developed as proposed.

Board Member Karakowsky asked Attorney Petrov if the Board should be taking the vision of the city into account when considering this application.

Attorney Petrov explained that the question before them is whether or not they will allow the building to utilize off-site parking to satisfy the parking requirements. The issue is not the number of parking spaces, but the general rule is that the parking must be on-site and this site does not have available on-site parking. He added that whether or not this is a building that the city likes does not factor into the consideration of this item, it has more to do with how it impacts the Comprehensive Plan of the area.

Board Member Karakowsky pointed out that regardless of where the parking is located the building is the same. She mentioned that it would be a completely different question if the Board was being asked to determine whether or not they approve of the building.

Board Member McGinty mentioned that the Board has approved applications in the past allowing businesses to utilize a shared parking agreement in order to satisfy their requirements and asked how this differs from those applications.

Mr. Cox explained that those applications are similar to this one, the difference being that the allowance of this special exception keeps the building as is, which would create a hindrance for re-development within the UV-T District.

Board Member McGinty asked for clarification that the building is currently using the utility easement as parking.

Mr. Cox confirmed that it is currently being used by J&R Medical, and added that it is the change in types of use that requires a special exception.

Mrs. Sanders mentioned that it was news to Mr. Dubose when she informed him that a special exception would be needed from the city in order to utilize those parking spaces. She pointed out that they are not trying to change anything, they are simply asking that they be allowed to use the utility easement in the same way that it has been used, historically. Mrs. Sanders stated that within talking about the character of the UV-T, the city is trying to promote off-site parking, shared parking, and on-street parking, and doesn't feel that this will be injurious to the development of the district. She also reiterated that there has been no re-development since in that area since the Comprehensive Plan was adopted.

Board Member Miller mentioned section 24-721 of the code, which states that the Board shall provide for the duration of the special exception. He then asked for confirmation that they could attach a condition to the approval with regards to a time limit.

Attorney Petrov confirmed that they could, but suggested that a better way to condition it would be to limit the special exception for as long as the Center Point easement parking is available.

Mrs. Sanders informed the Board that it is a 5 year renewable lease.

Chairman Sharp mentioned that there has been a lot of talk that the granting of this special exception would be detrimental to the development of the UV-T, and questioned whether there was anything that could be done about the easement in terms of re-development.

Mr. Cox explained that the easement belongs to Center Point, and unless they move their lines and put the easement up for sale it will continue to be where it currently is.

Chairman Sharp asked for clarification that the city's concern is that the granting of this variance allows the building to have longer life.

Mr. Cox stated that, essentially, that is correct.

It was then brought to the Board's attention that Board Member Shah had to leave.

Attorney Petrov explained that for the special exception to be granted all 6 members would have to vote in favor of the application. He added that the city

traditionally allows the applicant to request a postponement until the full Board can be present.

Dr. and Mrs. Sanders decided to move forward with a decision.

**Motion:** a motion was made by Vice Chairman Ligh and seconded by Board Member McGinty to approve the special exception.

**Amendment to the motion:** Board Member Miller amended the motion to include a duration of 5 years.

**Alternate Amendment:** Board Member Ligh offered an alternate amendment that the special exception would be valid as long as Center Point renews the lease agreement and Dr. and Mrs. Sanders own the property.

Board Member McGinty seconded the alternate amendment.

**The motion on the table now reads:**

That the special exception be granted with the conditions that Center Point continues to renew the lease agreement and Dr. and Mrs. Sanders continue to own the property at 4950 Terminal.

**Vote:** The motion passed on a unanimous vote of 6-0.

**The special exception was granted.**

(Requested by John McDonald, Community Development)

<b>RESULT:</b>	<b>ADOPTED AS AMENDED [UNANIMOUS]</b>
<b>MOVER:</b>	Tom Ligh, Vice Chairman
<b>SECONDER:</b>	Patty McGinty, Board Member
<b>AYES:</b>	McGinty, Raval, Ligh, Sharp, Karakowsky, Miller
<b>ABSENT:</b>	Shah

## 8. GENERAL COMMENTS

**(Limitations: Six (6) minutes per speaker with extensions in two (2) minute increments as approved by a majority vote of the Board Members present)**

**Lynn McBee**-Ms. McBee wanted to make it clear that the Board needs to know what the code provides for. She explained that it has always been stated and assumed that Center Point could not be used for parking. She added that the Board is being asked to take a position without the appropriate information, and encouraged the members to ask all of the questions that they can think of when considering an application.

**Councilman Andrew Friedberg**-Councilman Friedberg spoke on the sense of embarrassment that he feels for the city after the postponement of these two applications two weeks ago and the fact that the Board and applicant were put in a similar situation during this meeting. He then thanked the members of the Board that were present, and welcomed and congratulated the new members on their appointment. He added that he takes the role of Council Liaison seriously and tries to make himself available to members of the Board as a resource in any way that he can. He reminded the Board that there is a parliamentary procedure training session on August 14th, and

encouraged all to attend. Councilman Friedberg then congratulated Chairman Sharp on her first meeting as Chair, and commended the Board on a job well done.

**9. GENERAL COMMENTS FROM BOARD MEMBERS**

There were no comments from Board Members.

**10. ANNOUNCEMENTS**

Chairman Sharp reminded everyone that there will be a meeting on August 21st.

**11. ADJOURNMENT**

**Motion:** A motion was made by Vice Chairman Ligh and seconded by Board Member McGinty to adjourn the meeting.

**Vote:** The motion carried on a unanimous vote of 6-0.

**The meeting was adjourned at 9:55 PM.**