

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
MONDAY, JUNE 13, 2011**

MEMBERS PRESENT AT BRIEFING: Sharon Boyd, Vice-Chair, Robert Moore, Panel Vice-Chair, Ross Coulter, regular member, Bob Richard, regular member and Jim Gaspard, alternate member

MEMBERS ABSENT FROM BRIEFING: Joel Maten, regular member

MEMBERS PRESENT AT HEARING: Sharon Boyd, Vice-Chair, Robert Moore, Panel Vice-Chair, Ross Coulter, regular member, Bob Richard, regular member and Jim Gaspard, alternate member

MEMBERS ABSENT FROM HEARING: Joel Maten, regular member

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Bert Vandenberg, Asst. City Attorney, Tammy Palomino, Asst. City Attorney, Donnie Moore, Chief Planner, Todd Duerksen, Development Code Specialist, Jennifer Hiromoto, Senior Planner and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Bert Vandenberg, Asst. City Attorney, Tammy Palomino, Asst. City Attorney, Donnie Moore, Chief Planner, Todd Duerksen, Development Code Specialist, Jennifer Hiromoto, Senior Planner and Trena Law, Board Secretary

11:05 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **JUNE 13, 2011** docket.

1:05 P.M.

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

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel C May 16, 2011 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: JUNE 13, 2011

MOTION: Coulter

I move **approval** of the Monday, **May 16, 2011** public hearing minutes.

SECONDED: Moore

AYES: 5–Boyd, Moore, Coulter, Richard, Gaspard

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 101-048(J)

BUILDING OFFICIAL’S REPORT:

Application of Tony Visconti represented by Darren Marlowe for a special exception to the fence height regulations at 5242 Park Lane. This property is more fully described as Lot 4 in City Block 5/5595 and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 10 foot high fence in a required front yard setback which will require a special exception of 6 feet.

LOCATION: 5242 Park Lane

APPLICANT: Tony Visconti
Represented by Darren Marlowe

REQUEST:

- A special exception to the fence height regulations of 6’ is requested in conjunction with constructing and maintaining primarily an 7’ high open wrought iron fence with 7’9” high stucco cast stone columns, a recessed 9’ open wrought iron vehicular gate, and a recessed 10’ high open wrought iron pedestrian gate in the site’s 40’ Park Lane front yard setback on a lot being developed with a single family use.

STAFF RECOMMENDATION:

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

5205 Park Lane	approved a special exception of 6' to the fence height regulations for a 10' fence in the required front yard.
BDA989-255 5223 Park Lane	On August 24, 1999, the Board of Adjustment approved a special exception of 6'6" to the fence height regulations for a 10'6" fence in the required front yard.
BDA990-354 9610 Meadowbrook Drive	On January 16, 2001, the Board of Adjustment approved a special exception of 4'6" to the fence height regulations for an 8'6" fence in the required front yard.
BDA090-071 5323 Park Lane	On June 16, 2000, the Board of Adjustment approved a special exception of 4'6" to the fence height regulations for an 8'6" fence in the required front yard.
BDA078-081 5330 Park Lane	On June 25, 2008, the Board of Adjustment approved a special exception of 3' to the fence height regulations for a 7' fence in the required front yard setbacks of Park Lane and Alva Drive.

Timeline:

April 14, 2011:	The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
May 18, 2011:	The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
May 25, 2011:	The Board Senior Planner contacted the applicant and discussed the following information: <ul style="list-style-type: none"> • the public hearing date and panel that will consider the application; and the June 3rd deadline to submit additional evidence to be incorporated into the Board's docket materials; • the criteria/standard that the board will use in their decision to approve or deny the request; and • the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
May 31, 2011:	The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Senior Planner, the Board of Adjustment Senior Planner, the Building Inspection Senior Plans

Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorneys to the Board.

June 2, 2011: The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments: "Comply with all C.O.D visibility requirements."

June 3, 2011: The applicant submitted a revised site plan showing the proposed fencing on the western property line.

STAFF ANALYSIS:

- This request is for constructing and maintaining primarily an 7' high open wrought iron fence with 7'9" high stucco cast stone columns, a recessed 9' open wrought iron vehicular gate, and a recessed 10' high open wrought iron pedestrian gate.
- The revised site plan and elevation documents the location, height, and material of the proposed fence over 4' in height in the required front yard setback.
- The site plan indicates that the proposal is approximately 160' in length parallel to the Park Lane, approximately 30' at the corner outside of the visibility triangle, approximately 18' parallel to Meadowbrook Drive and approximately 40' perpendicular on the west side in the front yard setback. The plan shows the fence to be located approximately 1' from the site's front property line or about 10' from the curb line.
- As of June 6, 2011, no letters had been submitted to staff in support or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 6' will not adversely affect neighboring property.
- Granting this special exception of 6' with a condition imposed that the applicant complies with the submitted site plan and elevation would provide assurance that the proposal exceeding 4' in height in the front yard setback would be constructed and maintained in the location and of the height and material as shown on these documents.

BOARD OF ADJUSTMENT ACTION: JUNE 13, 2011

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Gaspard**

I move that the Board of Adjustment grant application **BDA 101-048** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general

purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and the intent of the Dallas Development Code:

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

SECONDED: Coulter

AYES: 5–Boyd, Moore, Coulter, Richard, Gaspard

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 101-052(J)

BUILDING OFFICIAL’S REPORT:

Application of Julianne McGee for a special exception to the parking regulations at 11217 Garland Road. This property is more fully described as Lot 18 in City Block 34/5364 and is zoned CR, which requires parking to be provided. The applicant proposes to construct a nonresidential structure for a retail and personal service use and provide 33 of the required 41 parking spaces which will require a special exception of 8 spaces (20% reduction).

LOCATION: 11217 Garland Road

APPLICANT: Julianne McGee

REQUEST:

- A special exception to the off-street parking regulations of 8 parking spaces (or an 20 percent reduction of the 41 off-street parking spaces that are required) is requested in conjunction with constructing a 176 square foot addition on an 3,960 square foot restaurant with drive-through or drive-in service (4,136 sf total) and reconfiguring the parking and drive-through lane. The applicant proposes to provide 33 (or 80 percent) of the required 41 off-street parking spaces.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The special exception of 8 spaces shall automatically and immediately terminate when and if the property is no longer used for a restaurant with drive-through or drive-in service.

Rationale:

- The Sustainable Development Department Project Engineer has no objections to this request given the applicant’s submitted parking analysis study.

- The applicant has substantiated how the parking demand generated by the existing/proposed office and retail and personal service uses does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

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

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

- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
- (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
 - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

GENERAL FACTS:

- The Dallas Development Code requires the following off-street parking requirement:
 - Restaurant with drive-through or drive-in service use: 1 space for 100 square feet of floor area.The applicant proposes to provide 33 (or 80 percent) of the required 41 off-street parking spaces in conjunction with constructing a 176 square foot addition on an 3,960 square foot restaurant with drive-through or drive-in service (4,136 sf total) and reconfiguring the parking and drive-through lane.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail)
North: CR (Community Retail)
South: CR (Community Retail)
East: CR (Community Retail)
West: CR (Community Retail)

Land Use:

The subject site is currently developed an approximately 3,960 square foot structure that is used as a restaurant with drive-through or drive-in service. The surrounding area to the north is developed with retail, personal service, and office 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:

April 21, 2011: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

- May 18, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- May 25, 2011: The Board Senior Planner contacted the applicant and discussed the following information:
- the public hearing date and panel that will consider the application; and the June 3rd deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- May 31, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorneys to the Board.
- April 7, 2011: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections."

STAFF ANALYSIS:

- This request focuses on the applicant's proposal to provide 33 (or 80 percent) of the required 41 off-street parking spaces in conjunction with constructing a 176 square foot addition on an 3,960 square foot restaurant with drive-through or drive-in service (4,136 sf total) and reconfiguring the parking and drive-through lane.
- The Sustainable Development and Construction Department Project Engineer has submitted a review comment sheet marked "Has no objections."
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the existing and proposed uses does not warrant the number of off-street parking spaces required, and
 - The special exception of 8 spaces (or 20 percent reduction of the required off-street parking spaces) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, subject to the condition that the special exception of 8 spaces shall automatically and immediately terminate if and when the restaurant with drive-through or drive-in service use is changed or discontinued, the applicant would be allowed to construct the proposed addition and reconfigure the parking and drive-through lane and provide only 33 of the 41 code required off-street parking spaces.

BOARD OF ADJUSTMENT ACTION: JUNE 13, 2011

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Gaspard**

I move that the Board of Adjustment grant application **BDA 101-052** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and the intent of the Dallas Development Code:

- The special exception shall automatically and immediately terminate if and when the restaurant with drive-through or drive-in service use is changed or discontinued.

SECONDED: **Coulter**

AYES: 5–Boyd, Moore, Coulter, Richard, Gaspard

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 101-058

BUILDING OFFICIAL’S REPORT:

Application of Juan Diaz for a special exception to the side yard setback regulations at 7107 Redbud Drive. This property is more fully described as Lot 13 in City Block 1/5825 and is zoned R-7.5(A) which requires a side yard setback of 5 feet. The applicant proposes to maintain a carport in a side yard and provide a 1 foot setback which will require a special exception of 4 feet.

LOCATION: 7107 Redbud Drive

APPLICANT: Juan Diaz

REQUEST:

- A special exception to the side yard setback regulations of 4’ is requested in conjunction with maintaining an existing approximately 480 square foot metal carport attached to a single family home, part of which is located in the site’s 5’ side yard setback on the east side of the property.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to the side yard setback regulations since the basis for this type of appeal is *when in the opinion of the board*, the carport will not have a detrimental impact on surrounding properties.

STANDARD FOR A SPECIAL EXCEPTION TO ALLOW A CARPORT IN THE SIDE YARD:

The Board of Adjustment may grant a special exception to the minimum side yard requirements to allow a carport for a single family or duplex use when, in the opinion of the Board, the carport will not have a detrimental impact on surrounding properties. In determining whether to grant a special exception, the Board shall consider the following:

- (1) Whether the requested special exception is compatible with the character of the neighborhood.
- (2) Whether the value of surrounding properties will be adversely affected.
- (3) The suitability of the size and location of the carport.
- (4) The materials to be used in construction of the carport.

(Storage of items other than motor vehicles is prohibited in a carport for which a special exception is granted in this section of the Code).

ORIGINAL GENERAL FACTS:

- A 5' side yard setback is required in the R-7.5(A) zoning district.
The applicant has submitted a site plan and elevations indicating the location of the carport 1' 4" from the site's eastern side property line or 3' 8" into the 5' side yard setback. (Note that the application notes that the special exception is for 4' to the side yard setback).
- The following information was gleaned from the submitted site plan:
 - The carport is represented to be 40' in length and 12' in width (480 square feet in total area) of which 160 square feet or approximately 1/3 is located in the western side yard setback.
- The following information was gleaned from the submitted elevations/sections:
 - Represented to be 10' in height, in line with the cornice line of the house with "4 x 4 metal posts" and "16" metal span-lok roofing."
- The subject site is 165' x 50' (or 8,250 square feet) in area.
- According to DCAD, the property at 7107 Red Bud Drive is developed with the following:
 - a structure in "average" condition built in 1935 with 720 square feet of living area,
 - a 396 square foot "attached carport;" and
 - a 192 square foot "storage building."
- The Dallas Development Code provides for the Board of Adjustment to consider special exceptions for *carports* in the side yard with a specific basis for this type of appeal. (Note that the Dallas Development Code does not provide a definition of

“carport” however Building Inspection interprets a “carport” to be a structure that would cover a vehicle and be open on at least one side. Building Inspection has recently been interpreting what would appear to a layperson to be a garage without a garage door as a “carport”).

- The Dallas Development Code provides for the Board of Adjustment to consider *variances for structures* in the side yard setback with a different basis for appeal than that of *special exceptions for carports* in the side yard setback.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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

Timeline:

April 26, 2011: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

May 18, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

May 19, 2011: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the May 26th deadline to submit additional evidence for staff to factor into their analysis; and the June 3rd deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- code provision related to visual obstruction regulations; and

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

May 31, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorneys to the Board.

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

STAFF ANALYSIS:

- This request focuses on maintaining an existing carport that is accessory to a single family home, and (according to the application) is located 4' into the required 5' side yard setback on the east side of the property.
- A site plan has been submitted indicating that the carport structure is 40' in length and 12' in width. The site plan denotes that the carport is located 1' 4" from the site's eastern side property line or 3' 8" into the required 5' side yard setback.
- The submitted elevations/sections represent the carport to be 10' in height with "4 x 4 metal poles" and "16" metal span-lok roofing."
- The applicant has the burden of proof in establishing the following:
 - That granting this special exception to the side yard setback regulations of 4' will not have a detrimental impact on surrounding properties.
- As of June 6, 2011, no letters had been submitted in support or in opposition to the request.
- Typically, staff has suggested that the Board impose conditions with this type of appeal. The following conditions would restrict the location and size of the carport in the side yard setback; would require the carport in the side yard setback to be maintained (in this case) in a specific design with specific materials and in a specific configuration; and would require the applicant to mitigate any water drainage-related issues that the carport may cause on the lot immediately west:
 1. Compliance with the submitted site plan and elevations/sections is required.
 2. The carport structure must remain open at all times.
 3. There is no lot-to-lot drainage in conjunction with this proposal.
 4. All applicable building permits are obtained.
 5. No item (other than a motor vehicle) may be stored in the carport.
- If the Board chooses to grant this side yard special exception request, and impose the submitted site plan and elevations/sections as a condition, the applicant would only be provided exception for what has been applied for, in this case, exception for the carport structure in the required side yard setback as represented/shown on these documents.

- Note that the applicant is aware of the fact that granting his request for a special exception to the side yard setback regulations to maintain a carport will not provide any relief to any existing/proposed condition on the site that is/would become in noncompliance with the Code's visual obstruction regulations.

BOARD OF ADJUSTMENT ACTION: JUNE 13, 2011

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Gaspard**

I move that the Board of Adjustment grant application **BDA 101-058** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and the intent of the Dallas Development Code:

- Compliance with the submitted site plan and elevations/sections is required.
- The carport structure must remain open at all times.
- There is no lot-to-lot drainage in conjunction with this proposal.
- All applicable building permits are obtained.
- No item (other than a motor vehicle) may be stored in the carport.

SECONDED: **Coulter**

AYES: 5–Boyd, Moore, Coulter, Richard, Gaspard

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 101-054(J)

BUILDING OFFICIAL'S REPORT:

Application of Robert Jamieson represented by Andrew Papson for a variance to the side yard setback regulations at 6776 Patrick Circle. This property is more fully described as Lot 29 in City Block D/2960 and is zoned R-7.5(A), which requires a side yard setback of 5 feet. The applicant proposes to construct and maintain a residential structure and provide a 2-foot 6-inch side yard setback, which will require a variance of 2 feet 6 inches.

LOCATION: 6776 Patrick Circle

APPLICANT: Robert Jamieson
Represented by Andrew Papson

REQUEST:

- A variance to the side yard setback regulations of 2'6" is requested in conjunction with constructing a second floor addition within the required 5' side yard setback along its western boundary on a site currently developed with a single family structure.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The applicant has substantiated how the variance is necessary to permit development of the site which is different from other lots by its irregular shape, and restrictive area caused by the floodplain on property.

STANDARD FOR A VARIANCE:

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that:

- the variance is not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;
- the variance is necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and
- the variance is not granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

GENERAL FACTS:

- The minimum side yard setback for lots zoned R-7.5(A) is 5 feet.
- The subject site is a lot that is an irregular wedge shape, which is not typical of a lot within an R-7.5(A) zoning district.
- A site plan has been submitted showing the proposed addition 2'6" into the 5' required side yard setback. A proposed carport is shown extending over the 30' platted building line; however, the applicant is aware of the procedures to alter a platted building line and that this application will not permit that encroachment.
- The applicant has provided elevations and floor plans showing the proposed addition will be two stories for informational purposes.

- The appearance of the slope of the subject site could not be determined by the Board Senior Planner's site visit. However, the entire subject site appears to be located in the floodplain. The applicant's representative has indicated that he is aware of the line of the floodplain and its limitations on construction.

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 single family use. 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:

- April 22, 2011: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 18, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- May 25, 2011: The Board Senior Planner contacted the applicant and discussed the following information:
- the public hearing date and panel that will consider the application; and the June 3rd deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- May 31, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public

hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Senior Planner, the Board of Adjustment Senior Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorneys to the Board.

June 2, 2011: The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments: "Comply with all floodplain requirements."

STAFF ANALYSIS:

- The request focuses on constructing a second floor addition within the required 5' side yard setback along its western boundary on a site currently developed with a single family structure.
- According to calculations taken by the Board Senior Planner from the submitted site plan, the area of the structure footprint to be maintained in the site's 5' side yard setback is approximately 15 square feet.
- The subject site is a lot that is an irregular wedge shape, which is not typical of a lot within an R-7.5(A) zoning district.
- The appearance of the slope of the subject site could not be determined by the Board Senior Planner's site visit. However, the subject site appears to be located in the floodplain.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the side yard setback regulation will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.
- If the Board were to grant the variance request, subject to the submitted site plan, the structure in the side yard setback would be limited to what is shown on this document– which in this case is a structure located 2'6" into the 5' side yard setback.

BOARD OF ADJUSTMENT ACTION: JUNE 13, 2011

APPEARING IN FAVOR: Robert Jamieson, 6776 Patrick Cr., Dallas, TX

APPEARING IN OPPOSITION: Chantal Gunawardena, 6772 Patrick Cr, Dallas, TX
Vicki hart, 6780 Patrick Cr., Dallas, TX
Ann Allison, 6738 Patrick Dr., Dallas, TX

MOTION #1: **Moore**

I move that the Board of Adjustment in Appeal No. **BDA 101-054**, suspend the rules and accept the evidence that is being presented to us today.

SECONDED: **Richard**

AYES: 5–Boyd, Moore, Coulter, Richard, Gaspard

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

MOTION #2: **Moore**

I move that the Board of Adjustment, in Appeal No. **BDA 101-054**, on application of Robert Jamieson, **deny** the front yard setback variance requested by this applicant **with 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: **Gaspard**

AYES: 2–Moore, Gaspard

NAYS: 3 – Boyd, Coulter, Richard,

MOTION FAILED: 2–3

MOTION #3: **Moore**

I move that the Board of Adjustment, in Appeal No. **BDA 101-054**, on application of Robert Jamieson, **deny** the front yard setback 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: **Boyd**

AYES: 5–Boyd, Moore, Coulter, Richard, Gaspard

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 101-056

BUILDING OFFICIAL'S REPORT:

Application of Fernando Perez for a special exception to the fence height regulations at 8344 Crystalwood Drive. This property is more fully described as Lot 7 in City Block E/8684 and is zoned PD-521(S-3), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 13-foot high fence in a required front yard setback which will require a special exception of 9 feet.

LOCATION: 8344 Crystalwood Drive

APPLICANT: Fernando Perez

REQUEST:

- A special exception to the fence height regulations of 9' is requested in conjunction with (according to the application) constructing and maintaining a 13' high fence ("5' – 0" retaining wall plus 8' – 0" fence") to be located in the one of the site's two 20' required front yards – Crystalwood Court on a site developed with a single family home. (This request is not made to erect or maintain any fence higher than 4' in the site's other required front yard along Crystalwood Drive).

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The subject site is a corner lot zoned PD No. 521 with two street frontages of unequal distance. The site is located at the southern corner of Crystalwood Drive and Crystalwood Court. Even though the Crystalwood Drive frontage of the subject site appears to function as its front yard and the Crystalwood Court frontage appears to function as its side yard, the subject site has two 20' required front yards (established through a platted 20' building line) along both streets.

The site has a 20' required front yard along Crystalwood Drive (the shorter of the two frontages which is always deemed the front yard setback on a corner lot of unequal frontage distance in a single family zoning district), and a 20' required front yard along Crystalwood Court (the longer of the two frontages of this corner lot of unequal frontage distance which would typically be regarded as a side yard where a 9' high fence could be maintained by right). The site's Crystalwood Court frontage is deemed a front yard nonetheless in order to maintain the continuity of the established required front yard established by the lots south and east of the site that front/are oriented northward and westward onto Crystalwood Court.

- The Dallas Development Code states that a person shall not erect or maintain a fence in a required yard more than 9' above grade, and additionally states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
The submitted application requests a 9' special exception for a 13' high fence (5' high retaining wall plus 8' high fence) however, the applicant has submitted a revised site plan/elevation indicating that the proposal in the required front yard setback reaches a maximum height of 11' 6" (a retaining wall that ranges from 5' - 5' 6" in height with a wood fence atop that ranges from 6' 1" - 6' 6" in height). (No fence is proposed to be constructed/maintained in the subject site's 20' Crystalwood Drive required front yard).
- The following additional information was gleaned from the submitted site plan:
 - The proposal located in the Crystalwood Court front yard over 4' in height is approximately 100' in length parallel to the street and approximately 15' - 20' in length *perpendicular* to Crystalwood Court on the south and north sides of the site in the required front yard.
 - The proposal is shown to be located about 0' - 5' from the site's Crystalwood Court front property line or about 11' - 13' from the curb line.
- One single family home "fronts" to the proposed fence on the subject site - a property with no fence in its front yard.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences above four (4) feet high which appeared to be located in a front yard setback.
- On May 31, 2011, the applicant submitted a revised site plan/elevation of the proposal (see Attachment A).

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 521 (Planned Development)
North: PD No. 521 (Planned Development)
South: PD No. 521 (Planned Development)
East: PD No. 521 (Planned Development)
West: PD No. 521 (Planned Development)

Land Use:

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

Zoning/BDA History:

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

Timeline:

- April 21, 2011: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 18, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- May 19, 2011: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the May 26th deadline to submit additional evidence for staff to factor into their analysis; and the June 3rd deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- May 31, 2011: The applicant forwarded additional information beyond what was submitted with the original application (see Attachment A).
- May 31, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorneys to the Board.
- June 2, 2011: The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" commenting "Since the proposed retaining wall exceeds 4 feet, will need to be designed by a registered professional engineer."

STAFF ANALYSIS:

- This request focuses on constructing and maintaining a fence/retaining wall that may reach a combined height of 13' (according to the application – a "5' – 0" retaining wall plus 8' – 0" fence") to be located in the one of the site's two 20' required front yards – Crystalwood Court on a site developed with a single family home. (This special exception request is not made to erect or maintain any fence higher than 4' in the site's other required front yard along Crystalwood Drive).
- The submitted revised site plan/elevation documents the location, height, and materials of the fence over 4' in height in the required front yard. The revised site plan/elevation indicates that the proposal in the required front yard setback reaches a maximum height of 11' 6" (a retaining wall that ranges from 5' - 5' 6" in height with a wood fence atop that ranges from 6' 1" - 6' 6" in height). The revised site plan/elevation shows the proposal to be approximately 100' in length parallel to Crystalwood Court and approximately 20' in length *perpendicular* to this street on the north and south sides of the site in the required front yard; and to be located about 0' – 5' from the site's Crystalwood Court front property line or about 11' – 13' from the curb line.
- One single family home "fronts" to the proposed fence on the subject site – a property with no fence in its front yard.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences above four (4) feet high which appeared to be located in a front yard setback.
- As of June 6, 2011, no letters had been submitted to staff in opposition to the request, and a petition signed by 24 neighbors/owners had been submitted in support of the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 9' will not adversely affect neighboring property.
- Granting this special exception of 9' with a condition imposed that the applicant complies with the submitted revised site plan/elevation would provide assurance that the proposal exceeding 4' in height in the required front yard would be constructed and maintained in the location and of the heights and materials as shown on this document.

BOARD OF ADJUSTMENT ACTION: JUNE 13, 2011

APPEARING IN FAVOR: Fernando Perez, 8344 Crystal Wood Dr., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Richard**

I move that the Board of Adjustment, in Appeal No. **BDA 101-056**, on application of Fernando Perez, **grant** the request of this applicant to construct and maintain a 13-foot high fence as a special exception to the height requirement for fences contained in the

Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Coulter

AYES: 5–Boyd, Moore, Coulter, Richard, Gaspard

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

MOTION: Moore

I move to adjourn this meeting.

SECONDED: Gaspard

AYES: 5–Boyd, Moore, Coulter, Richard, Gaspard

NAYS: 0 - None

MOTION PASSED: 5 – 0 (Unanimously)

2:30 P. M. - Board Meeting adjourned for **June 13, 2011.**

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.