

**BOARD OF ADJUSTMENT, PANEL C  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, COUNCIL CHAMBERS  
MONDAY, AUGUST 15, 2011**

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

MEMBERS ABSENT FROM BRIEFING: No one

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

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Tammy Palomino, Asst. City Attorney, David Cossum, Asst. Director, Todd Duerksen, Development Code Specialist, and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Tammy Palomino, Asst. City Attorney, David Cossum, Asst. Director, Todd Duerksen, Development Code Specialist, and Trena Law, Board Secretary

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**11:00 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **AUGUST 15, 2011** docket.

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**1:00 P.M.**

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

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel C June 13, 2011 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: AUGUST 15, 2011**

**MOTION:** Richard

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

**SECONDED:** Moore

**AYES:** 5–Boyd, Moore, Maten, Coulter, Richard

**NAYS:** 0 –

**MOTION PASSED:** 5– 0 (unanimously)

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**FILE NUMBER:** BDA 101-065

**BUILDING OFFICIAL’S REPORT:**

Application of Lee Williams represented by Rob Baldwin, for a special exception to the fence height regulations at 4360 Hallmark Drive. This property is more fully described as Lot 13 in City Block L/6396 and is zoned R-16(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 9 foot high fence, which will require a special exception of 5 feet.

**LOCATION:** 4360 Hallmark Drive

**APPLICANT:** Lee Williams  
Represented by Rob Baldwin

**REQUEST:**

- A special exception to the fence height regulations of 5’ is requested in conjunction with constructing and maintaining a 7’ 11” – 8’ 4” high board on board wood fence parallel to Crestline Avenue and a 7’ 8” – 8’ 6” stone wall perpendicular to Crestline Avenue (with stone columns reaching 9’ in height) to be located in one of the site’s two required front yards on a site being developed with a single family home – Crestline Avenue. (No fence proposal is shown to be located in the site’s Hallmark Drive required front yard).

**STAFF RECOMMENDATION:**

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

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

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

## **GENERAL FACTS:**

- The subject site is located at the southwest corner of Hallmark Drive and Crestline Avenue. The site has two required front yards - a 20' required front yard created by a platted building line along its shorter frontage (Crestline Avenue) and a 40' required front yard (created by a platted building line) along its longer frontage (Hallmark Drive). Regardless of how the site's Crestline Avenue frontage functions as a side yard on the property, it is a front yard nonetheless given that it is the shorter of the property's two street frontages. The site's longer Hallmark Drive frontage that functions as the property's front yard is also deemed a front yard to maintain continuity of the required front yards established by the lots west of the site fronting northward onto Hallmark Drive.
- 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 applicant has submitted a site plan and elevation indicating that the proposal in the 20' Crestline Avenue required front yard reaches a maximum height of 9'.
- The following additional information was gleaned from the submitted site plan:
  - The proposal located in the Crestline Avenue required front yard over 4' in height is approximately 80' in length parallel to the street and approximately 16' – 20' in length *perpendicular* to Crestline Avenue on the north and south sides of the site in the required front yard.
  - The proposal is shown to be located at a range of 0' – 4' from the site's Crestline Avenue front property line or a range of 9' - 13' from the curb line.
- No single family home "fronts" to the proposed fence on the subject site since the home on the lot immediately east across Crestline Avenue fronts northward onto Hallmark Drive as does the home being developed on the subject site.
- The Board Administrator conducted a field visit of the site and surrounding area and noted one other fence above 4' high, which appeared to be located in a front yard setback – an approximately 6' high wood fence located immediately south of the subject site.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included a letter (and related graphic) that provided additional details about the request.

## **BACKGROUND INFORMATION:**

### **Zoning:**

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

**Land Use:**

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

**Zoning/BDA History:**

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

**Timeline:**

- May 9, 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.
- June 22, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- June 23, 2011: The Board Administrator emailed the applicant's representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the August 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the August 5<sup>th</sup> 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.
- July 26, 2011: The applicant's representative submitted additional information to the Board Administrator beyond what was submitted with the original application (see Attachment A).
- August 2, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Development and Construction Department Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable

Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

August 4, 2011: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments: "Need to comply with all C.O.D visibility requirements." (Note that no item appears to be represented on the submitted site plan as being located in a visibility triangle).

### **STAFF ANALYSIS:**

- This request focuses on constructing and maintaining a 7' 11" – 8' 4" high board on board wood fence parallel to Crestline Avenue and a 7' 8" – 8' 6" stone wall perpendicular to Crestline Avenue (with stone columns reaching 9' in height) to be located in the one of the site's two required front yards on a site being developed with a single family home – Crestline Avenue. (No fence proposal is shown to be located in the site's Hallmark Drive required front yard).
- The subject site is located at the southwest corner of Hallmark Drive and Crestline Avenue. The site has two required front yards - a 20' required front yard created by a platted building line along its shorter frontage (Crestline Avenue) and a 40' required front yard (created by a platted building line) along its longer frontage (Hallmark Drive). Regardless of how the site's Crestline Avenue frontage functions as a side yard on the property, it is a front yard nonetheless given that is it the shorter of the property's two street frontages. The site's longer Hallmark Drive frontage that functions as the property's front yard is also deemed a front yard in order to maintain continuity of the required front yards established by the lots west of the site fronting northward onto Hallmark Drive.
- Note that if the site's Crestline Drive frontage were approximately 10' longer, it would be deemed the property's side yard and the applicant would not be required to make an application to the board since a 9' high fence can be erected and maintained by right.
- The submitted site plan and elevation documents the location, height, and material of the fence over 4' in height in the Crestline Avenue required front yard. The site plan shows the fence to be approximately 80' in length parallel to Crestline and approximately 16' - 20' in length *perpendicular* to Crestline Avenue on the north and south sides of the site in the required front yard; and to be located on 0' – 4' from the Crestline Avenue front property line or 9' - 13' from the curb line. The elevation shows that the proposed fence to be between 7' 8" – 8' 6" in height with 9' stone columns, and materials to be either board on board parallel to Crestline Avenue or stone parallel to Hallmark Drive in the Crestline Avenue required front yard.
- No single family home "fronts" to the proposed fence on the subject site since the home on the lot immediately east across Crestline Avenue fronts northward onto Hallmark Drive as does the home being developed on the subject site.
- The Board Administrator conducted a field visit of the site and surrounding area and noted one other fence above four (4) feet high which appeared to be located in a

- As of August 8, 2011, no letters have been submitted in support or opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 5' (whereby the proposal would reach a maximum of 9' in height in the site's Crestline Avenue required front yard) will not adversely affect neighboring property.
- Granting this special exception of 5' with a condition imposed that the applicant complies with the submitted site plan and elevation would assure that the proposal exceeding 4' in height in the Crestline Avenue required front yard would be constructed and maintained in the location and of the heights and materials as shown on these documents.

**BOARD OF ADJUSTMENT ACTION: AUGUST 15, 2011**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Maten**

I move that the Board of Adjustment grant application **BDA 101-065** 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 intent of the Dallas Development Code.

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

SECONDED: **Coulter**

AYES: 5—Boyd, Moore, Maten, Coulter, Richard

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

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FILE NUMBER: BDA 101-066

**BUILDING OFFICIAL'S REPORT:**

Application of Ruby Taylor, represented by Steve Myers, for a variance to the front yard setback regulations at 2002 Idaho Avenue. This property is more fully described as Lot 11 in City Block 5/3677 and is zoned R-7.5(A), which requires a front yard setback of 25 feet. The applicant proposes to construct/maintain a structure and provide a 14 foot front yard setback, which will require a variance of 11 feet.

**LOCATION:** 2002 Idaho Avenue

**APPLICANT:** Ruby Taylor  
Represented by Steve Myers

**REQUEST:**

- A variance to the front yard setback regulations of 11' is requested in conjunction with replacing an existing single family home structure with a new single family home structure, part of which would be located in one of the site's two 25' front yard setbacks (Louisiana Avenue). (No request has been made in this application to construct/maintain any portion of a structure in the site's Idaho Avenue front yard setback).

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The subject site is unique and different from most lots zoned R-7.5(A) in that it is a corner lot with a restrictive area due to two front yard setbacks. The atypical two front yard setbacks on the typically sized 7,500 square foot property/subject site precludes it from being developed in a manner commensurate with development on other similarly zoned properties - in this case, development being a single family home with an approximately 1,100 square foot building footprint.

**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;
- 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
- 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:**

- Single family structures on lots zoned R-7.5(A) are required to provide a minimum front yard setback of 25’.
- The subject site is located at the southeast corner of Idaho Avenue and Louisiana Avenue. Regardless of how the proposed structure on the site may be oriented or addressed, the subject site has two 25’ front yard setbacks along both streets. The site has a 25’ front yard setback along Idaho Avenue, the shorter of the two frontages which is always deemed the front yard setback on a corner lot in a single family zoning district, and a 25’ front yard setback along Louisiana Avenue, the longer of the two frontages of this corner lot which would typically be regarded as a side yard where only a 5’ yard setback would be required. But the site’s Louisiana Avenue frontage is deemed a front yard setback nonetheless in order to maintain the continuity of the established front yard setback established by the lots east of the site that front/are oriented northward onto Louisiana Avenue – lots that appear to be currently vacant/undeveloped.

A scaled site plan has been submitted denoting a portion of the proposed single family home to be located 14’ from the Louisiana Avenue front property line or 11’ into the 25’ front yard setback. (No encroachment is proposed in the site’s Idaho Avenue 25’ front yard setback).

- According to calculations taken by the Board Administrator from the submitted site plan, the area of the proposed structure to be located in the site’s Louisiana Avenue 25’ front yard setback is approximately 385 square feet in area or approximately 1/3 of the approximately 1,110 square foot building footprint.
- According to DCAD records, the “main improvement” on the site is a 1,099 square foot structure built in 1925 in “poor” condition.
- The subject site is flat, rectangular in shape (150’ x 50’), and 7,500 square feet in area. The site is zoned R-7.5(A) where lots in this zoning district are typically 7,500 square feet in area. This site has two 25’ front yard setbacks; and two 5’ side yard setbacks; most residentially-zoned lots have one front yard setback, two side yard setbacks, and one rear yard setback.

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

**Zoning/BDA History:**

1. Miscellaneous Item # 2, 2002  
Idaho Avenue (the subject site)

On April 18, 2011, the Board of Adjustment Panel C waived the filing fee to be submitted in conjunction with a pending board of adjustment application at this address and for this applicant.

**Timeline:**

- May 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.
- June 23, 2011: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C. 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.”
- June 23, 2011: The Board Administrator emailed the applicant’s representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the August 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the August 5<sup>th</sup> 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.
- August 2, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Development and Construction Department Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.
- August 4, 2011: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Has no objections if certain conditions are met” with the following

comments: "Need to comply with all C.O.D visibility requirements."  
(Note that no item appears to be represented on the submitted site plan as being located in a visibility triangle).

### **STAFF ANALYSIS:**

- This request focuses on replacing an existing single family home structure with a new single family home structure, part of which would be located in one of the site's two 25' front yard setbacks (Louisiana Avenue). (According to the applicant, the existing house on the property encroaches into the Louisiana Avenue front yard setback).
- The proposed replacement single family home structure that is the issue of this request is to be located on a site that has two front yard setbacks – a site with one front yard setback on Idaho Avenue (where no structure is proposed to be located in); the other front yard setback on Louisiana Drive (where the proposed structure that is the issue of this application is shown to be 14' from the Louisiana Avenue front property line or 11' into the 25' front yard setback).
- Regardless of how the proposed structure on the site may be oriented or addressed, the subject site has two 25' front yard setbacks along both streets. The site has a 25' front yard setback along Idaho Avenue, the shorter of the two frontages which is always deemed the front yard setback on a corner lot in a single family zoning district, and a 25' front yard setback along Louisiana Avenue, the longer of the two frontages of this corner lot which would typically be regarded as a side yard where only a 5' yard setback would be required.
- The site's Louisiana Avenue frontage is deemed a front yard setback nonetheless in order to maintain the continuity of the established front yard setback established by the lots east of the site that front/are oriented northward onto Louisiana Avenue – lots that appear to be currently vacant/undeveloped.
- According to calculations taken by the Board Administrator from the submitted site plan, the area of the proposed structure to be located in the site's Louisiana Avenue 25' front yard setback is approximately 385 square feet in area or approximately 1/3 of the approximately 1,110 square foot building footprint.
- According to DCAD records, the "main improvement" on the site is a 1,099 square foot structure built in 1925 in "poor" condition.
- The subject site is flat, rectangular in shape (150' x 50'), and 7,500 square feet in area. The site is zoned R-7.5(A) where lots in this zoning district are typically 7,500 square feet in area. This site has two 25' front yard setbacks; and two 5' side yard setbacks; most residentially-zoned lots have one front yard setback, two side yard setbacks, and one rear yard setback.
- The site has approximately 120' x 20' of developable area left once its setbacks are accounted for as opposed to 120' x 40' of developable area left if the site were more typical with having just one front yard setback.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the Louisiana Avenue front yard setback regulations 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 front yard setback would be limited to what is shown on this document– which in this case is a structure to be located 14’ from the Louisiana Avenue front property line (or 11’ into this 25’ front yard setback).

**BOARD OF ADJUSTMENT ACTION: AUGUST 15, 2011**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Maten**

I move that the Board of Adjustment grant application **BDA 101-066** 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 intent of the Dallas Development Code.

- Compliance with the submitted site plan is required.

SECONDED: **Coulter**

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

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FILE NUMBER: BDA 101-071

**BUILDING OFFICIAL’S REPORT:**

Application of James Moore for a special exception to the fence height regulations at 1026 Cliffdale Avenue. This property is more fully described as Lot 1 in City Block 8/5123 and is zoned R-7.5(A), which limits the height of a fence in the front yard to 4

feet. The applicant proposes to maintain an 8 foot high fence, which will require a special exception of 4 feet.

**LOCATION:** 1026 Cliffdale Avenue

**APPLICANT:** James Moore

**REQUEST:**

- A special exception to the fence height regulations of 4' is requested in conjunction with maintaining what is represented on submitted plans as a 6'- 8' high board on board wood fence in one of the site's two front yard setbacks on a site developed with a single family home – Buna Drive. (No existing or proposed fence is shown to be located in the site's Cliffdale Avenue front yard setback).

**STAFF RECOMMENDATION:**

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

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

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

**GENERAL FACTS:**

- The subject site is located at the southeast corner of Cliffdale Drive and Buna Drive. The site has two 25' front yard setbacks - one front yard setback along its shorter frontage (Cliffdale Avenue) and the other front yard setback along its longer frontage (Buna Drive). Regardless of how the site's Buna Drive frontage is the longer of the corner lot's frontages (usually deemed a side yard where a fence in a side yard setback can reach 9' in height) and functions as a side yard on the property, it is a front yard nonetheless in order to maintain continuity of the required front yard setback established by one lot east of the site fronting northward onto Buna Drive.
- 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 applicant has submitted a revised site plan (see Attachment A) and revised elevations indicating that the fence in the Buna Drive 25' front yard setback reaches a maximum height of 8'.
- The following additional information was gleaned from the submitted revised site plan:

- The fence located in the Buna Drive front yard setback over 4' in height is approximately 80' in length parallel to the street and approximately 20' in length *perpendicular* to Buna Drive on the east and west sides of the site in the required front yard.
- The fence is shown to be located approximately 4' from the site's Buna Drive front property line or about 8' from the pavement line.
- Three single family homes "front" to the existing fence, none of which have fences in their front yard setbacks.
- 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.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included a revised site plan, revised elevations, and a petition signed by 28 neighbors/owners in support of the request.

**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 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:**

May 25, 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.

June 22, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

June 28, 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 August 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the August 5<sup>th</sup> 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.

June 30: 2011: The applicant submitted additional information to the Board Administrator beyond what was submitted with the original application (see Attachment A).

August 2, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Development and Construction Department Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

August 4, 2011: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments: "Need to comply with all C.O.D visibility requirements." (Note that no item appears to be represented on the submitted site plan as being located in a visibility triangle).

### **STAFF ANALYSIS:**

- This request focuses on maintaining what is represented on submitted plans as a 6'-8' high board on board wood fence in one of the site's two front yard setbacks on a site developed with a single family home – Buna Drive.
- The subject site is located at the southeast corner of Cliffdale Drive and Buna Drive. The site has two 25' front yard setbacks - one front yard setback along its shorter frontage (Cliffdale Avenue) and the other front yard setback along its longer frontage (Buna Drive). Regardless of how the site's Buna Drive frontage is the longer of the corner lot's frontages (usually deemed a side yard where a fence in a side yard setback can reach 9' in height) and functions as a side yard on the property, it is a front yard nonetheless in order to maintain continuity of the required front yard setback established by one lot east of the site fronting northward onto Buna Drive.
- The one lot east of the site fronting northward onto Buna Drive is what makes the Buna Drive frontage on the subject site a front yard and requires the applicant to seek exception for the existing fence that reaches 8' in height. Otherwise the

applicant could maintain up to a 9' high fence along his longer Buna Drive frontage by right.

- The submitted revised site plan and revised elevation documents the location, height, and material of the fence over 4' in height in the Buna Drive required front yard setback. The revised site plan shows the fence to be approximately 80' in length parallel to Buna Drive and approximately 20' in length *perpendicular* to Buna Drive on the east and west sides of the site in the front yard setback; and to be located approximately 4' from the Buna Drive front property line or 8' from the pavement line. The elevation shows that the fence to be between 6' – 8' in height and comprised of board on board.
- Three single family homes “front” to the existing fence none of which have fences in their front yard setbacks.
- 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 August 8, 2011, a petition signed by 28 neighbors/owners in support had been submitted in support of the application, and no letters have been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' (whereby the existing fence reaches a maximum of 8' in height in the site's Buna Drive front yard setback) does not adversely affect neighboring property.
- Granting this special exception of 4' with a condition imposed that the applicant complies with the submitted revised site plan and revised elevations would assure that the fence exceeding 4' in height in the Buna Drive front yard setback would be maintained in the location and of the heights and material as shown on these documents.

### **BOARD OF ADJUSTMENT ACTION: AUGUST 15, 2011**

APPEARING IN FAVOR: James Moore, 1026 Cliffdale Ave., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Coulter**

I move that the Board of Adjustment, in Appeal No. **BDA 101-071**, on application of James Moore, **Grant** the request of this applicant to construct and maintain an eight-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 and revised elevations is required.

SECONDED: Richard  
AYES: 5–Boyd, Moore, Maten, Coulter, Richard  
NAYS: 0 –  
MOTIONPASSED: 5–0(unanimously)

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FILE NUMBER: BDA 101-072

**BUILDING OFFICIAL’S REPORT:**

Application of Mohammed I. Sultan, represented by Mohammed Kamal, for variances to the side yard setback regulations at 3003 S. Buckner Boulevard. This property is more fully described as Lot 1 in City Block D/6179 and is zoned PD-366, Subarea 6, which requires a side yard setback of 20 feet where there is residential adjacency. The applicant proposes to construct/maintain a structure and provide a 1 foot side yard setback, which will require a variance of 19 feet.

LOCATION: 3003 S. Buckner Boulevard

APPLICANT: Mohammed I. Sultan  
Represented by Mohammed Kamal

**August 15, 2011 Public Hearing Notes:**

- The Board heard testimony from the applicant and staff at the public hearing, and delayed action on the application until their November 14<sup>th</sup> public hearing in order for the applicant to possibly amend his application by adding a request/requests for special exception to the landscape and/or screening regulations.

**REQUESTS:**

- The following appeals have been made in this application on a site developed with a fuel station/convenience store structure/use (Conoco):
  1. A variance to the side yard setback regulations of 19’ is made in conjunction with maintaining an approximately 1,100 square foot addition on an approximately 1,000 square foot convenience store structure, virtually of which is located in the site’s 20’ side yard setback on the north side of the site;
  2. A variance to the side yard setback regulations of approximately 16’ 6” is made in conjunction with maintaining an approximately 1,100 square foot addition on an approximately 1,000 square foot convenience store structure part of which is located in the site’s 20’ side yard setback on the west side of the site;
  3. A variance to the side yard setback regulations of approximately 2’ is made in conjunction with maintaining an approximately 1,000 square foot convenience store structure, part of which is located in the site’s 20’ side yard setback on the west side of the site; and

4. A variance to the side yard setback regulations of up to 18' 8" is requested in conjunction with locating and maintaining an approximately 64 square foot dumpster structure which is located in the site's 20' side yard setback on the west side of the site.

**STAFF RECOMMENDATION:**

Denial

Rationale:

- The applicant had not substantiated how either the restrictive area, shape, or slope of the site/lot preclude it from being developed in a manner commensurate with development found on other PD No. 366 (Subarea 6) zoned lots.

**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:

- (A) not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;
- (B) necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and
- (C) 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 on a lot zoned lot PD 366 (Subarea 6) is 20 feet where adjacent to or directly across an alley from a single family, duplex, townhouse, or multifamily zoning district; or no minimum in all other cases. The subject site directly abuts to an R-7.5(A) (single family) zoning district to the north and west – an area that is developed as the Pleasant Mound Cemetery. The applicant has submitted a site plan indicating a “proposed extension” structure that is 1,082 square feet attached to an “existing 1 story building” that is 1,030 square feet. Although the site plan denotes a “proposed extension” along with an “existing 1 story building,” it appears from a field visit of the site that the “proposed extension” has been completed and is in the setbacks. The “proposed extension” structure is represented on the site plan as being 1' 1" from the site's northern side property line (or 18' 11" into this required 20' side yard setback) and approximately

3' 6" from the site's western side property line (or 16' 6" into this required 20' side yard setback). The site plan also represents that the "existing 1 story building" structure is approximately 18' from the site's side property line on the west (or 2' into this required 20' side yard setback). Lastly, the site plan also denotes a dumpster structure that (given its mobility) could potentially be located as close as 1' 4" from the site's side property line on the west (or as much as 18' 8" into this required 20' side yard setback).

- According to calculations taken by the Board Administrator from the submitted site plan, virtually the entire 1,082 square foot "proposed extension" structure is located in the site's northern 20' side yard setback; about 320 square feet (or approximately 30 percent) of the "proposed extension" structure, about 50 square feet (or approximately 4 percent) of the 1,030 square foot "existing 1 story building" structure, and the entire 64 square foot dumpster structure are located in the site's western 20' side yard setback.
- The site is flat, is rectangular in shape (116.5' x 125'), and is approximately 14,600 square feet in area. The site is zoned PD 366 (Subarea 6). The site has two front yard setbacks along both street frontages which is typical of any corner lot not zoned agricultural, single family, or duplex.
- According to DCAD records, the "improvements" on the property is a 976 square foot "convenience store" built in 1998.

### **BACKGROUND INFORMATION:**

#### **Zoning:**

Site: PD No. 366 (Subarea 6) (Planned Development)  
North: R-7.5(A) (SUP 92) (Single family district 7,500 square feet)(Specific Use Permit)  
South: R-7.5(A) (SUP 92) (Single family district 7,500 square feet)(Specific Use Permit)  
East: PD No. 366 (Subarea 6) (Planned Development)  
West: R-7.5(A) (SUP 92) (Single family district 7,500 square feet)(Specific Use Permit)

#### **Land Use:**

The subject site is developed with a convenience store/fuel station structure/use (Conoco). The areas to the north, south, and west are developed a cemetery use (Pleasant Mound Cemetery); and the area to the east is developed with commercial and retail uses.

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

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

## **Timeline:**

- June 6, 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.
- June 22, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- June 30, 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 August 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the August 5<sup>th</sup> 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.
- August 2, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Development and Construction Department Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.
- The Building Inspection Senior Plans Examiner/Development Code Specialist raised a concern about whether the site was in compliance with Article X: The Landscape Regulations. Staff discussed that while the site may not be in compliance with these regulations, the applicant made no request for the board to consider any leniency or exception to these regulations, and that the applicant's request for variances to the side yard setback regulations will not provide any relief to any existing or proposed noncompliant issues on the subject site pertaining to Article X: The Landscape Regulations.
- No review comment sheets with comments were submitted in conjunction with this application.

## **STAFF ANALYSIS:**

- The requests focus on maintaining portions of an existing convenience store structure/use (Conoco), part of which are located in the northern and western side

yard setbacks, and a dumpster structure all of which is located in the western side yard setback.

- According to calculations taken by the Board Administrator from the submitted site plan, virtually the entire 1,082 square foot “proposed extension” structure is located in the site’s northern 20’ side yard setback; about 320 square feet (or approximately 30 percent) of the “proposed extension” structure, about 50 square feet (or approximately 4 percent) of the 1,030 square foot “existing 1 story building” structure, and the entire 64 square foot dumpster structure are located in the site’s western 20’ side yard setback.
- The site is flat, is rectangular in shape (116.5’ x 125’), and is approximately 14,600 square feet in area. The site is zoned PD 366 (Subarea 6). The site has two front yard setbacks along both street frontages which is typical of any corner lot not zoned agricultural, single family, or duplex.
- According to DCAD records, the “improvements” on the property is a 976 square foot “convenience store” built in 1998.
- The applicant has the burden of proof in establishing the following:
  - That granting the variances to the side yard setback regulations of up to 19’ 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 variances are necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 366 (Subarea 6) zoning classification.
  - The variances 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 PD No. 366 (Subarea 6) zoning classification.
- If the Board were to grant the variances to the side yard setback regulations, imposing a condition whereby the applicant must comply with the submitted site plan, the encroachments into these setbacks would be limited to what is shown on this plan which in this case are structures that are located as close as 1’ from the side property line or as much as 19’ into the 20’ side yard setbacks.
- The applicant’s request for variances to the side yard setback regulations will not provide any relief to any existing or proposed noncompliant issues on the subject site pertaining to Article X: The Landscape Regulations.

**BOARD OF ADJUSTMENT ACTION: AUGUST 15, 2011**

APPEARING IN FAVOR: Mohammed Kamal, 7953 Pinkerton Ct., Plano, TX

APPEARING IN OPPOSITION: No one

MOTION: **Moore**

I move that the Board of Adjustment, in Appeal No. **BDA 101-072**, hold this matter under advisement until **November 14, 2011**.

SECONDED: **Maten**

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

NAYS: 0 - None

MOTION PASSED: 5 – 0 (Unanimously)

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MOTION: **Coulter**

I move to adjourn this meeting.

SECONDED: **Maten**

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

NAYS: 0 - None

MOTION PASSED: 5 – 0 (Unanimously)

**1:23 P. M.** - Board Meeting adjourned for **August 15, 2011**.

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CHAIRPERSON

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BOARD ADMINISTRATOR

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BOARD SECRETARY

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