

**BOARD OF ADJUSTMENT, PANEL C  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, COUNCIL CHAMBERS  
MONDAY, NOVEMBER 14, 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, Phil Erwin, Chief Arborist, Jerry Svec, Traffic Engineer 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, Phil Erwin, Chief Arborist, Jerry Svec, Traffic Engineer 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 **November 14, 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 October 17, 2011 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: NOVEMBER 14, 2011**

**MOTION: Maten**

I move **approval** of the Monday, **October 17, 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 101-100**

**BUILDING OFFICIAL’S REPORT:**

Application of Patrick L. Boyd for a variance to the front yard setback regulations at 6867 Avalon Avenue. This property is more fully described as Lot 4 in City Block F/2805 and is zoned R-10(A), which requires a front yard setback of 30 feet. The applicant proposes to construct/maintain a structure and provide a 3 foot front yard setback, which will require a variance of 27 feet.

**LOCATION: 6867 Avalon Avenue**

**APPLICANT: Patrick L. Boyd**

**REQUEST:**

- A variance to the front yard setback regulations of 27’ is requested in conjunction with constructing and maintaining swimming pool and a pool equipment “structures” all or part of which would be located in one of the site’s two 30’ front yard setbacks (Pickens Street) on a site developed with a single family home. (No request has been made in this application to construct/maintain any structure in the site’s Avalon Avenue front yard setback).

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted revised site plan is required.

Rationale:

- The subject site is unique and different from most lots zoned R-10(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 approximately 12,500 square foot property/subject site precludes it from being developed in a manner commensurate with development on other similarly zoned properties - in this case, the development on the property being the maintenance of a typically-sized single family home with an added swimming pool and related swimming pool structure.

**STANDARD FOR A VARIANCE:**

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area 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:**

- Structures on lots zoned R-10(A) are required to provide a minimum front yard setback of 30'.
- The subject site is located at the northwest corner of Avalon Avenue and Pickens Street. Regardless of how the existing single-family structure on the site is oriented or addressed (in this case, Avalon Avenue), the subject site has two 30' front yard setbacks along both streets. The site has a 30' front yard setback along Avalon 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 30' front yard setback along Pickens Street, the longer of the two frontages of this corner lot which would typically be regarded as a side yard where only a 6' yard setback would be required. But the site's Pickens Street frontage is deemed a front yard setback nonetheless to maintain the continuity of the established front yard setback established by the lots developed with single family homes north of the site that front/are oriented eastward onto Pickens Street.

A revised scaled site plan (see Attachment A) has been submitted denoting a portion of the proposed swimming pool structure and the entire "pool equipment structure to be located 3' from the Pickens Street front property line or 27' into the 30' front yard

setback; and (No encroachment is proposed in the site's Avalon Avenue 30' front yard setback).

- According to calculations taken by the Board Administrator from the submitted revised site plan, the area of the proposed swimming pool structure to be located in the site's Pickens Street 30' front yard setback is approximately 475 square feet in area or approximately 90 percent of the approximately 540 square foot footprint; and that all of the proposed 40 square foot "pool equipment" structure is to be located in the site's Pickens Street 30' front yard setback.
- According to DCAD records, the "main improvement" at 6867 Avalon is a structure built in 1952 with 2,887 square feet of living area; and that "additional improvements" is an attached garage with 720 square feet. Note that although part of the existing home is located in the Pickens Street front yard setback, the home is most likely a nonconforming structure ( a structure that does not conform to the current front yard setback regulations but was lawfully constructed under the regulations in force at the time of construction) where the applicant (who has been fully advised of code provisions related to nonconforming structures – that being the right to rebuild a nonconforming structure ceases if the structure is destroyed by the intentional act of the owner or the owner's agent) has chose not to seek variance for it.
- The subject site is sloped, somewhat irregular in shape (approximately 96' on the north, approximately 79' on the south, approximately 132' on the east, and approximately 134' on the west), and approximately 12,500 square feet in area. The site is zoned R-10(A) where lots in this zoning district are typically 10,000 square feet in area. This site has two 30' front yard setbacks; and two 6' 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 94' x 54' or 5,100 square feet of developable area left once its setbacks are accounted for as opposed to 94' x 78' or 7,300 square feet of developable area left if the site were more typical with having just one front yard setback.
- The structures requiring variance to the front yard setback regulations would be allowed by right if the Pickens Street frontage of the property was a side yard setback.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: R-10(A) (Single family district 10,000 square feet)  
North: R-10(A) (Single family district 10,000 square feet)  
South: R-10(A) (Single family district 10,000 square feet)  
East: R-10(A) (Single family district 10,000 square feet)  
West: R-10(A) (Single family district 10,000 square feet)

### **Land Use:**

The subject site is developed with a single family home. The areas to the north, south, east, 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:**

July 29, 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.

October 14, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

October 17, 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 October 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the November 4<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.

November 1, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Assistant Director, the Acting Building Official, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

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

November 3 2011: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

**STAFF ANALYSIS:**

- This request focuses on constructing and maintaining swimming pool and a pool equipment “structures” all or part of which would be located in one of the site’s two 30’ front yard setbacks (Pickens Street) on a site developed with a single family home.
- The proposed swimming pool and a pool equipment “structures” that are the issue of this request are to be located on a site that has two front yard setbacks – a site with one front yard setback on Avalon Avenue (where no structure is proposed to be located in); the other front yard setback on Pickens Street (where the proposed structures that are the issue of this application are shown to be as close as 3’ from the Pickens Street front property line or 27’ into the 30’ front yard setback).
- Regardless of how the proposed structure on the site may be oriented or addressed, the subject site has two 30’ front yard setbacks along both streets. The site has a 30’ front yard setback along Avalon 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 30’ front yard setback along Pickens Street, the longer of the two frontages of this corner lot which would typically be regarded as a side yard. (The structures requiring front yard variance in this application would be permitted by right if the site’s Pickens Street frontage were deemed a side yard).
- The site’s Pickens Street frontage is deemed a front yard setback nonetheless in order to maintain the continuity of the established front yard setback established by the lots developed with single family homes north of the site that front/are oriented eastward onto Pickens Street.
- According to calculations taken by the Board Administrator from the submitted site plan, the area of the proposed swimming pool structure to be located in the site’s Pickens Street 30’ front yard setback is approximately 475 square feet in area or approximately 90 percent of the approximately 540 square foot footprint; and that all of the proposed 40 square foot “pool equipment” structure is to be located in the site’s Pickens Street 30’ front yard setback.
- According to DCAD records, the “main improvement” at 6867 Avalon is a structure built in 1952 with 2,887 square feet of living area; and that “additional improvements” is an attached garage with 720 square feet. Note that although part of the existing home is located in the Pickens Street front yard setback, the home is most likely a nonconforming structure ( a structure that does not conform to the current front yard setback regulations but was lawfully constructed under the regulations in force at the time of construction) where the applicant (who has been fully advised of code provisions related to nonconforming structures – that being the right to rebuild a nonconforming structure ceases if the structure is destroyed by the intentional act of the owner or the owner’s agent) has chose not to seek variance for it.
- The subject site is sloped, somewhat irregular in shape (approximately 96’ on the north, approximately 79’ on the south, approximately 132’ on the east, and approximately 134’ on the west), and approximately 12,500 square feet in area. The site is zoned R-10(A) where lots in this zoning district are typically 10,000 square feet in area. This site has two 30’ front yard setbacks; and two 6’ 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 94' x 54' or 5,100 square feet of developable area left once its setbacks are accounted for as opposed to 94' x 78' or 7,300 square feet 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 Pickens Street 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-10(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-10(A) zoning classification.
- If the Board were to grant the variance request, subject to the submitted revised site plan, the structures 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 as close as 3' from the Pickens Street front property line (or as much as 27' into this 30' front yard setback).
- The applicant is aware that his request for variance to the front yard setback regulations will not provide relief to any existing or proposed noncompliant issues on the subject site pertaining to the City's visual obstruction regulations.

**BOARD OF ADJUSTMENT ACTION: NOVEMBER 14, 2011**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Richard**

I move that the Board of Adjustment grant application **BDA 101-100** 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 revised site plan is required.

SECONDED: **Maten**

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

NAYS: 0 –

MOTION PASSED: 5– 0(unanimously)

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**FILE NUMBER:** BDA 101-102

**BUILDING OFFICIAL'S REPORT:**

Application of Elias Rodriguez/CCI for a special exception to the side yard setback regulation at 6331 Petain Avenue. This property is more fully described as Lot 9 and the eastern 10.56 feet of Lot in City Block 15/5810 and is zoned R-7.5(A), which requires a side yard setback of 5 feet. The applicant proposes to construct/maintain a carport and provide a 0 foot side yard setback, which will require a special exception of 5 feet.

**LOCATION:** 6331 Petain Avenue

**APPLICANT:** Elias Rodriguez/CCI

**REQUEST:**

- A special exception to the side yard setback regulations of 5' is requested in conjunction with maintaining an existing approximately 450 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 west 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 revised site plan and elevation plan (see Attachment A) indicating the location of the carport on the site's western side property line or 5' into the 5' side yard setback.
- The following information was gleaned from the submitted revised site plan:
  - The carport is represented to be 38' in length and from 10' – 16' 8" in width (447 square feet in total area) of which 190 square feet or approximately 40 percent is located in the western side yard setback.
- The following information was gleaned from the submitted revised elevation plan:
  - Represented to be 9' in height, slightly higher in with the cornice line of the house, with aluminum metal roofing and with aluminum frame.
- The subject site is approximately 150' x 50' (or 7,500 square feet) in area.
- According to DCAD, the property at 6331 Petain has the following:
  - "main improvement" - a structure in "good" condition built in 1945 with 1,389 square feet of living area,
  - "additional improvements" – "room addition" with 540 square feet, and "attached carport" with 260 square feet.
- 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:**

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

August 11, 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.

October 14, 2011: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

October 17, 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 October 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the November 4<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.

October 21, 2011: The Board Administrator emailed the applicant his concerns that arose from further review of the application – specifically what appeared to be discrepancies between what is conveyed on the applicant’s submitted site plan/elevations from what the administrator had photographed on the subject site the week prior. The administrator requested that the applicant provide clarity as to the application was made to: 1) modify the existing carport as photographed on the site to what is shown on the applicant’s submitted site plan and elevation (noting how what *appeared* to be the carport - “new addition 420 sq. ft.” - on the submitted site plan was located behind the building footprint of the “existing one store house” but the photos showed the existing carport even with façade of the existing home; or to maintain the existing carport as is. (The administrator noted that if the application was to maintain the carport as is then the applicant would need to submit a revised site plan and elevation that accurately represented the features of the existing carport to Todd Duerksen and him no later than noon, October 28<sup>th</sup>).

October 27, 2011: The applicant emailed the Board Administrator conveying that he had actually went to do a field inspection that day, and determined that he needed to modify the original plans to reflect what is

actually there, and re-send updated ones. The applicant conveyed that his client built without a permit therefore has to apply for a building permit as well.

October 31, 2011: The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).

November 1, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Assistant Director, the Acting Building Official, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and the Assistant City Attorney 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 approximately 450 square foot metal carport that is located on a side property line or 5' into the required 5' side yard setback on the west side of the property.
- A revised site plan has been submitted indicating that the carport structure is 38' in length and 10' – 16' 8" in width.
- The submitted revised elevation represents the carport is 9' in height, slightly higher in with the cornice line of the house, with aluminum metal roofing and with aluminum frame.
- The applicant has the burden of proof in establishing the following:
  - That granting this special exception to the side yard setback regulations of 5' will not have a detrimental impact on surrounding properties.
- As of November 7, 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 revised site plan and revised elevation is required.
  2. The carport structure must remain open at all times.
  3. No lot-to-lot drainage is permitted in conjunction with this carport special exception.

- 4. All applicable building permits must be 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 revised site plan and revised elevation 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.
- The applicant is aware that his request for a special exception to the side yard setback regulations for a carport will not provide relief to any existing or proposed noncompliant issues on the subject site pertaining to the City's visual obstruction regulations.

**BOARD OF ADJUSTMENT ACTION: NOVEMBER 14, 2011**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Richard**

I move that the Board of Adjustment grant application **BDA 101-102** 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.

- The carport structure must remain open at all times.
- No lot-to-lot drainage is permitted with this carport special exception.
- All applicable building permits must be obtained.
- Compliance with the submitted revised site plan and revised elevation is required.
- No item (other than a motor vehicle) may be stored under the carport.

SECONDED: **Maten**

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

NAYS: 0 –

MOTION PASSED: 5– 0(unanimously)

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FILE NUMBER: BDA 101-104

**BUILDING OFFICIAL'S REPORT:**

Application of Clifton Phillips for a variance to the landscape regulations at 6712 Patrol Way. This property is more fully described as Lot 1 in City Block A/6896 and is zoned PD 625 (residential/retirement housing use subdistrict), which requires mandatory landscaping. The applicant proposes to construct a structure and provide an alternate landscape plan, which will require a variance.

**LOCATION:** 6712 Patrol Way

**APPLICANT:** Clifton Phillips

**REQUEST:**

- A variance to the landscape regulations is requested in conjunction with completing and maintaining a 112-unit residential/retirement housing development (Magnolia Trace) and not fully meeting the specific landscape requirements of PD No. 625.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan is required.

Rationale:

- A literal enforcement of certain landscape requirements of PD 625 would result in unnecessary hardship where the slope of the subject site precludes the applicant from fully complying with specific PD. No. 625 requirements related to the spacing of trees and the provision of tree grates along Patrol Way and Crouch Road.
- The City of Dallas Chief Arborist recommends approval of this request given how development of the property along Patrol Way required slope adjustments for drainage and site protection, and how Crouch Road is not at a proper elevation and does not provide curb or infrastructure to support the placement of a tree grate/sidewalk combination for the site.

**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:**

- The subject site is located in PD No. 625 – a Planned Development District that was created in 2002 and made up of three subdistricts: a residential use subdistrict, a residential/retirement housing use subdistrict (the subject site), and a mixed use subdistrict.
- PD No. 625 states that “except as modified in this section (Landscaping), the regulations in Article X, “Landscape and Tree Preservation Regulations,” apply in this district. The PD additionally provides additional “landscaping” for the “residential/retirement housing use subdistrict” – the subdistrict in this PD that is the subject site.
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator regarding the applicant’s submitted alternate landscape plan (see Attachment A). The memo states among other things how the applicant’s request is triggered by the new construction of retirement housing on the site; and where relief is sought from the tree spacing and tree grate requirements of the PD. The arborist’s memo explains several “factors’ related to the application, and recommends approval of the request.
- The site is sloped, virtually rectangular in shape (approximately 500’ on the northeast, approximately 504’ on the southwest; approximately 800’ on the southeast, and approximately 760’ on the northwest) and according to the application 8.94 acres in area. The subject site is zoned PD No. 625 (residential/retirement housing use subdistrict).
- DCAD shows “no record found” for property at 6712 Patrol Way.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD No. 625 (residential/retirement housing use subdistrict)  
North: R-7.5(A) (Single family residential 7,500 square feet)  
South: PD No. 625 (residential use subdistrict)  
East: PD No. 625 (residential use subdistrict)  
West: PD No. 625 (residential use subdistrict)

**Land Use:**

The subject site is being developed as a 112-unit residential/retirement housing development (Magnolia Trace). The areas to the north, east, south, and west appear to be undeveloped.

**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:**

- July 28, 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.
- October 14, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- October 20, 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 October 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the November 4<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.
- November 1, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Assistant Director, the Acting Building Official, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.
- November 4, 2011: The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment A).

**STAFF ANALYSIS:**

- This request focuses on completing and maintaining a 112-unit residential/retirement housing development (Magnolia Trace) and not fully meeting the specific landscape requirements of PD No. 625.
- Given specific provisions of the landscape provisions of PD No. 625, the applicant can only seek these leniencies from the board of adjustment by requesting a *variance* to the landscape regulations as opposed to the more typical *special exception* to the landscape regulations.
- The subject site is sloped, virtually rectangular in shape (approximately 500' on the northeast, approximately 504' on the southwest; approximately 800' on the southeast, and approximately 760' on the northwest) and according to the application 8.94 acres in area. The subject site is zoned PD No. 625 (residential/retirement housing use subdistrict).
- DCAD shows "no record found" for property at 6712 Patrol Way.

- The City of Dallas Chief Arborist recommends approval of this request given how development of the property along Patrol Way required slope adjustments for drainage and site protection, and how Crouch Road is not at a proper elevation and does not provide curb or infrastructure to support the placement of a tree grate/sidewalk combination for the site. The arborist states that the general slope of the property and the drainage slope along the street perimeter creates hardship that prohibits compliance with site requirements.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the landscape 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 PD No. 625 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 PD No. 625 zoning classification.
- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted alternate landscape plan, the site would be “varied” from the tree spacing and tree grate requirements of PD No. 625.

**BOARD OF ADJUSTMENT ACTION: NOVEMBER 14, 2011**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Richard**

I move that the Board of Adjustment grant application **BDA 101-104** 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 alternate landscape plan is required.

SECONDED: **Maten**

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

NAYS: 0 –

MOTION PASSED: 5– 0(unanimously)

\*\*\*\*\*

**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 and landscape 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 for new construction and requires mandatory landscaping. The applicant proposes to construct/maintain a structure and provide a 1 foot side yard setback, which will require a variance of 19 feet to the side yard setback regulations, and provide an alternate landscape plan, which will require a variance to the landscape regulations.

**LOCATION:** 3003 S. Buckner Boulevard

**APPLICANT:** Mohammed I. Sultan  
Represented by Mohammed Kamal

**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.
  5. A variance to the landscape regulations is requested in conjunction with maintaining the existing structure on the site, and not fully meeting the specific landscape requirements of PD No. 366 and Article X: The Landscape Regulations of the Dallas Development Code..

**STAFF RECOMMENDATION:**

## Denial of the requests

### 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; nor how a literal enforcement of the code provisions (including setback and landscape regulations) results in unnecessary hardship.

### **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 (side yard variances):**

- The minimum side yard setback on a lot zoned 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 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" at 3003 S. Buckner Boulevard is a 976 square foot "convenience store" built in 1998.
- On August 15, 2011, the Board conducted a public hearing and heard testimony from the applicant and staff. The Board 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 for a special exception to the landscape and/or screening regulations.

#### **GENERAL FACTS (landscape variance):**

- The subject site is located in PD No. 366 – a Planned Development District that was created in 1992. PD No. 366 includes specific provisions regarding landscaping. The applicant has submitted an amended application and revised alternate "site/landscape plan" (see Attachments A and B).
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator regarding the applicant's revised "site/landscape plan" (see Attachment C). The memo states among other things how the applicant's request is triggered by the construction of a building addition in 2005; and where relief is sought from parkway landscaping, site area landscaping, front yard strip landscaping, and mandatory perimeter landscape buffer requirements of either the landscape requirements of PD No. 366 or Article X: The Landscape Regulations of the Dallas Development Code. The arborist's memo explains several "factors" related to the application, and recommends denial of the request.
- 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" at 3003 S. Buckner Boulevard 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;
  - 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.

August 15, 2011: The Board conducted a public hearing and heard testimony from the applicant and staff. The Board 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 for a special exception to the landscape and/or screening regulations.

October 25 & 31, 2011: The applicant amended his application and submitted a revised alternate "site/landscape plan" to staff (see Attachments A and B). (Note that the applicant informed the Board Administrator that the revised site/landscape plan made no amendments to the locations and sizes of the structures as conveyed on the originally submitted site plan).

October 25, 2011: The Board Administrator emailed the applicant and the applicant's representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the October 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the November 4<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.

November 1, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November public hearings. Review team members in attendance included: the

Sustainable Development and Construction Department Current Planning Assistant Director, the Acting Building Official, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

November 3, 2011: The Chief Arborist submitted a memo to the Board Administrator pertaining to the landscape variance request (see Attachment C).

**STAFF ANALYSIS (side yard variances):**

- 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

and/or the submitted revised site/landscape plan (which the applicant states made no amendments to the locations and sizes of the structures as conveyed on the originally submitted site plan), the encroachments into these setbacks would be limited to what is shown on either one of these plans 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 either the landscape requirements of PD No. 366 or Article X: The Landscape Regulations of the Dallas Development Code.

### **STAFF ANALYSIS (landscape variance):**

- This request focuses on maintaining an existing convenience store structure/use (Conoco), and not fully complying with parkway landscaping, site area landscaping, front yard strip landscaping, and mandatory perimeter landscape buffer requirements of either the landscape requirements of PD No. 366 or Article X: The Landscape Regulations of the Dallas Development Code.
- Given specific provisions of the landscape provisions of PD No. 366, the applicant can only seek these leniencies from the board of adjustment by requesting a *variance* to the landscape regulations within this PD as opposed to the more typical *special exception* to the landscape regulations.
- 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" at 3003 S. Buckner Boulevard is a 976 square foot "convenience store" built in 1998.
- The City of Dallas Chief Arborist recommends denial of this request.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the landscape 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 PD No. 366 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 PD No. 366 zoning classification.
- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted revised site/landscape plan, the site would be "varied" from parkway landscaping, site area landscaping, front yard strip

landscaping, and mandatory perimeter landscape buffer requirements of either the landscape requirements of PD No. 366 or Article X: The Landscape Regulations of the Dallas Development Code.

- The applicant's request for variance to the landscape regulations will not provide any relief to the existing noncompliant issue on the subject site pertaining to side yard setbacks.

**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)

**BOARD OF ADJUSTMENT ACTION: NOVEMBER 14, 2011**

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

APPEARING IN OPPOSITION: No one

MOTION #1: **Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 101-072**, on application of Mohammed I. Sultan, **deny** the variance to the landscaping regulations 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: **Moore**

AYES: 4– Moore, Maten, Coulter, Richard

NAYS: 1 - Boyd

MOTION PASSED: 4 – 1

**MOTION #2: Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 101-072**, on application of Mohammed I. Sultan, **grant** variances to the minimum side yard setback regulations requested by this applicant because our evaluation of the property and 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 result in unnecessary hardship to this applicant.

**SECONDED: Coulter**

**AYES:** 3– Boyd, Maten, Coulter,

**NAYS:** 2 - Moore, Richard

**MOTION FAILED:** 3 –2

**MOTION #3: Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 101-072**, on application of Mohammed I. Sultan, **deny** the side yard setback variances requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

**SECONDED: Moore**

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

**NAYS:** 0 -

**MOTION PASSED:** 5 – 0 (Unanimously)

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**FILE NUMBER:** BDA 101-084

**BUILDING OFFICIAL’S REPORT:**

Application of Dee Anna Hanchey for special exceptions to the visual obstruction regulations at 3104 San Lucas Avenue. This property is more fully described as Lot 1 in City Block L/7312 and is zoned R-7.5(A) which requires a 20 foot visibility triangle at alley and driveway approaches. The applicant proposes to locate and maintain items in required visibility triangles, which will require special exceptions.

**LOCATION:** 3104 San Lucas Avenue

**APPLICANT:** Dee Anna Hanchey

**REQUESTS:**

- Special exceptions to the visual obstruction regulations are requested in conjunction with either maintaining or modifying and maintaining an eight-foot high solid wood

fence/sliding wood gate in the two 20-foot visibility triangles at the drive approach into the site from Matterhorn Drive, and at the 20-foot visibility triangle at the intersection of the alley immediately south of the site and Matterhorn Drive. The site is developed as a single family home.

**ORIGINAL SEPTEMBER STAFF RECOMMENDATIONS:**

(1) Approval of the requests for special exceptions to the visual obstruction regulations to maintain an eight-foot high solid wood fence/gate in the two 20-foot visibility triangles at the drive approach into the site from Matterhorn Drive, subject to the following condition:

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

Rationale:

- The Sustainable Development and Construction Department Engineering Assistant Director recommends approval of these requests.
- The applicant has substantiated how the location of the items in these drive approach visibility triangles does not constitute a traffic hazard.

(2) Denial of the request for a special exception to the visual obstruction regulations to maintain an eight-foot high solid wood fence/gate in the 20-foot visibility triangle at the intersection of the alley immediately south of the site and Matterhorn Drive.

Rationale:

- The Sustainable Development and Construction Department Engineering Assistant Director recommends denial of this request.
- The applicant has not substantiated how the location of the items in this 20-foot visibility triangle does not constitute a traffic hazard.

**UPDATED NOVEMBER STAFF RECOMMENDATIONS:**

(1) Approval of the requests for special exceptions to the visual obstruction regulations to maintain an eight-foot high solid wood fence/gate in the two 20-foot visibility triangles at the drive approach into the site from Matterhorn Drive, subject to the following condition:

- Compliance with the submitted site plan and elevation is required as the features shown on these documents relate to the fence located in the two 20-foot visibility triangles at the drive approach into the site from Matterhorn Drive only.

Rationale:

- The Sustainable Development and Construction Department Engineering Assistant Director recommends approval of these requests.
- The applicant has substantiated how the location of the fence and gate in these drive approach visibility triangles does not constitute a traffic hazard.

(2) Denial of the request for a special exception to the visual obstruction regulations to maintain an eight-foot high solid wood fence/gate in the 20-foot visibility triangle at the intersection of the alley immediately south of the site and Matterhorn Drive.

Rationale:

- The Sustainable Development and Construction Department Project Engineer recommends denial of this request, and only supports the applicant's proposal to relocate the existing solid wood fence where it no longer encroaches into this required visibility triangle.
- The applicant has not substantiated how either the location of the existing solid wood fence with safety mirrors or a modification to the existing solid wood fence with added windows with open wrought iron panels in this 20-foot visibility triangle does not constitute a traffic hazard.

### **STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:**

The Board shall grant a special exception to the requirements of the visual obstruction regulations when, in the opinion of the Board, the item will not constitute a traffic hazard.

### **GENERAL FACTS:**

- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
  - in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections, and 20 foot visibility triangles at drive approaches and at alleys on properties zoned single family); and
  - between two and a half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).

A site plan had been submitted that showed a fence (and sliding gate) located in the two 20-foot visibility triangles at the drive approach into the site from Matterhorn Drive (lengths of approximately six feet in each triangle), and in the 20-foot visibility triangle at the intersection of the alley immediately south of the site at Matterhorn Drive (length of approximately five feet in this triangle). An elevation document had been submitted that represents what appears as a solid fence (no materials are denoted on the elevation) that is eight feet in height.

- On September 19, 2011, the Board conducted a public hearing and heard testimony from the applicant and staff. The Board delayed action on the application until their November 14<sup>th</sup> public hearing for the applicant to possibly amend his application/proposal with particular focus on what was to be maintained or modified and maintained in the 20-foot visibility triangle at the intersection of the alley immediately south of the site at Matterhorn Drive
- On October 27, 2011, the applicant submitted additional information to staff (see Attachment B). This information included what the applicant described as "new

proposals that focus on pedestrian safety at the intersection of Matterhorn Drive and the alley between San Lucas Avenue and San Marcus Avenue.” The applicant entitled his three proposals as: Proposal A - Safety Mirror Solution, Proposal B - Decorative Openings; and Proposal C - Corner Cut with Gate Reconfiguration.

## **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 as 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:**

June 30, 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.

August 12, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

August 18, 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 September 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 9<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.

September 6, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September

public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Assistant Director, Sustainable Development and Construction Department Engineering Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

September 8, 2011: The Sustainable Development and Construction Department Engineering Assistant Director submitted a review comment sheet marked "Recommends that this be denied" commenting "1) Alley visibility obstruction should be denied due to pedestrian safety concerns. (Remedy exists by sliding gate in other direction); and 2) No objections to driveway visibility triangles."

September 19, 2011: The Board conducted a public hearing and heard testimony from the applicant and staff. The Board delayed action on the application until their November 14<sup>th</sup> public hearing in order for the applicant to possibly amend his application/proposal with particular focus on what was to be maintained or modified and maintained in the 20-foot visibility triangle at the intersection of the alley immediately south of the site at Matterhorn Drive

October 17, 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 deadline to submit additional evidence for staff to factor into their analysis; and the deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence; and
- a letter for his review from board member Bob Richard to him on the applicant's request (see Attachment A).

October 27, 2011: The applicant submitted additional information to staff on the application (see Attachment B).

October 31, 2011: The Building Inspection Senior Plans Examiner/Development Code Specialist emailed the applicant concerns that he had with the applicant's submittals (see Attachment C). Among the code specialist's concerns relayed to the applicant was that the "ideas" submitted for the board's consideration did not include "a proper site plan and elevation drawing" that would be required in conjunction with obtaining permits for construction if the board were to grant the requests.

November 1, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Assistant Director, the Acting Building Official, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

November 3, 2011: The Sustainable Development and Construction Department Project Engineer forwarded an email to the Board Administrator on the applicant's proposals (see Attachment D).

### **STAFF ANALYSIS:**

- The requests for special exceptions to the visual obstruction regulations focus on either maintaining or modifying and maintaining an eight-foot high solid wood fence/sliding wood gate in the two 20-foot visibility triangles at the drive approach into the site from Matterhorn Drive, and at the 20 foot visibility triangle at the intersection of the alley immediately south of the site and Matterhorn Drive. The site is developed as a single family home.
- The applicant has submitted "new proposals that focus on pedestrian safety at the intersection of Matterhorn Drive and the alley between San Lucas Avenue and San Marcus Avenue" in which he has entitled his three proposals as: Proposal A - Safety Mirror Solution, Proposal B - Decorative Openings; and Proposal C - Corner Cut with Gate Reconfiguration. Proposal A appears to be maintenance of the existing features in the alley/Matterhorn visibility triangle on the site that is leaving the solid wood fence with safety mirrors; Proposal B appears to be modification of the existing features in the alley/Matterhorn visibility triangle on the site that is leaving the fence in its current location but cutting two windows with open decorative wrought iron panels into the solid wood fence; and Proposal C appears to be modification of the existing features in the alley/Matterhorn visibility triangle on the site that is relocating the existing solid wood fence in a location that complies with the visual obstruction regulations.
- The Sustainable Development and Construction Department Engineering Assistant Director had originally submitted a review comment sheet in September marked "Recommends that this be denied" commenting "1) Alley visibility obstruction should be denied due to pedestrian safety concerns. (Remedy exists by sliding gate in other direction); and 2) No objections to driveway visibility triangles."
- However on November 3, 2011, the Sustainable Development and Construction Department Project Engineer emailed to the Board Administrator his recommendation on the applicant's proposals indicating that Proposal C was acceptable and the only proposal of the three that would reduce the existing traffic hazard. The City engineer commented that Proposal A was not acceptable since we (the City) do not depend on mirrors for visibility requirements; and that Proposal B

would have trees growing through the openings which would be a constant maintenance/enforcement problem.

- The applicant has the burden of proof in establishing how granting each/all of the requests for a special exception to the visual obstruction regulations to either maintain eight-foot high solid wood fence/sliding gate and/or modifying and maintaining the existing solid wood fence in each triangle does not constitute a traffic hazard.
- If the Board chooses to grant any/all of these requests, the Board may choose to impose a site plan and elevation to be submitted by the applicant no later than at the public hearing as a condition to ensure that the item/items in each triangle would not constitute a traffic hazard. (Note that the Building Inspection Senior Plans Examiner/Development Code Specialist has expressed concerns with the applicant's submittals, specifically that the applicant's submitted "ideas" did not include "a proper site plan and elevation drawing" that would be required in conjunction with obtaining permits for construction if the board were to grant the requests).

**BOARD OF ADJUSTMENT ACTION: SEPTEMBER 19, 2011**

APPEARING IN FAVOR: Dee Anna Hanchey, 3104 San Lucas Ave., Dallas, TX  
Chris Hanchey, 3104 San Lucas Ave., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: **Coulter**

I move that the Board of Adjustment, in Appeal No. **BDA 101-084**, on application of Dee Anna Hanchey, **grant** the request of this applicant to maintain an eight-foot-high solid wood fence/sliding wood gate in the two 20-foot visibility triangles at the drive approach into the site from Matterhorn Drive as a special exception to the visual obstruction regulation in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard. 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: **Maten**

**\*No vote called. Motion was withdrawn.**

MOTION #2: **Coulter**

I move that the Board of Adjustment in Appeal No. **BDA 101-084**, hold this matter under advisement until **November 14, 2011**.

SECONDED: **Maten**

AYES: 4—Moore, Maten, Coulter, Richard

NAYS: 1 – Boyd

MOTION PASSED: 4– 1

**BOARD OF ADJUSTMENT ACTION: NOVEMBER 14, 2011**

APPEARING IN FAVOR: Dee Anna Hanchey, 3104 San Lucas Ave., Dallas, TX  
Chris Hanchey, 3104 San Lucas Ave., Dallas, TX

APPEARING IN OPPOSITION: No one

**MOTION #1: Moore**

I move that the Board of Adjustment, in Appeal No. **BDA 101-084**, on application of Dee Anna Hanchey, **grant** the request of this applicant to maintain an eight-foot-high solid wood fence/sliding wood gate in the two 20-foot visibility triangles **at the drive approach into the site from Matterhorn Drive** as a special exception to the visual obstruction regulations in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard. 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

**MOTION #2: Moore**

I move that the Board of Adjustment, in Appeal No. **BDA 101-084**, on application of Dee Anna Hanchey, **deny** the special exception requested by this applicant **without prejudice** for the eight-foot-high solid wood fence/sliding wood gate in the 20-foot visibility triangle **at the intersection of the alley immediately south of the site and Matterhorn Drive**, because our evaluation of the property and the testimony shows that granting the application would constitute a traffic hazard.

**SECONDED: Boyd**

AYES: 2– Boyd, Moore,

NAYS: 3 –Maten, Coulter, Richard

MOTION FAILED: 2– 3

\*Therefore case is deemed denied **with** prejudice.

**MOTION #3: Coulter**

I move to reconsider the previous motion made.

**SECONDED: Maten**

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

NAYS: 0 –

MOTION PASSED: 5– 0(unanimously)

**MOTION #4: Moore**

I move that the Board of Adjustment, in Appeal No. **BDA 101-084**, on application of Dee Anna Hanchey, **deny** the special exception requested by this applicant **without prejudice** for the eight-foot-high solid wood fence/sliding wood gate in the 20-foot visibility triangle **at the intersection of the alley immediately south of the site and Matterhorn Drive**, because our evaluation of the property and the testimony shows that granting the application would constitute a traffic hazard.

**SECONDED: Maten**

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

**NAYS:** 0 –

**MOTION PASSED:** 5– 0 (unanimously)

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**FILE NUMBER:** BDA 101-108

**BUILDING OFFICIAL’S REPORT:**

Application of Staci Howie, represented by Michael R. Coker, to appeal the decision of an administrative official at 5541 Richard Avenue. This property is more fully described as Lot 17 in City Block 19/1932 and is zoned CD 15, which requires that the building official shall deny a building permit if the building official determines that the structure is in violation of the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations. The applicant proposes to appeal the decision of an administrative official in the denial of a building permit.

**LOCATION:** 5541 Richard Avenue

**APPLICANT:** Staci Howie  
Represented by Michael R. Coker

**REQUEST:**

- An appeal has been made requesting that the Board of Adjustment reverse/overturn the Building Official’s decision of September 2, 2011 to deny an application for a Department of Sustainable Development and Construction Conservation District Work Review Form on the subject site – specifically a “Conservation District Work Review Form” dated 8-8-2011 for property at 5541 Richard Avenue. The applicant alleges that the Administrative Official’s decision to deny this Conservation District Work Review Form was in error and should be overturned.

**BASIS FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:**

Section 51A-3.102(d)(1) of the Dallas Development Code states that the Board of Adjustment has the power and duty to hear and decide appeals from decisions of Administrative Officials made in the enforcement of the Dallas Development Code.

## **GENERAL FACTS:**

- Conservation District No. 15 states that “foundations of main buildings must be raised a minimum of 12 inches above grade.”
- Department of Sustainable Development and Construction Work Review Form made by applicant Staci and Douglas Howie for property located at 5541 Richard Avenue in Vickery Place CD 15 was marked “denied” by Margaret Fiskell on September 2, 2011. The aforementioned work review form was accompanied with a “Description of Proposed Work” attachment and an “Attached Denial Form” that are parts of this case file.
- The application states that a request is made to “appeal the decision of the administrative official who has denied an alternative design standard solution related to the requirement for the foundation of a twelve inch reveal above grade.”
- The “Conservation District Denial” that is part of this case file signed by Batsheba Antebi, Building Official states among other things that “work is denied” stating: “the proposed covering on the East Elevation within the wrap around does not encompass the front elevation; this Cosmetic approach (hiding the deficiency) is not an acceptable solution. A comprehensive excavation and drainage approach will provide the foundation exposure required for compliance; One Option to consider: 1) Raise the level of the Porch and raising the threshold of the Front Door by six inches. 2) Lower the Driveway by six inches. See attached sketch.”

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: CD No. 15 (Conservation District)  
North: CD No. 15 (Conservation District)  
South: CD No. 15 (Conservation District)  
East: CD No. 15 (Conservation District)  
West: CD No. 15 (Conservation District)

### **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:**

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

### **Timeline:**

- September 12, 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.
- October 14, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- October 18, 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 October 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the November 4<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - the outline of procedure for appeals from decisions of the building official to the board of adjustment; and
  - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”
- November 1, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Assistant Director, the Acting Building Official, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.

### **STAFF ANALYSIS:**

- The applicant is requesting the Board of Adjustment to overturn or reverse the Building Official’s decision of September 2, 2011 to deny an application for a Department of Sustainable Development and Construction Conservation District Work Review Form on the subject site – specifically a “Conservation District Work Review Form” dated 8-8-2011 for property at 5541 Richard Avenue.
- If the Board of Adjustment denies the applicant’s request and upholds the Building Official’s September 2<sup>nd</sup> decision, the application for a Department of Sustainable Development and Construction Conservation District Work Review Form on the subject site – specifically a “Conservation District Work Review Form” dated 8-8-2011, will remain denied.
- If the Board of Adjustment approves the applicant’s request and overturns the Building Official’s September 2<sup>nd</sup> decision, the application for a Department of Sustainable Development and Construction Conservation District Work Review

Form on the subject site – specifically a “Conservation District Work Review Form” dated 8-8-2011, will be approved.

**BOARD OF ADJUSTMENT ACTION: NOVEMBER 14, 2011**

APPEARING IN FAVOR: Mike Coker, 2700 Swiss Ave., Dallas, TX

APPEARING IN OPPOSITION: No one

APPEARING FOR THE CITY: David Cossum, Asst. Dir., 1500 Marilla 5BN, Dallas, TX

MOTION: **Coulter**

Having fully reviewed the decision of the City of Dallas Building Official in Appeal No. **BDA 101-108**, on application of Staci Howie, represented by Michael R. Coker, and having evaluated the evidence pertaining to the property and heard all testimony and facts supporting the application, I move that the Board of Adjustment **reverse** the decision of the building official and **grant** the relief requested by this applicant.

SECONDED: **Maten**

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

NAYS: 0 –

MOTION PASSED: 5– 0

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MOTION: **Maten**

I move to adjourn this meeting.

SECONDED: **Moore**

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

NAYS: 0 - None

MOTION PASSED: 5 – 0 (Unanimously)

**2:44 P. M.** - Board Meeting adjourned for **November 14, 2011.**

\_\_\_\_\_  
CHAIRPERSON

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

\_\_\_\_\_  
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.