

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
MONDAY, DECEMBER 13, 2010**

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, Bert Vandenberg, Asst. City Attorney, Donnie Moore, Chief Planner, Todd Duerksen, Development Code Specialist, Jerry Svec, Traffic Engineer, Phil Erwin, Chief Arborist and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Bert Vandenberg, Asst. City Attorney, Donnie Moore, Chief Planner, Todd Duerksen, Development Code Specialist, Jerry Svec, Traffic Engineer, Phil Erwin, Chief Arborist and Trena Law, Board Secretary

10:00 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **December 13, 2010** docket.

1:01 P.M.

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

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel C November 15, 2010 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: DECEMBER 13, 2010

MOTION: Moore

I move **approval** of the Monday, **November 15, 2010** public hearing minutes.

SECONDED: Coulter

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

Reconsideration of Board of Adjustment Panel C’s 2011 public hearing schedule.

BOARD OF ADJUSTMENT ACTION: DECEMBER 13, 2010

MOTION #1: Coulter

I move to suspend the rules to allow for reconsideration of the Board of Adjustment Panel C’s 2011 public hearing schedule that was adopted at last month’s hearing.

SECONDED: Maten

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

MOTION #2: Coulter

I move to reconsider the Board of Adjustment Panel C’s 2011 public hearing schedule that was adopted at last month’s hearing and move the hearing from Monday, February 14, 2011 to **Thursday, February 17, 2011.**

SECONDED: Maten

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 090-110

BUILDING OFFICIAL'S REPORT:

Application of Robert Reeves of Robert Reeves and Associates for a special exception to the parking regulations at 3910 Gaston Avenue. This property is more fully described as Lot 4A in City Block A/777 and is zoned PD No. 298 which requires parking to be provided. The applicant proposes to construct and maintain a structure for residential (PD 298, Exhibit 298E, 4.209 "Residential Uses"), medical clinic, office, general merchandise or food store 3500 square feet or less with a maximum combined floor area of 13,230 square feet, and restaurant without drive-in or drive-through service uses with a maximum combined floor area of 2,000 square feet, and provide 107 of the required 133 parking spaces which will require a special exception of 26 spaces.

LOCATION: 3910 Gaston Avenue

APPLICANT: Robert Reeves of Robert Reeves and Associates

December 13, 2010 Public Hearing Notes:

- The Building Inspection Senior Plans Examiner/Development Code Specialist suggested at the briefing that if the board were to grant the request, that they not impose the condition that the special exception of 26 spaces be based on at least 41 parking spaces being made available for property at any specific location including but no limited to property located at 3911 Gaston Avenue.

REQUEST:

- A special exception to the off-street parking regulations of 26 parking spaces (or a 20 percent reduction of the required off-street parking) is requested in conjunction with leasing an existing approximately 26,000 square foot building with a mix of residential, medical clinic, office, and retail uses, and providing 107 of the required 133 off-street parking spaces.

STAFF RECOMMENDATION:

Approval, subject to the following conditions:

- 1) The special exception shall automatically and immediately terminate if and when a certificate of occupancy is issued for a use other than a restaurant, retail, office, medical clinic, or residential use.
- 2) The special exception of 26 spaces is based on at least 41 parking spaces being made available for property located at 3911 Gaston Avenue.

- 3) The special exception of 26 spaces shall apply to residential uses, medical clinic uses, offices uses, and up to 13,230 square feet of retail uses, and up to 2,000 square feet of restaurant uses.

Rationale:

- The Sustainable Development Department Project Engineer has no objections to this request given previous history on the subject site, and the different peak parking demand due to the variety of uses proposed on the site.
- The applicant has substantiated how the parking demand generated by the restaurant, retail, office, medical clinic, and residential use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

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

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

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

GENERAL FACTS:

- The off-street parking requirements applicable to this application are as follows:
 - 1 space per every 500 square feet of residential use;
 - 1 space per every 333 square feet of office use;
 - 1 space per every 200 square feet of medical clinic use;
 - 1 space per every 200 square feet of retail use; and
 - 1 space per every 100 square feet of restaurant use.

The applicant proposes to provide 107 spaces (or 80% of the total required 133 parking spaces). The applicant has requested that the board grant a special exception of 26 spaces to apply to medical clinic uses; office uses; up to 13,230 square feet of retail uses; up to 2,000 square feet of restaurant uses; and residential uses.
- Except for restaurant use, the parking requirement for retail, office, and residential uses are equal to or less than the parking requirement for medical clinic use.
- The applicant is suggesting that the board impose the following conditions to his request:
 1. The special exception shall automatically and immediately terminate if and when a certificate of occupancy is issued for a use other than a restaurant, retail, office, medical clinic, or residential use.
 2. The special exception of 26 spaces is based on at least 41 parking spaces being made available at 3911 Gaston Avenue.
 3. The special exception of 26 spaces shall apply to residential uses, medical clinic uses, office uses, and up to 13,230 square feet of retail uses, and up to 2,000 square feet of restaurant uses.

Zoning:

Site: PD No. 298 (Planned Development)

North: PD No. 298 (Planned Development)
South: PD No. 298 (Planned Development)
East: PD No. 298 (Planned Development)
West: PD No. 298 (Planned Development)

Land Use:

The subject site is developed with an approximately 26,000 square foot structure. The areas to the north, east, south, and west are developed with a mixture of retail, office, and parking uses.

Zoning/BDA History:

1. BDA 045-272, 3910 Gaston (the subject site)

On March 15, 2005, the Board of Adjustment Panel C granted a request for a special exception to parking regulations of 26 spaces. The board imposed the following conditions: The special exception shall automatically and immediately terminate if and when the restaurant, retail, office, medical clinic, and residential uses on the site are changed or discontinued; the special exception of 26 spaces shall be tied to the City's parking agreement which allows for at least 41 extra spaces being made available on 3911 Gaston Avenue; and a copy of the parking agreement shall be submitted to the Board's Administrator once executed; and the special exception of 26 spaces shall apply to residential uses, medical clinic uses, offices uses, and up to 13,230 square feet of retail uses, and up to 2,000 square feet of restaurant uses.

The case report states that the request was made in conjunction in conjunction with converting an existing vacant 26,712 square foot building from being exclusively used for medical clinic use to being used with a mix of uses including medical clinic, office, restaurant, retail, and residential uses.

2. BDA034-136, 3910 Gaston (the subject site)

On March 15, 2004, the Board of Adjustment Panel C granted a request for a special exception to parking regulations of 26 spaces. The board imposed the following conditions: the special exception

of 26 spaces shall automatically and immediately terminate if and when the medical clinic use on the site is changed or discontinued; the special exception of 26 spaces shall be tied to the City's parking agreement which allows for at least 41 extra spaces being made available on 3911 Gaston Avenue; and a copy of the parking agreement shall be submitted to the Board's Administrator once executed. The case report states that the request was made in conjunction with converting an existing 26,712 square foot building from an office use to a medical clinic use.

Timeline:

- Sept. 23, 2010: 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 21, 2010: 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."
- November 3, 2010: 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 November 29th deadline to submit additional evidence for staff to factor into their analysis; and the December 3rd deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- November 30, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for December public hearing. Review team members in attendance included: the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

December 2, 2010: The Sustainable Development Department Project Engineer submitted a review comment sheet marked “Has no objections” commenting “previous history – different peak parking demands due to variety of uses.”

STAFF ANALYSIS:

- This request focuses with leasing an existing approximately 26,000 square foot building with a mix of residential, medical clinic, office, and retail uses, and providing 107 (or 80 percent) of the required 133 off-street parking spaces.
- The applicant informed the Board Administrator that this parking reduction special exception request is virtually the same request as what was granted on the subject site in 2005 (BDA045-272) but returns nonetheless mainly because the previous special exception granted by the board five years ago terminated when the owner of the property applied for a Certificate of Occupancy (CO) for a use other than what was listed/conditioned by the board in granting this application– the owner applied for a CO for an office/showroom/warehouse use in 2006 (which has since been removed), and the uses imposed in conjunction with this granted 2005 application were limited to restaurant, retail, office, medical clinic, and office uses – not office/showroom/warehouse use.
- This request for a 26 space parking reduction where 107 of 133 required spaces are proposed to be provided is very similar to an off-street parking space special exception of 26 spaces where 108 of required 134 spaces was granted on the subject site by Board of Adjustment Panel C in August of 2005 (BDA045-272) – an application made in conjunction with converting (at the time) an existing vacant 26,712 square foot building from being exclusively used for medical clinic use to being used with a mix of uses including medical clinic, office, restaurant, retail, and residential uses; and an application where the board imposed the following conditions: 1: The special exception shall automatically and immediately terminate if and when the restaurant, retail, office, medical clinic, and residential uses on the site are changed or discontinued; 2: the special exception of 26 spaces shall be tied to the City’s parking agreement which allows for at least 41 extra spaces being made available on 3911 Gaston Avenue; and 3: a copy of the parking agreement shall be submitted to the Board’s Administrator once executed; and 4: the special exception of 26 spaces shall apply to residential uses, medical clinic uses, offices uses, and up to 13,230 square feet of retail uses, and up to 2,000 square feet of restaurant uses.
- The current request for a 26 parking space special exception reduction is made to maintain a 25,942 square foot structure which would be used for residential uses, medical clinic uses, office uses up to 13,230 square feet of retail uses, and up to 2,000 square feet of restaurant uses requiring 133 parking spaces. The applicant is offering to comply with the following conditions: 1) The special exception shall automatically and immediately terminate if and when a certificate of occupancy is issued for a use other than a restaurant, retail, office, medical clinic, and residential use; 2) the special exception of 26 spaces is based on at least 41 parking spaces being made available on 3911 Gaston Avenue; and 3) the special exception of 26

spaces shall apply to residential uses, medical clinic uses, offices uses, and up to 13,230 square feet of retail uses, and up to 2,000 square feet of restaurant uses.

- The differences between the current request and the previously approved request (BDA045-272) on the subject site are as follows: 1) a slight difference in the square footages of the existing building (25,942 square feet in the current request verses 26,712 square feet in the previous request); 2) a slight difference in the number of spaces provided/required (107 of 133 spaces in the current request verses 108 of 134 in the previous application), and 3) a slight modification to conditions being offered in the current request from what were conditions imposed in the previous request.
- The Sustainable Development Department Project Engineer has no objections to this request citing “previous history – different peak parking demands due to variety of uses.”
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the proposed uses on the site does not warrant the number of off-street parking spaces required, and
 - The special exception of 26 spaces (or a 20 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, subject to the conditions previously mentioned in this case report, the applicant would be allowed to develop/maintain the site if these certain conditions are met, and provide only 107 of the 133 code required off-street parking spaces.

BOARD OF ADJUSTMENT ACTION: DECEMBER 13, 2010

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Moore**

I move that the Board of Adjustment grant application **BDA 090-110** 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 special exception shall automatically and immediately terminate if and when a certificate of occupancy is issued for a use other than a restaurant, retail, office, medical clinic, or residential use.
- The special exception of 26 spaces shall apply to residential uses, medical clinic uses, office uses, and up to 13,230 square feet of retail uses, and up to 2,000 square feet of restaurant uses.

SECONDED: **Coulter**

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

NAYS: 0 –
MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 101-006

BUILDING OFFICIAL'S REPORT:

Application of Lisa Brinser for a special exception to the fence height regulations at 10726 Webster Terrace. This property is more fully described as Lot 9 in City Block D/ 6154 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 an 8 foot 6 inch high fence which will require a special exception of 4 feet 6 inches.

LOCATION: 10726 Webster Terrace

APPLICANT: Lisa Brinser

REQUEST:

- A special exception to the fence height regulations of to 4' 6" is requested in conjunction with constructing and maintaining an 8' high board on board fence/wall with 8' 6" high pickets to be located in one of the site's two 40' required front yards on a site developed with a single family home - Morning Glory Drive.

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The subject site is located at the intersection of Webster Terrace and Morning Glory Drive. Even though the Webster Terrace frontage of the subject site functions as its front yard and the Morning Glory Drive frontage functions as its side yard, the subject site has two 40' required front yards created by platted building lines along both streets. The site has a 40' required front yard along Webster Terrace (the shorter of the two frontages which is always deemed a front yard on a corner lot in a single family zoning district), and a 40' required front yard along Morning Glory Drive (the longer of the two frontages of this corner lot which would typically be regarded as a side yard where a 9' high fence could be maintained by right). The site's Morning Glory Drive frontage is deemed a front yard nonetheless in order to

maintain the continuity of the established required front yard established by the lots northeast of the site that front/are oriented southeastward onto Morning Glory 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 a partial elevation indicating that the proposal in the 40' Morning Glory Drive required front yard reaches a maximum height of 8' 6". (No fence is proposed to be constructed/maintained in the subject site's 40' Webster Terrace required front yard).
- The following additional information was gleaned from the submitted site plan:
 - The proposal located in the Morning Glory Drive required front yard over 4' in height is approximately 170' in length parallel to the street and approximately 40' in length *perpendicular* to Morning Glory Drive on the northeast and southwest sides of the site in the required front yard.
 - The proposal is shown to be located on the site's Morning Glory Drive front property line or 16' from the curb line.
- Three single family home "front" to the proposed fence on the subject site none with fences.
- 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.

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:

October 28, 2010: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

November 10, 2010: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

November 11, 2010: 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 November 29th deadline to submit additional evidence for staff to factor into their analysis; and the December 3rd deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

November 30, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for December public hearing. Review team members in attendance included: the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

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

December 2, 2010: 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: “Must comply with all C.O.D visibility requirements.”

STAFF ANALYSIS:

- This request focuses on constructing and maintaining an 8’ high board on board fence/wall with 8’ 6” high pickets to be located in the one of the site’s two 40’ required front yards on a site developed with a single family home - . Morning Glory Drive.
- The proposal that is the issue of this request is located on a site that has two required front yards – one required front yard on Webster Terrace (where no fence is proposed); the other required front yard on Morning Glory Drive (where the proposed fence that is the issue of this request would reach 8’ 6” at its highest point).
- Regardless of the way the subject site’s Morning Glory Drive frontage functions as the site’s side/rear yard, this Morning Glory Drive frontage is technically deemed a

required front yard nonetheless in order to maintain the continuity of the established required front yard established by the lots northeast of the site that front/are oriented southeastward onto Morning Glory Drive.

- The submitted site plan and partial elevation documents the location, height, and material of the fence over 4' in height in the Morning Glory Drive required front yard. The site plan shows the fence to be approximately 170' in length parallel to Morning Glory Drive and approximately 40' in length *perpendicular* to Morning Glory Drive on the northeast and southwest sides of the site in the required front yard; and to be located on the site's Morning Glory Drive front property line or 16' from the curb line. The partial elevation shows that the proposed fence to be board on board and 8' 6" high pickets.
- Three single family home "front" to the proposed fence on the subject site none with fences.
- 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 required front yard.
- As of December 6, 2010, no letters had been submitted in support or in opposition to the proposal.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' 6" (whereby the proposal would reach a maximum of 8' 6" in height in the site's Morning Glory Drive required front yard) will not adversely affect neighboring property.
- Granting this special exception of 4' 6" with a condition imposed that the applicant complies with the submitted site plan and partial elevation would assure that the proposal exceeding 4' in height in the Morning Glory Drive 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: DECEMBER 13, 2010

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Moore**

I move that the Board of Adjustment grant application **BDA 090-106** 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 partial elevation is required.

SECONDED: **Coulter**

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

NAYS: 0 –
MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 101-007

BUILDING OFFICIAL’S REPORT:

Application of Mark Sadler of Hinojosa Architects for a special exception to the parking regulations at 2400 Lone Star Drive. This property is more fully described as Tract 1 in City Block C/6158 and is zoned IR which requires parking to be provided. The applicant proposes to construct and/or maintain a structure for a retail and personal service/animal shelter or clinic use and provide 186 of the required 248 parking spaces which will require a special exception of 62 spaces.

LOCATION: 2400 Lone Star Drive

APPLICANT: Mark Sadler of Hinojosa Architects

December 13, 2010 Public Hearing Notes:

- The Board Administrator circulated a revised review comment sheet to the board at the briefing from the Sustainable Development Department Project Engineer marked “Has no objections if certain conditions are met” commenting “Update: We made a mistake using 26 spaces instead of 62 spaces. The condition to restrict the use of the second floor to “dead file storage” only needs to restrict the entire floor (18,000 square feet) not just the 8,000 square feet as I originally suggested. This would still leave a 2 spaces deficiency which I can support.”

REQUEST:

- A special exception to the off-street parking regulations of 62 parking spaces (or a 25 percent reduction of the required off-street parking) is requested primarily in conjunction with transitioning square footage within an existing approximately 74,000 square foot structure built in 1995 from what had been a printing facility or office/manufacturing/warehouse use (The Methodist Reporter) to a slightly expanded approximately 75,000 square foot, higher parking requirement “animal shelter or clinic” use (SPCA of Texas) whereby 186 of the required 248 off-street parking spaces are proposed to be provided.

STAFF RECOMMENDATION:

Approval, subject to the following conditions:

1. The special exception of 62 spaces shall automatically and immediately terminate if and when the animal shelter or clinic use is changed or discontinued.

2. That at least 8,000 square feet of the second floor of the structure is restricted for storage space only as offered by the applicant.

Rationale:

- The Sustainable Development Department Project Engineer has no objections to this request with the condition imposed that “at least 8,000 square feet of the second floor be restricted to dead file storage only.”
- The applicant has substantiated how the parking demand generated by the animal shelter or clinic use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

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

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

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

GENERAL FACTS:

- The Dallas Development Code requires that an “animal shelter or clinic” use provide 1 space per 300 square feet of floor area.
The applicant proposes to provide 186 (or 75 percent) of the required 248 off-street parking spaces in conjunction with the site being developed this use.

BACKGROUND INFORMATION:

Zoning:

Site: IR (Industrial Research)
North: IR (Industrial Research)
South: IR (Industrial Research)
East: IR (Industrial Research)
West: IR (Industrial Research)

Land Use:

The subject site is developed with a nonresidential structure. The areas to the north, east, and west appear to be developed with office and/or office/warehouse uses; and the area to the south is Interstate 30.

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:

October 25, 2010: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

November 10, 2010: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

November 11, 2010: 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 November 29th deadline to submit additional evidence for staff to factor into their analysis; and the December 3rd deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

November 30, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for December public hearing. Review team members in attendance included: the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

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

December 2, 2010: The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" commenting "Condition: At least 8,000 of the second floor be restricted to dead file storage only."

STAFF ANALYSIS:

- This request focuses with primarily transitioning square footage within an existing approximately 74,000 square foot structure built in 1995 from what had been a printing facility or office/manufacturing/warehouse use (Methodist Reporter) to a slightly expanded approximately 75,000 square foot, higher parking requirement "animal shelter or clinic" use (SPCA of Texas), and providing 186 of the required 248 parking spaces.
- The applicant relayed to staff that a copy of the approved plan by the City for the previous use on the site (The Methodist Reporter) showed 36,000 square feet devoted to office use (at 3 spaces per 1,000 square feet) or 108 spaces; 18,000 square feet devoted to manufacturing use (at 2 spaces per 1,000 square feet) or 36

spaces; and 18,000 square feet devoted to warehouse use (at 1 space per 1,000 square feet) or 18 spaces for a total parking requirement of the structure has it had been used to be 162 spaces.

- The applicant has conducted a study concluding that the 186 spaces proposed in conjunction with the application is more than adequate to accommodate the estimated 97 cars during peak hours.
- The Sustainable Development Department Project Engineer has no objections to this request on the condition that that “at least 8,000 square feet of the second floor be restricted to dead file storage only.”
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the animal shelter or clinic use on the site does not warrant the number of off-street parking spaces required, and
 - The special exception of 62 spaces (or a 25 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, subject to the conditions previously mentioned in this case report, the applicant would be allowed to develop/maintain the site if these certain conditions are met, and provide only 186 of the 248 code required off-street parking spaces.

BOARD OF ADJUSTMENT ACTION: DECEMBER 13, 2010

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Moore**

I move that the Board of Adjustment grant application **BDA 090-107** 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 special exception of 62 spaces shall automatically and immediately terminate if and when the animal shelter or clinic use is changed or discontinued.
- That at least 18,000 square feet of the second floor of the structure is restricted for storage space only as offered by the applicant.

SECONDED: **Coulter**

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 101-008

BUILDING OFFICIAL’S REPORT:

Application of Zahra Darwish, represented by Gilbert Flores, for special exceptions to the fence height and visual obstruction regulations at 5126 Columbia Avenue. This property is more fully described as Lot 5 in City Block D/1422 and is zoned D(A) which limits the height of a fence in the front yard to 4 feet and requires 20 foot visibility triangles at drive approaches and 45 foot visibility triangles at street intersections. The applicant proposes to construct and/or maintain an 8 foot high fence which will require a special exception of 4 feet to the fence height regulations, and to locate and maintain items in required visibility triangles which will require special exceptions to the visual obstruction regulations.

LOCATION: 5126 Columbia Avenue

APPLICANT: Zahra Darwish
Represented by Gilbert Flores

December 13, 2010 Public Hearing Notes:

- The Board of Adjustment heard testimony at the hearing and delayed action on this application until their February 2011 hearing to allow the applicant an opportunity to reconsider/redesign the fence/column proposal in the site's Columbia Avenue front yard setback and in the 45 foot Columbia Avenue/St. Mary Avenue visibility triangle.

REQUESTS:

- The following appeals have been made in this application on a site that is currently developed with a single family home:
 1. Special exceptions to the fence height regulations of 4' are requested in conjunction with:
 - completing and maintaining a 6' high fence (2' high brick base retaining wall with 4' high iron pickets atop) with 6' high brick columns most of which is proposed to be completed/located in the site's 25' Columbia Avenue front yard setback; and
 - maintaining an 8' high solid wood fence and vehicular gate in the site's 25' St. Mary Avenue front yard setback; and
 2. Special exceptions to the visual obstruction regulations are requested in conjunction with:
 - completing and maintaining a 6' high fence (2' high brick base retaining wall with 4' high iron pickets atop) with 6' high brick columns located in the 45' visibility triangle at the intersection of Columbia Avenue and St. Mary Avenue; and
 - maintaining an 8' high solid wood fence located in the 20' visibility triangles located on both sides of two driveways into the site from St. Mary Avenue, and located in the 20' visibility triangle at the intersection of the alley and St. Mary Avenue.

STAFF RECOMMENDATION (fence height special exceptions):

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.

STAFF RECOMMENDATION (visual obstruction special exceptions):

Denial of the requests

Rationale:

- The Sustainable Development and Construction Department Project Engineer recommends that these requests be denied.
- The applicant has not substantiated how the location of the existing/proposed items in the visibility triangles does not constitute a traffic hazard.

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.

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 (fence height special exceptions):

- The subject site is located at the south corner of Columbia Avenue and St. Mary Avenue. Even though the Columbia Avenue frontage of the subject site functions as its front yard and the St. Mary Avenue frontage functions as its side yard, the subject site has two 25' front yard setbacks along both streets. The site has a 25' front yard setback along Columbia Avenue (the shorter of the two frontages which is always deemed the front yard setback on a corner lot in a single family or duplex zoning district), and a 25' front yard setback along St. Mary Avenue (the longer of the two frontages of this corner lot which would typically be regarded as a side yard where a 9' high fence could be maintained by right). The site's St. Mary Avenue frontage is deemed a front yard setback nonetheless in order to maintain the continuity of the established front yard setback established by the one lot southeast of the site between Columbia Avenue and East Side Avenue that fronts/is oriented northeastward onto St. Mary Avenue.
- 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 two partial elevations indicating that the proposal in the 25' Columbia Avenue front yard setback reaches a maximum height of 6' and the proposal in the 25' St. Mary Avenue front yard setback reaches a maximum height of 8'.

- The following additional information was gleaned from the submitted site plan regarding the fence proposal along Columbia Avenue:
 - The proposal is approximately 50' in length parallel to the street and approximately 25' in length *perpendicular* to Columbia Avenue on the southwest and northeast sides of the site in this front yard setback.
 - The proposal is shown to be located approximately 3' from the Columbia Avenue front property line or about 12' from the curb line.
- No single family home "fronts" to the proposed Columbia Avenue fence on the subject site.
- The Board Administrator conducted a field visit of the site and surrounding area along Columbia Avenue and noted no other fences above four (4) feet high which appeared to be located in a front yard setback.
- The following additional information was gleaned from the submitted site plan regarding the fence proposal along St. Mary Avenue:
 - The proposal is approximately 180' in length parallel to the street and approximately 25' in length *perpendicular* to St. Mary Avenue on the northwest and southeast sides of the site in this front yard setback. (Approximately 15' of the proposal along this frontage is the 6' high open iron/brick base fence to be completed and maintained, and the remaining 165' of the proposal along this frontage is the 8' high solid wood fence to be maintained).
 - The proposal is shown to be located approximately on the St. Mary Avenue front property line or about 7' from the curb line.
- One single family home "fronts" to the St. Mary Avenue proposal on the subject site.
- The Board Administrator conducted a field visit of the site and surrounding area along St. Mary Avenue and noted one fence above four (4) feet high which appeared to be located in a front yard setback – a solid board fence approximately 7' high immediately northeast of the subject site with no recorded Board of Adjustment history.

GENERAL FACTS (visual obstruction special exceptions):

- 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 intersections and 20-foot visibility triangles at drive approaches); and
 - between 2.5 – 8 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 and partial elevations have been submitted that show a portion of the 6' high fence (2' high brick base retaining wall with 4' high iron pickets atop) with 6'

high brick columns located in the 45' visibility triangle at the intersection of Columbia Avenue and St. Mary Avenue, and portions of the 8' high solid wood fence located in the 20' visibility triangles located on the both sides of two driveways into the site from St. Mary Avenue, and located in the 20' visibility triangle at the intersection of the alley and St. Mary Avenue.

BACKGROUND INFORMATION:

Zoning:

Site: D(A) (Duplex)
North: MF-2(A) (Multifamily district)
South: D(A) (Duplex)
East: D(A) (Duplex)
West: D(A) (Duplex)

Land Use:

The subject site is developed with a single family home. The areas to the north, east, and west are developed with multifamily uses, and the area to the south is developed with what appears to be single family use.

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:

- October 28, 2010: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- November 10, 2010: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- November 11, 2010: 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 November 29th deadline to submit additional evidence for staff to factor into their analysis; and the December 3rd deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

November 30, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for December public hearing. Review team members in attendance included: the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

December 2, 2010: The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" commenting "Must comply with all C.O.D. visibility requirements, except existing porch facing Columbia may remain. Alley is paved and used, and traffic volumes are too high to approve any visibility triangle reductions."

STAFF ANALYSIS (related to the fence height special exceptions):

- These requests focus on completing and maintaining a 6' high fence (2' high brick base retaining wall with 4' high iron pickets atop) with 6' high brick columns most of which is proposed to be completed/located in the site's 25' Columbia Avenue front yard setback; and maintaining an 8' high solid wood fence and vehicular gate in the site's 25' St. Mary Avenue front yard setback on a site developed with a single family home.
- The proposals that are the issues of these requests are located on a site that has two front yard setbacks – one front yard setback on Columbia Avenue, and another front yard setback on St. Mary Avenue (where the proposed fence and existing fence that are the issues of these requests reach 8' at their highest point).
- Regardless of the way the subject site's St. Mary Avenue frontage functions as the site's side/rear yard, this St. Mary Avenue frontage is technically deemed a front yard setback in order to maintain the continuity of the established front yard setback established by the one lot southeast of the site between Columbia Avenue and East Side Avenue that fronts/is oriented northeastward onto St. Mary Avenue.
- The submitted site plan and partial elevations document the location, height, and materials of the fence over 4' in height in both required front yard setbacks. The site plan shows the fence to be completed and maintained along Columbia Avenue to be approximately 50' in length parallel to the street and approximately 25' in length *perpendicular* to the street on the southwest and northeast sides of the site in this front yard setback; approximately 3' from the front property line or about 12' from the curb line. The site plan shows the fence to be maintained along St. Mary Avenue to be approximately 180' in length parallel to the street and approximately 25' in length *perpendicular* to the street on the northwest and southeast sides of the site in this front yard setback; approximately on the front property line or about 7' from the curb line. The partial elevation shows that the materials and heights of the proposed fence in the Columbia Avenue front yard setback, and the materials and height of the existing fence in the St. Mary Avenue front yard setback.

- No single family home “fronts” to the proposed Columbia Avenue fence on the subject site, and one single family home “fronts” to the St. Mary Avenue proposal on the subject site.
- No other fences above four (4) feet high which appeared to be located in a front yard setback were noted in a field visit of the site and surrounding area by the Board Administrator along Columbia Avenue; and one fence above four (4) feet high which appeared to be located in a front yard setback (a solid board fence approximately 7’ high immediately northeast of the subject site) was noted along St. Mary Avenue with no recorded Board of Adjustment history.
- As of December 6, 2010, 2 letters had been submitted to staff in support of the application, and no letters had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exceptions to the fence height regulations of 4’ will not adversely affect neighboring property.
- Granting these special exceptions of 4’ with a condition imposed that the applicant complies with the submitted site plan and partial elevations would provide assurance that the proposal exceeding 4’ in height would be completed and/or remain located and maintained in the location and of the heights and materials as shown on these documents.
- Note that if the board were to grant these requests and impose the submitted site plan and partial elevations as a condition, but deny any or all of the requests for the special exceptions to the visual obstruction regulations, notations would be made of such action on the submitted plans whereby the location of the items in any such visibility triangle would not be “excepted.”

STAFF ANALYSIS (related to the visual obstruction special exceptions):

- These requests focus on completing and maintaining a 6’ high fence (2’ high brick base retaining wall with 4’ high iron pickets atop) with 6’ high brick columns located in the 45’ visibility triangle at the intersection of Columbia Avenue and St. Mary Avenue; and maintaining an 8’ high solid wood fence located in the 20’ visibility triangles located on the both sides of two driveways into the site from St. Mary Avenue, and located in the 20’ visibility triangle at the intersection of the alley and St. Mary Avenue.
- The Sustainable Development and Construction Department Project Engineer recommends that these requests be denied stating that the site “must comply with all C.O.D. visibility requirements, except existing porch facing Columbia may remain. Alley is paved and used, and traffic volumes are too high to approve any visibility triangle reductions.” (Note that according to the submitted site plan, the porch the engineer refers to is not located in a visibility triangle).
- The applicant has the burden of proof in establishing that granting the requests for special exceptions to the visual obstruction regulations to the 45’ visibility triangle at the Columbia Avenue/St. Mary Avenue intersection and to the 20’ visibility triangles located on both sides of the two driveways and at the alley/St. Mary Avenue intersection will not constitute a traffic hazard.
- If the Board chooses to grant any/all of these requests, subject to compliance with the submitted site plan and partial elevations, the items shown on these documents would be “excepted” into the applicable visibility triangles.

- Note that if the board were to grant any/all of these requests and impose the submitted site plan and partial elevations as a condition, but deny one or both of the requests for special exceptions to the fence height regulations, notations would be made of such action on the submitted documents whereby the height of one or both such fence higher than 4' in the front yard setback would not be "excepted."

BOARD OF ADJUSTMENT ACTION: DECEMBER 13, 2010

APPEARING IN FAVOR: Zahra Darwish, 5126 Columbia Ave., Dallas, TX

APPEARING IN OPPOSITION: Jose Nieto, 5213 Eastside, Dallas, TX

MOTION #1: Maten

I move that the Board of Adjustment, in Appeal No. **BDA 101-008**, on application of Zahra Darwish, **grant** the request of this applicant to maintain fences in the visibility triangles at the intersection of St. Marys and the rear alley, the intersection of St. Marys and Columbia, and at the driveway approaches as special exceptions to the visual obstruction regulations contained 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:

- The brick columns and the fence be moved back three feet on a site plan to be submitted to the city.
- Compliance with the submitted site plan and partial elevations is required.

SECONDED: **No one**

***Motion Failed for Lack of a Second**

MOTION #2: Maten

I move that the Board of Adjustment in Appeal No. **BDA 101-008**, hold this matter under advisement until **February 17, 2011**.

SECONDED: **Coulter**

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 101-005

BUILDING OFFICIAL'S REPORT:

Application of Mostafa Setayesh for a special exception to the landscape regulations and a variance to the front yard setback regulations at 9351 L.B.J. Freeway. This property is more fully described as Lot 4 in City Block B/8413 and is zoned MU-1 which requires mandatory landscaping and a front yard setback of 15 feet. The applicant proposes to construct and maintain a structure and provide an alternate landscape plan which will require a special exception to the landscape regulations, and provide a 5 foot front yard setback which will require a variance of 10 feet to the front yard setback regulations.

LOCATION: 9351 L.B.J. Freeway

APPLICANT: Mostafa Setayesh

December 13, 2010 Public Hearing Notes:

- The Board Administrator circulated a revised site/landscape plan to the Board at the briefing – a plan dated 12-06-10 prepared by the applicant that incorporated comments mentioned on December 3rd by the City of Dallas Chief Arborist.

REQUESTS:

- The following appeals have been made in this application on a site that is currently developed with a vacant gas station/convenience store use/structure:
 1. A special exception to the landscape regulations is requested in conjunction with constructing and maintaining an approximately 2,000 square foot gas station/convenience store structure and not fully meeting the city's landscape regulations; and
 2. A variance to the front yard setback regulations of 10' is requested in conjunction with constructing and maintaining an approximately 170 square foot "dumpster enclosure" structure, part of which is to be located in the site's 15' front yard setback along Abrams Road.

STAFF RECOMMENDATION (landscape special exception):

Approval, subject to the following condition:

- Compliance with the submission of a revised site/landscape plan is required that adds the following two provisions/notations to the submitted site/landscape plan dated 12-01-10:
 1. Screening shrubs must be large evergreen shrubs capable of obtaining a solid appearance and of a height at least 36 inches within three years of initial planting. The shrubs must be planted in a bed at least three feet wide and within eight feet of the property line prior to a final landscape inspection; and

2. All required plant materials must be irrigated by an automatic irrigation system installed to comply with industry standards. All required plant materials must be maintained in a healthy, growing condition at all times.

Rationale:

- The City's Chief Arborist supports the request with the conditions mentioned above imposed in conjunction with the request.
- The applicant has substantiated how strict compliance with the requirements of the Landscape Regulations of the Dallas Development Code will unreasonably burden the use of the property; and that the special exception will not adversely affect neighboring property. In this case the applicant is not able to fully meet the landscape requirements on the property largely given mandatory lot reductions caused by TXDOT land acquisition on the subject site, and has submitted an alternate plan that the City of Dallas Chief Arborist feels is a reasonable alternative with the additional provisions mentioned above.

STAFF RECOMMENDATION (variance):

Approval, subject to the following condition:

- Compliance with the submitted revised site plan dated 12-01-10 is required.

Rationale:

- The subject site is unique and different from most lots MU-1 zoned lots in that it is irregular in shape and will be reduced in size by approximately 8,000 square feet (from about 23,500 square feet to about 15,000 square feet) after TXDOT right of way widening of Abrams Road along the east side of the subject site.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

The board may grant a special exception to the landscape regulations of this article upon making a special finding from the evidence presented that:

- (1) strict compliance with the requirements of this article will unreasonably burden the use of the property;
- (2) the special exception will not adversely affect neighboring property; and
- (3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

In determining whether to grant a special exception, the Board shall consider the following factors:

- the extent to which there is residential adjacency;
- the topography of the site;
- the extent to which landscaping exists for which no credit is given under this article; and
- the extent to which other existing or proposed amenities will compensate for the reduction of landscaping.

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:

- (A) 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;
- (B) the variance is necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and
- (C) the variance is not granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

GENERAL FACTS (landscape special exception):

- The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period.
A revised alternate landscape plan has been submitted (see Attachment A) which according to the City of Dallas Chief Arborist is deficient from meeting the landscape requirements of Article X.
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Chief Board of Adjustment Planner (see Attachment C). The memo stated the following:
 - The applicant is requesting a special exception to the landscape requirements of Article X: The Landscape Regulations.
 - Trigger:
New construction on realigned property initiated after State land acquisition.
 - Deficiencies – the proposed landscape plan is deficient street trees, parking lot trees and one design standard.
 - Factors for consideration:
 - The mandatory lot reduction has caused the need for a smaller floor area structure with a large expanse of pavement for safe vehicle maneuvering and parking on the lot for the proposed use. Possible landscaping areas have been reduced to minimal areas.
 - The applicant has provided four small trees on the property that will provide the required site trees without conflicting with possible future utilities.
 - The applicant proposes a row of evergreen shrubs to be planted outside the lot to provide low-level screening. TXDOT has provided written authorization

for landscape improvements in the parkway. Article X does not allow design standards (screening of off-street parking) outside of a lot, but, in my opinion, the screening meets the intent of the ordinance. I recommend to allow for a flexibility in the placement of screening shrubs based on uncertainties for the location of a future sidewalk. Their proposal does not place the sidewalk as a part of their landscape request but is shown for informational purposes. I recommend the shrubs be placed between the property line and the future sidewalk.

- The applicant has proposed a hardscape enhanced vehicular pavement for the lot in compliance with Article X design standards.
- The proposal does not provide for a large canopy tree for the parking lot requirements. The limited site conditions and the uncertainty for future utility installations with any road construction suggests that the proposed crepe myrtles are a greater option for this location. The proposed scale of landscaping is appropriate for the location and size of the lot and the availability of landscape area.
- Recommendation
 - Approval with the following conditions:
 - Screening shrubs must be large evergreen shrubs capable of obtaining a solid appearance and of a height at least 36 inches within three years of initial planting. The shrubs must be planted in a bed at least three feet wide and within eight feet of the property line prior to a final landscape inspection.
 - All required plant materials must be irrigated by an automatic irrigation system installed to comply with industry standards. All required plant materials must be maintained in a healthy, growing condition at all times.

GENERAL FACTS (variance):

- The minimum front yard setback on an MU-1 zoned lot is 15 feet. The applicant has submitted a revised site plan (see Attachment A) indicating that the structure that is the focus of this application is located about 6' from the site's front property line along Abrams Road or about 9' into the required 15' front yard setback.
- According to calculations taken by the Board Administrator from the submitted revised site plan, the area of the proposed "dumpster enclosure" structure that is to be located in the site's Abrams Road 15' front yard setback is approximately 110 square feet (or approximately 2/3) of the approximately 170 square foot building footprint.
- The site is relatively flat, irregular in shape, and (according to a submitted plat map) 0.5386 acres or 23,459 square feet in area. The applicant has submitted another document of the property "after taking" (in reference to TXDOT right of way widening of Abrams Road) indicating that the site will be 0.3538 acres or 15,412 square feet in area.
- DCAD records indicate that the site is developed with a 460 square foot "canopy service station" built in 1977.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	MU-1 (Mixed use)
<u>North:</u>	MU-1 (Mixed use)
<u>South:</u>	MU-1 (Mixed use)
<u>East:</u>	LO-1 (Limited office)
<u>West:</u>	MU-1 (Mixed use)

Land Use:

The subject site is developed with a vacant service station use. The areas to the north and west are developed with retail uses; the area to the east is developed with office uses; and the area to the south is the LBJ Freeway.

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:

October 29, 2010: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

November 10, 2010: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

November 16, 2010: 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 November 29th deadline to submit additional evidence for staff to factor into their analysis; and the December 3rd deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

November 30, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for December public hearing. Review team members in attendance included: the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the

City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

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

It was discovered immediately before this meeting that the applicant would be required to request a variance to the front yard setback regulations for a “dumpster enclosure” structure that was shown to be located in the site’s Abrams Road front yard setback. The applicant added this request which prompted a revised Building Official’s report (see Attachment B).

December 2, 2010: 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: “Must comply with all C.O.D visibility requirements.”

December 3, 2010: The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment C).

STAFF ANALYSIS (landscape special exception):

- This request focuses on constructing and maintaining an approximately 2,000 square foot gas station/convenience store structure (which would replace a vacant gas station/convenience store structure) and being “excepted” from fully meeting the City’s landscape regulations.
- An alternate landscape plan has been submitted whereby the applicant seeks an exception from the landscape requirements with regard to required street trees, parking lot trees, and design standards.
- The City of Dallas Chief Arborist supports the request (with the condition that the applicant add certain provisions previously mentioned in this case report to his revised 12-01-10 site/landscape plan) largely given the mandatory lot reduction of the site caused by TXDOT right of way widening of Abrams Road which in turn precludes the applicant from fully meeting the City’s landscape regulations.
- The applicant has the burden of proof in establishing the following:
 - Strict compliance with the requirements of the Landscape Regulations of the Dallas Development Code will unreasonably burden the use of the property; and
 - The special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose a condition mentioned previously in this case report, the site would be “excepted” from compliance with the street trees, parking lot trees, and design standard requirements of Article X: The Landscape Regulations.

STAFF ANALYSIS (variance):

- The focus of this request is to construct and maintain an approximately 170 square foot “dumpster enclosure” structure that is to be located about 6’ from the Abrams Road front property line or about 9’ into the site’s this 15’ front yard setback.
- According to calculations taken by the Board Administrator from the submitted revised site plan, the area of the proposed “dumpster enclosure” structure that is to be located in the site’s Abrams Road 15’ front yard setback is approximately 110 square feet (or approximately 2/3) of the approximately 170 square foot building footprint.
- The site is relatively flat, irregular in shape, and (according to a submitted plat map) 0.5386 acres or 23,459 square feet in area. The applicant has submitted another document of the property “after taking” (in reference to TXDOT right of way widening of Abrams Road) indicating that the site will be 0.3538 acres or 15,412 square feet in area.
- Submitted plat maps of the site before and after the proposed Abrams Road TXDOT widening show that the site will be reduced in size by about 1/3 of its area (or approximately 8,000 square feet). The site that is currently about 23,500 square feet will have about 15,000 square feet after right of way widening.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations requested in conjunction with constructing and maintaining an approximately 170 square foot “dumpster enclosure” structure site 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 MU-1 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 MU-1 zoning classification.
- If the Board were to grant the front yard variance request, imposing a condition whereby the applicant must comply with the submitted revised site plan, the structure in the front yard setback would be limited to what is shown on this plan – which in this case is an approximately 170 square foot “dumpster enclosure” structure located about 6’ from the site’s Abrams Road front property line (or about 9’ into this 15’ front yard setback).

BOARD OF ADJUSTMENT ACTION: DECEMBER 13, 2010

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: Scott Taylor, 4300 Alpha Rd., Dallas, TX

MOTION #1: **Moore**

I move that the Board of Adjustment, in Appeal No. **BDA 101-005**, on application of Mostafa Setayesh, **grant** the request of this applicant to provide an alternate landscape plan as a special exception to the landscape requirements in the Dallas Development Code because our evaluation of the property and the testimony shows that strict compliance with the requirements will unreasonably burden the use of the property; the special exception will not adversely affect neighboring property; and the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council. 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/landscape plan dated 12-6-2010 is required.

SECONDED: Coulter

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

MOTION #2: Moore

I move that the Board of Adjustment, in Appeal No. **BDA 101-005**, on application of Mostafa Setayesh, **grant** the ten-foot variance to the minimum front 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. 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/landscape plan dated 12-6-2010 is required.

SECONDED: Richard

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 101-002

BUILDING OFFICIAL’S REPORT:

Application of Albert Monjaras for a special exception to the side yard setback regulations at 1257 Sleepy Hollow Drive. This property is more fully described as Lot 61 in City Block 5629 and is zoned PD-465 (Area 3) which requires a side yard setback

of 5 feet. The applicant proposes to construct and/or maintain a carport and provide a 1 foot setback which will require a special exception of 4 feet.

LOCATION: 1257 Sleepy Hollow Drive

APPLICANT: Albert Monjaras

December 13, 2010 Public Hearing Notes:

- The Board of Adjustment heard testimony from the applicant at the public hearing, and delayed action on this application until their February 2011 hearing to allow the applicant an opportunity to confirm whether the existing carport was indeed at the distance shown on his submitted plans.

REQUEST:

- The submitted application states that a request is made for a “special exception of 1’ to the side yard setback for a carport” but the site is currently developed with a single family home with an attached carport that appears to be closer than 4’ from the side property line. Given that the Board Administrator was unable to contact the applicant on the phone number submitted on his application, it cannot be determined whether the applicant’s request is to maintain the carport in its current location (with the information on the submitted application and on the submitted site plan being in error), or if the applicant’s request is to modify the existing carport by relocating it in a location that actually provides the setback as stated on the application and as shown on his submitted site plan, floor plan/foundation plan, and elevation plan.

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).

GENERAL FACTS:

- A 5' side yard setback is required in the PD No. 465 (Area 3) zoning district. The applicant has submitted a site plan, floor plan/foundation plan, and elevation plan representing what appears to be a roof line of a "proposed covered porch" (denoted as 1,494 square feet in area) or carport 4' from the site's western side property line or 1' into the 5' side yard setback. The site plan denotes the carport attached to an "existing one story stucco 1,216 sq ft" structure/single family home.
- The following information was gleaned from the submitted site plan and submitted floor plan/foundation plan:
 - The area of what appears to be the location of the carport is represented to be 62' in depth and approximately 12' in width at the side of the single family home. The submitted floor plan/foundation plan represents what appears to be the carport or "proposed covered porch" to be "1,494 square feet." The area of what appears to be the carport as represented on the site plan as being in the 5' side yard setback is 1' wide and 62' in length or 62 square feet in area.
- The following information was gleaned from the submitted elevation plan:
 - Represented to be from 9' – 15' 4 ¾" in height.
- The following information was gleaned from the submitted roof plan:
 - Represented to be of "conventural roof" with 6" x 6" sq. post."
- The subject site is 147' x 50' (or 7,350 square feet) in area.
- According to DCAD, the site is developed with the following:
 - a structure in "very good" condition built in 1952 with 1,216 square feet of living area,
 - a 100 square foot storage building;
 - a 574 square foot attached carport; and
 - a 0 square foot outbuilding.
- The Dallas Development Code provides for the Board of Adjustment to consider special exceptions for *carports* in the side yard with a specific basis for this type of appeal. (Note that the Dallas Development Code does not provide a definition of "carport" however Building Inspection interprets a "carport" to be a structure that would cover a vehicle and be open on at least one side. Building Inspection has recently been interpreting what would appear to a layperson to be a garage without a garage door as a "carport").
- The Dallas Development Code provides for the Board of Adjustment to consider *variances for structures* in the side yard setback with a different basis for appeal than that of *special exceptions for carports* in the side yard setback.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 465 (Planned Development)
North: PD No. 465 (Planned Development)
South: PD No. 465 (Planned Development)
East: PD No. 465 (Planned Development)
West: PD No. 465 (Planned Development)

Land Use:

The subject site is developed with a single family home with an attached carport. The areas to the north, east, and west are developed with single family uses, and the area to the south is developed as a public park.

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:

October 14, 2010: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

November 10, 2010: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

November 11, 2010: The Board Administrator wrote the applicant a letter that conveyed the following information given that the Board Administrator could not reach the applicant on the phone number printed on his application:

- the panel, public hearing date and location of his public hearing on his application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the November 5th deadline to submit additional evidence to be incorporated into the Board’s docket materials; and
- a general description of the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

(Note that this letter referenced a staff person who can provide assistance in Spanish).

November 30, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for December public hearing. Review team members in attendance included: the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the

City of Dallas 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 focus of this request has not been determined given:
 - 1) a discrepancy between what has been noted on the application and on submitted plans as a carport that is 4' away from the western side property line from what was observed in the Board Administrator's November 4th field trip where the actual existing carport on the subject site appeared to be about 1' away from the western side property line; and
 - 2) the Board Administrator's inability to reach the applicant by phone on November 10th, 12th, 16th, and December 1st.As a result, the board should determine from the applicant at the public hearing as to whether his request is made to: a) maintain the carport as it is in its current location (at a distance from the side property line to be determined at the public hearing); or b) if his request is to modify and maintain the carport as he has stated on his application and as it is shown on his submitted plans.
- The applicant has the burden of proof in establishing the following:
 - That granting this special exception to the side yard setback regulations of a distance to be determined at the December 13th public hearing will not have a detrimental impact on surrounding properties.
- As of December 6, 2010, no letters had been submitted in support or in opposition to the request.
- Typically, staff has suggested that the Board impose conditions with this type of appeal. The following conditions would restrict the location and size of the carport in the side yard setback; would require the carport in the side yard setback to be maintained (in this case) in a specific design with specific materials and in a specific configuration; and would require the applicant to mitigate any water drainage-related issues that the carport may cause on the lot immediately west:
 1. Compliance with the submitted site plan, floor plan/foundation plan and elevation plan is required.
 2. The carport structure must remain open at all times.
 3. There is no lot-to-lot drainage in conjunction with this proposal.
 4. All applicable building permits are obtained.
 5. No item (other than a motor vehicle) may be stored in the carport.
- If the Board chooses to grant this side yard special exception request, and impose the submitted site plan, floor plan/foundation plan, and elevation plan 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 the applicant's submitted plans – a location that would result in the applicant being required to modify/relocate the existing carport from how it appeared on the site on November 4, 2010.

BOARD OF ADJUSTMENT ACTION: DECEMBER 13, 2010

APPEARING IN FAVOR: Alberto Monjaras, 1257 Sleepy Hollow Dr., Dallas, TX

APPEARING IN OPPOSITION: No one

APPEARING AS TRANSLATOR: Claudia Ibarra, 1500 Marilla, 7DN, Dallas, TX

MOTION: Coulter

I move that the Board of Adjustment in Appeal No. **BDA 101-002**, hold this matter under advisement until **February 17, 2011**.

SECONDED: Maten

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 101-004

BUILDING OFFICIAL’S REPORT:

Application of John Jarrett for a special exception to the fence height regulations at 11303 W. Ricks Circle. This property is more fully described as Lot 1 in City Block 2/7490 and is zoned R-1ac(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct an 8 foot high fence which will require a special exception of 4 feet.

LOCATION: 11303 W. Ricks Circle

APPLICANT: John Jarrett

REQUEST:

- A special exception to the fence height regulations of up to 4’ is requested in conjunction with constructing and maintaining primarily a 5’ 4” high open iron fence and gates with 7’ high masonry stone columns to be located in the one of the site’s two 40’ front yard setbacks on a site being developed with a single family home - Northaven Road. (An 8’ high wood fence is proposed to be constructed and maintained on the west side of the site, perpendicular to Northaven Road in this 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 northwest corner of Northaven Road and W. Rick's Circle. Even though the W. Rick's Circle frontage of the subject site functions as its front yard and the Northaven Road frontage functions as its side yard, the subject site has two 40' front yard setbacks along both streets. The site has a 40' front yard setback along W. Rick's Circle (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 40' front yard setback along Northaven Road (the longer of the two frontages of this corner lot which would typically be regarded as a side yard where a 9' high fence could be maintained by right). The site's Northaven Road frontage is deemed a front yard only because the Northaven Road frontage of the lot immediately to the west (at the northeast corner of Crest Brook Drive and Northaven Road) is deemed a front yard since the Northaven Road frontage is the shorter of the two frontages on this site. (If the Northaven Road frontage on the lot immediately west of the subject site were (according to the applicant) 13' longer, the Northaven Road frontage on it and the subject site would become side yards where the owner of this site and the applicant on the subject site could maintain 9' high fences by right without a need to apply to the board for a fence height special exception to maintain as requested in this application an 8' high fence).
- 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 elevations indicating that the proposal in the 40' Northaven Road front yard setback reaches a maximum height of 8'. (No fence is proposed to be constructed/maintained in the subject site's 40' W. Rick's Circle front yard setback).
- The following additional information was gleaned from the submitted site plan:
 - The proposal located in the Northaven Road front yard setback over 4' in height is approximately 230' in length parallel to the street and approximately 40' in length *perpendicular* to Northaven Road on the east and west sides of the site in the front yard setback.
 - The proposal is shown to be located on the site's Northaven Road front property line or about 18' – 20' from the curb line.

- No single family home “fronts” to the proposed fence on the subject site since the home on the south side of Northaven Road “fronts” east to W. Rick’s Circle.
- 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.

BACKGROUND INFORMATION:

Zoning:

- Site: R-1ac(A) (Single family district 1 acre)
- North: R-1ac(A) (Single family district 1 acre)
- South: R-1ac(A) (Single family district 1 acre)
- East: R-1ac(A) (Single family district 1 acre)
- West: R-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:

- October 25, 2010: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- November 10, 2010: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- November 11, 2010: 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 November 29th deadline to submit additional evidence for staff to factor into their analysis; and the December 3rd deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

November 30, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for December public hearing. Review team members in attendance included: the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

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

December 2, 2010: 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: "All C.O.D visibility requirements must be complied with."

STAFF ANALYSIS:

- This request focuses on constructing and maintaining primarily a 5' 4" high open iron fence and gates with 7' high columns to be located in the one of the site's two 40' front yard setbacks - Northaven Road. (An 8' high wood fence is proposed to be constructed and maintained on the west side of the site, perpendicular to Northaven Road in this front yard setback).
- The proposal that is the issue of this request is located on a site that has two front yard setbacks – one front yard setback on West Ricks Circle (where no fence is proposed); the other front yard setback on Northaven Road (where the proposed fence that is the issue of this request would reach 8' at its highest point).
- Regardless of the way the subject site's Northaven Road frontage functions as the site's side yard, this Northaven Road frontage is technically deemed a front yard setback merely because of the dimensions of the lot immediately to the west. If the Northaven Road frontage of the lot to the west of the subject site were (according the applicant) 13' longer, it and the subject site would have side yard setbacks along Northaven Road where a 9' high fence would be allowed by right.
- A submitted site plan and elevations document the location, height, and materials of the fence over 4' in height in the Northaven Road front yard setback. The site plan shows the fence to be approximately 230' in length parallel to Northaven Road and approximately 40' in length *perpendicular* to Northaven Road on the west side of the site in the front yard setback; and to be located on the site's Northaven Road front property line or about 18' – 20' from the curb line. The elevations show that the proposed fence and gates parallel to Northaven Road are open iron and 5' 4" in height with masonry stone columns that are 7' in height; and that the proposed fence perpendicular to Northaven Road in the front yard setback is wood and 8' in height.
- No single family home "fronts" to the proposed fence on the subject site since the home on the south side of Northaven Road "fronts" east to W. Rick's Circle.

- 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 December 6, 2010, no letters had been submitted in support of the proposal and one letter/email had 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 proposal would reach a maximum of 8' in height in the site's Northaven Road front yard setback) will not adversely affect neighboring property.
- Granting this special exception of 4' with a condition imposed that the applicant complies with the submitted site plan and elevations would assure that the proposal exceeding 4' in height in the Northaven Road front yard setback would be constructed and maintained in the location and of the heights and materials as shown on these documents.

BOARD OF ADJUSTMENT ACTION: DECEMBER 13, 2010

APPEARING IN FAVOR: John Jarrett, 5646 Milton, Suite 604, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Coulter**

I move that the Board of Adjustment, in Appeal No. **BDA 101-004**, on application of John Jarrett, **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 site plan and elevations is required.

SECONDED: **Maten**

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 090-105

BUILDING OFFICIAL'S REPORT:

Application of Evelyn J. L. Braswell to require compliance of a nonconforming use at 14831 Seagoville Road. This property is more fully described as Tracts 68 A and B in City Block 8823 and is zoned R-10(A) which limits the legal uses in a zoning district.

The applicant proposes to request that the board establish a compliance date for a nonconforming manufactured home park use.

LOCATION: 14831 Seagoville Road

APPLICANT: Evelyn J. L. Braswell

December 13, 2010 Public Hearing Notes:

- The owner of the nonconforming use ((Rickey Gregory) submitted photographs to the Board at the public hearing.

REQUEST:

- A request is made for the Board of Adjustment to establish a compliance date for a nonconforming “manufactured home park” use on the subject site.

COMPLIANCE REGULATIONS FOR NONCONFORMING USES: SEC. 51A-4.704. NONCONFORMING USES AND STRUCTURES of the Dallas Development Code provides the following provisions:

(a) Compliance regulations for nonconforming uses. It is the declared purpose of this subsection that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.

(1) Amortization of nonconforming uses.

(A) Request to establish compliance date. The city council may request that the board of adjustment consider establishing a compliance date for a nonconforming use. In addition, any person who resides or owns real property in the city may request that the board consider establishing a compliance date for a nonconforming use. Upon receiving such a request, the board shall hold a public hearing to determine whether continued operation of the nonconforming use will have an adverse effect on nearby properties. If, based on the evidence presented at the public hearing, the board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for the nonconforming use; otherwise, it shall not.

(B) Factors to be considered. The board shall consider the following factors when determining whether continued operation of the nonconforming use will have an adverse effect on nearby properties:

(i) The character of the surrounding neighborhood.

(ii) The degree of incompatibility of the use with the zoning district in which it is located.

(iii) The manner in which the use is being conducted.

(iv) The hours of operation of the use.

- (v) The extent to which continued operation of the use may threaten public health or safety.
 - (vi) The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust, and odor.
 - (vii) The extent to which public disturbances may be created or perpetuated by continued operation of the use.
 - (viii) The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use.
 - (ix) Any other factors relevant to the issue of whether continued operation of the use will adversely affect nearby properties.
- (C) Finality of decision. A decision by the board to grant a request to establish a compliance date is not a final decision and cannot be immediately appealed. A decision by the board to deny a request to establish a compliance date is final unless appealed to state court within 10 days in accordance with Chapter 211 of the Local Government Code.
- (D) Determination of amortization period.
- (i) If the board determines that continued operation of the nonconforming use will have an adverse effect on nearby properties, it shall, in accordance with the law, provide a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.
 - (ii) The following factors must be considered by the board in determining a reasonable amortization period:
 - (aa) The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.
 - (bb) Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
 - (cc) Any return on investment since inception of the use, including net income and depreciation.
 - (dd) The anticipated annual recovery of investment, including net income and depreciation.
- (E) Compliance requirement. If the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.
- (F) For purposes of this paragraph, "owner" means the owner of the nonconforming use at the time of the board's determination of a compliance date for the nonconforming use.

GENERAL FACTS:

- City records indicate the “manufactured home park” use became nonconforming on April 1, 1978.

- The Dallas Development Code states that “nonconforming use” means “a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time.”
- The subject site is zoned R-10(A) (Single family district 10,000 square feet) that does not permit a “manufactured home park, manufacture home subdivision, or campground” use.
- The Dallas Development Code establishes the following provisions for “manufactured home park, manufacture home subdivision, or campground” use in Section 51A-4.209 (b) (4):
 - ““Manufactured home park, manufactured home subdivision, or campground”
 - (A) Definition:
 - (i) A manufactured home park is a unified development of transient stands arranged on a lot under single ownership.
 - (ii) A manufactured home subdivision is a plat designed specifically for manufactured home development
 - (iii) a campground is a lot used to accommodate recreation vehicles, tents, or manufactured homes on a rental basis for temporary camping purposes.
 - (B) Districts permitted: By right in the MH(A) district.
- The owner of the site could eliminate the nonconforming use status of the existing manufactured home park use by obtaining MH(A) (Manufactured Home district) zoning from City Council.
- The owner of the site could transition the use of the site from manufactured home park use to any use that is permitted by right in the site’s existing R-10(A) (Single family district 10,000 square feet) zoning classification. Uses permitted by right in this zoning district.
- On December 2, 2010, the applicant submitted information to the Board Administrator on her application (see Attachment A). This information included what the applicant stated was documentation relevant to the application from January 2006 – present divided/organized by factors/numbers listed in Section 51A-4.704(a)(1)(B).

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-7.5(A) (Single family district 7,500 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 site is currently developed with a “manufactured home park” use. The areas to the north, east, and west are developed with single family uses; and the area to the south appears 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:

Sept. 17, 2010: 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 21, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

October 21, 2010: The Board Administrator wrote/sent the owner of the site/property (Rickey Gregory) a letter (with a copy to the applicant) that informed him that a Board of Adjustment case had been filed against his property. The letter included following enclosures:

- a copy of the Board of Adjustment application and related materials that had been submitted in conjunction with the application;
- a copy of the section of the Dallas Development Code that described the Board of Adjustment (Section 51A-3.102);
- a copy of the section of the Dallas Development Code that provides the definition of “nonconforming use” (Section 51A-2.102(90));
- a copy of the section of the Dallas Development Code that provides the purpose and main use permitted set forth for “R-10(A)” districts (Section 51A-4.122 (e));
- a copy of the section of the Dallas Development Code that provides the definition and provisions set forth for “manufactured home park” use (Section 51A-4.209 (b)(4));
- a copy of the section of the Dallas Development Code that provides provisions for “nonconforming uses and structures” (Section 51A-4.704);
- a copy of the section of the Dallas Development Code that provides provisions regarding the Board of Adjustment hearing procedures (51A-4.703);
- a copy of the City of Dallas Board of Adjustment Working Rules of Procedure; and
- A copy of the hearing procedures for board of adjustment amortization of a nonconforming use.

The letter also informed the owner of the property the date, time, and location of the briefing/public hearing, and provided a deadline

of December 3rd to submit any information that would be incorporated into the board's docket.

November 30, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for December public hearing. Review team members in attendance included: the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

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

December 2, 2010 The applicant submitted additional information to the Board Administrator beyond what was submitted with the original application (see Attachment A).

STAFF ANALYSIS:

- The “manufactured home park” use on the subject site is a nonconforming use. According to city records, the use became nonconforming on April 1, 1978.
- The Dallas Development Code states that it is the declared purpose of this subsection (Sec. 51A-4.704. Nonconforming Uses and Structures) that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.
- The owner of the site could eliminate the nonconforming use status of the existing manufactured home park use by obtaining MH(A) (Manufactured Home district) zoning from City Council.
- The owner of the site could transition the use of the site from manufactured home park use to any use that is permitted by right in the site's existing R-10(A) (Single family district 10,000 square feet) zoning classification. Uses permitted by right in this zoning district.
- The applicant has the burden of proof in establishing the following:
 - Continued operation of the nonconforming “manufactured home park” use will have an adverse effect on nearby properties.
- The purpose of the Board of Adjustment's December 13th public hearing shall be to determine whether continued operation of the nonconforming “manufactured home park” use will have an adverse effect on nearby properties. The Dallas Development Code states that if, based on the evidence presented at the public hearing, the board determines that continued operation of this use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for the nonconforming use (at a subsequent public hearing); otherwise, it shall not.

BOARD OF ADJUSTMENT ACTION: DECEMBER 13, 2010

APPEARING IN FAVOR: Evelyn Braswell, 14825 Seagoville Rd., Dallas, TX

APPEARING IN OPPOSITION: Rick Gregory, 14831 Seagoville Rd., Dallas, TX
Donald Downey, 14831 Seagoville Rd., Dallas, TX

MOTION #1: **Moore**

I move that the Board of Adjustment in Appeal No. **BDA 090-105**, suspend the rules and accept the evidence that is being presented to us today.

SECONDED: **Maten**

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

MOTION #2: **Richard**

I move that the Board of Adjustment in Appeal No. **BDA 090-105**, based on the evidence presented at the public hearing find that continued operation of this nonconforming use will have an adverse effect on nearby properties, based on the following factors:

- The character of the surrounding neighborhood with the traffic in and out and non maintenance of high grass and appliances on the property.
- The degree of incompatibility of the use with the zoning district in which it is located is not properly zoned even though it's grandfathered.
- The manner in which the use is being conducted as a business.
- The hours of operation of the use being all hours and not normal business hours.
- The extent to which continued operation of the use may threaten public health or safety.
- The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use in that access to the property is a serious contention to the two parties.
- And set a hearing date of **March 14, 2011** for the purpose of establishing a compliance date for this nonconforming use.

SECONDED: **Moore**

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

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)

3:51 P. M. - Board Meeting adjourned for **December 13, 2010**.

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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