

NOTICE FOR POSTING
MEETING OF
BOARD OF ADJUSTMENT, PANEL A
TUESDAY, JANUARY 16, 2007

Briefing: 10:00 A.M.
Public Hearing: 1:00 P.M.

5/E/S
COUNCIL CHAMBERS

Purpose: To take action on the attached agenda, which contains the following:

1. Zoning Board of Adjustment appeals of cases the Building Official has denied.
2. And any other business which may come before this body and is listed on the agenda.

***All meeting rooms and chambers are located in Dallas City Hall, 1500 Marilla, Dallas, Texas 75201**

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01-16-2007

BOARD OF ADJUSTMENT, PANEL A
TUESDAY, JANUARY 16, 2007
AGENDA

BRIEFING	5/E/S	10:00 A.M.
LUNCH		
PUBLIC HEARING	COUNCIL CHAMBERS	1:00 P.M.

Donnie Moore, Chief Planner
Steve Long, Board Administrator
Jennifer Hiromoto, Senior Planner

MISCELLANEOUS ITEMS

	Approval of the Tuesday, November 14, 2006 Board of Adjustment Public Hearing Minutes	M1
Unassigned	6158 Highland Hills Drive REQUEST: Application of Sharon Pickles to waive the filing fee/fees to be submitted in conjunction with a potential board of adjustment appeal/appeals	M2

UNCONTESTED CASES

BDA 067-009	3413 Bryan Street aka 3401 Bryan Street, Suite R-1 REQUEST: Application of Jeffery Blue, represented by Rob Baldwin, for a special exception to the visibility obstruction regulations	1
BDA 067-010	1405 McCoy Street, Bldg 1 aka 3401 Bryan Street REQUEST: Application of Dominick Vitris, represented by Rob Baldwin Associates, for a special exception to the visibility obstruction regulations	2
BDA 067-015	4818 N. Lindhurst Avenue REQUEST: Application of Lacie Crow for a special exception to the fence height regulations	3

HOLDOVER CASES

BDA 056-256	3520 Cedar Springs Road REQUEST: Application of Crescent Estates Custom Homes, L.P., represented by Mark A. Shekter, for a variance to the front yard setback regulations and for a special exception to the landscape regulations	4
BDA 056-257(J)	1315 Skiles Street aka 3115 and 3117 Live Oak REQUEST: Application of Jack C. Irwin for a variance to the height regulations and a special exception to the visibility obstruction regulations	5

REGULAR CASES

BDA 067-004	10430 Strait Lane REQUEST: Application of Amanda Ryan for a special exception to the fence height regulations	6
BDA 067-008	5944 Luther Lane REQUEST: Application of Metropolitan Investments III, represented by Jackson Walker L.L.P./Susan Mead and Jonathan Vinson, for variances to the front yard setback regulations, urban form front yard setback regulations, and height regulations due to the residential proximity slope	7

EXECUTIVE SESSION NOTICE

The Commission/Board may hold a closed executive session regarding any item on this agenda when:

1. seeking the advice of its attorney about pending or contemplated litigation, settlement offers, or any matter in which the duty of the attorney to the Commission/Board under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act. [Tex. Govt. Code §551.071]
2. deliberating the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.072]
3. deliberating a negotiated contract for a prospective gift or donation to the city if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.073]
4. deliberating the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or to hear a complaint or charge against an officer or employee unless the officer or employee who is the subject of the deliberation or hearing requests a public hearing. [Tex. Govt. Code §551.074]
5. deliberating the deployment, or specific occasions for implementation, of security personnel or devices.. [Tex. Govt. Code §551.076]
6. discussing or deliberating commercial or financial information that the city has received from a business prospect that the city seeks to have locate, stay, or expand in or near the city and with which the city is conducting economic development negotiations; or deliberating the offer of a financial or other incentive to a business prospect. [Tex. Govt. Code §551.086]

(Rev. 6-24-02)

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel A November 14, 2006 public hearing minutes.

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: Unassigned

REQUEST: To waive the filing fee/fees to be submitted in conjunction with a potential Board of Adjustment appeal/appeals

LOCATION: 6158 Highland Hills Drive

APPLICANT: Sharon Pickles

STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:

The Dallas Development Code states that the board may waive the filing fee for a board of adjustment application if the board finds that payment of the fee would result in substantial financial hardship to the applicant.

GENERAL FACTS:

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waiver/s reimbursements:
 - The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.
 - The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board's miscellaneous docket for predetermination.
 - If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.
 - In making this determination, the board may require the production of financial documents.
- The applicant submitted a letter to the Board Administrator requesting a waiver of the filing fees to be submitted in conjunction with a potential appeal to the Board of Adjustment – fees the applicant states a in relation to height regulations with her fence (see Attachment A). This letter contained no details on the applicant's finances or the specific dollar amount of the fee (or fees) to be waived.
- The board may want to determine from the applicant the specific amount of filing fee or fees to be waived at the January 16th public hearing in order for the applicant to have the full amount of fee or fees to be waived considered at one public hearing.

Timeline:

- Nov. 14, 2006 The applicant submitted a letter requesting a waiver of the filing fees for a Board of Adjustment application that may be submitted/requested at the address referenced above.
- Nov. 28, 2006: The Board of Adjustment Secretary randomly assigned this request to Board of Adjustment Panel A.
- Nov. 28, 2006: The Board Administrator wrote the applicant a letter that conveyed the following information (see Attachment B):
- the public hearing date and panel that will consider the request;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the January 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the January public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

FILE NUMBER: BDA 067-009

BUILDING OFFICIAL'S REPORT:

Application of Jeffery Blue, represented by Rob Baldwin, for a special exception to the visibility obstruction regulations at 3413 Bryan Street aka 3401 Bryan Street, Suite R-1. This property is more fully described as Lot 1R in City Block 1/507 and is zoned PD-298 which requires a 20 foot visibility triangle at a street and driveway intersection. The applicant proposes to locate and maintain items within a required visibility triangle which would require a special exception.

LOCATION: 3413 Bryan Street aka 3401 Bryan Street, Suite R-1

APPLICANT: Jeffery Blue
Represented by Rob Baldwin

REQUEST:

- A special exception to the visibility obstruction regulations is requested in conjunction with maintaining an existing stairwell in what would become a 20' visibility triangle at a drive approach into the subject site from McCoy Street if the existing one-way driveway were to be widened to a two-way driveway. The existing stairwell leads from a one-way driveway of a shared access development to the front door of a townhouse in this development.

STAFF RECOMMENDATION:

Approval, subject to the following conditions:

1. Compliance with the submitted revised site plan/photo document is required.
2. The drive approach into the site can be widened to a width not to exceed 16 feet.

Rationale:

- The City's Development Services Senior Engineer states that the request will not create a traffic hazard on the condition that the drive approach is widened to a width not to exceed 16 feet.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISIBILITY OBSTRUCTION REGULATIONS:

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

GENERAL FACTS:

- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at 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).

The applicant had originally submitted two site plans that denoted an unmarked structure that may have been the stairway mentioned in the application - a structure appeared to be located in the 20' visibility triangle at the drive approach into the site from McCoy Street. (No elevation of the stairway has been submitted). A document that includes a photograph of the stairwell and a site plan that denotes a "7' x 3' stairwell in sight visibility triangle" was submitted on January 4, 2007 (see Attachment D).
- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachments B, C, and D). This information included the following:
 - duplicate letters and photographs to the Board Administrator and the Board of Adjustment that provides additional details about the request; and
 - A document including a photo of the stairwell and a site plan that denotes the location of a "7' x 3' stairwell in sight visibility triangle."

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is developed with a single family townhome that is part of a shared access development. The areas to the north, east, south, and west are currently undeveloped.

Zoning/BDA History:

1. BDA 067-010, 1405 McCoy Street, AKA 3401 Bryan Street (the lot immediately south of the subject site)

On January 16, 2007, the Board of Adjustment Panel A will consider a request for a special exception to the visibility obstruction regulations to maintain a stairwell in what would become the site's 20' drive approach visibility triangle from McCoy Street if the one-way driveway were expanded to a

2. BDA 001-262, 3401 Bryan Street
(the subject site)

two-way driveway.

On September 25, 2001, the Board of Adjustment Panel A took the following actions:

1) granted a request for a special exception to the visibility obstruction regulations (subject to the condition that only parked vehicles may be placed in the Bryan Street/McCoy Street intersection visibility triangle. (All other structures or objects are prohibited);

2) granted a request for a variance to the side yard setback regulations of 5' (subject to the conditions that a revised site plan is submitted indicating a side yard variance need only along the northwestern portion of the property is required, and this site plan to be submitted must indicated 2 drive approaches (verses 6) along McCoy Street); and

3) denied a request for a variance to the parking regulations of 2'. will consider a request for a special exception to the fence height regulations of 2.5' and a special exception to the visibility obstruction regulations to construct and maintain a 6.5' high retaining wall in the site's Prairie Flower Trail front yard setback and in the 45' intersection visibility triangle.

The case report stated that these requests were made in conjunction with:

- 1) locating a parked vehicle in the 45' Bryan Street/McCoy Street intersection visibility triangle;
- 2) constructing and maintaining townhomes that would provide a 5' side yard setback (verses either a 0' or 10' side yard setback);
- 3) constructing and maintaining six McCoy Street-facing enclosed parking spaces (garage doors) attached to proposed townhouse units.

Timeline:

October 27, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

- Nov. 16, 2007: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. 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."
- Nov. 30, 2006: The Board Administrator emailed the applicant's representative concerns he had with the information submitted with the application (see Attachment A).
- Dec. 12, 2006: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the December 29th deadline to submit additional evidence for staff to factor into their analysis;
 - the January 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the January public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Dec. 29, 2006,
Jan. 2 & 4, 2007 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment B, C, and D).
- January 2, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Building Inspection Development Code Specialists, the Development Services Senior Engineers, and the Assistant City Attorney to the Board.

- January 5, 2007 The Development Services Senior Engineer submitted a review comment sheet marked “Has no objections if certain conditions are met” commenting:
1. Existing width of drive approach appears to be 8’
 2. If the width is 8’ or 10’, the two stairways are not in the 20’ x 20’ driveway visibility triangles
 3. The drive approach can be widened to a 16’ maximum without potential traffic hazard.

STAFF ANALYSIS:

- The Development Services Senior Engineer has commented that he has no objections to the request if the widened drive approach that the stairwell would be located in does not exceed a 16’ width. (The engineer has commented that the 16’ wide drive approach would allow the applicant’s desired two-way drive approach, and would exceed the City’s minimum 10’ width for a residential two-way drive approach.)
- The applicant has the burden of proof in establishing the following:
 - Granting the special exception to the visibility obstruction regulations (whereby, according to the submitted documentation, a 7’ x 3’ stairway will be located in the what would become a 20’ visibility triangle at the drive approach into the site from McCoy Street if the existing one-way driveway were widened to a two-way driveway) will not constitute a traffic hazard.
- If this request is granted, subject to compliance with the submitted revised site plan/photo document, a 7’ x 3’ stairwell would be “excepted” into the 20’ drive approach visibility triangle at McCoy Street.

FILE NUMBER: BDA 067-010

BUILDING OFFICIAL'S REPORT:

Application of Dominick Vitris, represented by Rob Baldwin Associates, for a special exception to the visibility obstruction regulations at 1405 McCoy Street, Bldg 1 aka 3401 Bryan Street. This property is more fully described as Lot 1B in City Block 1/507 and is zoned PD-298 which requires a 20 foot visibility triangle at a street and driveway intersection. The applicant proposes to locate and maintain items within a required visibility triangle which would require a special exception.

LOCATION: 1405 McCoy Street, Bldg 1 aka 3401 Bryan Street

APPLICANT: Dominick Vitris
Represented by Rob Baldwin Associates

REQUEST:

- A special exception to the visibility obstruction regulations is requested in conjunction with maintaining an existing stairwell in what would become a 20' visibility triangle at a drive approach into the subject site from McCoy Street if the existing one-way driveway were to be widened to a two-way driveway. The existing stairwell leads from a one-way driveway of a shared access development to the front door of a townhouse in this development.

STAFF RECOMMENDATION:

Approval, subject to the following conditions:

1. Compliance with the submitted revised site plan/photo document is required.
2. The drive approach into the site can be widened to a width not to exceed 16 feet.

Rationale:

- The City's Development Services Senior Engineer states that the request will not create a traffic hazard on the condition that the drive approach is widened to a width not to exceed 16 feet.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISIBILITY OBSTRUCTION REGULATIONS:

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

GENERAL FACTS:

- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at 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).

The applicant had originally submitted two site plans that denoted an unmarked structure that may have been the stairway mentioned in the application - a structure appeared to be located in the 20' visibility triangle at the drive approach into the site from McCoy Street. (No elevation of the stairway has been submitted). A document that includes a photograph of the stairwell and a site plan that denotes a "7' x 3' stairwell in sight visibility triangle" was submitted on January 4, 2007 (see Attachment D).
- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachments B, C, and D). This information included the following:
 - duplicate letters and photographs to the Board Administrator and the Board of Adjustment that provides additional details about the request; and
 - A document including a photo of the stairwell and a site plan that denotes the location of a "7' x 3' stairwell in sight visibility triangle."

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is developed with a single family townhome that is part of a shared access development. The areas to the north, east, south, and west are currently undeveloped.

Zoning/BDA History:

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. BDA 067-009, 3413 Bryan Street, AKA 3401 Bryan Street (the lot immediately north of subject site) | <p>On January 16, 2007, the Board of Adjustment Panel A will consider a request for a special exception to the visibility obstruction regulations to maintain a stairwell in what would become the site's 20' drive approach visibility triangle from McCoy Street if the one-way driveway were expanded to a</p> |
|--|---|

2. BDA 001-262, 3401 Bryan Street
(the subject site)

two-way driveway.

On September 25, 2001, the Board of Adjustment Panel A took the following actions:

1) granted a request for a special exception to the visibility obstruction regulations (subject to the condition that only parked vehicles may be placed in the Bryan Street/McCoy Street intersection visibility triangle. (All other structures or objects are prohibited);

2) granted a request for a variance to the side yard setback regulations of 5' (subject to the conditions that a revised site plan is submitted indicating a side yard variance need only along the northwestern portion of the property is required, and this site plan to be submitted must indicated 2 drive approaches (verses 6) along McCoy Street); and

3) denied a request for a variance to the parking regulations of 2'. will consider a request for a special exception to the fence height regulations of 2.5' and a special exception to the visibility obstruction regulations to construct and maintain a 6.5' high retaining wall in the site's Prairie Flower Trail front yard setback and in the 45' intersection visibility triangle.

The case report stated that these requests were made in conjunction with:

4) locating a parked vehicle in the 45' Bryan Street/McCoy Street intersection visibility triangle;

5) constructing and maintaining townhomes that would provide a 5' side yard setback (verses either a 0' or 10' side yard setback);

6) constructing and maintaining six McCoy Street-facing enclosed parking spaces (garage doors) attached to proposed townhouse units.

Timeline:

October 27, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

- Nov. 16, 2007: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. 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."
- Nov. 30, 2006: The Board Administrator emailed the applicant's representative concerns he had with the information submitted with the application (see Attachment A).
- Dec. 12, 2006: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the December 29th deadline to submit additional evidence for staff to factor into their analysis;
 - the January 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the January public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Dec. 29, 2006,
Jan. 2 & 4, 2007: The applicant's representative submitted information beyond what was submitted with the original application (see Attachment B, C, and D).
- January 2, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Building Inspection Development Code Specialists, the Development Services Senior Engineers, and the Assistant City Attorney to the Board.

January 5, 2007 The Development Services Senior Engineer submitted a review comment sheet marked “Has no objections if certain conditions are met” commenting “see BDA067-009” which states:

1. Existing width of drive approach appears to be 8’
2. If the width is 8’ or 10’, the two stairways are not in the 20’ x 20’ driveway visibility triangles
3. The drive approach can be widened to a 16’ maximum without potential traffic hazard.

STAFF ANALYSIS:

- The Development Services Senior Engineer has commented that he has no objections to the request if the widened drive approach that the stairwell would be located in does not exceed a 16’ width. (The engineer has commented that the 16’ wide drive approach would allow the applicant’s desired two-way drive approach, and would exceed the City’s minimum 10’ width for a residential two-way drive approach.)
- The applicant has the burden of proof in establishing the following:
 - Granting the special exception to the visibility obstruction regulations (whereby, according to the submitted documentation, a 7’ x 3’ stairway will be located in the what would become a 20’ visibility triangle at the drive approach into the site from McCoy Street if the existing one-way driveway were widened to a two-way driveway) will not constitute a traffic hazard.
- If this request is granted, subject to compliance with the submitted revised site plan/photo document, a 7’ x 3’ stairwell would be “excepted” into the 20’ drive approach visibility triangle at McCoy Street.

FILE NUMBER: BDA 067-015

BUILDING OFFICIAL'S REPORT:

Application of Lacie Crow for a special exception to the fence height regulations at 4818 N. Lindhurst Avenue. This property is more fully described as Lot 1 in City Block 2/5531, 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 in the required front yard setback which would require a special exception of 4 feet.

LOCATION: 4818 N. Lindhurst Avenue

APPLICANT: Lacie Crow

REQUEST:

- A special exception to the fence height regulations of 4' is requested in conjunction with constructing and maintaining the following on a site being developed with a single family home:
 1. In the site's 40' front yard setback along North Lindhurst Avenue: a 6' high open decorative iron fence with 6.5' high stone columns, an 8' high arched open iron pedestrian gate with 7' high stone columns flanked by two, approximately 10' long, 6' high solid stone wing walls; and
 2. In this site's 40' front yard setback along Lennox Lane: a 6' high decorative iron fence with 6.5' high stone columns, 6' high open iron vehicular gates, and a 7' high stone wall with 8' high columns.

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 North Lindhurst Avenue and Lennox Lane. The site has a front yard setback along Lennox Lane (since this frontage is the shorter of the site's two frontages) and along North Lindhurst Avenue. Although the

site's North Lindhurst Avenue is the longer of the two frontages which typically would be deemed a side yard where a 9' high fence could be erected by right, the site's North Lindhurst Avenue frontage is deemed a front yard in order to maintain continuity of an established front yard setback on this street.

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.

The applicant has submitted site plans and elevation with the original application and a revised site plan and elevation all of which indicate a fence/wall/column/gate proposal that would reach a maximum height of 8'.

- The originally submitted site plans and elevation submitted with the application indicate that the proposal in the site's North Lindhurst Avenue 40' front yard setback has the following additional characteristics:
 - Approximately 240' in length;
 - Located about 3' from the site's front property line or about 17' from the pavement line; and
 - Generally linear in design with a slightly recessed pedestrian gate.
- The originally submitted site plans and elevation submitted with the application indicates that the proposal in the site's Lennox Lane 40' front yard setback has the following additional characteristics:
 - Approximately 180' in length;
 - Located about 2' from the site's front property line or about 16' from the pavement line; and
 - Generally linear in design with a recessed ingress/egress point for vehicular traffic.
- There is one single family home that would have direct frontage to the proposal to be located in the site's North Lindhurst Avenue front yard setback, and no single family home that would have direct frontage to the proposal to be located in the site's Lennox Lane front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area along both North Lindhurst Avenue and Lennox Lane and noted one other fence above four (4) feet high which appeared to be located in the front yard setback. This fence, located immediately east of the subject site, is an approximately 6' high open iron fence with approximately 6.5' high columns and approximately 8' high gates. (This Board of Adjustment granted a fence height special exception of 4' at this location in June of 1998 in conjunction with constructing a cast stone/open wrought iron picket fence, stucco or cast stone columns, and gates along North Lindhurst Avenue: BDA 978-186).
- On January 8, 2007, the applicant submitted a letter and a revised site plan and elevation (see Attachment A). The revised site plan and elevation made no significant changes from that shown on the originally submitted plans but were submitted to clarify matters that were hand written on the original copies submitted in November of 2006.

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-1ac (A) (Single family district 1 acre)

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:

1. BDA 95-071, 4805 S. Lindhurst Avenue (the lot immediately south of the subject site) On May 23, 1995, the Board of Adjustment denied a request for a fence height special exception of 2.5' without prejudice. The case report stated that the request was made to construct/maintain a 6' open metal fence with 6.5' high masonry columns in the site's South Lindhurst Avenue front yard setback.
2. BDA 978-186, 4834 N. Lindhurst Avenue (the lot immediately east of the subject site) On June 15, 1998, the Board of Adjustment Panel C granted a request for a fence height special exception of 4' and imposed the following conditions: 1) compliance with the submitted elevation plan and a revised landscape/site plan to be submitted to the Board Administrator indicating no more than a 2' high continuous hedge to be placed along the length of the N. Lindhurst Avenue side of the fence/wall in addition to the landscape materials indicated on the landscape plan dated April 20, 1998 is required; and 2) an intercom at the gate to be operable 24 hours a day, and when in operable, be repaired, is required. The case report stated that the request was made to construct/maintain a cast stone/open wrought iron picket fence, stucco or cast stone columns, and gates along North Lindhurst Avenue.

Timeline:

- Nov. 13, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

Dec. 12, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

Dec. 26, 2006: The Board Administrator contacted the applicant and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the December 29th deadline to submit additional evidence for staff to factor into their analysis;
- the January 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the January public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

January 2, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Building Inspection Development Code Specialists, the Development Services Senior Engineers, and the Assistant City Attorney to the Board.

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

January 8, 2007 The applicant submitted information beyond what was submitted with the original application and beyond what was discussed/considered at the January 2nd staff review team meeting (see Attachment A).

STAFF ANALYSIS:

- A revised scaled site plan has been submitted that documents the location of the proposed fence, columns, wing walls, wall, and gates relative to their proximity to the front property lines and pavement lines (the fence is shown to be located about 3'

from the Lindhurst front property line or about 17' from the pavement line, and the fence/wall is shown to be located about 2' from the Lennox front property line and about 16' from the pavement line). The site plan clearly shows the length of the proposal relative to the entire lot (the proposal is to be about 240' long parallel to N. Lindhurst Avenue and about 180' long parallel to Lennox Lane).

- A revised elevation document has been submitted that provides full elevations of the proposals on N. Lindhurst Avenue and Lennox Lane. These elevations document the heights and materials of the proposal on N. Lindhurst Avenue (a 6' high open decorative iron fence with 6.5' high stone columns, an 8' high arched open iron pedestrian gate with 7' high stone columns flanked by two, approximately 10' long, 6' high solid stone wing walls) and on Lennox Lane (a 6' high decorative iron fence with 6.5' high stone columns, 6' high open iron vehicular gates, and a 7' high stone wall with 8' high columns).
- There is one single family home that would have direct frontage to the proposal to be located in the site's North Lindhurst Avenue front yard setback, and no single family home that would have direct frontage to the proposal to be located in the site's Lennox Lane front yard setback.
- Only one fence above four (4) feet high which appeared to be located in the front yard setback was noted in the area along North Lindhurst Avenue and Lennox Lane. This fence, located immediately east of the subject site, is an approximately 6' high open iron fence with approximately 6.5' high columns and approximately 8' high gates. (This Board of Adjustment granted a fence height special exception of 4' at this location in June of 1998 in conjunction with constructing a cast stone/open wrought iron picket fence, stucco or cast stone columns, and gates along North Lindhurst Avenue: BDA 978-186).
- As of January 8, 2007, one letter had been submitted in support of the request (from the property owner located immediately north of the subject site) and no letters 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 proposed fence, columns, gates, and wall to exceed 4' in height in the site's two front yard setbacks) will not adversely affect neighboring property.
- Granting this special exception to the fence height regulations of 4' with conditions imposed that the applicant complies with the submitted revised site plan and elevation document would provide assurance that the proposal would be constructed and maintained in the location and of the heights and materials as shown on these documents.

FILE NUMBER: BDA 056-256

BUILDING OFFICIAL'S REPORT:

Application of Crescent Estates Custom Homes, L.P., represented by Mark A. Shekter, for a variance to the front yard setback regulations and for a special exception to the landscape regulations at 3520 Cedar Springs Road. This property is more fully described as Lot 1 in City Block 2/992 and is zoned PD-193 (O-2 Subdistrict) which requires a front yard setback of 20 feet and requires mandatory landscaping. The applicant proposes to construct a building and provide an 8 foot front yard setback which would require a variance of 12 feet to the front yard setback regulations, and to provide an alternate landscape plan which would require a special exception to the landscape regulations.

LOCATION: 3520 Cedar Springs Road

APPLICANT: Crescent Estates Custom Homes, L.P.
Represented by Mark A. Shekter

REQUESTS:

- The following appeals have been made in this application:
 1. a special exception to the landscape regulations; and
 2. a variance to the front yard setback regulations of 12 feet.These appeals are requested in conjunction with constructing and maintaining an approximately 4 level, 7 unit multifamily structure with an approximately 4,800 square foot building footprint (128' X 36') on a site that is developed with what appears to be a residential structure.

STAFF RECOMMENDATION: (Landscape Special Exception)

Approval, subject to compliance with the submitted revised landscape plan dated 01-08-07

Rationale:

- The City's Chief Arborist recommends approval of the revised request.

STAFF RECOMMENDATION: (Front Yard Variance)

Denial

Rationale:

- The applicant has not substantiated how the site's restrictive area, shape and/or slope preclude its development (in this case, with a structure that could meet the

applicable development standards including the 20' front yard setbacks) in a manner commensurate with other developments found on other similarly-zoned lots.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS IN OAK LAWN:

Section 26(a)(4) of Ordinance No. 21859, which establishes PD No. 193, specifies that the board may grant a special exception to the landscaping requirements of this section if, in the opinion of the Board, the special exception will not compromise the spirit and intent of this section. When feasible, the Board shall require that the applicant submit and that the property comply with a landscape plan as a condition to granting the special exception.

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 ratios, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations that 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 must be necessary to permit development of a specific parcel of land which 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 in districts with the same zoning classification. A variance may 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 a parcel of land not permitted by this chapter to other parcels of land in districts with the same zoning classification.

GENERAL FACTS (related to the landscape special exception):

- The Dallas Development Code requires full compliance with the Landscape Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet.
The applicant proposed an alternate landscape plan with the original application that did not fully comply with the landscape regulations, specifically a landscape plan where, according to the City of Dallas Chief Arborist, the applicant was specifically requesting relief from the sidewalk width and location, the quantity and location of street tree, garage screening and landscaping, and the required minimum percentage of the lot designated as particular landscape area requirements of the PD No. 193 ordinance.
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner (see Attachment A). The memo stated the following with regard to the originally submitted landscape plan:
 - The applicant is requesting relief from the landscape requirements of PD 193, more specifically, relief from the sidewalk width and location, quantity and

location of street tree, garage screening and landscaping, and required minimum percentage of the lot designated as particular landscape area requirements.

- The special exception request is triggered by new construction.
- Deficiencies:
 1. The applicant is required to provide a 6' wide sidewalk between 5' – 12' from the back of curb.
The applicant is proposing to provide a 4' wide sidewalk between 2' and 6.5' from the back of curb.
 2. The applicant is required to provide one, 3.5" diameter street tree for every 25' feet of street frontage (less areas where visibility obstruction regulations prohibit planting trees) to be located 2.5' – 5' from the back of curb (which on this site is 2 street trees).
The applicant is proposing to provide only 1 street tree within the tree planting zone, and 5 of 7 street trees are proposed to lie within visibility triangles and must be eliminated from the landscape plan.
 3. The applicant is required to provide 2,580 square feet of landscape site area in the required front yard; 1,290 square feet of general planting area in the required front yard, and 150 square feet of special planting area in the required front yard.
The applicant is proposing to provide 1,226 square feet of landscape site area in the required front yard; 500 square feet of general planting area in the required front yard, and 80 square feet of special planting area in the required front yard.
The applicant is required to provide 1,950 square feet of landscape site area for the lot area; 960 square feet of general planting area for the lot area, and 192 square feet of special planting area for the lot area.
The applicant is proposing to exceed the landscape site area for the lot area; 700 square feet of general planting area for the lot area, and 136 square feet of special planting area for the lot area.
 4. The applicant is required to a 10' wide landscape buffer strip immediately adjacent to and along the entire façade of an above grade parking structure that faces a public street which must contain 1 tree for every 25' of frontage and evergreen shrubs at 3' on center.
The applicant is not providing a garage buffer, some landscaping adjacent to the garage façade along Cedar Springs but not enough to satisfy the requirements. There is no buffer adjacent to the garage façade along Hood Street.

Factors for consideration:

- The one Live Oak tree proposed for the parkway along Hood Street is much too large a species to be located in a 2' – 2.5' planting strip. The arborist is unclear why the sidewalk is only 4' wide and why it is closer to the curb than the PD would like. If the board is inclined to grant the request, no trees should be shown in the 2' wide parkway.
- Recommendation:
 - Denial.
- On November 14, 2005, the applicant's representative submitted additional information at the public hearing. This information included photos of the site and surrounding area, and revised unscaled site/landscape plan of the proposed

development (see Attachment B). The board delayed action on the appeals until their next scheduled hearing to be held on January 16, 2007.

- On January 8, 2007, the applicant's representative submitted additional information beyond what was submitted with the original application, and beyond the January 2nd staff review team meeting (see Attachment C). This information included the following:
 - A letter that provided additional details about the requests;
 - A revised scaled "landscape plan;"
 - Floor plans; and
 - Front elevation.
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner pertaining to the revised landscape plan dated 01-08-07 (see Attachment D). The memo stated the following with regard to the originally submitted landscape plan:
 - The applicant is requesting relief from the landscape requirements of PD 193, more specifically, relief from the quantity and location of street trees, garage screening and landscaping, and required minimum percentage of the required front yard designated as landscape site area requirements.
 - The special exception request is triggered by new construction.
 - Deficiencies:
 1. The applicant is required to provide one, 3.5" diameter street tree for every 25' feet of street frontage (less areas where visibility obstruction regulations prohibit planting trees) to be located 2.5' – 5' from the back of curb (which on this site is 2 street trees).

The applicant is proposing to provide zero (0) street trees within the tree planting zone: 16 "qualifying" street trees proposed within the required front yard.
 2. The applicant is required to provide 2,580 square feet of landscape site area in the required front yard.

The applicant is proposing to provide 1,790 square feet of landscape site area in the required front yard.
 3. The applicant is required to a 10' wide landscape buffer strip immediately adjacent to and along the entire façade of an above grade parking structure that faces a public street which must contain 1 tree for every 25' of frontage and evergreen shrubs at 3' on center.

The applicant is proposing to provide a 10' wide landscape buffer strip immediately adjacent to and along the entire façade of the parking structure that faces a public street, but not with the required plant materials. There are fewer trees than is required, and dwarf evergreen shrubs where there should be large evergreen shrubs.

Factors for consideration:

- The applicant has come a long way in redesigning the revised alternate landscape plan. The sidewalks now comply with the PD requirements (as long as they show both sidewalks at 6' wide between 5' – 12' from the back of the curb – the intent but forgot to change the sidewalk along Cedar Springs), there are no longer any trees in visibility triangles, there are more appropriate tree species proposed (size), and an increased the amount of landscape areas, and garage screening and landscaping. If the parking is ALL

underground, the garage screening and landscaping requirements would not even apply.

- Recommendation:
- Approval.

GENERAL FACTS (related to the variance):

- The minimum front yard setback must be provided in the PD No. 193 (O-2 Subdistrict) zoning district is 10' for single family structures and 20' for other permitted structures.
The applicant submitted a site plan (and floor plans) with the original application that indicated a 7 unit apartment structure that was providing the required 20' front yard setback along Cedar Springs Avenue but (with the exception of a 2' x 12' entry way that is 8' from the Hood Street front property line) a 10' front yard setback in the site's other front yard setback along Hood Street (or a structure that is 10' into the 20' Hood Street front yard setback).
- The Board Administrator had calculated from the submitted site plan that about 1,300 square feet of total approximately 4,800 square foot building footprint would be located in the site's Hood Street 20' front yard setback.
- The site appears to be relatively flat, is rectangular in shape (160' x 57') and approximately 9,500 square feet in area. The site is located at the corner of Cedar Springs Road and Hood Street and has two front yard setbacks which is a typical characteristic of any lot that has a street frontage and is not zoned single family, duplex, or agricultural.
- The subject site is 57' wide. Once one accounts for a 20' front yard setback on the northwest and a 10' side yard setback on the southeast, the developable width remains at 27 feet.
- DCAD records indicate that the site is developed with a "converted residence" structure built in 1930 with a total area of 3,040. (It has not been established whether or not the existing structure is in compliance with the site's two 20' front yard setbacks).
- On November 14, 2005, the applicant's representative submitted additional information at the public hearing. This information included photos of the site and surrounding area, and revised unscaled site/landscape plan of the proposed development (see Attachment B). The board delayed action on the appeals until their next scheduled hearing to be held on January 16, 2007.
- On January 8, 2007, the applicant's representative submitted additional information beyond what was submitted with the original application, and beyond the January 2nd staff review team meeting (see Attachment C). This information included the following:
 - A letter that provided additional details about the requests;
 - A revised scaled "landscape plan;"
 - Floor plans; and
 - Front elevation.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (O-2 Subdistrict) (Planned Development District, Office)
North: PD No. 193 (O-2 Subdistrict) (Planned Development District, Office)
South: PD No. 193 (O-2 Subdistrict) (Planned Development District, Office)
East: PD No. 193 (O-2 Subdistrict) (Planned Development District, Office)
West: PD No. 193 (O-2 Subdistrict) (Planned Development District, Office)

Land Use:

The subject site is developed with what appears to be a residential structure. The areas to the north, east, south, and west appear to be developed with office uses.

Zoning/BDA History:

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

Timeline:

- Sept. 29, 2006: 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 17, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- October 19, 2006: The Board Administrator contacted the applicant’s representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the October 26th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
 - the November 3rd deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the November public hearing after considering the information/evidence and

testimony presented to them by the applicant and all other interested parties.

October 27, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, and the Assistant City Attorney to the Board.

The Development Services Senior Engineer identified that the site plan submitted in conjunction with the application showed what could be parking spaces that are out of compliance with the visibility obstruction regulations in the Hood Street drive approach visibility triangles. The engineer stated that these spaces would only be violating the visibility obstruction regulations if the parking spaces were needed to fulfill the off-street parking requirements.

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

October 27, 2006: The Board Administrator relayed the Development Service Senior Engineer's visibility obstruction concern to the applicant's representative who responded by explaining that the parking spaces were not needed to fulfill the off-street parking requirement, therefore would not require a special exception to the visibility obstruction regulations.

October 31, 2006 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the special exception to the landscape regulations (see Attachment A).

Nov. 14, 2006: The Board of Adjustment conducted a public hearing on these requests. The applicant's representative submitted additional information at the public hearing (see Attachment B). The board delayed action on the requests until January 16, 2007.

Nov. 22, 2006: The Board Administrator wrote the applicant's representative a letter that conveyed the following information:

- the action the board took on the appeals at the November hearing;
- the December 29th deadline to submit additional evidence for staff to factor into their analysis/recommendation; and
- the January 5th deadline to submit additional evidence to be incorporated into the Board's docket materials.

January 2, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Assistant Director of the Development Services Current Planning

Division, the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Building Inspection Development Code Specialists, the Development Services Senior Engineers, and the Assistant City Attorney to the Board.

- January 8, 2007 The applicant's representative submitted additional information to the Board Administrator (see Attachment C). This information was submitted past the January 2nd staff review team meeting therefore was not information that was factored into the staff recommendations on the landscape special exception or front yard variance requests.
- January 9, 2007 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the revised landscape plan dated 01-08-07 in conjunction with the special exception to the landscape regulations (see Attachment D).

STAFF ANALYSIS (related to the landscape special exception):

- The applicant proposes to demolish the existing building on the site and construct a new multifamily structure in its place.
- An alternate landscape plan was submitted with the original request where, according to the City of Dallas Chief Arborist, there were areas that would not fully comply with sidewalk width and location, quantity and location of street tree, garage screening and landscaping, and required minimum percentage of the lot designated as particular landscape area requirements.
- A revised site/landscape plan was submitted at the November 14th public hearing where, according to the City of Dallas Chief Arborist, there are areas that would not fully comply with sidewalk width and location, quantity and location of street tree, garage screening and landscaping, and required minimum percentage of the lot designated as particular landscape area requirements.
- A revised landscape plan was submitted on January 8, 2007, where, according to the City of Dallas Chief Arborist, the applicant is requesting relief from the landscape requirements of PD 193, more specifically, relief from the quantity and location of street trees, garage screening and landscaping, and required minimum percentage of the required front yard designated as landscape site area requirements.
- The applicant has the burden of proof in establishing the following:
 - The special exception (where the revised landscape plan dated 01-08-07 that, according to the Chief Arborist, is deficient in the quantity and location of street trees, garage screening and landscaping, and required minimum percentage of the required front yard designated as landscape site area requirements) will not compromise the spirit and intent of the section of the ordinance (Section 26: Landscape, streetscape, screening, and fencing standards).
- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted revised landscape plan dated 01-08-07, the proposed multifamily structure could be constructed on the site with the site would be "excepted" from full compliance with the quantity and location of street trees,

garage screening and landscaping, and required minimum percentage of the required front yard designated as landscape site area requirements of the Oak Lawn PD landscape ordinance.

STAFF ANALYSIS (related to the variance):

- The site appears to be relatively flat, is rectangular in shape (160' x 57') and approximately 9,500 square feet in area. The site is located at the corner of Cedar Springs Road and Hood Street and has two front yard setbacks which is a typical characteristic of any lot that has a street frontage and is not zoned single family, duplex, or agricultural.
- The subject site is 57' wide. Once one accounts for a 20' front yard setback on the northwest and a 10' side yard setback on the southeast, the developable width remains at 27 feet.
- The Board Administrator has calculated from the submitted site plan that about 1,300 square feet of total approximately 4,800 square foot building footprint would be located in the site's Hood Street 20' front yard setback.
- The applicant has the burden of proof in establishing the following with regard to the front yard variance request:
 - That granting the variance to the front yard setback regulations of 12' along Hood Street requested to construct and maintain an approximately 4 level, 7 unit multifamily structure with an approximately 4,800 square foot building footprint will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 193 (O-2 Subdistrict) zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD No. 193 (O-2 Subdistrict) zoning classification.
- If the Board were to grant the front yard variance request of 12', imposing a condition whereby the applicant must comply with the originally submitted site plan, the structure could be built on the site as close as 8' from the Hood Street front property line (or 12' into the 20' front yard setback).
- If the Board were to grant the front yard variance request of 12', imposing a condition whereby the applicant must comply with the revised site plan at the November public hearing, the structure could be built on the site as shown on this unscaled plan where the structure would not be permitted any closer than 8' from the site's Hood Street or Cedar Springs Avenue front property line (or 12' into the 20' front yard setbacks).
- If the Board were to grant the front yard variance request of 12', imposing a condition whereby the applicant must comply with the "landscape plan" submitted on January 8, 2007, the structure could be built on the site as shown on this scaled

landscape plan where the distance of the structure from the site's Hood Street front property line cannot be assessed.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 14, 2006

APPEARING IN FAVOR: Mark Shekter, 3615 N. Hall St., Dallas, TX

APPEARING IN OPPOSITION: Neil Emmons, 2525 Turtle Creek, Dallas, TX

MOTION: **Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 056-256**, hold these matters under advisement until **January 16, 2007** so that the applicant may bring back a landscape plan.

SECONDED: **Jefferson**

AYES: 5– Richmond, Gabriel, Schweitzer, Griggs, Jefferson

NAYS: 0 -

MOTION PASSED: 5–0 (unanimously)

FILE NUMBER: BDA 056-257(J)

BUILDING OFFICIAL'S REPORT:

Application of Jack C. Irwin for a variance to the height regulations and a special exception to the visibility obstruction regulations at **1315 Skiles Street aka 3115 and 3117 Live Oak**. This property is more fully described as Lots 15 and 16 in City Block 309 and is zoned PD-298 which limits the height of a building on a portion of the site to 26 feet due to the residential proximity slope regulations and requires 45 foot visibility triangles at the intersections of streets and 20 foot visibility triangles at the intersections of driveways and streets. The applicant proposes to construct a building with a height of 46 feet 8 inches and to encroach into the visibility triangles, which would require a variance of 20 feet 8 inches to the height regulations and a special exception to the visibility obstruction regulations.

LOCATION: 1315 Skiles Street aka 3115 and 3117 Live Oak

APPLICANT: Jack C. Irwin

REQUEST:

- A variance to the height regulations (due to RPS) of 20 feet 8 inches and a special exception to the visibility obstruction regulations are requested in conjunction with constructing a multifamily structure.

STAFF RECOMMENDATION (variance):

Denial

Rationale:

- The request site appears to be flat, rectangular, and approximately 20,000 square feet.

STAFF RECOMMENDATION (visibility obstruction special exception):

Denial

Rationale:

- The City's Development Services Senior Engineer does not support this request.

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 ratios, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations that 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 must be necessary to permit development of a specific parcel of land which 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 in districts with the same zoning classification. A variance may 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 a parcel of land not permitted by this chapter to other parcels of land in districts with the same zoning classification.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISIBILITY OBSTRUCTION REGULATIONS:

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

GENERAL FACTS:

- The request site is currently undeveloped.
- The property is zoned PD 298 Subarea 10. The property to the northwest is zoned PD 298 Subarea 6, which requires any development on the request site to respect a 1-to-3 Residential Proximity Slope (RPS). In PD 298, a 1-to-3 RPS is required from property in Subarea 6 or any R(A), D(A), or TH(A) districts adjacent to PD 298 except for Subarea 7.
- Residential proximity slope restricts height for development on properties adjacent to residential districts at a specified ratio or distance. In this case, RPS applies to any portion of a structure over 26 feet.
- Elevations have not been submitted showing the portion of the structure that would be violating the RPS. The applicant submitted with the application a graphic showing the zoning envelope related to height allowed for the subject property and the adjacent properties in Subarea 6. The graphic shows the property line of the parcels that are causing the RPS, the 1-to-3 RPS, and the proposed heights that the applicant is requesting to violate RPS.
- The zoning envelope graphic showed the RPS originating from the incorrect location. RPS originates from the adjacent private property line; the original graphic showed the RPS originating from a private property line 24 feet further away because it was assumed that the 24'x 158' lot was right-of-way. This lot is not right-of-way. The application was advertised using this graphic and was incorrectly noticed and advertised for the November 14, 2006 Panel A hearing. Staff has reevaluated the RPS and has determined the variance request based on the maximum heights shown in the zoning graphic with the RPS originating from the proper private property line.
- The zoning envelope graphic shows the applicant is requesting a maximum height of 35' in the 53' portion of the site closest to Subarea 6, a maximum height of 46'8" for

the adjacent 28'4" portion of the site, and the remaining approximately 125' of the site would be of an unknown height, presumably the maximum height that would respect the 1-to-3 RPS.

- PD 298 allows a maximum height of 100' in Subarea 10 and a maximum height of 36'-40' in Subarea 6. PD 298 does not require RPS for properties in Subarea 7 or for commercially compatible single family uses. Commercially compatible single family use is defined as a moderately dense single family use, a minimum of 12 units per acre in this Subarea, which is compatible with commercial development.
- Attachment E demonstrates the affect of RPS on the subject property. RPS allows a height of 26 feet anywhere on the site. A setback for RPS is required for portions of the building to exceed 26 feet, at the specified 1-to-3 ratio from the originating private property line. Attachment E shows the setback needed to exceed 26 feet up to the maximum height of the district, 100 feet.
- The submitted site plan shows the proposed multifamily structure will have a footprint of approximately 88'11" x 183'7".
- The site appears to be flat, rectangular in shape, and approximately 20,000 square feet (100'x 200') in area.
- A structure that is 26 feet in height could be constructed without additional setbacks or a height variance.
- The applicant has indicated that the "taking of land for public right-of-way" remarks on the application are speaking to the portion of the subject site adjacent to Carmel Street. Carmel Street has a current width of 20' as shown on the plat map.
- 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 revised site plan shows the portions of the proposed structure that are located in a visibility triangle in the following locations:
 - a 16"x16" column within the 45'x45' corner clip visibility triangles of Live Oak Street and Skiles Street and Skiles Street and Carmel Street;
 - both sides of the 20'x20' visibility triangles for the driveway on Live Oak Street and the driveway on Carmel Street.
- The applicant has indicated that the portions of the building to be located within these visibility triangles will be constructed of solid materials and will be within the 2 ½' to 8' area that the Development Code requires to be unobstructed.
- The applicant requested on his application an extension of time for the number of days a permit could be obtained if the Board of Adjustment approves his applications. The applicant has withdrawn this request after Staff informed that request must be at a subsequent hearing.

BACKGROUND INFORMATION:

Zoning:

Request Site: PD 298 Subarea 10
North: PD 298 Subarea 7 and PD 298 Subarea 6
South: PD 298 Subarea 10
East: PD 298 Subarea 10
West: PD 298 Subarea 6

Land Use:

The request site is undeveloped. The areas to the north and west are developed with single family and multifamily residential; the areas to the south are developed with a mix of office, medical office, and parking uses; the area to the east is developed with a park. The site adjacent to the northwest is undeveloped.

Zoning/BDA History:

There have been no recent or relevant Board of Adjustment or zoning cases in the area.

Timeline:

- Undated: 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 17, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- October 24, 2006: The Board Administrator contacted the applicant via email and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the November 3rd deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board’s docket;
 - that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

- October 26, 2006 The applicant submitted a letter and photos regarding his request (Attachment A). (Color photos will be available at the hearing.)
- October 27, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Chief Planner, the Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.
- October 31, 2006 Transportation Engineer Nguyen submitted a review comment sheet: "Cannot support the special exception to the visibility triangles, especially at Live Oak Street."
- November 3, 2006 The applicant submitted an additional letter and additional photos regarding his request. (Attachment B). (Color photos will be available at the hearing.)
- January 3, 2007 The applicant submitted additional information (Attachment C).
- January 5, 2007 The applicant submitted additional information (Attachment D).

STAFF ANALYSIS:

- An elevation of the proposed multifamily structure that would violate RPS and be located within corner clips and visibility triangles was not provided. Typically, for height variance and visibility obstruction special exceptions, elevations are submitted to show the amount and materials of structures that are seeking Board approval. The amount of encroachment into the RPS and visibility obstruction triangles and the materials of the structure are unknown.
- The Transportation Engineer submitted a review comment sheet stating that he cannot support the request for the special exception to the visibility obstruction regulations, especially at Live Oak.
- The applicant has the burden of proof in establishing that the special exception to the visibility obstruction regulations will not constitute a traffic hazard.
- Granting the special exception subject to the site plan, would allow columns and portions of the multifamily structure to be located within the corner clip and visibility triangles in the location and materials noted on the site plan.
- The subject site appears to be flat, rectangular in shape, and approximately 20,000 feet in area. The site to the southwest of the request is developed with single family uses that appear to meet RPS. If the site southwest of the request site was developed as a commercially compatible single family use, then it would not have been subject to RPS.
- Granting this variance, subject to the submitted site plan, would allow a multifamily structure to encroach 20 feet 8 inches in height into the Residential Proximity Slope.
- The zoning envelope graphic shows the portion of the subject site that the applicant is requesting certain heights. The RPS line shown is incorrect and should originate 24 feet closer to the request site than shown on this document.

- The applicant has the burden of proof in establishing the following in regards to the height variance request:
 - That granting the variance 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 appears to be flat, rectangular in shape, and approximately 20,000 square feet in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD 298 Subarea 10 zoning classification.
 - The variance would not to be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD 298 Subarea 10 zoning classification.

FILE NUMBER: BDA 067-004

BUILDING OFFICIAL'S REPORT:

Application of Amanda Ryan for a special exception to the fence height regulations at 10430 Strait Lane. This property is more fully described as Lot 1A in City Block 5524 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 11 foot 10 inch fence in the required front yard setback which would require a special exception of 7 feet 10 inches.

LOCATION: 10430 Strait Lane

APPLICANT: Amanda Ryan

REQUEST:

- A special exception to the fence height regulations of 7' 10" is requested in conjunction with constructing and maintaining the following in the site's 40' front yard setback on Strait Lane:
 - A 7' high open wrought iron fence with 7' 4" high brick columns;
 - Two 7' high, 26' long solid brick entry gate wing walls with 9' 1" high brick columns;
 - An 8' 4" high open wrought iron gate (with solid panel at the base) with 11' 10" high brick entry gate columns.

The site is being developed with a single family home.

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 corner of Strait Lane and Calleja Way. The site has two front yard setbacks. The site has a front yard setback along Strait Lane given that this frontage is the shorter of the two street frontages, and a front yard setback along Calleja Way given that the continuity of the established setback must be

maintained on this street since a house faces Calleja Way immediately east of the subject site. The only matter before the board with this request is a fence proposal that will exceed 4' in height in the site's Strait Lane front yard setback since the applicant was granted a fence height special exception of 10' 2" in June of 2004 to construct and maintain a 9' high open wrought iron fence with 9' 8" high columns, 8' 8" high solid masonry wing walls on either side of a 14' 2" high entry gate with 10' 10" high columns (BDA 034-154). (The applicant has conveyed in an email that a building permit for the home and fence was obtained in December of 2004, referencing the BDA approved setback for the fence height on Calleja Way).

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.

The applicant has submitted a site plan and an elevation indicating a fence/wall and gate proposal that would be located in the site's Strait Lane front yard setback and would reach a maximum height of 11' 10". (The site plan and elevation do not show any fence to exceed 4' in height to be located in the site's Calleja Way front yard setback since the applicant has already achieved a fence height special exception for this frontage of the subject site in 2004).

- A site plan has been submitted that indicates the location of the proposal in the Strait Lane front yard setback. The following additional information was gleaned from this site plan:
 - The proposed fence would be approximately 250' in length parallel to Strait Lane with a recessed entryway, approximately 31' in length perpendicular to Strait Lane on the north, and 8' in length perpendicular to Strait Lane on the south.
 - The proposed fence is to be located 8' 2" from the Strait Lane front property line (or approximately 24' from the Strait Lane pavement line).
 - The proposed gate is to be located about 30' from the Strait Lane front property line (or approximately 44' from the Strait Lane pavement line).
- The following additional information was gleaned from the submitted elevation:
 - The columns and entry wing walls will be comprised of brick to match the color and pattern (Flemish Bond) of the house.
- The proposed fence would be located on a site where two single family homes would have direct/indirect frontage to the proposed fence along Strait Lane. The home immediately west has an approximately 6' high open iron fence (with a 2' high masonry base) with 6' high wing walls and 6.5' high gates (which is a result of BDA034-193), the home immediately northwest has an approximately 4' high fence, and the lot southwest is undeveloped with no fence.
- The Board Administrator conducted a field visit of the site and surrounding area along Strait Lane (approximately 500 feet north and south of the site) and noted the following additional fence/walls beyond those described above which appeared to be located in the front yard setback (Note that these locations and dimensions are approximations):
 - an approximately 7' – 8' high solid masonry fence with approximately 8.5' high columns behind significant landscape materials located immediately north of the site (which is a result of Board action on BDA 89-003);
 - an approximately 6' high entry wall with 6.5' high entry columns located two lots immediately south of the site;

- an approximately 10' high gate with 12' high columns (14' high with finials) located three lots south of the site;
 - an approximately 5' high open wrought iron fence with 6' high brick columns and 8' high entry gates and columns located two lots southwest of the site (which is a result of BDA 96-063);
 - an approximately 6' high open iron fence (with a 2' high masonry base) with 6.5" high columns, and two 6.5' high open iron entry gates located immediately west of the site (which is a result of BDA034-103);
 - an approximately 5' high open iron fence with 5' high columns located immediately two lots northwest of the site; and
 - an approximately 4' high open board fence with 4' high stone columns, 7' high stone entry columns, and a 7' high arched open wrought iron gate located three lots northwest of the site.
- On January 8, 2007, the applicant submitted additional information beyond what was submitted with the original application, and beyond the January 2nd staff review team meeting (see Attachment A). This information included a notebook with the following components:
 - A copy of the proposed fence design;
 - A summary of factors related to the request;
 - A map indicating shrubs, fences or gates on Strait Lane between Walnut Hill Lane and Royal Lane;
 - A list of Strait Lane fences (along with descriptions and heights) and photographs;
 - A tax appraisal chart of properties on Strait Lane between 2000 – 2006;
 - A photograph of the posted sign;
 - 28 reconfirmation letters of support;
 - 20 letters of support; and
 - 1 letter of opposition (and photograph of the fence on the site from which the opposition is from).

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-1ac (A) (Single family district 1 acre)

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:

1. BDA 034-154, 10430 Strait Lane On June 22, 2004, the Board of Adjustment

(the subject site)

Panel A took the following actions:

1. Granted a request to preserve an existing tree as a special exception to the minimum front yard requirements (subject to compliance with a submitted plan).
2. Denied a request for a variance to the front yard setback regulations without prejudice.
3. Granted a request for a variance to the height regulations (subject to compliance with a plan and elevation).
4. Granted a request to maintain a 14' 2" fence as a special exception along Calleja Way (subject to compliance with a site plan, "Planting Plan," and fence elevation).
5. Denied a request for a fence height special exception along Strait Lane without prejudice.

The case reports states that the requests were made in conjunction with constructing a 51.5'-high single family home partially located in the Calleja Way front yard setback, and a 9' high open wrought iron fence with 9'8" high columns, 8' 8" high masonry wing walls on either side of 14' 2" high entry gates (with 10' 10" high entry columns) along Strait Lane and Calleja Way. A request for a fence height special exception of 8' 8" that has been tentatively scheduled for Panel A's December 13, 2005 public hearing (then postponed indefinitely) was withdrawn on November 2, 2006.

2. BDA 045-296, 10430 Strait Lane
(the subject site)

On September 22, 2004, the Board of Adjustment Panel B granted a request for a special exception to the fence regulations of 2' 6", subject to compliance with the submitted site plan, landscape plan, and fence/gate elevation. The staff report states that the request was made to construct a 6'-high open iron fence (with a 2' high masonry base), 6' 6" high masonry columns, and two 6' 6" high open iron entry gates.

3. BDA 034-193, 10433 Strait Lane
(the lot immediately west of the
subject site)

On January 10, 1989, the Board of Adjustment followed the staff recommendation and granted a request for a special exception to the fence regulations of

4. BDA 89-003, 10444 Strait Lane
(the lot immediately north of the
subject site)

4' 7.5". The case report stated "The bulk of the fence will be 7 feet high with pilasters 7' 6" high. The only portion of the fence that is 8' 7.5" high is the pilasters at the gate. The solid fence will be softened by additional landscaping, and the existing chain link fence of the south portion of the side is hardly noticeable due to dense plant materials." The board imposed the site plan and landscape plan as conditions to the special exception request.

5. BDA 86-132, the southeast corner of Strait Lane and Calleja Way (a pan-handled shaped lot immediately south and southeast from the subject site)

On March 25, 1986, the Board of Adjustment followed the staff recommendation and granted a request for a special exception to the fence regulations of 7' 8". The motion reflected in the minutes for this case states the following: "I move that the Board of Adjustment grant the request of this applicant to maintain a 6 ft. fence in height with columns (4) not to exceed 8 ft. in height with decorative caps and details as a special exception to the height requirement for fences contained in the Dallas Development Code." The board further moved that the following conditions be imposed: "The fence height should be measured from the driveway to the center column; and the fence should be constructed in accordance with the site plan submitted and marked exhibit "A" and dated February 3, 1986 except for the height provisions." The motion was amended to reflect: "The fence height should be measured from the average existing grade." (Note that it appears from the Board Administrator's field visit that this fence, if ever constructed on this site, has since been removed).

6. BDA 93-063, 10349 Strait Lane (two lots southwest of the subject site)

On April 27, 1993, the Board of Adjustment followed the staff recommendation and granted a request for a special exception to the fence regulations of 4' requested in conjunction with constructing an 8' high fence. The Board granted a fence special exception "to maintain a 6' wrought iron fence with an 8' gate and columns of 6.5'."

Timeline:

October 26, 2006 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

Nov. 16, 2007: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. 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."

Dec. 8, 2006: The Board Administrator and the Chief Board of Adjustment Planner met with the applicant and her assistant where the following information was discussed:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the December 27th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the January 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the January public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

January 2, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Building Inspection Development Code Specialists, the Development Services Senior Engineers, and the Assistant City Attorney to the Board.

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

January 8, 2007 The applicant submitted additional information to the Board Administrator (see Attachment A). This information was submitted past the January 2nd staff review team meeting.

STAFF ANALYSIS:

- A scaled site plan has been submitted that documents the location of the proposed fence, columns, wing walls and gate relative to their proximity to the property line and pavement line (the fence is shown to be located about 8' from the property line or about 24' from the pavement line). The site plan clearly shows the length of the proposal relative to the entire lot (the proposal is to be about 250' long parallel to Strait Lane and about 31' long perpendicular on the north, and about 8' long perpendicular on the south).
- A document has been submitted with a scaled partial and full elevation of the proposal. These elevations document the heights and materials of the proposal: 7' high open wrought iron fence with 7' 4" high brick columns; two 7' high, 26' long solid brick entry gate wing walls with 9' 1" high brick columns; and an 8' 4" high open wrought iron gate (with solid panel at the base) with 11' 10" high brick entry gate columns.
- The proposed fence would be located on a site where two single family homes would have direct/indirect frontage to the proposal along Strait Lane. The home immediately west has an approximately 6' high open iron fence (with a 2' high masonry base) with 6' high wing walls and 6.5' high gates (which is a result of BDA034-193), the home immediately northwest has an approximately 4' high fence, and the lot southwest is undeveloped with no fence.
- The Board Administrator conducted a field visit of the site and surrounding area along Strait Lane (approximately 500 feet north and south of the site) and noted the following additional fence/walls beyond those described above which appeared to be located in the front yard setback (Note that these locations and dimensions are approximations):
 - an approximately 7' – 8' high solid masonry fence with approximately 8.5' high columns behind significant landscape materials located immediately north of the site (which is a result of Board action on BDA 89-003);
 - an approximately 6' high entry wall with 6.5' high entry columns located two lots immediately south of the site;
 - an approximately 10' high gate with 12' high columns (14' high with finials) located three lots south of the site;
 - an approximately 5' high open wrought iron fence with 6' high brick columns and 8' high entry gates and columns located two lots southwest of the site (which is a result of BDA 96-063);
 - an approximately 6' high open iron fence (with a 2' high masonry base) with 6.5" high columns, and two 6.5' high open iron entry gates located immediately west of the site (which is a result of BDA034-103);
 - an approximately 5' high open iron fence with 5' high columns located immediately two lots northwest of the site; and
 - an approximately 4' high open board fence with 4' high stone columns, 7' high stone entry columns, and a 7' high arched open wrought iron gate located three lots northwest of the site.

- As of January 8, 2007, 38 letters had been submitted to staff in support and 1 letter had been submitted in opposition to the proposal.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the fence, entry gate wing walls, columns, and gate that are proposed to exceed 4' in height) will not adversely affect neighboring property.
- Granting this special exception of 7' 10" with conditions imposed that the applicant complies with the submitted site plan and elevation document would assure that the proposal would be constructed and maintained in the location and of the heights and materials as shown on these documents.

FILE NUMBER: BDA 067-008

BUILDING OFFICIAL'S REPORT:

Application of Metropolitan Investments III, represented by Jackson Walker L.L.P/Susan Mead and Jonathan Vinson, for variances to the front yard setback regulations, urban form front yard setback regulations, and height regulations due to the residential proximity slope at 5944 Luther Lane. This property is more fully described as Lot 3A in City Block 3/5625 and is zoned PD-314, which requires a front yard setback of 15 feet for a portion of a structure 45 feet in height or less, an urban form front yard setback of 35 feet for any portion of a structure exceeding 45 feet in height, and limits the height of a portion of the proposed structure to 116 feet due to the residential proximity slope regulations. The applicant proposes to construct a structure and provide a 0 foot front yard setback which would require a variance of 15 feet to the front yard setback regulations for the portion of the structure under 45 feet in height, and a variance of 35 feet to the urban form front yard setback regulations for the portion of the structure over 45 feet in height. Lastly, the applicant proposes to construct a structure with a height of 164 feet which would require a variance of 48 feet to the height regulations due to the residential proximity slope.

LOCATION: 5944 Luther Lane

APPLICANT: Metropolitan Investments III
Represented by Jackson Walker L.L.P/Susan Mead and Jonathan Vinson

REQUESTS:

- The following appeals have been made in this application:
 1. a variance to the front yard setback regulations of 15' for a portion of a proposed structure under 45' in height;
 2. a variance to the urban form front yard setback regulations of 35' for a portion of a proposed structure over 45' in height; and
 3. a variance to the height regulations (specifically to the residential proximity slope or RPS) of 48 feet.

These appeals are requested in conjunction with constructing and maintaining an approximately 164' high, 11-level office tower structure (Park Cities Plaza Office Building) with, according to the submitted elevation, 233,911 gsf (gross square footage). The subject site is currently developed with an office tower (Fidelity Bank), a hotel (Hilton) and a surface parking lot. (The proposed tower is to be located where the surface parking lot currently exists on the site – on its far western side immediately adjacent to Lomo Alto Road).

STAFF RECOMMENDATION:

Denial

Rationale:

- The 2.801 acre (or 122,012 square foot) subject site is flat, generally rectangular in shape (616.27' on the north, 634.73' on the south, 195.1' on the east, and 196.07' on the west). Although the site has two front yard setbacks, this characteristic is typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural. And although the applicant has indicated the site is encumbered with a right-of-way easement, staff concludes that since it ranges from about 14' – 33' in width parallel to Lomo Alto Drive, it does not appear to restrict development on the 600' long subject site.
- The applicant has not substantiated how the site's restrictive area, shape and/or slope preclude its development (in this case, with a structure that could meet the applicable development standards including the 15' front yard setback, the 35' urban form front yard setback for the portion of the structure that would exceed 45' in height, and the height regulations created by the residential proximity slope) in a manner commensurate with other developments found on other similarly PD No. 314 zoned lots.

STANDARD FOR A VARIANCE:

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area ratios, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations that 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 must be necessary to permit development of a specific parcel of land which 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 in districts with the same zoning classification. A variance may 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 a parcel of land not permitted by this chapter to other parcels of land in districts with the same zoning classification.

GENERAL FACTS:

- PD No. 314 establishes the following provisions related to front yard setbacks:
Except as otherwise provided in Subparagraph (B), the minimum front yard is:
 - 1) 15 feet where adjacent to Lomo Alto Drive; and
 - 2) No minimum in all other cases.Subparagraph (B) of the ordinance states the following:
 - An additional 20-foot "urban form" front yard setback is required for a building exceeding 45 feet in height if the building on a lot whose front yard is adjacent to Lomo Alto Drive. The additional setback is only required for that portion of a building exceeding 45 feet in height.

- The applicant had originally submitted a site plan that indicated that the proposed structure was to be located as close as 1' 4" from the site's Lomo Alto Drive front property line (or as much as 13' 8" in the required 15' front yard setback). However, a revised site plan was submitted on December 26, 2006 indicating that the proposed structure would be as close as on the easement line – a right-of-way easement that ranges from about 14' – 33' in width parallel to the Lomo Alto Drive front property line. (According to the applicant's representative, the City has taken the position that setbacks should be measure from easement lines, hence a variance request of 15' for the portion under 45' in height since part of the proposed structure is proposed to be located on the easement line).
- The applicant had originally submitted a site plan and elevation that indicated that the proposed tower immediately adjacent to Lomo Alto Drive was 57' in height and located as close as 1' 4" from the site's Lomo Alto Drive front property line (or a structure above 45' in height that is 33' 8" into the total 35' front yard setback). The proposed 57' high structure on the originally submitted plan and elevation was not providing either the 15' front yard setback or the additional 20' setback required for structures over 45' in height. However, a revised site plan and elevations/sections were submitted on December 26, 2006 indicating that the proposed structure would be as close as on the easement line and reaching a 60' height without providing the 35' setback for the portion of the building over 45' in height.
(Staff has interpreted that the ordinance created the additional 20' setback for structures or portions of structures higher than 45' in height to discourage a canyon effect that a structure may create once it exceeds a specific height. Staff has interpreted that this additional front yard setback was enacted to ensure openness, light, and airflow between tower structures).
- PD No. 314 establishes the following provisions related to height:
Maximum structure height is 180 feet unless further restricted under Subparagraph (A).
Subparagraph (A) states that if any portion of a structure is over 26 feet in height, that portion may not be located above a residential proximity slope.
The Dallas Development Code establishes a residential proximity slope that limits height to 1 foot in height for every 3 feet away from private property in a residential zoning district (or a portion of a PD district which is restricted to residential uses).
The originally submitted site plan and elevation denoted an 11-story structure that, according to the Building Official's Report would reach a height of 148' but be limited to 118' due to the residential proximity slope. (The subject site is adjacent to R-16(A) zoned property to the west of the subject site from which the residential proximity slope line originates). However, a revised site plan and elevations/sections were submitted on December 26, 2006 along with comments from the applicant's representative that led to a revised Building Official's Report (see Attachment D) stating the structure would reach a height of 164' but be limited in height to 116' due to the residential proximity slope.
(Staff has interpreted that the residential proximity slope was created to discourage incompatibility/privacy disruptions that may be caused by high office towers overlooking into single family lots).
- The 2.801 acre (or 122,012 square foot) subject site is flat, generally rectangular in shape (616.27' on the north, 634.73' on the south, 195.1' on the east, and 196.07' on the west). The site has street frontage on two streets (Luther Lane and Lomo Alto

Drive), and as a result, has two front yard setbacks which is typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural.

- On December 26th and 29th, 2006, the applicant's representative submitted the following additional information to the Board Administrator beyond what was submitted with the application (see Attachments A and B):
 - A revised site plan, sections, and view graphics of the proposed tower; and
 - A letter that provided additional details about the requests.
- On January 5, 2007, the applicant's representative submitted additional information beyond what was submitted with the original application, and beyond the January 2nd staff review team meeting (see Attachment C). This information included the following:
 - A letter that provided additional details about the requests;
 - Color visuals including a site plan, sections, views; and
 - Board of adjustment case history of the site and a site in the vicinity.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 314 (Planned Development District)
North: PD No. 314 (Planned Development District)
South: PD No. 314 (Planned Development District)
East: PD No. 314 (Planned Development District)
West: R-16 (A) (Single family district 16,000 square feet)

Land Use:

The 2.801 acre subject site is developed with an office tower (Fidelity Bank), a hotel (Hilton) and a surface parking lot. The area to the north is developed with a residential high-rise use; the areas to the east and south are developed with office uses; and the area immediately west is the Dallas North Tollway.

Zoning/BDA History:

1. BDA 989-114, 5944 Luther Lane (the subject site) On October 27, 1998, the Board of Adjustment Panel A granted requests for variance to the front yard setback regulations of 5' and urban form front yard setback regulations of 16'. The board imposed the following condition: compliance with the submitted elevation is required. The case report stated that the requests were made to construct and maintain nine-story office building.

Timeline:

- Oct. 27, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Nov. 16, 2006: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. 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."
- Nov. 16, 2006: The Board Administrator emailed the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the December 27th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
 - the January 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the January public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Dec. 14, 2006: The applicant and the applicant's representative met with the Board Administrator and the Board of Adjustment Chief Planner. Points of discussion included the 10' building line that was shown on the submitted site plan (that would have to be addressed through the City Plan Commission), and the proposed structure that appeared to be located in a ROW easement.
- Dec. 26 & 29, 2006: The applicant's representative submitted additional information to the Board Administrator (see Attachments A and B).
- January 2, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, the Board of Adjustment Chief Planner, the Board

Administrator, the Board of Adjustment Senior Planner; the Building Inspection Development Code Specialists, the Development Services Senior Engineers, and the Assistant City Attorney to the Board.

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

January 5, 2007 The applicant's representative submitted additional information to the Board Administrator (see Attachment C). This information was submitted past the January 2nd staff review team meeting therefore was not information that was factored into the staff recommendation.

January 8, 2007 The Building Inspection Development Code Specialist forwarded an amended Building Official's Report to the Board Administrator (see Attachment D).

STAFF ANALYSIS:

- The 2.801 acre (or 122,012 square foot) subject site is flat, generally rectangular in shape (616.27' on the north, 634.73' on the south, 195.1' on the east, and 196.07' on the west). The site has street frontage on two streets (Luther Lane and Lomo Alto Drive), and as a result, has two front yard setbacks which is typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural.
- The applicant has the burden of proof in establishing the following:
 - That granting the variances to the front yard setback regulations, the urban form front yard setback regulations, and the height regulations due to the residential proximity slope requested to construct and maintain a 164' high, 11-level office structure will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variances are necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 314 zoning classification.
 - The variances would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD No. 314 zoning classification.
- If the Board were to grant the front yard variance request of 15', the urban form front yard setback regulations of 35', and the height variance of 48', imposing a condition whereby the applicant must comply with the submitted revised site plan and section drawings, the structure would be limited to that what is shown on these submitted plans – a structure below 45' in height that is on the easement line (or 15' into the 15' front yard setback); a structure above 45' in height that is on the easement line

(or 35' into the 35' front yard setback for portions of a structure that exceeds 36' in height), and a structure that is 48' above the residential proximity slope.

- Granting any or all of these variances does not remedy the applicant/owner's issue with the proposed structure's location over the site's 10' platted building line. The applicant/owner will be required to make application for a replat with the City Plan Commission on this issue.