

**BOARD OF ADJUSTMENT, PANEL A  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, COUNCIL CHAMBERS  
TUESDAY, JUNE 19, 2012**

MEMBERS PRESENT AT BRIEFING: Robert Moore, Vice Chair, Jordan Schweitzer, regular member, Scott Hounsel, regular member, Clint Nolen, regular member and Scott Jackson, alternate member

MEMBERS ABSENT FROM BRIEFING: Johnnie Goins, regular member

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

MEMBERS PRESENT AT HEARING: Robert Moore, Vice Chair, Jordan Schweitzer, regular member, Scott Hounsel, regular member, Clint Nolen, regular member and Scott Jackson, alternate member

MEMBERS ABSENT FROM HEARING: Johnnie Goins, regular member

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

**11:30 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **June 19, 2012** docket.

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**1:00 P.M.**

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

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel A **May 15, 2012** public hearing minutes as amended.

**BOARD OF ADJUSTMENT ACTION: JUNE 19, 2012**

**MOTION: Nolen**

I move **approval** of the Tuesday, **May 15, 2012** public hearing minutes.

**SECONDED: Hounsel**

**AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Jackson**

**NAYS: 0 -**

**MOTION PASSED: 5– 0 (unanimously)**

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**FILE NUMBER: BDA 112-062**

**BUILDING OFFICIAL’S REPORT:**

Application of Zachery Popkess for a special exception to the fence height regulations at 3122 San Jacinto Street. This property is more fully described as Lot 3A in City Block 1/503 and is zoned PD-298 (Subarea 6), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain a 9 foot high fence in a required front yard, which will require a special exception of 5 feet.

**LOCATION: 3122 San Jacinto Street**

**APPLICANT: Zachery Popkess**

**REQUEST:**

- A special exception to the fence height regulations of 4’ is requested in conjunction with replacing an approximately 8’ high wood fence with a 5’ 6” high solid board-on-board cedar fence to be located atop a proposed 30” (or 2’ 6” high) stone retaining wall in the site’s San Jacinto Street front yard setback on a property 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:**

- PD No. 298 states that for all residential uses, maximum fence height in the required front yard is four feet.
- The applicant had submitted a site plan and a revised elevation (see Attachment A) indicating that the proposal in the required front yard setback reaches a maximum height of 8' – a height reduced from what had been originally requested at 9'.
- The following additional information was gleaned from the submitted revised site plan:
  - The proposed fence located in the front yard setback is over 4' in height and is approximately 33' in length parallel to the street.
  - The proposed fence is shown to be located approximately 2.5' the front property line or about 8' from the curb line.

### **BACKGROUND INFORMATION:**

#### **Zoning:**

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

#### **Land Use:**

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

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

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

#### **Timeline:**

April 16, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

May 16, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

May 17, 2012: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the May 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the June 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

June 5, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

June 7, 2012: The applicant forwarded additional information beyond what was submitted with the original application (see Attachment A).

### **STAFF ANALYSIS:**

- This request focuses on replacing an approximately 8' high wood fence with a 5' 6" high solid board-on-board cedar fence to be located atop a proposed 30" (or 2' 6" high) stone retaining wall in the site's San Jacinto Street front yard setback on a property developed with a single family home.
- The proposed replacement fence is located on a property that is one of six lots in a shared access development. The subject site is located at the corner of shared access easement drive where it meets San Jacinto Street. Although the San Jacinto Street frontage of the subject site functions as one of its side yards, it is a front yard since the San Jacinto Street side of the site fronts/or is adjacent to the street, hence a front yard setback.
- The submitted site plan and revised elevation documents the location, height, and materials of the fence over 4' in height in the required front yard. The site plan shows the proposal to be approximately 33' in length parallel to the street, and approximately 2.5' from the front property line or about 8' from the curb line. The revised elevation denotes that the fence is to be 8' in height and solid board-on-board cedar materials atop a stone retaining wall.
- No single family home "fronts" to the proposed fence on the subject site.

- The Board Administrator conducted a field visit of the site and surrounding area and noted one other fence above 4 feet high – that being an approximately 8’ high board fence immediately northeast of the subject site (the property one directly on the other side of the shared access easement drive where it meets San Jacinto Street) with no recorded BDA history.
- As of June 11, no letters have been submitted in support or opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4’ will not adversely affect neighboring property.
- If the Board is inclined to grant this special exception of 4’, imposing a condition that the applicant comply with the submitted site plan and revised elevation would provide assurance that the proposal exceeding 4’ in height in the front yard setback would be constructed and maintained in the location and of the height and materials as shown on these documents.

**BOARD OF ADJUSTMENT ACTION: JUNE 19, 2012**

APPEARING IN FAVOR: Zack Popkess, 3122 San Jacinto, Dallas, TX  
Eric Williamson, 3507 Bryan St., Dallas, TX

APPEARING IN OPPOSITON: No one

**MOTION: Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 112-062**, on application of Zachery Popkess, **grant** the request of this applicant to construct and maintain an 8-foot-high fence on the property as a special exception to the height requirement for fences in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

**SECONDED: Hounsel**

AYES: 5– Moore, Schweitzer, Hounsel, Nolen, Jackson

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

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**FILE NUMBER:** BDA 112-068

**BUILDING OFFICIAL’S REPORT:**

Application of Darick Favors, Sr. for special exceptions to the fence height regulations, visual obstruction regulations, off-street parking regulations at 623 E. Woodin Boulevard. This property is more fully described as Lot 4A in City Block 19/3641 and is zoned R-7.5(A), which (1) limits the height of a fence in the front yard to 4 feet, (2)

requires a 20 foot visibility triangle at driveway approaches, and (3) requires off-street parking. The applicant proposes to construct and/or maintain (1) a 6 foot high fence in required front yard setbacks, which will require special exceptions to the fence regulations of 2 feet; (2) items in required visibility triangles, which will require special exceptions to the visual obstruction regulations; and (3) a structure for church and child-care facility uses and provide 28 of the required 36 parking spaces; which will require a special exception to the off-street parking regulations of 8 spaces.

**LOCATION:** 623 E. Woodin Boulevard

**APPLICANT:** Darick Favors, Sr.

**REQUESTS:**

- The following appeals have been made on a site that is currently developed with a church use:
  1. special exceptions to the fence height regulations of 2' in conjunction with maintaining an existing 6' high open wrought iron fence/gate in the site's 25' front yard setbacks on Marsalis Avenue and Woodin Boulevard (a portion of the existing fence is proposed to be relocated where the alley meets Marsalis Avenue on the northeast corner of the subject site);
  2. special exceptions to the visual obstruction regulations are requested in conjunction with maintaining the aforementioned 6' high open wrought iron fence in the two, 20-foot visibility triangles at the driveway into the site from Marsalis Avenue; and
  3. a request for a special exception to the off-street parking regulations of 8 off-street parking spaces (or a 22 percent reduction of the 36 off-street parking spaces required) in conjunction with maintaining the existing church use and transitioning some of its vacant space to a child-care facility use (proposed approximately 4,600 square foot church and approximately 1,500 square foot child-care facility.) The applicant proposes to provide 28 (or 78 percent) of the required 36 off-street parking spaces in conjunction with the transition of existing vacant space on the property to a child-care facility use.

**STAFF RECOMMENDATION (fence height special exception):**

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

**STAFF RECOMMENDATION (visual obstruction special exceptions):**

Approval subject to the following condition:

- Compliance with the submitted site plan (denoting "exist. 6' ht. wrought iron fence") is required.

Rationale:

- The Sustainable Development and Construction Department Engineering Division Assistant Director has no objections to these requests.

- The applicant has substantiated how the location of the item (open wrought iron fence) in the visibility triangles at the drive approach into the site from Marsalis Avenue does not constitute a traffic hazard.

**STAFF RECOMMENDATION (off-street parking special exception):**

Approval subject to the following condition:

- The special exception of 8 off-street parking spaces shall automatically and immediately terminate if and when the church and child-care facility uses are changed or discontinued.

Rationale:

- The Sustainable Development and Construction Department Engineering Division Assistant Director has no objections to these requests.
- The applicant substantiated how the parking demand generated by the church and child-care facility uses does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

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

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

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

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

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.

- 2) In determining whether to grant a special exception, the board shall consider the following factors:
  - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
  - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
  - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
  - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
  - (E) The availability of public transit and the likelihood of its use.
  - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
  - (A) Establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
  - (B) Impose restrictions on access to or from the subject property; or
  - (C) Impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
  - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
  - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

**GENERAL FACTS (fence height special exception):**

- The subject site is located at the northwest corner of Marsalis Avenue and Woodin Boulevard. The site has a front yard setback along Woodin Boulevard (the shorter of the two frontages which is always deemed the front yard setback on a corner lot of unequal frontage distance in a single family zoning district), and a front yard setback along Marsalis Avenue (the longer of the two frontages of this corner lot of unequal frontage distance), which typically is a side yard where a 9' high fence could be maintained by right). But, the site's Marsalis Avenue frontage is deemed a front yard to maintain the continuity of the established front yard setback along this street because lots immediately north front eastward on Marsalis Avenue and have front yard setbacks along this street.

- The Dallas Development Code states that a person shall not erect or maintain a fence in a required yard more than 9' above grade, and additionally states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The applicant has submitted a site plan and an elevation of the proposal/existing fence in the front yard setback that reaches a maximum height of 6'.
- The following additional information was gleaned from the submitted site plan:
  - Along Woodin Boulevard:
    - Approximately 22' in length parallel to the street and approximately 25' in length perpendicular on the east and west sides in this front yard setback;
    - The proposal is shown to be located as close as on the site's front property line or as close as 27' from the curb line.
  - Along Marsalis Avenue:
    - Approximately 150' in length parallel to the street and approximately 25' in length perpendicular on the north and south sides in this front yard setback;
    - The proposal is shown to be located as close as on the site's front property line or as close as 8' from the curb line.

**GENERAL FACTS (visual obstruction special exception):**

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

A site plan and elevation has been submitted indicating portions of a 6' high open wrought iron fence located in the two, 20-foot visibility triangles at the driveway into the site from Marsalis Avenue.

**GENERAL FACTS (parking special exception):**

- The Dallas Development Code requires the following off-street parking requirement:
  - Church: One space per each four fixed seats in the sanctuary or auditorium. If fixed benches or pews are provided, each 18 inches of length of the fixed bench or pew constitutes one fixed seat.
  - Child-care facility: One space per 500 square feet of floor area.
 The applicant proposes to provide 28 (or 78 percent) of the required 36 off-street parking spaces in conjunction with the transition of existing space to a use with a higher off-street parking requirement.

**BACKGROUND INFORMATION:**

**Zoning:**

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

### **Land Use:**

The subject site is developed with a church use (Full Gospel Tabernacle). The areas to the north and west are developed with single family uses; the area to the east is developed with a church use; and the area to the south is a school (Harrell Budd Elementary School).

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

1. Z 101-388, northwest corner of Woodin Boulevard at Marsalis Avenue (the subject site) On application for an SUP for child-car facility will be scheduled for the City Plan Commission once the Board of Adjustment has acted upon the applicant's requests for special exceptions to the fence height, visual obstruction, and off-street parking regulations.

### **Timeline:**

- April 27, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 16, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- May 17, 2012: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the May 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the June 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the requests; and
  - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- June 5, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings.

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

June 7, 2012: The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked "Has no objections."

**STAFF ANALYSIS (fence height special exceptions):**

- This request focuses on primarily maintaining an existing 6' high open wrought iron fence/gate in the site's 25' front yard setbacks along Marsalis Avenue and Woodin Boulevard (a portion of the existing fence is proposed to be relocated where the alley meets Marsalis Avenue on the northeast corner of the subject site).
- No single family home "fronts" to the existing fences on the subject site.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences above four feet high were located in a front yard setback.
- As of June 11, 2012, no letters have been submitted in support or opposition to the requests.
- The applicant has the burden of proof in establishing that the special exceptions to the fence height regulations of 2' will not adversely affect neighboring property.
- Granting these special exceptions of 2' with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding 4' in height in the front yard setbacks to be maintained (and slightly modified) in the location and of the height and material as shown on these documents.

**STAFF ANALYSIS (visual obstruction special exceptions):**

- These requests focus on maintaining the aforementioned 6' high open wrought iron fence in the two, 20-foot visibility triangles at the driveway into the site from Marsalis Avenue.
- The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections."
- The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulations to maintain a 6' high open wrought iron fence in the driveway visibility triangles into the site from Marsalis Avenue does not constitute a traffic hazard.
- Granting this request with a condition imposed that the applicant complies with the submitted site plan (denoting "exist. 6' ht. wrought iron fence") would require that the items located in the visibility triangle to be limited to the location, height and materials of those items as shown on this document.

**STAFF ANALYSIS (parking special exception):**

- This request focuses on maintaining the existing church use and transitioning some of its vacant space to a child-care facility use (proposed approximately 4,600 square foot church and approximately 1,500 square foot child-care facility) where the

applicant proposes to provide 28 (or 78 percent) of the required 36 off-street parking spaces.

- The applicant has submitted a document stating that the hours for the church use on the property are on weekends and Wednesday nights, and the hours for the proposed child-care facility are weekdays from 6 a.m. – 6 p.m.
- The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked “Has no objections.”
- The applicant has the burden of proof in establishing the following:
  - The parking demand generated by the church and child-care facility uses on the site does not warrant the number of off-street parking spaces required, and
  - The special exception of 6 spaces (or a 22 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board grants this request subject to the condition that the special exception of 6 off-street parking spaces shall automatically and immediately terminate if and when the church and child-care facility uses are changed or discontinued, the applicant would be allowed to maintain the existing use on the property along with the proposed use, and provide only 28 of the 36 code required off-street parking spaces.

**BOARD OF ADJUSTMENT ACTION: JUNE 19, 2012**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITON: No one

MOTION: **Jackson**

I move that the Board of Adjustment grant application **BDA 112-068** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted site plan and elevation is required.
- The special exception of 8 parking spaces automatically and immediately terminates if and when the church and child-care facility uses are changed or discontinued.

SECONDED: **Schweitzer**

AYES: 5– Moore, Schweitzer, Hounsel, Nolen, Jackson

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

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**FILE NUMBER:** BDA 112-066

**BUILDING OFFICIAL'S REPORT:**

Application of Thom Faust, represented by G. Kent Cobb, to appeal the decision of the administrative official at 5221 Milam Street. This property is more fully described as Lot 13 in City Block H/1997 and is zoned CR, which requires a residential adjacency review for the construction of a commercial parking lot or garage. The applicant is appealing the administrative official's decision that approved the residential adjacency review for a commercial parking lot or garage.

**LOCATION:** 5221 Milam Street

**APPLICANT:** Thom Faust  
Represented by G. Kent Cobb

**June 19, 2012 Public Hearing Notes:**

- Both the applicant and the Administrative Official submitted additional written documentation to the Board at the public hearing.

**REQUEST:**

- An appeal to the Board of Adjustment to reverse/overturn the Administrative Official's (David Cossum, Assistant Director of Sustainable Development and Construction Current Planning Division) April 10, 2012 decision to approve (with certain conditions) an application for residential adjacency/site plan review made on September 18, 2011 by Negusse Investments for property located on the "Residential Adjacency/Site Plan Review" form at 5221 Milam Street.

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

Dallas Development Code Sections 51A-3.102(d)(1) and 51A-4.703(a)(2) states that any aggrieved person may appeal a decision of an administrative official when that decision concerns issues within the jurisdiction of the Board of Adjustment.

The Board of Adjustment may hear and decide an appeal that alleges error in a decision made by an administrative official. Tex. Local Gov't Code Section 211.009(a)(1).

Administrative official means that person within a city department having the final decision-making authority within the department relative to the zoning enforcement issue. Dallas Development Code Section 51A-4.703(a)(2).

**GENERAL FACTS:**

- The applicant (Thom Faust) has made “an appeal of an administrative official’s decision” to the Board of Adjustment for the following reason: “Residential Adjacency Review for 5221 Milam Street was completed and the site plan was approved without adequate consideration of Section 51A-4.803, subsection, (f) (3) of the city code.”
- The “Residential Adjacency/Site Plan Review” form included with the application states among other things the following:
  - Date: 9/18/11
  - Name: Negusse Investments
  - Property information: 5221 Milam Street
  - Brief description of all existing and proposed uses: Existing use is a vacant lot; proposed use is a parking area.
  - For staff use only: Approval, subject to conditions noted. (signed David Cossum, 4-10-12)
- The “Residential Adjacency (RAR) Attachment” form included with the application states among other things the following:
  - Location: 5221 Milam Street
  - Owner: Negusse Investments
  - Applicant: Bryan Hull
  - Proposed Use: parking lot
  - Conditions for approval:
    1. Site Plan: Site must be developed and landscaped per the approved site plan and landscape plan.
    2. Screening: Screening fence must be provided as shown on site plan, both sides to be split face block.
    3. Parking curb stops: Parking areas adjacent to alley must have curb stops spaces so as no vehicles may exit to alley.
    4. Lighting: Lighting must be approved in accordance with the approved lighting plan. Prior to issuance of final CO, lighting shall be certified to be in compliance with the plan by a licensed professional.
- The applicant has included a copy of a site plan of the property.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: CR (Community Retail)  
North: PD No. 462 (Planned Development)  
South: R-5(A) (Single family residential, 5,000 square feet)  
East: CR (Community Retail)  
West: R-5(A) (Single family residential, 5,000 square feet)

**Land Use:**

The subject site appears to be in the process of being developed as a surface parking lot. The areas to the north and east appear to be developed with retail uses; the area to immediately south is undeveloped, and the area to the west appears to be developed with single family uses.

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

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

### **Timeline:**

- April 24, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 16, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- May 18, 2012: The Board Administrator emailed the applicant's representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the May 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the June 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - the provision from the Dallas Development Code that allows the board to consider appeals of an administrative official (Section 51A-4.703(a)(2)).
  - the outline of procedure for appeals from decisions of an Administrative Official by the board of adjustment; and
  - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- June 5, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings.
- No review comment sheets with comments were submitted in conjunction with this application.

### **STAFF ANALYSIS:**

- The applicant is requesting that the Board of Adjustment reverse/overtake the Administrative Official's (David Cossum, Assistant Director of Sustainable Development and Construction Current Planning Division) April 10, 2012 decision to approve (with certain conditions) an application for residential adjacency/site plan review made on September 18, 2011 by Negusse Investments for property located on the "Residential Adjacency/Site Plan Review" form at 5221 Milam Street.
- The applicant has the burden of proof to establish the necessary facts to warrant favorable action of the board.
- The board may in whole or in part affirm, reverse, or amend the decision of the administrative official.

- If the Board of Adjustment affirms the Administrative Official's April 10, 2012 decision, the residential adjacency/site plan review will remain approved. If the Board of Adjustment reverses the Administrative Official's April 10, 2012 decision, the application for residential adjacency/site plan review will be denied.

**BOARD OF ADJUSTMENT ACTION: JUNE 19, 2012**

APPEARING IN FAVOR: Kent Cobb, 4931 Alcott Street, Dallas, TX

APPEARING IN OPPOSITON: Roger Albright, 3301 Elm Street, Dallas, TX  
Bryan Hall, 600 Wentworth, Dallas, TX

APPEARING FOR THE CITY: Andrew Gilbert, Asst. City Atty, 1500 Marilla, 7DN, Dallas, TX  
David Cossum, Asst. Dir. 1500 Marilla, 5BN, Dallas, TX

**MOTION #1: Hounsel**

I move that the Board of Adjustment suspend the rules and accept the evidence that is being presented to us today by the applicant.

SECONDED: **Nolen**

AYES: 5– Moore, Schweitzer, Hounsel, Nolen, Jackson

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

**MOTION #2: Hounsel**

I move that the Board of Adjustment suspend the rules and accept the evidence that is being presented to us today by the Administrative Official.

SECONDED: **Nolen**

AYES: 5– Moore, Schweitzer, Hounsel, Nolen, Jackson

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

**MOTION #3: Hounsel**

Having fully reviewed the City of Dallas Administrative Official's decision in Appeal No. **BDA 112-066**, on application of Thom Faust, and having evaluated the evidence and heard all testimony and facts supporting the application, I move that the Board of Adjustment **modify** the decision of the administrative official and **deny** the relief requested by this applicant **without prejudice** subject to the following change:

- Revise the site plan to have three light poles at a maximum height of 10 feet.

SECONDED: **Nolen**  
AYES: 4– Moore, Hounsel, Nolen, Jackson  
NAYS: 1 – Schweitzer  
MOTION PASSED 4 – 1

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MOTION: **Schweitzer**

I move to adjourn this meeting.

SECONDED: **Hounsel**  
AYES: 5– Moore, Schweitzer, Hounsel, Nolen, Jackson  
NAYS: 0 -  
MOTION PASSED 5– 0 (unanimously)

**2:41 P. M.** - Board Meeting adjourned for **June 19, 2012.**

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CHAIRPERSON

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BOARD ADMINISTRATOR

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BOARD SECRETARY

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