

NOTICE FOR POSTING
MEETING OF
BOARD OF ADJUSTMENT, PANEL A
TUESDAY, AUGUST 12, 2008

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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08-12-2008

BOARD OF ADJUSTMENT, PANEL A
TUESDAY, AUGUST 12, 2008
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
Kyra Blackston, Senior Planner

MISCELLANEOUS ITEMS

	Approval of the Tuesday, June 24, 2008 Board of Adjustment Public Hearing Minutes	M1
BDA 078-104(K)	7045 Greentree Lane REQUEST: Of Susan Drechsler to reimburse the filing fee submitted in conjunction with a request for a special exception to the fence height regulations	M2

UNCONTESTED CASES

BDA 078-094	1800 E. Illinois Avenue (AKA 1700 E. Elmore Avenue)1 REQUEST: Application of Charles Lightner, represented by Hue Woodson, for a special exception to the landscape regulations	
BDA 078-097(K)	5130 Belmont Avenue REQUEST: Application of Charlie Corson represented by Rob Baldwin for a special exception to the tree preservation regulations	2
BDA 078-100	6619 Willow Lane REQUEST: Application of Santos T. Martinez of Masterplan for a variance to the side yard setback regulations	3
BDA 078-101(K)	4905 Radbrook Place REQUEST: Application of James P. Graham for a special exception to the fence height regulations	4

BDA 078-104(K)	7045 Greentree Lane REQUEST: Application of Susan Drechsler for a special exception to the fence height regulations	5
BDA 078-113	6010 Desco Drive REQUEST: Application of James T. Dowell for a special exception to the fence height regulations	6

REGULAR CASES

BDA 078-092	6159 Oram Street REQUEST: Application of Jamie Pierson to appeal the decision of an administrative official	7
BDA 078-102	8989 Forest Lane REQUEST: Application of Fred Yick, represented by Jim Copus of the Michael R. Coker Company, for a special exception to the parking regulations	8

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 June 24, 2008 public hearing minutes.

MISCELLANEOUS ITEM NO. 2

REQUEST: To reimburse the filing fee to be submitted in conjunction with a request for a special exception to the fence height regulation

LOCATION: 7045 Greentree Lane

APPLICANT: Susan Drechsler

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 waivers and 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 with the submittal of the application requesting a reimbursement of the filing fee submitted in conjunction with the request for a variance to the front yard setback regulations (see Attachment A).

Timeline:

June 24 2008 The applicant submitted a letter with her application requesting a reimbursement of the filing fee submitted in conjunction with the request for a special exception to the fence height regulation

July 15, 2008: The Board of Adjustment Secretary assigned this case to Panel A because the rules of procedure of the Board of Adjustment requires this case be returned to the panel hearing the pervious filed case.

July 16, 2008: The Board Senior Planner contacted the applicant and shared the following information by phone and letter:

- the public hearing date and panel that will consider the application;
- the criteria and standard that the board will use in their decision to approve or deny the requests;
- the July 28th deadline to submit additional evidence for staff to factor into their analysis;
- the August 1st 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 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 August public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.

FILE NUMBER: BDA 078-094

BUILDING OFFICIAL'S REPORT:

Application of Charles Lightner, represented by Hue Woodson, for a special exception to the landscape regulations at 1800 E. Illinois Avenue (AKA 1700 E. Elmore Avenue). This property is more fully described as Lot 2 in City Block 5857 and is zoned MF-2(A) and R-7.5(A) which require mandatory landscaping. The applicant proposes to construct a nonresidential structure and provide an alternate landscape plan which will require a special exception to the landscape regulations.

LOCATION: 1800 E. Illinois Avenue (AKA 1700 E. Elmore Avenue)

APPLICANT: Charles Lightner
Represented by Hue Woodson

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with completing and maintaining an addition to an existing church structure (New Comforter Church of God in Christ).

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan is required.

Rationale:

- The City's Chief Arborist supports the request.
- The applicant has substantiated how strict compliance with the requirements of the Landscape Regulations of the Dallas Development Code (specifically related to street tree, parking lot tree, perimeter landscape buffer strip and buffer plant requirements) will unreasonably burden the use of the property; and that the special exception will not adversely affect neighboring property. In this case the applicant is not able to fully meet the landscape requirements on the property given conflicting demands/requirements of Oncor. Additionally, staff concurs with the Chief Arborist's conclusions that:
 1. the alternative landscape plan provides an appropriate and balanced level of landscaping that addresses the various utility restrictions placed upon the owner within their property while maintaining most of the existing landscape;
 2. the adjacent property owners to the east (City of Dallas and Oncor) most impacted by these exceptions will not suffer adverse impacts by the installation of smaller trees; and

3. the street frontages and perimeter buffer will be providing sufficient aesthetic enhancements while not compromising utility maintenance.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

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

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

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

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

GENERAL FACTS:

- The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period. An alternate landscape plan has been submitted with the application that according to the City of Dallas Chief Arborist is deficient from meeting street tree, parking lot tree, perimeter landscape buffer strip and buffer plant requirements.
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Chief Board of Adjustment Planner (see Attachment A). The memo stated the following:
 - The applicant is requesting relief from street tree, parking lot tree, perimeter landscape buffer strip, and buffer plant material requirements of Article X: The Landscape Regulations.
 - Trigger:
 - New construction and paving on replatted lot.
 - Deficiencies:
 1. Street trees:
 - The code requires 1 large tree per 50 linear feet of street frontage within 30' of the projected street curb.
 - The applicant proposes to provide none of the required 8 large trees required for the combined street frontages. (Multiple trees are proposed beyond 30' from curb and situated away from utility lines and easements)

2. Parking lot trees:

The code requires all required parking spaces to be within 120' of a large canopy tree.

The applicant proposes to meet this requirement in some locations on the site given utility easements the prohibit planting large canopy trees within the required distances of some parking spaces.

3. Perimeter landscape buffer strip:

The code requires 1 plant buffer group per 50' of residential adjacency where 1 large canopy tree is required per plant group.

Adjacency buffers are within the utility easement. 11 plant groups are required for the easement area and 7 small trees are proposed in the buffer along the east edge.

- Factors for consideration:

- The property, platted for the purpose of parking expansion, includes a portion of property previously owned by the Texas Utilities Electric Company. An easement is still maintained by the utility on that portion of the property that contains high energy transmission towers as well as standard transmission lines.

- A confluence of underground utilities of various depths and sizes are situated along Illinois Avenue and Ozona Street frontages that minimizes the areas that are suitable for planting large trees in proximity to the street frontages required by code. The Illinois Avenue street curb is at a substantially lower elevation from the development site which will enhance the screening effectiveness of dispersed trees.

- Overhead utility lines within the mandatory easements are prohibitive to planting large trees per code. Oncor has prohibited any trees that grow taller than 20' in height. The Public Utilities Commission (PUC) recommends a limited number of species of "small trees" that may be planted in these environments.

- The parking lot that expands across the easement will not accommodate the placement of large canopy trees required per code due to utility conflict.

- The properties to the east of the easement, and the retirement center property are zoned R-7.5(A). This mandates a perimeter landscape buffer for those locations where adjacency exists. The adjacent property to the east is with the City of Dallas Cedar Crest Water Pump Station and within utility company property. The applicant proposes to create the buffer area as required but is requesting to be allowed to plant small species of tree suitable for installation under overhead utilities.

- A stand of trees on the south side of the site along a drainage area. The property owner will be maintaining this stand of trees as part of the landscape requirements. The trees within this area are helping the site comply with perimeter buffer, site tree, and design standard requirements.

- The City of Dallas must continue to enforce ordinance provisions specified by Council although they may be in conflict with the PUC recommendation and Oncor directives.

- Recommendation

- Approval.

- Strict compliance with the provisions of Article X unreasonably burdens the use of the property by conflicting demands of Oncor and this ordinance. The alternative landscape plan provides an appropriate and balanced level of landscaping that addresses the various utility restrictions placed upon the owner within their property while maintaining most of the existing landscape. Adjacent property owners to the east (City of Dallas and Oncor) most impacted by these exceptions will not suffer adverse impacts by the installation of smaller trees. The street frontages and perimeter buffer will be providing sufficient aesthetic enhancements while not compromising utility maintenance.

BACKGROUND INFORMATION:

Zoning:

Site: MF-2 (A) & R-7.5 (A) (Multifamily and Single family residential 7,500 square feet)
North: R-7.5 (A) (Single family residential 7,500 square feet)
South: R-7.5 (A) (Single family residential 7,500 square feet)
East: R-7.5 (A) (Single family residential 7,500 square feet)
West: R-7.5 (A) (Single family residential 7,500 square feet)

Land Use:

The subject site is developed with an existing church (New Comforter Church of God in Christ) in which an addition is currently underway. The area to the north is developed as a public golf course (Cedar Crest Golf Course); the area to the east is developed as what appears to be an office use; the area to the south appears to be undeveloped; and the area to the west is developed with single family uses.

Zoning/BDA History:

1. Miscellaneous Item #2, Property at 1800 E. Illinois Avenue (the subject site) On June 24, 2008, the Board of Adjustment Panel A waived the filing fee to be submitted in conjunction with a pending board of adjustment.

Timeline:

- May 26, 2008: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 16, 2008: 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 Rules of Procedure that states, "If any preliminary action is required on a case, including but not limited to a fee waiver or waiver of the two

year waiting period, the case must be returned to the panel taking the preliminary action.”

- July 18, 2008: 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 July 28th deadline to submit additional evidence for staff to factor into their analysis;
 - the August 1st 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 Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and, if not, may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

July 29, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

July 31, 2008 The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment A).

STAFF ANALYSIS:

- The request focuses on completing and maintaining an addition to an existing church structure (New Comforter Church of God in Christ) and being “excepted” from fully meeting the Landscape Regulations of the Dallas Development Code.
- An alternate landscape plan has been submitted whereby the applicant seeks an exception from the landscape requirements in the following ways:
 - providing none of the required 8 large street trees,
 - partially providing parking lot trees in their required locations; and
 - partially providing the perimeter landscape buffer strips in their required locations.

- The City of Dallas Chief Arborist supports the request largely given the landscaping that is proposed on the site while taking into consideration the number of constraints that are intrinsic to the site – mainly the prevalence of utility easements and utility lines that preclude meeting the City’s landscape requirements.
- The applicant has the burden of proof in establishing the following:
 - Strict compliance with the requirements of the Landscape Regulations of the Dallas Development Code will unreasonably burden the use of the property; and
 - The special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted alternate landscape plan, the site would be “excepted” from compliance with the street tree, parking lot tree, perimeter landscape buffer strip and buffer plant requirements of Article X: The Landscape Regulations.

FILE NUMBER: BDA 078-097(K)

BUILDING OFFICIAL'S REPORT:

Application of Charlie Corson represented by Rob Baldwin for a special exception to the tree preservation regulations at 5130 Belmont Avenue. This property is more fully described as Lots 2-8, in City Block C/1993 and is zoned MF-2(A), which requires mandatory landscaping. The applicant proposes to construct and maintain a residential multifamily structure and provide an alternate landscape plan for tree mitigation which will require a special exception to the tree preservation regulations.

LOCATION: 5130 Belmont Avenue

APPLICANT: Charlie Corson
Represented by Rob Baldwin

REQUEST:

- A special exception to the tree preservation regulations of Article X for property located on Belmont Avenue.

STAFF RECOMMENDATION:

Approval with the following conditions:

A preliminary landscape plan and a tree mitigation plan must be submitted to the chief arborist within 120 days of the hearing date. (A building permit will be required to be issued within 180 days of approval.)

A letter of credit or performance bond must be submitted within 60 days of approval to the chief arborist for the cost of purchasing and planting 363 caliper inches of trees with an expiration date that is no sooner than 3 months after the board approved date for completing tree mitigation.

Rationale:

- The City's Chief Arborist provides the following explanation:
The former owner has completed a portion of the tree mitigation for the area currently developed. The local community would be best served to have as many of the removed trees replaced back on the site that can be done in a reasonable measure of time. Development of the property is the fastest way to place a large number of maintained shade trees into that area. The appropriate administrative conditions can help support the achievement of this goal while insuring the City for compensation of the removed trees.

STANDARD FOR A SPECIAL EXCEPTION TO THE TREE PRESERVATION REQUIREMENTS:

Section 51A-10.110 specifies that the board of adjustment may grant a special exception to the requirements of the landscape article upon making a special finding of evidence presented that:

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

In determining whether to grant a special exception under Subsection (a), the board shall consider the following factors:

- (1) The extent to which there is residential adjacency.
- (2) The topography of the site.
- (3) The extent to which landscaping exists for which no credit is given under this article.
- (4) The extent to which other existing or proposed amenities will compensate for the reduction of landscaping. (Ord. Nos. 22053, 25155)

GENERAL FACTS:

- The site is currently undeveloped.
- The applicant is requesting a special exception to the tree preservation requirements of Article X. More specifically, the request is for relief from mitigation requirements specified under Section 51A-10.134 (5).
- The City of Dallas Chief Arborist submitted a memo to the Board's Senior Planner and the Board Chief Planner pertaining to the submitted site plan (see attachment A). The memo stated the following:
 - The special exception requested is triggered by a tree removal permit issued on August 9, 2006 in conjunction with a grading permit to prepare a site for development.
 - Deficiencies:
 - The ordinance requirements for the completion of tree mitigation for protected trees removed from a property have not been met.
 - Factors:
 - A tree removal permit was issued on August 9, 2006. Section 51A-10.134(5) of the Dallas Development Code states that 'all replacement trees must be planted within 30 days after the removal' unless an extension of six months is formally requested by the owner, or an extension of 18 months is approved with the acceptance of a letter of credit or performance bond.
 - The 18 month anniversary date from the permit was February 9, 2008. No letter of credit or performance bond was submitted to the chief arborist.
 - The initial assessment of mitigation was 550 caliper inches from 31 protected trees removed with a replacement value of \$44,662.00.

- The previous owner of the site mitigated a total of 187 caliper inches (34% of the total for the site) by planting 19.25 inches onto the property and paying money into the Reforestation Fund for the amount of \$14,672.29 on November 2, 2007.
 - The remaining mitigation for the property is 363 caliper inches from 19 trees with a cumulative value of \$28,306.00.
 - Recommendation
 - Approval

BACKGROUND INFORMATION:

Zoning:

Site: MF-2(A) (Multifamily)
North: MF-2(A) (Multifamily)
South: MF-2(A) (Multifamily)
East: PD 462 (Planned Development)
West: MF-2(A) (Multifamily)

Land Use:

The subject site is undeveloped. The area to the north is under construction. The area the east is undeveloped. The properties to the south are developed with multifamily use. The area to the west is developed with single family shared access.

Zoning/BDA History:

BDA 056-115	On April 16, 2006 the Board of Adjustment Panel A granted a special exception to the landscape requirement.
BDA067-077	On May 16, 2007 The Board of Adjustment Panel A granted a 7 foot variance to the front yard setback regulation.
Z678-191	On June 5, 2008 the City Plan Commission recommended denial for a Planned Development District for MF-2 (A) uses on the property located at the southeast corner of Belmont Ave and Henderson Avenue.

Timeline:

May 21 2008:	The applicant’s representative submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
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- July 15, 2008: The Board of Adjustment Secretary assigned this case to Panel A because the rules of procedure of the Board of Adjustment requires this case be returned to the panel hearing the pervious filed case.
- July 16, 2008: The Board of Adjustment's Senior Planner contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria and standard that the board will use in their decision to approve or deny the request;
 - the July 28th deadline to submit additional evidence for staff to factor into their analysis and discuss at the staff review team meeting;
 - the August 1st 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 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 August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- July 29, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.
- August 1, 2008: The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment A).

STAFF ANALYSIS:

- The subject site is currently undeveloped.
- The applicant's representative provided the following information to the Board of Adjustment's Senior Planner:
 - The property was original developed as apartments.
 - A few years ago, Perry Homes purchased the property and demolished the apartments and trees to accommodate a shared access development.
 - Perry Homes constructed the first phase of the shared access townhouse development and then decided to stop working in the Dallas market.
 - The new owner plans on developing the property with a multi-family project, similar to what is being constructed across Belmont Avenue.

- The applicant requests an additional 24 months to complete the remainder of tree mitigation as they continue to design the project. This would be approximately 4 years from the date of the tree removal permit.
- The current owner was notified by the district arborist during a pre-development meeting on August 8, 2007 that the property was still encumbered with outstanding tree mitigation. The owner has shown recent public signs of activity to pursue development of the site through a replat and a failed attempt at rezoning.
- The total amount of mitigation required on the property is based upon the number of protected trees removed. Any trees remaining on the property would not contribute to the mitigation count until, and if, the tree is removed and verified by the arborist. The Chief Arborist's initial assessment of mitigation was 550 caliper inches from 31 protected trees removed with a replacement value of \$44,662.00.
- The arborist office had worked with the previous owner to obtain mitigation on the initial development (single family units) for the trees removed in that portion of the development site. A total of 187 caliper inches (34% of the total for the site) were mitigated by planting 19.25 inches onto the property and paying money into the Reforestation Fund for the amount of \$14,672.29 on November 2, 2007.
- The remaining mitigation total for the property is 363 caliper inches from 19 trees with a cumulative value of \$28,306.00. Article X will require a minimum of 55 caliper inches of site trees to be planted on the property. A new proposed landscape plan has not been submitted at this time to identify how much mitigation will be planted on site.

- The applicant has the burden of proof in establishing the following:
 - strict compliance with the requirements of this article will unreasonably burden the use of this property;
 - the special exception will not adversely affect neighboring property; and
 - the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

- If the Board chooses to approve the request the staff recommends imposing the following conditions as recommended by the Chief Arborist:
 1. . A preliminary landscape plan and a tree mitigation plan must be submitted to the chief arborist within 120 days of the hearing date. (A building permit will be required to be issued within 180 days of approval.)
 2. A letter of credit or performance bond must be submitted within 60 days of approval to the chief arborist for the cost of purchasing and planting 363 caliper inches of trees with an expiration date that is no sooner than 3 months after the board approved date for completing tree mitigation.

FILE NUMBER: BDA 078-100

BUILDING OFFICIAL'S REPORT:

Application of Santos T. Martinez of Masterplan for a variance to the side yard setback regulations at 6619 Willow Lane. This property is more fully described as Lot 5C in City Block A/7460 and is zoned R-16(A) which requires a side yard setback of 10 feet. The applicant proposes to construct and maintain structures and provide a 3 foot side yard setback which will require a variance of 7 feet.

LOCATION: 6619 Willow Lane

APPLICANT: Santos T. Martinez of Masterplan

REQUEST:

- A variance to the side yard setback regulations of up to 7' is requested in conjunction with constructing and maintaining covered patio/gazebo, pool benchwall, and fireplace structures (none of which exceed 15' in height) in the site's 10' side yard setback on a site that is developed with a single family home.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

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

Rationale:

- The site is restricted in its developable area, and different from other parcels of land given its irregular-shape. This feature creates hardship on the lot and prohibits the applicant's ability to locate the proposed covered patio/gazebo, pool benchwall, and fireplace structures in the rear 30 percent of the lot where no side yard setback would be required since all of the proposed structures do not exceed 15' in height.
- Furthermore granting this variance would not appear to be contrary to the public interest considering:
 - The structures to be "varied" in this case could be located on the side property line by right if it were not for the lot's irregular shape, and
 - Immediately adjacent to the east of the subject site (i.e. the area nearest the side yard encroaching covered patio, pool benchwall, and outdoor fireplace structures) is the driveway of the single family home on this property;
 - The fact that there is an approximately 8' high solid buffer/fence/wall separating the site/side yard encroaching structures from the property (driveway) immediately east.

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:

- The minimum side yard setback for structures on lots zoned R-16(A) is 10'. The code states that in a residential district, a person need not provide a side yard setback for a structure accessory to a residential use if the structure does not exceed 15' in height and is located in the rear 30 percent of the lot.
A full site plan and a partial site plan/elevation have been submitted that indicate the location of a portion of a covered patio/gazebo would be as close as 6.5' from the site's eastern side property line (or 3.5' into the 10' side yard setback), and an outdoor fireplace and pool benchwall to be located as close as 3' from the site's eastern side property line (or 7' into the 10' side yard setback). These structures appear to be located just to the south of the rear 30 percent of the lot where no side yard setback would be required.
- According to calculations taken from the site plan by the Board Administrator, the proposed covered patio/gazebo structure has an approximately 294 square foot building footprint of which an approximately 74 square foot area is proposed to be located in the 10' side yard setback; the proposed fireplace has an approximately 36 square foot building footprint of which all is proposed to be in the 10' side yard setback; and about a 14' length of the pool benchwall will be in the 10' side yard setback.
- The site is flat and irregular in shape (approximately 70' on the north, approximately 5' on the south, approximately 296' on the east, and approximately 247' on the west). The application states that the site is 0.384 acres (or 16,727 square feet) in area. The site is zoned R-16(A) where lots are typically 16,000 square feet in area.
- DCAD states that the site is developed with the following:
 - a single family home in good condition built in 1993 with 4,267 square feet of living space; and
 - a 738 square foot attached garage.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a document that provided additional details about the request;

- plans that convey the front and rear yards of the site, the denotation of the side yard setback and the structures within the setback.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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

Timeline:

- 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.
- July 16, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 17, 2008: The Board Administrator contacted the applicant and shared the following information by phone and email:
- 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 July 28th deadline to submit additional evidence for staff to factor into their analysis;
 - the August 1st 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 Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and, if not, may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the August public hearing after considering the information/evidence and

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

July 25, 2008 The applicant submitted additional information to the Board Administrator (see Attachment A).

July 29, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- This variance request is made to allow an outdoor fireplace, a pool benchwall, and part of a covered patio/gazebo structure to be located in the site's eastern 10' side yard setback.
- The site is flat and irregular in shape (approximately 70' on the north, approximately 5' on the south, 2 approximately 296' on the east, and approximately 247' on the west). Due to the site's irregular shape, the applicant has stated how the proposed structures that are the nature of this variance request cannot be located in the site's rear 30 percent of the lot where if they were no side yard setback would be required since the proposed structures do not appear to exceed 15' in height.
- According to calculations taken from the site plan by the Board Administrator, the proposed covered patio/gazebo structure has an approximately 294 square foot building footprint of which an approximately 74 square foot area is proposed to be located in the 10' side yard setback; the proposed fireplace has an approximately 36 square foot building footprint of which all is proposed to be in the 10' side yard setback; and about a 14' length of the pool benchwall will be in the 10' side yard setback.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the side yard setback regulations of up to 7' requested in conjunction with constructing/maintaining an outdoor fireplace, a pool benchwall, and part of a covered patio/gazebo structure in the 10' side yard setback 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 is flat, irregular in shape, 0.384 acres (or 16,727 square feet) in area on a lot zoned R-16(A) where lots are typically 16,000 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 R-16(A) zoning classification.

- The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the R-16(A) zoning classification.
- If the Board were to grant the side yard variance request of up to 7', imposing a condition whereby the applicant must comply with the submitted site plan and partial site plan/elevation, the structures in the side yard setback would be limited to that shown on this plan – which in this case is an outdoor fireplace, a pool benchwall, and part of a covered patio/gazebo structure that are located as close as 3' from the site's eastern side property line (or as much as 7' into the site's 10' side yard setback).

FILE NUMBER: BDA 078-101(K)

BUILDING OFFICIAL'S REPORT:

Application of James P. Graham for a special exception to the fence height regulations at 4905 Radbrook Place. This property is more fully described as Lot 5 in City Block 13A/5586 and is zoned R-1ac(A) FP, which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain an 8 foot 6 inch fence in a required front yard setback which will require a special exception of 4 feet 6 inches.

LOCATION: 4905 Radbrook Place

APPLICANT: James P. Graham

REQUEST:

- A special exception to the fence height regulation is requested on property located on Radbrook Place.

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:

- Structures on lots zoned R-1ac(A) are required to provide a minimum front yard setback of 40 feet, where fence height is restricted to 4 feet. The applicant is requesting to construct and maintain a 8'6' fence 16 feet from the property line or 24 feet within the 40 foot front yard setback.
- The proposed fence will run parallel to Radbrook Place and extends back to the 40 foot front yard setback.
- The site is gently slopping, irregular shape and approximately 28,000 square feet.

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 developed with a single-family dwelling. The areas to the north, south, east, and west are developed with single family uses.

Zoning/BDA History:

There is no case history for neither this site nor any sites in the immediate area.

Timeline:

- June 25, 2008 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 15, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- July, 2008: The Board of Adjustment's Senior Planner contacted the applicant and shared the following information by telephone and letter:
- the public hearing date and panel that will consider the application;
 - the criteria and standard that the board will use in their decision to approve or deny the request;
 - the July 29th deadline to submit additional evidence for staff to factor into their analysis;
 - the August 1st 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 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 August public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.
- July 29, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearing. 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, the Building Chief Arborist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The applicant proposes to construct and maintain an 8' 6" solid and open fence in the property's 40 front yard setback.
- The site is currently developed with a single family structure.
- The subject site is gently sloping, irregular shape and approximately 28,000 square feet in area.
- The site plan indicates there is a 6' solid stucco fence and open 8'6" gate existing on the site.
- In addition to maintaining the existing solid fence and gate the applicant proposes to construct and maintain a 6 foot high metal fence. The proposed fence will run approximately 45 feet across the front property line parallel to Radbrook Place.
- The applicant has the burden of proof in establishing the fact that the requested 8'6" fence will not have an adverse impact on neighboring properties.
- If the Board of Adjustment were to grant the special exception to fence height regulation staff recommend imposing the following condition:
 - Compliance with the submitted site plan and elevation.

FILE NUMBER: BDA 078-104(K)

BUILDING OFFICIAL'S REPORT:

Application of Susan Drechsler for a special exception to the fence height regulations at 7045 Greentree Lane. This property is more fully described as Lot 6 in City Block F/4404 and is zoned R-16(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 6 foot fence in a required front yard setback which will require a special exception of 2 feet.

LOCATION: 7045 Greentree Lane

APPLICANT: Susan Drechsler

REQUEST:

- A special exception of 2 feet to the fence height regulation to construct and maintain a 6 foot high fence in the property's front yard setback on property located on Greentree Lane.

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:

- Structures on lots zoned R-16(A) are required to provide a minimum front yard setback of 35 feet. The applicant is requesting to construct and maintain a six foot high fence in the site's required front yard setback, which will require a special exception of two feet.
- The applicant proposes to construct and maintain a solid 6' fence constructed of 4"x6' cedar slates with metal support posts on 5' centers. The fence will be parallel to the north property line and will run 35' from the front property line towards the back of the property.

- The site is flat and approximately 17,705 (109' x 150') square feet. According to DCAD the site was developed in 1956 and is in fair condition with 2,004 square feet of living space and includes the following additional improvements:
 - Attached garage (528 square feet)
- The Dallas Development Code provides for the Board of Adjustment to consider special exceptions for fence height with a specific basis for this type of appeal.

BACKGROUND INFORMATION:

Zoning:

Site: R-16 (A) (Single family district 16,000 square feet)
North: R-16 (A) (Single family district 16,000 square feet)
South: R-1ac (A) (Single family district 1 acre)
East: R-16 (A) (Single family district 16,000 square feet)
West: R-1ac (A) (Single family district 1 acre)

Land Use:

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

Zoning/BDA History:

BDA 078-024 7045 Greentree Lane. On February 12, 2008 the Board of Adjustment denied without prejudice a special exception to the fence height regulations and granted a fee reimbursement request in conjunction with the application.

Timeline:

- June 24 2008 The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- July 15, 2008: The Board of Adjustment Secretary assigned this case to Panel A because the rules of procedure of the Board of Adjustment requires this case be returned to the panel hearing the pervious filed case.
- July 16, 2008: The Board of Adjustment’s Senior Planner contacted the applicant and shared the following information by telephone and letter:
- 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 May 5th deadline to submit additional evidence for staff to factor into their analysis;

- the May 9th 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 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 May public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.

June 10, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearing. 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, the Building Chief Arborist, and the Assistant City Attorney to the Board.

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

July 31, 2008 The applicant submitted additional information for the Board's review (see attachment).

STAFF ANALYSIS:

- The site is currently developed with a single family structure.
- The applicant proposes to construct and maintain a solid 6' fence constructed of 4"x6' cedar slates with metal support posts on 5' centers. The fence will be parallel to the north property line and will run 35' from the front property line towards the back of the property.
- The site is heavily landscaped with various trees and plants. A narrative submitted by the applicant details how the proposed fence will be screened with existing vegetation and new vegetation.
- The surrounding properties in the area are developed with single family structures. There is at least one home in the immediate area has fences within the front yard setback.
- The site is flat and rectangular in shape being approximately 17,705 square feet in area. The site is zoned R-16(A) where lots are typically 16,000 square feet in area.
- The applicant has the burden of proof in establishing that granting the special exception to the fence height regulation of 2 feet, allowing the applicant to construct and maintain a 6 foot high fence in the property's front yard setback will not adversely impact neighboring properties.
- If the Board were to grant the special exception to the fence height regulation, staff would recommend imposing the following condition:
 1. Compliance with the submitted site plan and elevation.

FILE NUMBER: BDA 078-113

BUILDING OFFICIAL'S REPORT:

Application of James T. Dowell for a special exception to the fence height regulations at 6010 Desco Drive. This property is more fully described as Lot 1 in City Block A/5483 and is zoned R-10(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 6 foot 6 inch fence in a required front yard setback which will require a special exception of 2 feet 6 inches.

LOCATION: 6010 Desco Drive

APPLICANT: James T. Dowell

REQUEST:

- A special exception to the fence height regulations of 2' 6" is requested in conjunction with constructing and maintaining two 6' high, approximately 30' long, curved brick walls with 6' 6" high columns in the site's 30' front yard setback on a lot 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 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.
A revised site plan and a partial elevation (see Attachment A) have been submitted showing that the proposal in the site's 30' front yard setback will reach a maximum height of 6' 6".
- The following additional information was gleaned from the submitted revised site plan:

- Two curved lines on either side of a concrete walkway/sidewalk indicating a “Proposed brick wall 6’ – 0” H (TYP)” with six “brick piers w/caps 6’ – 6” H” that are approximately 30’ in length each and on the front property line or about 12’ from the pavement line.
- The following additional information was gleaned from the submitted revised partial elevation:
 - Notations of “Typical brick pier w/caps 3E & 3W 6’-6” H” with 6’ high brick wall where the each of the six typical bay is 6’ wide. In the typical bay is an additional notation of “brick section with openings between brick centered in each bay.” This revised elevation also denotes an 8’ 11” high pedestrian gate/columns that appear in conjunction with notations made on the submitted revised site plan to be located at/behind the site’s 30’ front yard setback - not in the required front yard.
- There is one single family home that would have direct frontage to the proposal. This home has no fence in its front yard.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences above four (4) feet high which appeared to be located in the front yard setback.

BACKGROUND INFORMATION:

Zoning:

Site: R-10(A) (Single family district 10,000 square feet)
North: R-10(A) (Single family district 10,000 square feet)
South: R-10(A) (Single family district 10,000 square feet)
East: R-10(A) (Single family district 10,000 square feet)
West: R-1ac(A) (Single family district 1 acre)

Land Use:

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

Zoning/BDA History:

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

Timeline:

June 27, 2008 The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

July 16, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

- July 16, 2008: The Board Administrator contacted the applicant and shared the following information by phone and email:
- 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 July 28th deadline to submit additional evidence for staff to factor into their analysis;
 - the August 1st 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 Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and, if not, may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- The Board Administrator encouraged the applicant to consider submitting the following in order to strengthen his appeal before August 1st:
- 1) A revised site plan that clearly shows three lines (the property line, the pavement line, and the fence line that is to exceed 4' in height in the front yard setback), and
 - 2) A full elevation that clearly shows the length, maximum height, and materials of the proposal that is proposed to be located in the front yard setback. (The administrator attached a sample of a proposal that was recently submitted by an applicant and imposed as a condition to approval of the request by the board).
- July 29, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- July 30, 2008 The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).
- July 30, 2008 The Board Administrator amended the Building Official's Report per the applicant's request to convey that the highest component of the proposal in the front yard setback would be 6' 6" (see Attachment B).

STAFF ANALYSIS:

- This request focuses on allowing the construction and maintenance of two 6' high, approximately 30' long curved brick walls with 6' 6" high brick columns (at approximately 30' in length each) in the site's front yard setback.
- The submitted revised site plan denotes how the proposed 6' high curved brick walls (with 6' 6" high brick columns) will flank either side of the existing sidewalk on the site, and will encompass about 26' of the lot's total Desco Drive width of 133'.
- The submitted revised partial elevation denotes the heights and materials of the proposal to be located in the front yard setback which in this case is a 6' high brick wall with 6' 6" high brick columns.
- There is one single family home that would have direct frontage to the proposed walls. This home does not have a fence in its front yard.
- No other fences above four (4) feet high which appeared to be located in the front yard setback were noted in the immediate area surrounding the subject site.
- As of August 4, 2008, no letters had been submitted in support or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 2' 6" (whereby the proposed two 6' high curved brick walls with 6' 6" high columns in the front yard setback) will not adversely affect neighboring property.
- Granting this special exception of 2' 6" with a condition imposed that the applicant complies with the submitted revised site plan and partial elevation would assure that the proposal would be constructed of/maintained as/limited to the materials, heights, and locations shown on these documents.
- Granting this request for a special exception to the fence height regulations does not provide any relief that the applicant may determine is needed on the subject site to address possible violations to the Dallas Development Code's Visual Obstruction Regulations.

FILE NUMBER: BDA 078-092

BUILDING OFFICIAL'S REPORT:

Application of Jamie Pierson to appeal the decision of an administrative official at 6159 Oram Street. This property is more fully described as Lot 1 in City Block 2138 and is zoned MF-2(A) which restricts maximum structure height to 36 feet. The applicant proposes to appeal the decision of an administrative official in the issuance of a building permit inspection approval (green tag).

LOCATION: 6159 Oram Street

APPLICANT: Jamie Pierson

REQUEST:

- An application has been made requesting that the Building Official's April 25, 2008 "green tag" for Building Permit # 0611011043 (a green tag that was issued for a multifamily structure on the subject site/property immediately adjacent to the applicant's property) be reversed/overturned.

BASIS FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:

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

GENERAL FACTS:

- The Building Official's Report states that the lot is zoned MF-2(A) which restricts maximum structure height to 36 feet.
- The applicant who owns property located at 6158 Prospect Avenue is appealing a "green tag" issued by the Building Official on April 25, 2008 for a multifamily structure constructed on the subject site immediately south at 6159 Oram Street.
- The applicant alleges that the April 25th "green tag" for the multifamily structure on the property immediately adjacent to him was issued by Building Inspection in error since the structure on the subject site violates the maximum height and Residential Proximity Slope (RPS) allowed by the Dallas Development Code for property zoned MF-2(A).
- The Dallas Development Code defines "Height" as "the vertical distance measured from grade to: A) for a structure with a gable, hip, or gambrel roof, the midpoint of the vertical dimension between the lowest eaves and the highest ridge of the structure; B) for a structure with a dome roof, the midpoint of the vertical dimension of the dome; and C) for any other structure, the highest point of the structure."

- The Dallas Development Code defines “Grade” as “the average of the finished ground surface elevations measure at the highest and lowest exterior corners of a structure.”
- The Dallas Development Code provides two provisions related to height on properties zoned MF-2(A). The first provision pertains to “residential proximity slope” where the code 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 originating in an R, R(A), D, D(A), TH, or TH(A) district. The second provision pertains to “maximum height” where the code states “Unless further restricted under Subparagraph (i) (which is the provision related to the residential proximity slope), the maximum structure height is 36 feet.
- The Dallas Development Code provides several provisions related to residential proximity slope. The code states that the site of origination from which the slope line projects from means “any private property in an R, R(A), D, D(A), TH, TH(A), CH, MF-1, MF-1(A), MF-1(SAH), MF-2, MF-2(A), or MF-2(SAH); or an identifiable portion of a planned development or conservation district, which portion is restricted to residential uses not exceeding 36 feet in height.”
- The property on which the applicant is located (and which is immediately adjacent to the MF-2(A)-zoned subject site to the south and across an alley) is zoned CD No. 14: The Edgemont Park Conservation District where the maximum height for all structures is 35 feet.

BACKGROUND INFORMATION:

Zoning:

Site: MF-2 (A) (Multifamily)
North: CD No. 14 (Conservation District, Edgemont Park)
South: MF-2 (A) (Multifamily)
East: MF-2 (A) (Multifamily)
West: MF-2 (A) (Multifamily)

Land Use:

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

Zoning/BDA History:

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

Timeline:

May 9, 2008: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

July 16, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

July 17, 2008: The Board Administrator contacted the applicant and shared the following information by phone and email:

- the public hearing date and panel that will consider the application;
- the outline of procedures from decisions of the Building Official that the board will use at the public hearing in their decision to approve or deny the request (see Attachment A);
- the July 28th deadline to submit additional evidence for staff to factor into their analysis;
- the August 1st 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 Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and, if not, may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

July 29, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The applicant is requesting that the Building Official's decision be overturned/reversed regarding a "green tag" issued for a recently constructed multifamily structure on his adjacent neighbor's property (to the south, across an alley) – a multifamily structure that the applicant contends is in violation of the maximum height and Residential Proximity Slope (RPS) allowed by the Dallas Development Code for property zoned MF-2(A).

- If the Board of Adjustment upholds the Building Official's decision, the multifamily structure on the subject site can remain as it is currently constructed with regard to building height.
- If the Board of Adjustment reverses the Building Officials' decision, the multifamily structure on the subject site will have to be modified to comply with the code regulations pertaining to height, or the owner of the site could choose to make application to the board of adjustment to consider a variance to the height regulations in conjunction with allowing the structure to be maintained as it is currently constructed.

FILE NUMBER: BDA 078-102

BUILDING OFFICIAL'S REPORT:

Application of Fred Yick, represented by Jim Copus of the Michael R. Coker Company, for a special exception to the parking regulations at 8989 Forest Lane. This property is more fully described as Lot 5 in City Block A/8410 and is zoned CR which requires parking to be provided. The applicant proposes to maintain a structure with restaurant without drive-in or drive-through service, office, medical clinic or ambulatory surgical center use, personal service, and general merchandise or food store less than 3500 square feet uses, and provide 250 of the required 283 parking spaces which will require a special exception of 33 spaces (12% reduction) to the parking regulations.

LOCATION: 8989 Forest Lane

APPLICANT: Fred Yick
Represented by Jim Copus of the Michael R. Coker Company

REQUEST:

- A special exception to the off-street parking regulations of 33 parking spaces (or a 12 percent reduction of the required off-street parking) is requested in conjunction with leasing suites within an existing approximately 41,000 square foot shopping center (Forest View Plaza) with a mix of restaurant without drive-in or drive through service office, medical clinic or ambulatory surgical center, personal service, and general merchandise or food store less than 3,500 square foot uses.

STAFF RECOMMENDATION:

Denial

Rationale:

- The applicant has not substantiated how the parking demand generated by the restaurant without drive-in or drive through service office, medical clinic or ambulatory surgical center, personal service, and general merchandise or food store less than 3,500 square foot uses does not warrant the number of off-street parking spaces required, nor that the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. In this case, the applicant has not submitted a parking study/analysis that the Development Services Senior Engineer concluded was a key component in obtaining his approval.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
 - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
 - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
 - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
 - (E) The availability of public transit and the likelihood of its use.
 - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
 - (A) establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
 - (B) impose restrictions on access to or from the subject property; or
 - (C) impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
 - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
 - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

GENERAL FACTS:

- The Dallas Development Code requires the following off-street parking requirements:
 - Restaurant without drive-in or drive-through service use (as a main use): 1 space per 100 square feet of floor area.
 - Office use: 1 space per 333 square feet of floor area.
 - Medical center or ambulatory surgical center use: 1 space per 200 square feet of floor area.
 - Personal service center use: 1 space per 200 square feet of floor area.
 - General merchandise or food store greater than 3,500 square feet: 1 space per 200 square feet of floor area. If more than ten off-street parking spaces are required for this use, handicapped parking must be provided pursuant to code.

Materials within the application and Building Official's Report state that 250 (or 88 percent) of the required 283 spaces will be provided in conjunction with leasing more than 12,700 square feet of retail spaces that has remained vacant for more than 18 years.
- On August 1, 2008, the applicant's representative submitted additional information to staff regarding the request (see Attachment A). This information included the following:
 - two maps indicating "peak parking counts" on July 22, 2008 from 6:00 p.m. to 7:30 p.m. and on July 25, 2008 from 12:00 p.m. to 1:30 p.m.; and
 - a table that lists the businesses in the center along with their hours of operation and required parking.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail)
North: MF-2(A) (Multifamily)
South: CR (Community Retail)
East: CR and SUP 742 (Community Retail and Specific Use Permit)
West: IR (Industrial Research)

Land Use:

The subject site is developed with an approximately 40,000 square foot retail center (Forest View Plaza). The area to the north is developed with multifamily uses; the area to the east is developed with a nursing home use and retail uses; the area to the south is developed with commercial uses; and the area to the west is developed with office use (Texas Instruments).

Zoning/BDA History:

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. BDA 034-106, property located at 8989 Forest Lane (the subject site) | <p>On December 9, 2003, the Board of Adjustment Panel A granted a request for a special exception to the parking regulations</p> |
|---|--|

of 27 spaces and imposed the following conditions: 1) the special exception of 27 spaces shall automatically and immediately terminate if and when the retail, restaurant and office uses on the site are changed or discontinued. (It is agreed and understood that changes in the existing or future tenant mix or the physical location of the tenants on the site shall not in and of itself be grounds for termination of this special exception); and 2) the restaurant use on the site may not have more than 16,000 square feet of floor area at any given time. The case report stated that the request was requested in conjunction with facilitating the leasing of more than 12,000 square feet of retail space that has remained vacant for more than 18 years in an existing retail center (Forest View Plaza. The applicant proposes to provide 254 of the required 281 required off-street parking spaces.

Timeline:

- June 26, 2008: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- July 16, 2008: 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.”
- July 17, 2008: The Board Administrator contacted the applicant’s representative and shared the following information by phone and email:
- 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 July 28th deadline to submit additional evidence for staff to factor into their analysis;
 - the August 1st 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 Board of

Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and, if not, may result in delay of action on the appeal or denial; and

- that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

July 29, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

August 1, 2008 The Development Services Senior Engineer submitted a review comment sheet marked “Has no objections if certain conditions are met” with the following comments: “A parking study/analysis is needed to substantiate the request. The “Forest View Parking Analysis” submitted with the application is considered a parking table showing only spaces required per code. Ref: BDA034-106.” (Note the Development Services Senior Engineer’s review comment sheet of November 24, 2003 regarding BDA034-106 was marked “Has no objections if certain conditions are met” with the following comments: “1) In the parking analysis, indicate percentage of compact parking spaces; and 2) Due to vacant retail spaces and different types of business, parking spaces may be shared by overlapping uses.”)

August 1, 2008 The applicant’s representative submitted additional information to the Board Administrator (see Attachment A).

STAFF ANALYSIS:

- This parking special exception request is made in conjunction with leasing suites with certain uses within an existing approximately 41,000 square foot shopping center. Although no additional square footage is planned in conjunction with this request, the applicant seeks a reduction of the required off-street parking spaces in order to lease some of the suites within the center with uses that have a higher parking requirement than what presently exist in the center.
- This parking special exception request is for a reduction of 33 parking spaces (or a 12 percent reduction of the required spaces) in order to lease the center with a certain amount of square footage allotted for a mix of restaurant without drive-in or drive through service office, medical clinic or ambulatory surgical center, personal service, and general merchandise or food store less than 3,500 square foot uses.
- This subject site has already achieved a parking special exception of 27 spaces from Board of Adjustment Panel A in December of 2003. But with the proposed mix of

uses requested in conjunction with the current application, the applicant must return to the board in order to:

- 1) increase the previous reduction/special exception by 6 spaces (only 27 spaces were "excepted" in 2003);
 - 2) add 332 square feet of restaurant use beyond the 16,000 square foot restaurant use maximum that the applicant was conditioned to in 2003; and
 - 3) add "medical clinic or ambulatory surgical center" use (a use that the applicant had not requested or was not conditioned to in 2003).
- The applicant proposes to provide 250 (or 88 percent) of the required 283 spaces in conjunction with the proposed designation/leasing of uses within the existing shopping center.
 - The Development Services Senior Engineer has indicated that he would have no objections to this request if certain conditions were met – conditions as of August 4th that have still not been met (i.e. a parking study/analysis has not been submitted to substantiate the parking reduction request).
 - Granting this request, subject to the condition that the special exception of 33 spaces automatically and immediately terminates if and when the restaurant without drive-in or drive through service office, medical clinic or ambulatory surgical center, personal service, and general merchandise or food store less than 3,500 square foot uses are changed or discontinued, would allow the applicant to lease the shopping center with this mix of uses.
 - The applicant has the burden of proof in establishing the following:
 - The parking demand generated by restaurant without drive-in or drive through service office, medical clinic or ambulatory surgical center, personal service, and general merchandise or food store less than 3,500 square foot uses does not warrant the number of off-street parking spaces required, and
 - The special exception of 33 spaces (or 12 percent of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.