

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
TUESDAY, JANUARY 17, 2012**

MEMBERS PRESENT AT BRIEFING: Rob Richmond, Chair, Jordan Schweitzer, Panel Vice-Chair, Scott Hounsel, regular member and Johnnie Goins, regular member

MEMBERS ABSENT FROM BRIEFING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Tammy Palomino, Asst. City Attorney, Todd Duerksen, Development Code Specialist, David Cossum, Asst. Director, Lloyd Denman, Asst. Director, and Trena Law, Board Secretary

MEMBERS PRESENT AT HEARING: Rob Richmond, Chair, Jordan Schweitzer, Panel Vice-Chair, Scott Hounsel, regular member and Johnnie Goins, regular member

MEMBERS ABSENT FROM HEARING: No one

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

11:00 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **January 17, 2012** docket.

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.

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel A **November 15, 2011** public hearing minutes as amended.

BOARD OF ADJUSTMENT ACTION: January 17, 2012

MOTION: Hounsel

I move **approval** of the Tuesday, **November 15, 2011** public hearing minutes as amended.

SECONDED: Schweitzer

AYES: 4 – Richmond, Schweitzer, Hounsel, Goins

NAYS: 0 -

MOTION PASSED: 4– 0 (unanimously)

FILE NUMBER: BDA 112-006

BUILDING OFFICIAL’S REPORT:

Application of Mark Sharp for a special exception to the fence height regulations at 4929 Royal Lane. This property is more fully described as Lot 3 in City Block 5503 and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct an 8 foot 6 inch high fence, which will require a special exception of 4 feet 6 inches.

LOCATION: 4929 Royal Lane

APPLICANT: Mark Sharp

REQUEST:

- A special exception to the fence height regulations of 4’ 6” is requested in conjunction with maintaining an approximately 7’ 9” high brick wall with 8’ 6” high brick columns and maintaining a 6’ high open wrought iron gate in the site’s 40’ front yard setback on a site 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.
The applicant has submitted a site plan/elevation document and gate elevation indicating a fence/column/gate in the site's front yard setback that reaches a maximum height of 8' 6".
- The following additional information was gleaned from the submitted site plan/elevation:
 - The fence is shown to be approximately 170' in length mostly parallel to the street with a recessed entry gate.
 - The fence is shown to be located at a range of approximately 0' - 16' from the property line or at a range of approximately 12' – 28' from the pavement line; and the gate is shown to be located approximately 15' from the property line or approximately 31' from the pavement line.
- The proposal is located on the site where one single family home has frontage, a property that appears to have a 6.5' high open iron fence with masonry base with no recorded BDA history in its front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area and noted the following additional fences above four feet high in the immediate area (approximately 500 feet east and west from the site), which appeared to be located in the front yard setback. (Note that these locations and dimensions are approximations):
 - a 9' high solid wood fence immediately west of the site; and
 - a 6.5' high solid stucco fence immediately southwest of the site.(There was no recorded BDA history for either of these fences).

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 home. The areas to the north, south, and west are developed with single family uses; and the area to the east is a creek bed.

Zoning/BDA History:

1. BDA 91-058, Property at 4929 Royal Lane (the subject site)

On October 8, 1991, the Board of Adjustment granted a request for a special exception to fence height regulations of 3' imposing the following condition to the request: "subject to submitting a site plan to be approved by the Board showing the landscaping, type of fence, and an automatic sprinkler on the street side of the fence." The case report stated that the request was made to construct/maintain a solid brick fence that will have panels six feet in height and columns of 6' 9".

Timeline:

November 7, 2011: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

December 9, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

December 9, 2011: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the December 28th deadline to submit additional evidence for staff to factor into their analysis; and the January 6th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

January 3, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The request focuses on maintaining an approximately 7' 9" high brick wall with 8' 6" high brick columns and maintaining a 6' high open wrought iron gate in the site's 40' front yard setback on a site developed with a single family home.
- A site plan/elevation document and gate elevation has been submitted indicating a proposal that reaches a maximum height of 8' 6". The site plan represents that the fence is about 170' in length mostly parallel to the street. The site plan represents that the fence is located at a range of approximately 0' - 16' from the property line or at a range of approximately 12' – 28' from the pavement line; and the gate is approximately 15' from the property line or approximately 31' from the pavement line.
- The proposal is located on the site where one single family home has frontage, a property that appears to have a 6.5' high open iron fence with masonry base with no recorded BDA history in its front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area and noted the following additional fences above four feet high in the immediate area (approximately 500 feet east and west from the site) which appeared to be located in the front yard setback. (Note that these locations and dimensions are approximations):
 - a 9' high solid wood fence immediately west of the site; and
 - a 6.5' high solid stucco fence immediately southwest of the site.
 (There was no recorded BDA history for either of these fences).
- As of January 9, 2012, no letters had been submitted to staff in support or in opposition to the application.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal/existing fence that reaches 8' 6" in height) does not adversely affect neighboring property.
- Granting this special exception of 4' 6" with a condition imposed that the applicant complies with the submitted site plan/elevation document and gate elevation would assure that the proposal/existing fence/gates would be maintained in the location and of the heights and materials as shown on these documents.

BOARD OF ADJUSTMENT ACTION: JANUARY 17, 2012

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Goins

I move that the Board of Adjustment grant application **BDA 101-006** 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/ elevation and gate elevation plan is required.

SECONDED: Hounsel

AYES: 4 – Richmond, Schweitzer, Hounsel, Goins

NAYS: 0 -

MOTION PASSED: 4– 0 (unanimously)

FILE NUMBER: BDA 112-011

BUILDING OFFICIAL’S REPORT:

Application of Bruce Myers, represented by Audra Buckley, for a special exception to the off-street parking regulations at 908 S. Riverfront Boulevard. This property is more fully described as Lot 1 in City Block 7334 and is zoned PD-784, which requires off-street parking to be provided. The applicant proposes to construct/maintain a structure for a restaurant without drive-in or drive-through service use and provide 38 of the required 46 off-street parking spaces, which will require a special exception of 8 spaces.

LOCATION: 908 S. Riverfront Boulevard

APPLICANT: Bruce Myers
Represented by Audra Buckley

REQUEST:

- A special exception to the off-street parking regulations of 8 spaces is requested in conjunction with transitioning an existing approximately 4,600 square foot structure, formerly uses as a general merchandise or food store use (Elmer’s Ice House), to a restaurant without drive-in or drive through use (Riverfront Café), and providing 38 (or 83 percent) of the 46 required off-street parking spaces.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The special exception shall automatically and immediately terminate if and when the restaurant without drive-in or drive-through service use is changed or discontinued.

Rationale:

- The applicant has substantiated how the parking demand generated by the proposed restaurant without drive-in or drive-through service 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 Sustainable Development Department Project Engineer has indicated that he has no objections to the applicant’s request.

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 requirement:
 - Restaurant without drive-in service use: 1 space per 200 square feet of floor area
 The applicant proposes to provide 38 (or 83 percent) of the required 46 off-street parking spaces in conjunction with the site being leased/maintained with the use mentioned above.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 784 (Planned Development)
North: PD No. 784 (Planned Development)
South: PD No. 784 (Planned Development)
East: PD No. 784 (Planned Development)
West: PD No. 784 (Planned Development)

Land Use:

The subject site is developed with an existing approximately 4,600 square foot structure. The areas to the north, east, and west are developed with freeways; and the area to the south is developed with a utility use.

Zoning/BDA History:

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

Timeline:

November 7, 2011: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

December 9, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

December 9, 2011: The Board Administrator emailed the applicant’s representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the December 28th deadline to submit additional evidence for staff to factor into their analysis; and the January 6th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

January 3, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

January 6, 2012: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections."

STAFF ANALYSIS:

- This request focuses on transitioning an existing approximately 4,600 square foot structure, formerly uses as a general merchandise or food store use (Elmer's Ice House), to a restaurant without drive-in or drive through use (Riverfront Café), and providing 38 (or 83 percent) of the 46 required off-street parking spaces.
- The request is triggered from the applicant's attempt to lease the existing structure with a use that required more off-street parking than the former use -- 1 space per 100 square feet is required for restaurant use; 1 space per 200 square feet is required for general merchandise or food store use.
- The applicant has stated that of the approximately 4,600 square feet of structure, only approximately 3,250 square feet will be used by the public with the remaining square footage being storage/kitchen area.
- The Sustainable Development Department Project Engineer has indicated that he has no objections to the applicant's request for the 17 percent parking reduction.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the proposed restaurant without drive-in or drive through use on the site does not warrant the number of off-street parking spaces required, and
 - The special exception of 8 spaces (or a 17 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, and impose the condition that the special exception of 8 spaces shall automatically and immediately terminate if and when the restaurant without drive-in or drive through service use is changed or discontinued, the applicant would be allowed to lease/maintain the site with this specific use and provide only 38 of the 46 code required off-street parking spaces.

BOARD OF ADJUSTMENT ACTION: JANUARY 17, 2012

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Goins

I move that the Board of Adjustment grant application **BDA 101-011** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- The special exception of 8 off-street parking spaces automatically and immediately terminates if and when the restaurant without drive-in or drive through service use is changed or discontinued.

SECONDED: Hounsel

AYES: 4 – Richmond, Schweitzer, Hounsel, Goins

NAYS: 0 -

MOTION PASSED: 4– 0 (unanimously)

FILE NUMBER: BDA 112-001

BUILDING OFFICIAL’S REPORT:

Application of Johnny Lee, represented by Rob Baldwin, for a special exception to the visual obstruction regulations at 2611 Worthington Street (AKA 2723 McKinney Avenue). This property is more fully described as part of Lot 2 in City Block 2/955 and is zoned PD-193 (LC), which requires a 45 foot visibility triangle at street intersections. The applicant proposes to locate and maintain items in a required visibility triangle, which will require a special exception.

LOCATION: 2611 Worthington Street (AKA 2723 McKinney Avenue)

APPLICANT: Johnny Lee
Represented by Rob Baldwin

January 17, 2012 Public Hearing Notes:

- The applicant submitted a revised site plan/elevation document at the public hearing. The Sustainable Development and Construction Department Engineering Division Assistant Director stated that he had no objections to the items located in the visibility triangle shown on this revised document.

REQUEST:

- A special exception to the visual obstruction regulations is requested in conjunction with maintaining an existing retaining wall, and constructing and maintaining an approximately 1’ high wood deck and 3.5’ high open wrought iron fence atop in the 45-foot visibility triangle at the intersection of Worthington Street and McKinney

Avenue on a site developed as a three non-residential structures (Tate's, Gui, and a vacant structure).

STAFF RECOMMENDATION:

Denial

Rationale:

- The Sustainable Development and Construction Department Engineering Division Assistant Director recommends that this request be denied based on a site visit where he has concluded that there is not adequate visibility.
- The applicant has not substantiated how the location of the items located/to be located in the 45 foot visibility triangle at the intersection of Worthington Street and McKinney Avenue does not constitute a traffic hazard.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

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

GENERAL FACTS:

- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at intersections and 20-foot visibility triangles at drive approaches 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/elevation document has been submitted that shows approximately 28 linear feet of "3.5' wrought iron fence" in the 45-foot visibility triangle at the intersection of Worthington Street and McKinney Avenue. The elevation also indicates a 5.32 high "existing retaining wall," a 1.1' high "wood deck," and a 3.5' high "wrought iron fence" located in the visibility triangle.
- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A).

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (LC) (Planned Development, Light Commercial)
North: PD No. 193 (LC) (Planned Development, Light Commercial)
South: PD No. 193 (LC) (Planned Development, Light Commercial)
East: PD No. 193 (LC) (Planned Development, Light Commercial)

West: PD No. 193 (LC) (Planned Development, Light Commercial)

Land Use:

The subject site is developed as three nonresidential structures (Tate's, Gui, and a vacant structure). The areas to the north, east, south, and west are developed with a mix of uses.

Zoning/BDA History:

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

Timeline:

October 27, 2011: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

December 9, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

December 9, 2011: The Board Administrator emailed the applicant's representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the December 28th deadline to submit additional evidence for staff to factor into their analysis; and the January 6th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

December 16, 2011: The applicant's representative forwarded additional information beyond what was submitted with the original application (see Attachment A).

January 3, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

January 6, 2012: The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review

comment sheet marked "Recommends that this be denied" commenting "Based on site visit, there is not adequate visibility."

STAFF ANALYSIS:

- This request focuses on: 1) maintaining an existing retaining wall, and 2) constructing and maintaining an approximately 1' high wood deck and 3.5' high open wrought iron fence atop in the 45' visibility triangle at the intersection of Worthington Street and McKinney Avenue on a site developed as a three non-residential structures (Tate's, Gui, and a vacant structure).
- The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked "Recommends that this be denied" commenting "Based on site visit, there is not adequate visibility."
- The applicant has the burden of proof in establishing how granting the request for a special exception to the visual obstruction regulations will not constitute a traffic hazard.
- If the Board chooses to grant this request, subject to compliance with the submitted site plan/elevation, the items shown on this document (in this case, what is represented as an "existing retaining wall with planting;" a 1.1' high "wood deck;" and a 3.5' high "wrought iron fence") would be "excepted" into the 45' visibility triangle at the intersection of Worthington Street and McKinney Avenue.

BOARD OF ADJUSTMENT ACTION: JANUARY 17, 2012

APPEARING IN FAVOR: Robert Baldwin, 3904 Elm Street, Ste 4, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Schweitzer

I move that the Board of Adjustment, in Appeal No. **BDA 112-001**, on application of Johnny Lee, represented by Rob Baldwin, **grant** the request of this applicant to construct and maintain a wood deck, an open wrought iron fence, and the existing retaining wall in the 45-foot visibility triangle as a special exception to the visual obstruction regulations in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan/elevation submitted January 17, 2012 is required.

SECONDED: Goins

AYES: 4 – Richmond, Schweitzer, Housel, Goins

NAYS: 0 -

MOTION PASSED: 4– 0 (unanimously)

FILE NUMBER: BDA 112-002

BUILDING OFFICIAL'S REPORT:

Application of K. Michael King for a variance to the front yard setback regulations at 1340 Highland Road. This property is more fully described as Lot 17 in City Block 11/5262 and is zoned PD-575 (Subdistrict I), which requires a front yard setback of 80 feet. The applicant proposes to construct and maintain a structure and provide a 70 foot front yard setback, which will require a variance of 10 feet.

LOCATION: 1340 Highland Road

APPLICANT: K. Michael King

REQUEST:

- A variance to the front yard setback regulations of 10' is requested in conjunction with constructing and maintaining an addition to an existing single family home on the site, part of which is proposed to be located in the site's 80' front yard setback.

STAFF RECOMMENDATION:

Denial

Rationale:

- Staff was unable to conclude how the parcel differs from other parcels of land by being of such 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.

STANDARD FOR A VARIANCE:

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

- (A) not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;
- (B) necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and
- (C) not granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

GENERAL FACTS:

- Structures on lots zoned PD No. 575 (Subdistrict I) are required to provide a minimum front yard setback of 80'.
A revised site plan has been submitted denoting a portion of a proposed addition to a single family home that is located 70' from the front property line (or 10' into the 80' front yard setback).
- It appears from the submitted revised site plan that the existing building footprint of the home on the site is approximately 2,100 square feet and that the proposed addition (which, according to a submitted revised floor plan, includes a master bathroom, a master closet, and a garage) is approximately 1,200 square feet. The site plan shows that approximately 300 square feet (or 1/4 of the proposed addition) is to be located in the site's 80' front yard setback.
- According to DCAD records, the "main improvement" at 1340 Highland is a structure built in 1951 with 2,016 square feet of living area; with "additional improvements" being an attached garage with 420 square feet.
- The subject site is sloped, rectangular in shape and according to the application, is 0.58 acres (or approximately 25,000 square feet) in area. The site is zoned PD No. 575 (Subdistrict I). The applicant has submitted a partial site plan that shows contour lines and vegetation/trees in the back of the property.
- Before creation of PD No. 575 in 2000, the property had been zoned R-10(A) where lots in this zoning district are typically 10,000 square feet in area, and where lots are required to provide a 30' front yard setback.
- The applicant forwarded additional information beyond what was submitted with the original application (see Attachment A).

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	PD No. 575 (Planned Development)
<u>North:</u>	PD No. 575 (Planned Development)
<u>South:</u>	PD No. 575 (Planned Development)
<u>East:</u>	PD No. 575 (Planned Development)
<u>West:</u>	PD No. 207 (Planned Development)

Land Use:

The subject site is developed with a single family home use. 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:

October 27, 2011: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

December 9, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

December 9, 2011: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the December 28th deadline to submit additional evidence for staff to factor into their analysis; and the January 6th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

December 28, 2011: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

January 3, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The request focuses on constructing and maintaining an approximately 1,200 square foot addition (including an expanded master bedroom, a master bath and closet, and a two car garage) to an existing single family home on the site, part of which is proposed to be located in the site's 80' front yard setback.
- A revised site plan has been submitted denoting that the proposed addition will be located 70' from the front property line (or 10' into the 80' front yard setback).
- It appears from the submitted revised site plan that the existing building footprint of the home on the site is approximately 2,100 square feet and that the proposed addition is approximately 1,200 square feet. The site plan shows that approximately 300 square feet (or 1/4 of the proposed addition) is to be located in the site's 80' front yard setback.
- According to DCAD records, the "main improvement" at 1340 Highland is a structure built in 1951 with 2,016 square feet of living area; with "additional improvements" being an attached garage with 420 square feet.

- The subject site is sloped, rectangular in shape and according to the application, is 0.58 acres (or approximately 25,000 square feet) in area. The site is zoned PD No. 575 (Subdistrict I). The applicant has submitted a partial site plan that shows contour lines and vegetation/trees in the back of the property.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 575 (Subdistrict I) zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD No. 575 (Subdistrict I) zoning classification.
- If the Board were to grant the variance request and impose the submitted revised site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document – which in this case is a structure to be located 70' from the front property line (or 10' into the 80' front yard setback).

BOARD OF ADJUSTMENT ACTION: JANUARY 17, 2012

APPEARING IN FAVOR: Michael King, 1340 Highland Road, Dallas, TX
 Craig Whites, 8631 Richardson Branch Trail, Dallas, TX

APPEARING IN OPPOSITION: Sharon Amacker, 1332 Highland Road, Dallas, TX

MOTION: **Hounsel**

I move that the Board of Adjustment, in Appeal No. **BDA 112-002**, on application of K. Michael King, **deny** the front yard setback variance requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: **Goins**
AYES: 4 – Richmond, Schweitzer, Hounsel, Goins
NAYS: 0 -
MOTION PASSED: 4– 0 (unanimously)

MOTION: **Hounsel**

I move to adjourn this meeting.

SECONDED: **Goins**
AYES: 4– Richmond, Schweitzer, Hounsel, Goins

NAYS: 0 -
MOTION PASSED 4- 0 (unanimously)

1:47 P.M. - Board Meeting adjourned for **January 17, 2012.**

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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