

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
TUESDAY, APRIL 15, 2008**

MEMBERS PRESENT AT BRIEFING: Rob Richmond, Chair, Ben Gabriel, Panel Vice-Chair, Ellen Taft, regular member, Steve Harris, regular member and Jim Gaspard, alternate member

MEMBERS ABSENT FROM BRIEFING: Jordan Schweitzer, regular member

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Casey Burgess, Asst. City Attorney, Donnie Moore, Chief Planner, Kyra Blackston, Senior Planner, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, Chau Nguyen, Traffic Engineer and Trena Law, Board Secretary

MEMBERS PRESENT AT HEARING: Rob Richmond, Chair, Ben Gabriel, Panel Vice-Chair, Ellen Taft, regular member, Steve Harris, regular member and Jim Gaspard, alternate member

MEMBERS ABSENT FROM HEARING: Jordan Schweitzer, regular member

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Casey Burgess, Asst. City Attorney, Donnie Moore, Chief Planner, Kyra Blackston, Senior Planner, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, Chau Nguyen, Traffic Engineer and Trena Law, Board Secretary

10:05 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **April 15, 2008** 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 March 18, 2008 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: APRIL 15, 2008

MOTION: Taft

I move **approval** of the Tuesday, **March 18, 2008** public hearing minutes.

SECONDED: Gabriel

AYES: 5 – Richmond, Gabriel, Taft, Harris, Gaspard

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 078-051(K)

BUILDING OFFICIAL'S REPORT:

Application of Roger Perry represented by Tom Barone for a variance to the front yard setback regulations and for a special exception to the fence height regulations at 7401 Ferguson Road. This property is more fully described as Lot 1A in City Block A/7026 and is zoned R-7.5(A) which limits the height of a fence in the front yard to 4 feet and requires a front yard setback of 25 feet. The applicant proposes to construct a nonresidential parking lot in a required front yard setback and provide a 10 foot setback, which will require a 15 foot variance to the front yard setback regulations and to construct a 6 foot fence in a front yard setback which will require a special exception of 2 feet to the fence regulations.

LOCATION: 7401 Ferguson Road

**APPLICANT: Roger Perry
Represented by Tom Barone**

REQUESTS:

- The following appeals have been made in this application:
 1. A variance to the parking regulations of 15' is requested with locating off-street parking spaces in the required 25' front yard setback; and
 2. A special exception to the fence height regulations of 2' is requested in conjunction with constructing and maintaining an approximately 5' 8" high open metal fence with 6' high brick columns in the 25' front yard setback on Ferguson Road.

STAFF RECOMMENDATION FOR VARIANCE:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The front yard variance is requested to construct and maintain the same proposed parking lot that Board of Adjustment "varied" to the front yard setback regulations in June of 2006.

STAFF RECOMMENDATION FOR SPECIAL EXCEPTION:

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

STANDARD FOR A VARIANCE:

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area ratios, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations that will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done. The variance must be necessary to permit development of a specific parcel of land which differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same zoning classification. A variance may not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land in districts with the same zoning classification.

STANDARD FOR A SPECIAL EXCEPTION TO 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 (related to the variance):

- A 25' front yard setback is required in the R-7.5 (A) zoning district. A site plan has been submitted with the application that denotes 18 off-street parking spaces that are located as close as 10' from the Ferguson Road front property line (or as much as 15' into the 25' front yard setback).
- Although no topographic map has been submitted, the subject site appears to have areas that are sloped. In addition, the site is irregularly-shaped (approximately 550' on the northeast, approximately 515' on the southwest, approximately 385' on the northwest, and approximately 310' on the southeast), and approximately 4.5 acres in area. (Although the application states that the site is 17.3 acres, the applicant's representative has stated that this area includes the subject site and the area to the southwest that is a part of the Lakehill Preparatory School Athletic Center). The site has a number of mature trees that the applicant contends limits the location of the proposed parking lot in other areas on the site without removing these mature trees. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- The site is developed with a baseball field, a field house, and a softball field and parking lots. .

GENERAL FACTS (related to the fence special exception):

- 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 "fence exhibit" has been submitted that notes a "6'-0" high brick posts with open metal picket fence" in the site's Ferguson Road front yard setback.
- The following additional information was gleaned from the submitted site plan:
 - The fence is to be approximately 300' in length parallel to Ferguson Road.
 - The fence is to be located approximately 1' from the property line (or about 8' from the Ferguson Road curb line).
- The following additional information was gleaned from the submitted document entitled "Fence Exhibit;"
 - The maximum height of the proposal is 6' which describes the height of a "Typical brick post with cast stone top." The "open metal fence" on the elevation is slightly lower than the columns however the actual dimension cannot be derived since no scale is provided on the elevation drawing.
- No single family homes would have indirect frontage to the proposed fence since the area across Ferguson Road from the subject site is zoned NO(A) (Neighborhood Office).
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment). This information included a letter that

provides additional details about the request, and a revised site plan and “fence exhibit” document.

BACKGROUND INFORMATION:

Zoning:

- Site: R-7.5(A) (Single family district 7,500 square feet)
- North: MF-2(A) (Multifamily)
- South: NO (A) (Neighborhood Office)
- East: NO (A) (Neighborhood Office)
- West: R-7.5(A)(SUP 1455) (Single family district 7,500 square feet, Specific Use Permit)

Land Use:

The somewhat-sloped, irregular-shaped, approximately 4.5 acre subject site is developed. The area to the north is developed with multifamily uses; the areas to the east and south are developed with commercial, retail, and office uses; and the area to the west is developed as private school recreation fields (Lakehill Preparatory School).

Zoning/BDA History:

1. BDA 012-174, 7401 Ferguson Road (the area immediately south of the subject site) On March 26, 2002, the Board of Adjustment Panel A granted a request to reimburse the filing fee submitted in conjunction with a variance and a special exception, and granted a special exception of 2’ to the fence height regulations (subject to compliance with the submitted fence elevation/site plan) and granted a variance to the front yard setback regulations (subject to compliance with the submitted “concept plan”). The case report stated that the variance was requested to locate baseball field bleachers in the front yard setback, and that the fence special exception was requested to erect and maintain a 6’ high ornamental metal fence and a 6’ chain link fence in the front yard setback.
2. Z 056-241, Ferguson Road at Laughlin Drive (the subject site) On June 15, 2006, the City Plan Commission will consider an application to amend/expand an SUP (Specific Use Permit) for an institutional use (Lakehill Preparatory School Athletic Fields).
3. BDA 056-154, 7401 Ferguson On June 21, 2006, the Board of Adjustment

Road (the subject site)

Panel B made the following decisions

1. Denied a request to reimburse the \$3,750.00 filing fee submitted in conjunction with requests for a variance and a special exception.
2. Granted a request for a special exception to the fence height regulation of 2 feet.

Timeline:

February 28, 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.

March 19, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

March 20, 2008: The Board of Adjustment 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 importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the April 4th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the April public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

March 31, 2008 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).

April 1, 2008 : The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Chief Arborist, the Board

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

STAFF ANALYSIS (related to the variance):

- The subject site appears to have areas that are sloped. In addition, the site is irregularly-shaped (approximately 550' on the northeast, approximately 515' on the southwest, approximately 385' on the northwest, and approximately 310' on the southeast), and approximately 4.5 acres in area. The site has a number of mature trees that the applicant contends limits the location of the proposed parking lot in certain areas on the site without removing these mature trees.
- The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- According to the submitted site plan, 18 of 49 parking spaces will be located in the site's Ferguson Road 25' front yard setback.
- The applicant has the burden of proof in establishing the following related to the front yard variance request:
 - That granting the variance to the front yard setback regulations of 15' requested to locate off-street parking spaces in the site's 25' front 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 to the front yard setback regulations of 15' requested to locate off-street parking spaces in the front yard setback is necessary to permit development of the subject site (a site that is sloped in areas, is with mature trees in areas, and is irregularly-shaped and intended to be developed with 6,000 square foot "science pavilion" and athletic fields) 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-7.5 (A) zoning classification.
 - The variance to the front yard setback regulations of 15' requested to locate off-street parking spaces in the site's 25' front yard setback would not to be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5 (A) zoning classification.
- 1. If the Board were to grant the front yard variance request of 15', imposing a condition whereby the applicant must comply with the submitted site plan, the only encroachment into the front yard setback would be 18 off-street parking spaces – spaces that would be located as close as 10' from the site's Ferguson Road front property line (or as much as 15' into the 25' front yard setback).

STAFF ANALYSIS (related to the fence special exception):

- A site plan has been submitted that documents the location of the proposed fence in the Ferguson Road front yard setback relative to the its location of the entire site (about 300' in length) and its distance from the property line (approximately 1' off the property line) and Ferguson Road curb line (about 8' from the curb).
- A revised "fence exhibit" has been submitted that documents the height and materials of the proposed columns (6' high brick) and fence (approximately 5' 8" high open metal).
- Landscape materials adjacent to the open metal fence have not been specified.
- No single family home would have direct or indirect frontage to the proposed fence.
- An approximately 6' high open iron picket fence was noted to the south which appears to be the result of a previous Board of Adjustment special exception granted in 2002 (BDA 012-174). In addition, an approximately 8' high open iron picket fence was noted to the north which appears to be permitted by right since this area is zoned MF-2(A).
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 2' (whereby the proposal that would exceed 4' in height) will not adversely affect neighboring property.
- Granting this special exception of 2' with conditions imposed that the applicant complies with the submitted revised site plan and "fence exhibit" would assure that the proposed fence and columns are constructed and maintained as shown on these documents.

BOARD OF ADJUSTMENT ACTION: APRIL 15, 2008

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Gaspard**

I move that the Board of Adjustment grant application **BDA 078-051** 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 is required.

SECONDED: **Gabriel**

AYES: 5 – Richmond, Gabriel, Taft, Harris, Gaspard

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 078-022

BUILDING OFFICIAL’S REPORT:

Application of McShane Corporation, represented by Molly McShane, for a special exception to the parking regulations at 10702 N. Central Expressway. This property is more fully described as Lot 8A in City Block 7291 and is zoned PD-577 which requires parking to be provided. The applicant proposes to construct a structure for medical clinic or ambulatory surgical center use and provide 401 of the required 460 parking spaces which will require a special exception of 59 spaces.

LOCATION: 10702 N. Central Expressway

APPLICANT: McShane Corporation
Represented by Molly McShane

REQUEST:

- A special exception to the off-street parking regulations of 59 parking spaces (or 13% of the required off-street parking) is requested in conjunction with constructing and maintaining an approximately 92,000 square foot “medical clinic or ambulatory surgical center” use (Eye Institute of Texas) on a site that is undeveloped.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The special exception of 59 parking spaces shall automatically and immediately terminate if and when the “medical clinic or ambulatory surgical center” use is changed or discontinued.

Rationale:

- The Development Services Senior Engineer has no objections to the request based parking studies submitted by the applicant.
- The applicant has substantiated how the parking demand generated by the use does not warrant the number of off-street parking spaces required, and that the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. Specifically, the applicant’s studies indicate that only 378 parking stalls are recommended for the use on the site given architectural guidelines and the consultant’s experience with designing roughly 300 ambulatory surgery centers and 1,000 physician offices nationwide.

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:
 - Medical clinic or ambulatory surgical center: 1 space per 200 square feet of floor area.

The application materials and Building Official's Report state that 401 (or 87 percent) of the required 460 spaces are proposed to be provided.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 577 (Planned Development District)
North: PD No. 577 (Planned Development District)
South: PD No. 577 (Planned Development District)
East: PD No. 745 (Planned Development District)
West: GO (A) (General Office)

Land Use:

The subject site is undeveloped. The area to the north is developed with office use; the areas to the east and west are developed with multifamily uses, and the area to the south is developed with commercial 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:

- Dec. 20, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Jan. 17, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- March 21, 2008: The Board Administrator emailed the applicant 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 March 31st deadline to submit additional evidence for staff to factor into their analysis;

- the April 4th 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 April public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

April 1, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

April 3, 2008 The Development Services Senior Engineer submitted a review comment sheet marked “Has no objections” with the following comment: “Based the studies provided.”

STAFF ANALYSIS:

- This request focuses on the applicant’s proposal to construct/maintain an approximately 92,000 square foot “medical clinic or ambulatory surgical center” use (Eye Institute of Texas) on an undeveloped site where 401 (or 87 percent) of the required 460 spaces will be provided.
- According to the applicant, the code requirement for this use is excessive since AIA Guidelines for Design and Construction of Health Care Facilities and their experience with designing roughly 300 ambulatory surgery centers and 1,000 physician offices would indicate that only 378 parking stalls are recommended.
- The Development Services Senior Engineer has indicated that he has no objections to this request.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the “medical clinic or ambulatory surgical center use does not warrant the number of off-street parking spaces required, and
 - The special exception of 59 spaces (or 13 percent of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- Granting this request, subject to the condition that the special exception of 59 spaces automatically and immediately terminates if and when the “medical clinic or ambulatory surgical center” use is changed or discontinued, would allow the development of the site with this specific use that provides 13 percent less off-street parking spaces than what the code requires.

BOARD OF ADJUSTMENT ACTION: APRIL 15, 2008

APPEARING IN FAVOR: Molly McShane, 635 N Dearborn, Chicago, IL
Brian Shearer, 12474 Ventana Mesa Circle, Castle Rock, CO

APPEARING IN OPPOSITION: Scott Shipp, 475 Craig Circle, Highland Village, TX

MOTION: Taft

I move that the Board of Adjustment, in Appeal No. **BDA 078-022**, on application of McShane Corporation, represented by Molly McShane, **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development Code by 59 parking spaces, because our evaluation of the property and the testimony shows that the parking demand generated by the proposed use on the site does not warrant the number of off-street parking spaces required, and the special exception would NOT create a traffic hazard nor increase traffic congestion on adjacent and nearby streets. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception shall automatically and immediately terminate if and when the medical clinic or ambulatory surgical center use on the site is changed or discontinued.

SECONDED: Gabriel

AYES: 5 – Richmond, Gabriel, Taft, Harris, Gaspard

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 078-042

BUILDING OFFICIAL'S REPORT:

Application of Mary M. Russell for a special exception to the fence height regulations at 7115 S. Janmar Drive. This property is more fully described as Lot 1 in City Block D/7494 and is zoned R-16(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct an 8 foot fence in a front yard setback which will require a special exception of 4 feet.

LOCATION: 7115 S. Janmar Drive

APPLICANT: Mary M. Russell

April 15, 2008 Public Hearing Notes:

- The applicant submitted additional printed documentation to the board at the public hearing: a landscape plan
- An opposing property owner submitted photos of the site, and an inspection report, and a map to the board at the public hearing.
- The Board of Adjustment delayed action on this matter until May 20, 2008 in order to allow the applicant and the opposing citizen time in which to possibly reach a compromise on the matter at hand.

REQUEST:

- A special exception to the fence height regulations of 4' is requested in conjunction with completing and maintaining an 8' high "grey veneer, ledge-style stone" wall in the site's 35' Kenny Lane front yard setback (that according to documentation submitted by the applicant would replace an 18+-year old 6' high chain link fence) on a lot developed with a single family home. Note that although the site is located at the intersection of South Janmar Drive and Kenny Lane, with front yard setbacks along both street frontages, the request is only made to complete/maintain a fence higher than 4' in the site's Kenny Lane front yard setback.

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The 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 site plan and partial elevation have been submitted that indicate that the proposal in the site's 35' Kenny Lane front yard setback will reach a maximum height of approximately 8'.
- The following additional information was gleaned from the submitted site plan:
 - A line indicates the location of the "proposed 8' stone wall" in the required 35' front yard setback where the proposal over 4' in height appears to be

- approximately 170' in length parallel to the street (and approximately 35' in length on the east side of the site in the Kenny Lane front yard setback).
- The wall line appears to be located on the front property line (or approximately 14' from the pavement line).
 - The following additional information was gleaned from the submitted elevation:
 - An elevation plan conveys two drawings one of which is described as "Entire length of fence is to be grey veneer, ledge-style stone" and the other of which is described as "Transition to existing 4' stone wall around the side yard at the rear corner of the housed is pictured below." (Neither drawing shows a clear representation of the full fence/wall elevation).
 - There are three single family homes that would have direct/indirect frontage to the proposal, none of which have fences higher than 4' in their front yard setbacks.
 - The Board Administrator noted no other fences above four (4) feet high which appeared to be located in the front yard setback in his field visit of the site and surrounding area - an area beginning at South Janmar Drive northeasterly approximately 500' from the site along Kenny Lane.

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:

February 29, 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.

March 20, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

- March 26, 2008: Given unsuccessful attempts to reach the applicant by phone or email, the Board Administrator wrote the applicant a letter that conveyed 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 March 31st deadline to submit additional evidence for staff to factor into their analysis;
 - the April 4th 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 April public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

April 1, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, 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 request focuses on allowing an 8' high "grey veneer, ledge-style stone" wall to be completed and maintained in the site's Kenny Lane front yard setback – a wall that would, according to the applicant, replace a 18+ year old 6' high chain link fence. A site plan has been submitted that indicates that the proposed fence/wall to exceed 4' in height on the site would be limited to its Kenny Lane front yard setback. The proposed fence/wall in the Kenny Lane front yard setback appears to be about 170' in length parallel to the street and about 35' in length on the east "side" of the site in the front yard setback, approximately on the front property line (or about 14' from the pavement line. Only partial elevations have been submitted. These elevations provide some notations of heights and materials but do not convey a clear full representation of the proposal. Although the Board Administrator noted what appeared to be landscape materials along some of the length of the fence/wall on his field visit, no documentation has been submitted that provides any details about

what may be provided on the street-side of the wall that would soften/screen the proposed 8' high solid stone wall.

- There are three single family homes that would have direct/indirect frontage to the proposal none of which have fences above 4' in a front yard setback.
- Although the applicant submitted a list of other 6'-9' high privacy fences in the neighborhood, the board administrator noted no other fences above four (4) feet high which appeared to be located in the front yard setback in the immediate area surrounding the subject site - an area beginning at South Janmar Drive northeasterly approximately 500' from the site along Kenny Lane.
- As of April 7th, 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 4' (whereby the proposed 8' high solid stone fence/wall in the site's Kenny Lane front yard setback) will not adversely affect neighboring property.
- Granting this special exception of 4' with a condition imposed that the applicant complies with the submitted site plan and partial elevations would provide fairly reasonable assurances as to what would be allowed to materialize on the site with regard to a fence over 4' in the front yard setback. If the site plan were imposed as condition to the request, the proposal would be limited to the location shown on the site plan, and to the notations on this plan: "Proposed 8' stone wall" and "8' wooden fence – currently being changed to stone." If the partial elevations were imposed as a condition to the request, the materials and heights would be restricted to the notations on these elevations: "Entire length of fence is to be grey veneer, ledge-style stone" and the "Transition to existing 4' stone wall around the side yard at the rear corner of the housed is pictured below."
- If the Board determines that the proposed 8' high stone fence/wall in the site's 35' front yard setback will not adversely affect neighboring property based partly/solely on the landscape materials that appear on the street side of the proposal in the Board Administrator's field slides of the site and/or what the applicant may offer to install/maintain on the street side of the wall at the public hearing, the board may want to impose specific landscape materials (sizes, species, and numbers of materials) to be installed/maintained as a condition along with imposing compliance with the submitted site plan and partial elevations as a condition to the request.

BOARD OF ADJUSTMENT ACTION: APRIL 15, 2008

APPEARING IN FAVOR: Mary Russell, 7115 S Janmar, Dallas, TX

APPEARING IN OPPOSITION: Bruce Wilke, 7227 N Janmar, Dallas, TX

MOTION #1: Harris

I move that the Board of Adjustment, in Appeal No. **BDA 078-042**, on application of Mary M. Russell, **deny** the special exception requested by this applicant **without**

prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: **Gaspard**

AYES: 2 – Harris, Gaspard

NAYS: 3 – Richmond, Gabriel, Taft

MOTION FAILED: 2– 3

MOTION #2: **Taft**

I move that the Board of Adjustment, in Appeal No. **BDA 078-042**, on application of Mary M. Russell, **grant** the request of this applicant to construct and maintain an eight-foot-tall fence on the property as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: **Gabriel**

AYES: 3 – Richmond, Gabriel, Taft

NAYS: 2 – Harris, Gaspard

MOTION FAILED: 3– 2

MOTION #3: **Gaspard**

I move that the Board of Adjustment in Appeal No. **BDA 078-042**, hold this matter under advisement until **May 20, 2008**.

SECONDED: **Harris**

AYES: 5 – Richmond, Gabriel, Taft, Harris, Gaspard

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 078-052

BUILDING OFFICIAL’S REPORT:

Application of Donna Parker for a special exception to the visual obstruction regulations at 4200 Northcrest Road. This property is more fully described as Lot 1 in City Block

4/5538 and is zoned R-16(A) which requires a 45 foot visibility triangle at street intersections and a 20 foot visibility triangle at driveway with street intersections. The applicant proposes to maintain items in visibility triangles which will require special exceptions.

LOCATION: 4200 Northcrest Road

APPLICANT: Donna Parker

April 15, 2008 Public Hearing Notes:

- The applicant submitted additional printed documentation to the board at the public hearing.

REQUESTS:

- Special exceptions to the visual obstruction regulations are requested in conjunction with maintaining landscape materials (a 36" high hedge) in the site's 45' visibility triangle at the intersection of Northcrest Road and Midway Road, and landscape materials (height unspecified) and a wood fence (height unspecified) in the site's two 20' visibility triangles on either side of the driveway into the site from Midway Road. (The site is developed with a single family home).

STAFF RECOMMENDATION:

Approval, subject to the following conditions:

1. Compliance with the submitted site plan is required.
2. Landscape materials located in the 45' visibility triangle at the intersection of Northcrest Road and Midway Road must not exceed 36" in height.

Rationale:

- The City's Development Services Senior Engineer has indicated that he has no objections to the request if certain conditions are met with regard to the 45' Northcrest Road/Midway Road intersection visibility triangle – that the height of any shrubs be limited to 36" or lower.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

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

GENERAL FACTS:

- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at intersections and 20-foot visibility triangles at drive approaches); and
 - between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
 The applicant has submitted a revised site plan that denotes a 36” tall hedge that is located in the 45’ visibility triangle at the intersection of Northcrest Road and Midway Road, and in response to the Board Administrator findings on his field visit of the site, landscape materials and a “pre-existing fence, previously approved by City” wood privacy fence located in the 20’ drive approach visibility triangles on either side of the drive into the site from Midway Road. Although neither the originally submitted site plan nor submitted revised plan do not denote the heights of these items in these visibility triangles, the applicant has authorized staff to include these items as part of her request to the board.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - photos of the site;
 - letters that provide additional details about the requests; and
 - a revised site plan.

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, east, and south are developed with single family uses; and the area to the west is developed with a recreation field.

Zoning/BDA History:

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. Miscellaneous Item #2, 4200 Northcrest Road (the subject site) | <p>On February 12, 2008, the Board of Adjustment Panel A waived the filing fee to be submitted in conjunction with an application on the subject site.</p> |
|---|--|

Timeline:

- Feb. 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.
- March 20, 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."
- March 20 & 25, 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 March 31st deadline to submit additional evidence for staff to factor into their analysis;
 - the April 4th 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 April public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- March 23, 2008 The applicant submitted additional information to the Board Administrator (see Attachment A).
- April 1, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.
- April 3, 2008 The Development Services Senior Engineer submitted a Review Comment Sheet marked "Has no objections if certain conditions are met" making the following additional comments:

1. For intersection: limit the height of any shrub to 36 inches or lower;
2. For driveway: no objection because the property owner(s) have to back vehicles out onto traffic northbound on Midway, should be owners' choice to improve visibility.

STAFF ANALYSIS:

- These requests focus on maintaining landscape materials (a 36" high hedge) in the site's 45' Northcrest Road/Midway Road intersection visibility triangle, and landscape materials and a wood fence (of unspecified heights) in the site's two 20' drive approach visibility triangles into the site from Midway Road.
- The City's Development Services Senior Engineer has indicated that he has no objections to the request if certain conditions are met with regard to the 45' Northcrest Road/Midway Road intersection visibility triangle – that the height of any shrubs be limited to 36" or lower.
- The applicant has the burden of proof in establishing the following:
 - Granting the special exceptions to the visual obstruction regulations (whereby, according to the submitted revised site plan, portions of a hedge would be maintained in the 45' visibility triangle at the intersection, and portions of a hedge and privacy fence in the two 20' drive approach visibility triangles at the drive approach into the site from Midway Road) will not constitute a traffic hazard.
- If these requests are granted, subject to compliance with the submitted revised site plan, and the condition that the landscape materials located in the 45' visibility triangle at the intersection of Northcrest Road and Midway Road must not exceed 36" in height, the items "excepted" into these visibility triangles would be restricted to the location and characteristics of the items as shown on this document along with what may specifically stated in a board-imposed condition which in this case with these combined conditions imposed being maximum 36" high landscape materials in the intersection triangle, and landscape materials and fence (of unspecified heights) in the two drive approach visibility triangles.

BOARD OF ADJUSTMENT ACTION: APRIL 15, 2008

APPEARING IN FAVOR: Donna Parker, 4200 Northcrest, Dallas, TX
Mick Mackey, 304 Sheridan Trail, Irving, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Harris

I move that the Board of Adjustment, in Appeal No. **BDA 078-052**, on application of Donna Parker, **grant** the request of this applicant to maintain landscaping materials in a 45 foot visibility triangle as a special exception to the visibility obstruction regulation contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard. I

further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.
- Landscape materials located in the 45 foot visibility triangle must not exceed 36 inches in height.

SECONDED: Gabriel

AYES: 5 – Richmond, Gabriel, Taft, Harris, Gaspard

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

MOTION #2: Harris

I move that the Board of Adjustment, in Appeal No. **BDA 078-052**, on application of Donna Parker, **grant** the request of this applicant to maintain landscaping materials and a fence in the two 20 foot visibility triangles on either side of the site’s driveway from Midway Road as a special exception to the visibility obstruction regulation contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: Gabriel

AYES: 5 – Richmond, Gabriel, Taft, Harris, Gaspard

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 078-037(K)

BUILDING OFFICIAL’S REPORT:

Application of Autozone, Inc. represented by Chris Wright for a special exception to the sign regulations at 3600 W. Illinois aka 3720 W. Illinois Avenue. This property is more fully described as Lot 3 Part of Tract 11 in City Block 6114 and is zoned LI which limits the setback and height of signs. The applicant proposes to construct a detached premise sign with a setback of 13 feet 6 inches and a height of 16 feet 6 inches, which will require a special exception of up to 10 percent of the setback and the height requirements to the sign regulations.

LOCATION: 3600 W. Illinois aka 3720 W. Illinois Avenue

APPLICANT: Autozone, Inc.
Represented by Chris Wright

REQUEST:

A special exception of up to 10 percent of the setback and height requirement to the sign regulation is requested in conjunction with construction of a 16' 6" non-monument sign.

STAFF RECOMMENDATION:

Denial

Rationale:

The applicant has not substantiated how compliance with the requirements results in substantial financial hardship or inequity to the applicant.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

Section 51A7.703 (d)(1) states the board of adjustment is permitted to grant a variance for detached premise signs of up to 10 percent (10%) of the setback, effective area, and height requirement of this article.

GENERAL FACTS:

- The subject site is currently under construction.
- The applicant proposes to construct a 16' 6" non-monument sign and provide a 13'6" setback or 10% reduction for the required setback of 15 feet and a 10% increase in allowed height.
- The code states that the minimum setback for a single-tenant non-monument sign is 15 feet and the allowed sign height is 15 feet.

-

BACKGROUND INFORMATION:

Zoning:

Site: LI(light industrial)
North: R-5 (A) (Single family 5,000 square feet)
South: LI (Light Industrial)
East: LI (Light Industrial)
West: LI (Light Industrial))

Land Use:

The current site is under development. The properties to the north are single family. The properties to the east and west are zoned LI and are retail development. The properties to the south are zoned LI. The proposed use of the site is an Auto Zone retail store.

BDA History:

There is no history on this site or sites in the immediate vicinity.

Timeline:

- January 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.
- March 19, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- March 20, 2008: The Board of Adjustment 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 importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the March 31st deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board’s docket;
 - the April 4th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the April public hearing after considering the information, evidence and testimony presented to them by the applicant and all other interested parties.
- April 1, 2008 : The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation

Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The proposed site is zoned LI (light industrial) and requires detached single premise signs to have a setback of 15' and a maximum height of 15 feet.
- The properties to the north are zoned R-5(A) (single family 5,000 square feet).
- A scaled site plan and elevation have been submitted in conjunction with this application that reflects the location and dimension of the proposed sign.
- The site plan indicates the proposed sign location is 13' 6" from the front property line, or encroaching 1'6" into the setback requirement for a non-monument sign.
 - The elevations describe a sign that is 16'6" in total height, 10% higher than allowed
 - A 12' 1 ¼ " pole
 - A sign with the a logo and letters "Auto Zone" and words "Auto Parts Accessories Advice" 4' 4 ¼ " x 16' 9" or a sign that is approximately 73 square feet.
- The proposed sign is defined as non-monument, since the ordinance defines a monument sign as the following.(51A-7.304 (a):
 - (3) MONUMENT SIGN means a detached sign applied directly onto a ground-level support structure (instead of a pole support) with no separation between the sign and the ground, or mounted on a fence.
 - (4) NON-MONUMENT SIGN means a detached sign that is not a monument sign.
- The applicant has the burden of proof to substantiate how strict compliance of the sign regulation setback of 15 feet and maximum height of 15 feet causes a substantial financial hardship or inequity to the applicant.
- If the Board chooses to grant the special exception of up to 10 percent of the setback and the height requirements to the sign regulation, staff recommends imposing the following condition, strict compliance with the submitted site plan and elevation is required.

BOARD OF ADJUSTMENT ACTION: APRIL 15, 2008

APPEARING IN FAVOR: Chris Wright, 123 S. Front St., Memphis, TX 38103

APPEARING IN OPPOSITION: No one

MOTION #1: **Gaspard**

I move that the Board of Adjustment, in Appeal No. **BDA 078-037** on application of Auto Zone, Inc., represented by Chris Wright, **grant** the one-and-a-half-foot special exception to the setback requirement for detached premise signs, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that strict compliance with the provisions of Article VII of the Dallas Development Code will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the City of Dallas and its citizens in accomplishing the objectives of that article. I further move that the following condition be imposed to further the purpose and intent of Article VII of the Dallas Development Code:

- Strict compliance with the submitted site plan and elevation is required.

SECONDED: Gabriel

AYES: 5 – Richmond, Gabriel, Taft, Harris, Gaspard

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

MOTION #2: Gaspard

I move that the Board of Adjustment, in Appeal No. **BDA 078-037** on application of Auto Zone, Inc., represented by Chris Wright, **deny** the special exception to the height requirement for detached premise signs requested by this applicant **without prejudice** because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that any financial hardship or inequity that may result from strict compliance with the provisions of Article VII of the Dallas Development Code is outweighed by the benefit to be received by the citizens of the City of Dallas in promoting the health, safety, and welfare of the public in accomplishing the objectives of that article.

SECONDED: Taft

AYES: 5 – Richmond, Gabriel, Taft, Harris, Gaspard

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 078-056(K)

BUILDING OFFICIAL’S REPORT:

Application of Masterplan for a variance to the side yard setback regulations at 1930 Euclid Street. This property is more fully described as Lot 1 in City Block 2/1984 and is zoned MF-2(A) which requires a side yard setback of 10 feet where there is residential adjacency for new construction. The applicant proposes to construct a multifamily residential structure and provide a 0 foot side yard setback which will require a variance of 10 feet

LOCATION: 1930 Euclid Street

APPLICANT: Masterplan

REQUESTS:

The applicant proposes to construct a multifamily residential structure and provide a 0 foot side yard setback, which will require a 10 foot variance to the side yard setback regulation.

STAFF RECOMMENDATION (Variance):

Denial

Rationale:

- The parcel of land does not have a restrictive shape or size. The parcel of land is flat and rectangular in shape (150 x 50). This property is zoned MF2(A) that requires a front yard setback of 15', side yard setback of 10', and rear yard setback of 15'.

STANDARD FOR A VARIANCE:

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area ratios, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations that will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done. The variance must be necessary to permit development of a specific parcel of land which differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same zoning classification. A variance may not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land in districts with the same zoning classification.

GENERAL FACTS (related to the variance):

- The site is zoned MF2 (A) and requires a minimum:
 1. front yard setback of 15 feet
 2. side yard setback of 10'
 3. and rear yard setback of 15'
- The site is currently undeveloped.
- The site is flat and rectangular in-shape (50' x150') approximately 7,500 square feet.
- Due to residential adjacency, the site is encumbered with a residential proximity slope emanating from the single family zoned property across Sears Street.

- In order to comply with the residential proximity slope, the applicant chose to design the structure to be constructed on the side property line, and ask for a variance to the 10' side yard setback rather than a variance to compliance with the residential proximity slope.

BACKGROUND INFORMATION:

Zoning:

Site: MF2 (A) (Multifamily)
North: R7.5(A) (Single family 7,500 square feet)
South: MF2 (A) (Multifamily)
East: CR (Community Retail)
West: MF2 (A) (Multifamily)

Land Use:

The subject site is undeveloped. Properties to the south are currently being developed. Properties to the west and east are single family dwellings, and properties to the east are community retail.

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:

- February 29, 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.
- March 19, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- March 20, 2008: The Board of Adjustment 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/standard that the board will use in their decision to approve or deny the request;

- the March 31st deadline to submit additional evidence for staff to factor into their analysis;
- the April 4th 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 April public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

April 1, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

April 3, 2008 the applicant submitted additional information to the Senior Planner for the Board's consideration (see attachment A)

STAFF ANALYSIS:

- The applicant has submitted an elevation and site plan showing the proposed location of the multifamily structure. The site plan describes a four-unit structure 125' x 35', or an approximate footprint of 4,375 square feet.
- The property to the south is currently under development. The properties to the north and the east are developed with single family structures.
- The properties to the north of Sears Street are single-family structures and create a residential proximity slope applicable to the site. The code states the proximity slope extends from residentially zoned property, point of origin, at a 1 to 3 ratio and the extension of this requirement is indefinite.
- The applicant submitted a letter of explanation (see attachment) and included the following statements:
 - "The property owner obtained a building permit for a three story, four unit structure in December 2007.
 - The applicant was notified that the permit was issued in error. The error occurred in the calculation of the residential proximity slope.
 - The construction of this proposed development will maintain a minimum ten foot separation from the next building.

- A unity agreement will allow the owner to provide windows along this property line. This agreement will be secured should approval of this setback variance request occur.”
 - DCAD records indicated the property owner Kingmark LLC, owns the two adjacent properties to the south of the site.
2. If the Board were to grant the variance request, imposing a condition whereby the applicant must comply with the submitted site plan, the structures in the side yard setback would be limited to what is shown on this plan.

BOARD OF ADJUSTMENT ACTION: APRIL 15, 2008

APPEARING IN FAVOR: Santos Martinez, 900 Jackson St., #640, Dallas, TX
 Brian Dedeaux, 1916 Euclid Ave., Dallas, TX
 Daniel Milligan, 1918 Euclid, Dallas, TX
 Billie Sue Vance, 11987 White Oak Pass, Conroe, TX

APPEARING IN OPPOSITION: John Scarborough, 1931 Euclid, Dallas, TX
 David Smith, 5545 Sears St., Dallas, TX
 Cheryl Kellis, 2007 Summit Ave., Dallas, TX
 Bruce Richardson, 5607 Richmond Ave., Dallas, TX

MOTION #1: Gaspard

I move that the Board of Adjustment, in Appeal No. **BDA 078-056**, on application of Masterplan, **deny** the variance to the side yard setback regulations requested by this applicant **with 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: Taft

AYES: 2 – Taft, Gaspard

NAYS: 3 – Richmond, Gabriel, Harris

MOTION FAILED: 2-3

MOTION #2: Harris

I move that the Board of Adjustment, in Appeal No. **BDA 078-056**, on application of Masterplan, **grant** the 10-foot variance to the side yard setback regulations because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: Gabriel
AYES: 3 – Richmond, Gabriel, Harris
NAYS: 2 – Taft, Gaspard
MOTION FAILED: 3– 2

MOTION #3: Gaspard

I move that the Board of Adjustment, in Appeal No. **BDA 078-056**, hold this matter under advisement until **May 20, 2008**.

SECONDED: Taft
AYES: 4 – Gabriel, Taft, Harris, Gaspard
NAYS: 1 – Richmond
MOTION PASSED: 4– 1

FILE NUMBER: BDA 078-059

BUILDING OFFICIAL’S REPORT:

Application of St. Philip's School PSA, represented by Monifa Akinwole Bandele, to require compliance of a nonconforming use at 3103 Colonial Avenue. This property is more fully described as Lots 17-20 in City Block 11/1156 and is zoned PD-595 (CC) which limits the legal uses in a zoning district. The applicant proposes to request that the board establish a compliance date for a nonconforming hotel or motel use.

LOCATION: 3103 Colonial Avenue

APPLICANT: St. Philip's School PSA
Represented by Monifa Akinwole Bandele

April 15, 2008 Public Hearing Notes:

- The following occurred at this public hearing:
 - the Board Administrator circulated an amended page to be substituted for a page in the originally mailed case report – a page that confirmed among other things, the dates in which CO’s were issued, and the dates in which the use on the site became nonconforming;
 - the attorney representing the applicant submitted written documentation to the members (see Attachment D);
 - verbal testimony was given by a number of citizens who supported the application, and attorneys representing the applicant and the owner of the motel;
 - the applicant showed a video regarding the nonconforming motel;
 - the applicant amended the application to include the St. Philip’s School in addition to the St. Philip’s School PSA; and

- the Board delayed action on the application and called a special hearing to be held on April 22, 2008 for the purpose of continuing its consideration on whether continued operation of the nonconforming motel has an adverse affect on nearby properties. (The board suggested that the applicant consider reviewing submitted letters that were either unsigned or illegibly signed by the April 22nd hearing, and that any additional evidence that either party wanted the board to be mailed prior to the April 22nd special hearing to be submitted no later than April 17th.)

REQUEST:

- A request is made for the Board of Adjustment to establish a compliance date for a nonconforming motel use (Colonial House Motel) on the subject site.

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

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

(1) Amortization of nonconforming uses.

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

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

(i) The character of the surrounding neighborhood.

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

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

(iv) The hours of operation of the use.

(v) The extent to which continued operation of the use may threaten public health or safety.

(vi) The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust, and odor.

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

GENERAL FACTS:

- The subject site is zoned PD No. 595 (CC Community Commercial Subdistrict) that permits a "hotel or motel" use with an SUP (Specific Use Permit).
- The Dallas Development Code establishes the following provisions for "hotel or motel" use in Section 51A-4.205 (1):
 - "Hotel or motel."

- (A) Definition: A facility containing six or more guest rooms that are rented to occupants on a daily basis.
- City records indicate that the hotel or motel use on the subject site first became nonconforming on September 30, 1987 with the passage of Ordinance No. 19700. The hotel or motel use on the subject site remained nonconforming when it was rezoned from GR to CR on July 18, 1989 with the passage of Ordinance No. 20314. The nonconformity was reinforced again on September 26, 2001 when the property was rezoned from CR to PD No. 595 (Ordinance 24726).
- The Dallas Development Code states that “nonconforming use” means “a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time.”
- The owner of the site could eliminate the nonconforming use status of the existing motel use by obtaining an SUP (Specific Use Permit) from City Council.
- The owner of the site could transition the use on the site from motel use to any use that is permitted by right in the site’s existing PD No. 595 (CC Community Commercial Subdistrict) zoning classification. Uses permitted by right in this zoning district include a number of commercial and business service uses, institutional and community service uses, office uses, recreation uses, retail and personal service uses, transportation uses, and utility and public service uses.
- On April 4, 2008, the applicant’s representative submitted additional information to the Board Administrator on this application beyond what was originally submitted with the application in late February of 2008 (see Attachment A). This information included 41 letters referenced by the applicant’s representative as “letters of complaints supporting our claim of non-compliance against the Colonial Inn Motel.”
- On April 4, 2008, the attorney representing the owner of the nonconforming motel submitted information to the Board Administrator on this application (see Attachment B). This information included a letter requesting: a dismissal of the application, a denial of the application, and/or for “continuance” of the application.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 595 (CC Subdistrict) (Planned Development District, Community Commercial)
North: PD No. 595 (CC Subdistrict) (Planned Development District, Community Commercial)
South: PD No. 595 (CC Subdistrict) (Planned Development District, Community Commercial)
East: PD No. 595 (CC Subdistrict) (Planned Development District, Community Commercial)
West: PD No. 595 (MF-2 Subdistrict) (Planned Development District, Multifamily)

Land Use:

The site is currently developed with a motel use (Colonial House Motel). The area to the immediate north is developed with a vacant office/retail structure; the area to the

immediate east is undeveloped; the area to the immediate south is developed as a tree farm; and the area to the west is developed with commercial uses and play fields.

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:

February 29, 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.

March 20, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

March 20, 2008: The Board Administrator wrote/sent the owner of the site (Jay Ma Corporation) a letter (with a copy to the applicant's representative) that informed them that a Board of Adjustment case had been filed against their property. The letter included the following enclosures:

- a copy of the Board of Adjustment application and related materials that had been submitted in conjunction with the application;
- a copy of the section of the Dallas Development Code that described the Board of Adjustment (Section 51A-3.102);
- a copy of the section of the Dallas Development Code that provides the definition of "nonconforming use" (Section 51A-2.102(90));
- a copy of the section of the Dallas Development Code that provides the definition and provisions set forth for "hotel or motel" use (Section 51P-595.113(5));
- a copy of the section of the Dallas Development Code that provides provisions for "nonconforming uses and structures" (Section 51A-4.704);
- a copy of the section of the Dallas Development Code that provides provisions regarding the Board of Adjustment hearing procedures (51A-4.703);
- a copy of the City of Dallas Board of Adjustment Working Rules of Procedure; and
- A copy of the hearing procedures for board of adjustment amortization of a nonconforming use.

The letter also informed the owner of the date, time, and location of the briefing/public hearing, and provided a deadline of April 4th to submit any information that would be incorporated into the board's docket.

April 1, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

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

April 4, 2008 The applicant's representative submitted additional information on this application beyond what was submitted with the original application in February of 2008 (see Attachment A).

April 4, 2008 The attorney for the owner of the nonconforming motel use submitted information on this application (see Attachment B).

STAFF ANALYSIS:

- The hotel or motel use (Colonial House Motel) on the subject site is a nonconforming use. City records indicate the following:
 - On July 26, 1985, a certificate of occupancy was issued for a hotel or motel use at 3103 Colonial Avenue which was then zoned GR (see Attachment C).
 - On March 1, 1987, Ordinance No. 19455 was passed which created Chapter 51A and CR zoning. Hotel or motel uses are permitted by specific use permit (SUP) only in CR districts.
 - The hotel or motel use located at 3103 Colonial Avenue became nonconforming on September 30, 1987 with the passage of Ordinance No. 19700 (See Attachment C) which required an SUP for hotel or motel uses in GR zoning with fewer than 50 rooms or fewer than four stories. According to DCAD records the hotel or motel use located at 3103 Colonial Avenue has 29 rooms.
 - The hotel or motel use located at 3103 Colonial Avenue became nonconforming again on July 18, 1989, with the passage of Ordinance No. 20314 which rezoned all property within the City of Dallas, including the subject site which was rezoned from GR (General Retail) to CR (Community Retail).
 - The hotel or motel use located at 3103 Colonial Avenue became nonconforming for a third time on September 26, 2001 with the passage of Ordinance No. 24726 which created Planned Development District No. 595 and rezoned the property from CR to PD 595 (CC) (portions of which are included as part of Attachment C). Hotel or motel uses are permitted by SUP only in PD 595 (CC) districts.
- The Dallas Development Code states that it is the declared purpose of this subsection (Sec. 51A-4.704. Nonconforming Uses and Structures) that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.

- The owner of the site could eliminate the nonconforming use status of the existing motel use by obtaining an SUP from City Council.
- The owner of the site could transition the use on the site from motel use to any use that is permitted by right in the site's existing PD No. 595 (CC Community Commercial Subdistrict) zoning classification. Uses permitted by right in this zoning district include a number of commercial and business service uses, institutional and community service uses, office uses, recreation uses, retail and personal service uses, transportation uses, and utility and public service uses.
- The applicant has the burden of proof in establishing the following:
 - Continued operation of the nonconforming motel use will have an adverse effect on nearby properties.
- The purpose of the Board of Adjustment's April 15th public hearing shall be to determine whether continued operation of the nonconforming motel use will have an adverse effect on nearby properties. The Dallas Development Code states that if, based on the evidence presented at the public hearing, the board determines that continued operation of this use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for the nonconforming use (at a subsequent public hearing); otherwise, it shall not.

BOARD OF ADJUSTMENT ACTION: APRIL 15, 2008

APPEARING IN FAVOR: P. Michael Jung, 7143 Fisher Rd, Dallas, TX
 Monifa Bandele, 1500 mountain Laurel LN, DeSoto, TX
 Michael Hubbard, 7137 Lanyon Dr., Dallas, TX
 David Gleason, 7007 Prestonshire LN, Dallas, TX
 Anika Herod, 725 Longleaf Dr., DeSoto, TX
 Winda Marks, 1326 Dalview Ave, Dallas, TX
 Luther A. Harris, 923 Thistle Green LN, Duncanville, TX
 Cheryl English, 2238 Elder Oaks Dr., Dallas, TX
 Alicia Fordsen 516 Magnolia, DeSoto, TX

APPEARING IN OPPOSITION: Mark Cronenwett, 4166 Wilada Dr., Dallas, TX

4:08 P.M. Member Gaspard was excused and left the meeting

MOTION: **Richmond**

I move that the Board of Adjustment, in Appeal No. **BDA 078-059**, hold this matter under advisement until **April 22, 2008**.

SECONDED: **Gabriel**

AYES: 3 – Richmond, Gabriel, Harris

NAYS: 1 – Taft

MOTION PASSED: 3– 1

MOTION: **Taft**

I move to adjourn this meeting.

SECONDED: **Harris**

AYES: 4– Richmond, Gabriel, Taft, Harris

NAYS: 0 -

MOTION PASSED: 4– 0 (Unanimously)

5:30 P.M. - Board Meeting adjourned for **April 15, 2008.**

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.