

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
TUESDAY, MAY 19, 2009**

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

MEMBERS ABSENT FROM BRIEFING: Jordan Schweitzer, Panel Vice-Chair

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Casey Burgess, Asst. City Attorney, Bert Vandenberg, 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, Ellen Taft regular member, Ben Gabriel, regular member, Steve Harris, regular member and Jim Gaspard, alternate member

MEMBERS ABSENT FROM HEARING: Jordan Schweitzer, Panel Vice-Chair

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Casey Burgess, Asst. City Attorney, Bert Vandenberg, 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

10:02 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **May 19, 2009** docket.

1:01 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 May 19, 2009 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: MAY 19, 2009

MOTION: Harris

I move **approval** of the Tuesday, **April 14, 2009** public hearing minutes.

SECONDED: Gaspard

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 089-055

BUILDING OFFICIAL'S REPORT:

Application of Sami El Chami for a special exception to the fence height regulations at 5943 Walnut Hill Lane. This property is more fully described as Lot 6 in City Block 3/5515 and is zoned R-10(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 13 foot fence which will require a special exception of 9 feet.

LOCATION: 5943 Walnut Hill Lane

APPLICANT: Sami El Chami

REQUEST:

- A special exception to the fence height regulations of 9' is requested in conjunction with constructing and maintaining the following in the site's 30' front yard setback on a site being developed with a single family home:

- a 6' 3" high open wrought iron fence and solid masonry wall with approximately 7' 6" high masonry columns parallel and perpendicular to Walnut Hill Lane on the east side of the subject site;
- an 8' high board-on-board fence/wall perpendicular to Walnut Hill Lane on the west side of the subject site;
- two approximately 10' 6" high open wrought iron entry gates flanked with approximately 10' 6" high masonry columns and 6' 6" – 8' 6" high solid masonry wing walls; and
- a 13' high solid masonry pedestrian gate.

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 revised site plan/elevation document indicating a fence/column/gate/pedestrian gate proposal that would be located in the site's front yard setback and would reach a maximum height of 13'.
- A revised site plan/elevation document has been submitted that indicates the location of the proposal in the front yard setback. This site plan/elevation document indicates the location, heights, and materials of the proposal in the front yard setback. The following additional information was gleaned from the revised site plan/elevation document:
 - The proposal would be approximately 185' in length parallel to Walnut Hill Lane with recessed entryways, and approximately 30' in length perpendicular to Walnut Hill Lane in the front yard setback on the east and west sides of the site.
 - The proposed fence is shown to be located approximately on the property line or about 12' from the pavement line.
 - The proposed gates (two vehicular gates, one pedestrian gate) are shown to be located approximately 7.5' – 17.5' from the property line or about 20' – 29' from the pavement line.

- Of the approximately 185' length of the proposal parallel to Walnut Hill Lane, approximately 75' is shown to be open wrought iron, and approximately 110' is shown to be solid masonry.
- The proposal is located on a site where three single family homes have direct/indirect frontage all of which have fences in their front yard setbacks that appear to be over 4' in height.
- The Board Administrator conducted a field visit of the site and surrounding area along Walnut Hill Lane (approximately 500 feet east and west of the site) and noted the following additional fence/walls which appeared to be located in the front yard setback (Note that these locations and dimensions are approximations):
 - an approximately 6' 4" high stone wall with approximately 7' high stone columns with 11' 4" high gates with 14' high entry columns in the 40'-Preston Road and Walnut Hill Lane front yard immediately southeast of the site (which appears to be a result of BDA 056-045);
 - a 6'-high solid stone wall with 9' high gates south of the site (with no "BDA History" on record);
 - a 7'-high solid stucco wall southwest of the site (with no "BDA History" on record); and
 - a 6' high open wrought iron fence with masonry base west of the site (with no "BDA History" on record).

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA 056-045, Property at 5952 Walnut Hill Lane aka 9625 Preston Road (the lot southeast of subject site)

On December 13, 2005, the Board of Adjustment Panel A granted a request for a special exception to the fence height regulations of 10' 6" and imposed the following conditions: 1) Compliance with the submitted revised site plan and elevations dated 12/2/05 is required; and 2) The gazebo structure on the site plan is not part of this approved request. The case report stated that the request was made in conjunction with constructing and maintaining primarily a 6' 4" high stone wall* with approximately 7' high stone columns with 11' 4" high gates (one gate on Preston Road, the other gate on Walnut Hill Lane) with 12' high entry columns in the 40'-Preston Road and Walnut Hill Lane front yard setbacks. Each entry gate was proposed to be flanked by a curved entry wing wall that ranges from 7' 6" to 10' 2" in height. However on November 28, 2005, a revised site plan and elevations were submitted that created a need to increase the special exception to 10' 6". The special exception was amended to account for entry columns that were raised from 12' to 14' 6" in height.

Timeline:

- March 24, 2009: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- April 16, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- April 17, 2009: The Board Administrator contacted the applicant by phone and shared the following information via email:
- an attachment that provided the public hearing date and panel that will consider the application; the May 4th deadline to submit additional evidence for staff to factor into their analysis; and the May 8th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the requests; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

May 5, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The request focuses on constructing and maintaining a 6' 3" high open wrought iron fence and solid masonry wall (with approximately 7' 6" high masonry columns) parallel to Walnut Hill Lane; an 8' high board-on-board fence/wall perpendicular to Walnut Hill Lane on the west side of the subject site; two approximately 10' 6" high open wrought iron entry gates flanked with approximately 10' 6" high masonry columns and 6' 6" – 8' 6" high solid masonry wing walls; and a 13' high solid masonry pedestrian gate in the site's front yard setback.
- A revised site plan/elevation document has been submitted indicating the location of the proposed fence/gates/columns in the front yard setback relative to their proximity to the front property line and pavement line, the length of the proposal relative to the entire lot, and the proposed building materials. The fence is shown to be located approximately on the front property line or about 12' from the pavement line. The vehicular gates are shown to be located approximately 7.5' – 17.5' from the front property line or about 20' – 29' from the pavement line. The proposal is about 185' long parallel to Walnut Hill Lane. Of the approximately 185' length of the proposal parallel to Walnut Hill Lane, approximately 75' is shown to be open wrought iron, and approximately 110' is shown to be solid masonry.
- The proposal is located on a site where three single family homes have direct/indirect frontage all of which have fences in their front yard setbacks that appear to be over 4' in height – and only one of which has recorded BDA history. Immediately southeast of the subject site is an approximately 6' 4" high stone wall with approximately 7' high stone columns with 11' 4" high gates with 14' high entry columns in the 40'-Preston Road and Walnut Hill Lane front yard immediately southeast of the site which appears to be a result of BDA056-045.
- Three other fence/walls higher than 4' were noted by the Board Administrator in a field visit of the site and surrounding area (approximately 500 feet east and west of the site). A 6'-high solid stone wall with 9' high gates was noted south of the site (with no "BDA History" on record); a 7'-high solid stucco wall was noted southwest of the site (with no "BDA History" on record); and a 6' high open wrought iron fence with masonry base was noted west of the site (with no "BDA History" on record).

- As of May 11, 2009, no letters had been submitted to staff in opposition to the proposal, and one letter had been submitted in support.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal that would reach 13' in height) will not adversely affect neighboring property.
- Granting this special exception of 9' with a condition imposed that the applicant complies with the submitted revised site plan/elevation document would assure that the proposal would be constructed and maintained in the location and of the heights and materials as shown on this document.

BOARD OF ADJUSTMENT ACTION: MAY 19, 2009

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Taft**

I move that the Board of Adjustment grant application **BDA 089-055** 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 revised site plan/elevation document is required.

SECONDED: **Gabriel**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 089-059

BUILDING OFFICIAL'S REPORT:

Application of Raul G. De La Rosa for a special exception to the landscape regulations at 4000 Cole Avenue. This property is more fully described as being a 7.6728 acre lot in City Block 2/1516 and is zoned PD-193 (MF-2) which requires mandatory landscaping. The applicant proposes to increase nonpermeable coverage on the lot and provide an alternate landscape plan which will require a special exception.

LOCATION: 4000 Cole Avenue

APPLICANT: Raul G. De La Rosa

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with increasing the nonpermeable coverage with an interior concrete walkway/sidewalk on the subject site which is developed as a public park (Cole Park).

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan is required.

Rationale:

- If the board were to grant this request with the staff suggested condition imposed, the site would only be minimally “excepted” from the street tree requirements of PD No. 193 while exceeding requirements related to the landscape site area, general planting area, and special planting area.
- The City’s Chief Arborist recommends approval of this request whereby if the alternate landscape plan were imposed as a condition, the special exception would not compromise the spirit and intent of the landscaping requirements of PD No. 193, particularly given that the components shown on the alternate plan exceed certain landscape requirements, and that granting the request would allow the retention of large mature trees that are placed in the park in a healthy growing environment while minimizing any damage to these trees in conjunction with merely adding interior sidewalks and improving planting areas within the existing city park.

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

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

GENERAL FACTS:

- PD No. 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged

or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind.

The applicant has submitted an alternate landscape plan that, according to the City of Dallas Chief Arborist, is seeking relief from the landscaping requirements of PD No. 193, specifically the street tree requirements of this ordinance.

- The City of Dallas Chief Arborist has submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner pertaining to the special exception request (see Attachment A). The memo stated the following:
 - The special exception request is triggered by the installation of new interior sidewalks in a city park.
 - Deficiencies:
 1. The ordinance requires 66 street trees to be planted 2.5' – 5' from back of curb. (The applicant proposes to retain existing mature trees greater than 10' from the curb).
- The memo provides a table indicating among other things how the applicant is exceeding the requirements relating to landscape site area, general planting area, and special planting area.
- Factors:
 - The City of Dallas is conducting improvements to the park that include interior sidewalks and improved planting areas. The proposed general planting area and special planting areas are distributed around the park.
 - The park is populated with large mature trees that placed in a healthy environment away from public utilities and properly distributed for public recreation purposes.
 - Placement of the street trees within the required parkway planting zone would place the trees in conflict with utilities or placed under existing mature trees.
 - The sidewalk locations are in their proper locations per ordinance requirements.
 - No additional landscaping to that which is shown on the proposed landscape plan is recommended in order to maintain the best current and proposed uses of the park and to minimize any damages to existing trees.
 - Recommendation:
 - Approval.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (MF-2 Subdistrict) (Planned Development District, Multifamily)
North: PD No. 193 (MF-2 Subdistrict) (Planned Development District, Multifamily)
South: PD No. 305, SUP 893, H/11 (Planned Development District, Specific Use Permit, Historic)
East: MU-3 (SAH) (Mixed Use, Standard Affordable Housing)
West: PD No. 193 (MF-2 Subdistrict) (Planned Development District, Multifamily)

Land Use:

The subject site is developed with a public park (Cole Park). The areas to the north and west are developed with residential uses; and the area to the east is developed with office and residential uses; and the area to the south is developed with an institutional use (North Dallas High School).

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:

March 27, 2009: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

April 16, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

April 17, 2009: The Board Administrator contacted the applicant and shared the following information via email:

- an attachment that provided the public hearing date and panel that will consider the application; the May 4th deadline to submit additional evidence for staff to factor into their analysis; and the May 8th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

May 5, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

May 11, 2009

The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment A).

STAFF ANALYSIS:

- This request focuses on obtaining leniency to fully meeting the landscape regulations triggered by the applicant's proposal to merely add a new interior sidewalks (or increasing nonpermeable coverage) on the subject site which is developed as a city park (Cole Park).
- An alternate landscape plan has been submitted whereby the applicant seeks an exception from the landscape requirements in the following way:
 1. The applicant proposes to retain existing mature trees greater than 10' from the curb rather than providing the required 66 street trees to be planted 2.5' – 5' from back of curb.
- The applicant submitted alternate landscape plan exceeds the requirements relating to landscape site area, general planting area, and special planting area.
- The City of Dallas Chief Arborist supports the request particularly given that the components shown on the alternate plan exceed certain landscape requirements, and that granting the request would allow the retention of large mature trees that are placed in the park in a healthy growing environment while minimizing any damage to these trees in conjunction with merely adding interior sidewalks and improving planting areas within the existing city park.
- The applicant has the burden of proof in establishing the following:
 - The special exception (where an alternate landscape plan has been submitted that is deficient the street tree requirements) will not compromise the spirit and intent of the section of the ordinance (Section 26: Landscape, streetscape, screening, and fencing standards).
- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted alternate landscape plan, the site would be minimally "excepted" from compliance from the street tree requirements of PD No. 193 while exceeding requirements related to landscape site area, general planting area, and special planting area.

BOARD OF ADJUSTMENT ACTION: MAY 19, 2009

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Taft**

I move that the Board of Adjustment grant application **BDA 089-059** 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 alternate landscape plan is required.

SECONDED: Gabriel

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 089-065

BUILDING OFFICIAL’S REPORT:

Application of Bill Manning, represented by the Michael R. Coker Company, for a special exception to the off-street parking regulations at 2621 Southerland Avenue. This property is more fully described as Lot 1 in City Block 1/7532 and is zoned MF-2(A) which requires parking to be provided. The applicant proposes to construct and maintain structures for multifamily and child-care facility uses and provide 163 of the required 217 parking spaces which will require a special exception of 54 spaces.

LOCATION: 2621 Southerland Avenue

APPLICANT: Bill Manning
Represented by the Michael R. Coker Company

REQUEST:

- A special exception to the off-street parking regulations of 54 parking spaces (or a 25% reduction of the required off-street parking) is requested in conjunction with replacing an existing vacant multifamily complex with an approximately 104,000 square foot multifamily use development (104 dwelling units) and maintaining an approximately 4,100 square foot child-care facility on the subject site. The applicant proposes to provide 163 of the required 217 parking spaces.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The special exception of 54 spaces automatically and immediately terminates if and when the “multifamily” and “child-care facility” uses on the site are changed or discontinued.

Rationale:

- The Development Services Senior Engineer has no objections to this request based on the parking counts at three similar locations in the City of Dallas, and the analysis.

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:
 - Multifamily: 1 space per 500 square feet of dwelling unit floor area within the building site
 - Only the floor area within a dwelling unit (excluding balconies) is included in the calculation of required off-street parking.
 - Not less than one space nor more than two and one-half spaces are required for each dwelling unit in a multifamily structure 36 feet or less in height.
 - Not less than one space nor more than two spaces are required for each dwelling unit in a multifamily structure over 36 feet in height.
 - Child-care facility: 1 space per 500 square feet of floor area. If more than ten off-street parking spaces are required for this use, handicapped parking must be provided pursuant to Section 51A-4.305.

The application materials and Building Official's Report state that 163 (or 75 percent) of the required 217 spaces are proposed to be provided.

BACKGROUND INFORMATION:

Zoning:

Site: MF-2 (Multifamily)
North: MF-2 (Multifamily)
South: NS(A) Neighborhood Service)
East: IR (Industrial Research)
West: R-7.5(A) (Single family 7,500 square feet)

Land Use:

The subject site is developed with a vacant multifamily complex and a child-care use. The area to the north is developed with warehouse/storage use; and the areas to the east, south, and west are either undeveloped or appear to be undeveloped.

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:

March 25, 2009: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

April 16, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

April 16, 2009: The Board Administrator contacted the applicant and shared the following information via email:

- an attachment that provided the public hearing date and panel that will consider the application; the May 4th deadline to submit additional evidence for staff to factor into their analysis; and the May 8th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

May 5, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

The Trinity River Corridor Senior Planner submitted a review comment sheet marked "Has no objections" with attached information stating that the site is located in a Residential Traditional Module of the Trinity River Corridor CLU Plan.

May 7, 2009 The Development Services Senior Engineer submitted a review comment sheet marked "Has no objections" with the following comments: "Based on the parking counts at three similar locations in the City of Dallas, and analysis."

STAFF ANALYSIS:

- This request focuses on the applicant's proposal to replace an existing vacant multifamily complex with an approximately 104,000 square foot multifamily use development (104 dwelling units) and maintaining an approximately 4,100 square foot child-care facility on the subject site, and providing 75 percent of the required off-street parking spaces (163 of the 217).
- According to the applicant, demographic information obtained from DHA (Dallas Housing Authority) most of their residents are either single or single-parent households.
- The Development Services Senior Engineer has no objections to this request based on the submitted parking counts at three similar locations in the City of Dallas (and related analysis).
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the "multifamily" and "child-care facility" uses does not warrant the number of off-street parking spaces required, and
 - The special exception of 54 spaces (or 25 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, subject to the condition that the special exception of 54 spaces automatically and immediately terminates if and when the "multifamily" and "child-care facility" uses are changed or discontinued, the applicant would be allowed to develop/maintain the site with these specific uses and with 163 of the 217 off-street parking spaces required by the code.

BOARD OF ADJUSTMENT ACTION: MAY 19, 2009

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Taft**

I move that the Board of Adjustment grant application **BDA 089-065** 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 54 spaces automatically and immediately terminates if and when the "multifamily" and "child-care facility" uses are changed or discontinued.

SECONDED: **Gabriel**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 089-040(K)

BUILDING OFFICIAL’S REPORT:

Application of Eric Rodriguez, represented by Construction Concepts, Inc. for a special exception to the fence height regulations at 117 S. Jester Avenue. This property is more fully described as Lots 15, 16, & 17 in City Block 13/4165 and is zoned R-7.5(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct an 8 foot, 4 inch fence in a required front yard setback which will require a special exception of 4 feet, 4 inches.

LOCATION: 117 S. Jester Avenue

APPLICANT: Eric Rodriguez
Represented by Construction Concepts, Inc.

REQUESTS:

Special exceptions to the fence height and visibility obstruction regulations are requested in conjunction with constructing and maintaining a fence in the property’s front yard setback that is 8 feet and 4 inches in height.

STAFF RECOMMENDATION (fence height special exception):

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

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.

STAFF RECOMMENDATION (visibility obstruction special exception):

Denial.

Rationale:

- The Development Services Senior Engineer recommends this request be denied (see attachment).

Standard for Visual Obstruction:

The board shall grant a special exception to the requirements of this section when, in the opinion of the board, the item will not constitute a traffic hazard.

GENERAL FACTS:

- The site is zoned R 7.5(A) and requires a 25 front yard setback.
- The applicant proposes to maintain an 8 foot 4 inch high fence.
- The applicant submitted a revised site plan that illustrates the gate and columns within the 20 foot visibility triangles at the drive approach.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is developed with a single family structure. The properties to the north, south, and east are developed with single family structures.

Zoning/BDA History:

There is no zoning or Board of Adjustment case history for this site or properties in the immediate area.

Timeline:

February 10, 2009: The applicant’s representative submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

March 20, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

March 24, 2008: The Board Senior Planner mailed the applicant’s representative a letter that contained 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 30th deadline to submit additional evidence for staff to factor into their analysis and recommendation;
- the April 3rd deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the April public hearing after considering the information, evidence and testimony presented to them by the applicant and all other interested parties.

March 2, 2009: 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 Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

April 14, 2009: The Board of Adjustment Panel A voted to hold this matter under advisement until May 19, 2009

May 5, 2009: 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 Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

May 5, 2009 : The submitted a revised site elevation in conjunction with this request.

May 7, 2009 : The Development Services Senior Engineer submitted a review comment sheet recommending denial special exception to the visibility obstruction regulations.

STAFF ANALYSIS:

- The property is developed with a single family structure. This property is located at the end of dead-end street.
- The applicant proposes to construct and maintain a solid block concrete fence and open wrought iron fence with solid masonry columns and open wrought iron gate to a maximum height of 8 feet and 4 inches.
- The proposed fence is 8 foot 4inches in height and runs approximately 45 feet parallel to the front property line and 25 feet perpendicular to the front property line.
- The applicant is seeking a special exception to the visibility obstruction regulations to construct and maintain an open wrought iron gate that is 8 feet and 4 inches tall in the required visibility obstruction triangles at the drive approach for this property. The Development Services Senior Engineer recommends denial of the special exception for visibility obstruction.
- The applicant has the burden of proof in establishing that granting the special exception to the fence height regulation will not adversely affect neighboring properties.
- If the Board grants the special exception to the fence height regulations and/or the special exception to the visibility obstruction regulations, staff recommends imposing the submitted site plan and elevation as a condition.

BOARD OF ADJUSTMENT ACTION: MAY 19, 2009

APPEARING IN FAVOR: Eric Rodriguez, 117 Jester Avenue, Dallas, TX
Nancy Cardoza, 5316 Castlewood Cr., Grand Prairie, TX

APPEARING IN OPPOSITION: No one

MOTION: **Harris**

I move that the Board of Adjustment, in Appeal No. **BDA 089-040**, on application of Eric Rodriguez, represented by Construction Concepts, Inc., **grant** the request of this applicant to construct and maintain an eight-foot-four inch fence 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 revised site plan and elevation is required.

SECONDED: **Gabriel**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 089-052(K)

BUILDING OFFICIAL'S REPORT:

Application of David Moynihan for a special exception to the fence height regulations and for a special exception to the visibility obstruction regulations at 1826 Sanger Avenue. This property is more fully described as Lot 18 in City Block G/874 and is zoned PD 595 (MF-2(A)), which limits the height of a fence in a front yard to 4 feet and limits the height of a fence in a side yard to 9 feet and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct a 10 foot fence in the required front and side yard setbacks, which will require a 6 foot special exception to the fence regulation in the front yards and a 1 foot special exception to the fence regulation in the side yards, and to construct and maintain a fence in a required visibility obstruction triangle, which will require a special exception to the visibility obstruction regulation.

LOCATION: 1826 Sanger Avenue

APPLICANT: David Moynihan

REQUESTS:

Special exceptions to the visibility obstruction and fence height regulations are requested in conjunction with constructing and maintaining a 10 foot tall fence in a required front yard and a 9 foot 7 inch tall fence in a required side yard and a portion of the fence and gate in the required 20 foot visibility triangle at the drive approach.

STAFF RECOMMENDATION (visibility obstruction):

Denial of the 20' x 20' driveway visibility obstruction to the drive approach.

Rationale:

The Development Services Senior Engineer has reviewed the request and recommends denial of the 20' x 20' driveway visibility triangle. (see attachment A).

STAFF RECOMMENDATION (fence height special exception):

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

STANDARD FOR A SPECIAL EXCEPTION TO THE VISIBILITY OBSTRUCTION REGULATIONS:

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

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 property is zoned PD 595 [MF-2(A)] which requires a front yard setback of 15 for single family residential structures.
- The property is located on the corner of Sanger Ave and Riggs St.
- The applicant's request includes an existing fence that runs parallel to the northern (front) property line on Sanger Ave and in the visibility triangles at the drive approach.
- The site is zoned PD 595 MF-2(A) that requires a visibility triangle of 20' at driveway approaches.

BACKGROUND INFORMATION:

Zoning:

Site: PD 595 [MF-2(A)] (multifamily sub district).
North: PD 595 (RS-C) Tract 1 (Regional Service Commercial)
South: PD 595 [MF-2(A)] (multifamily sub district)
East: PD 595 (RS-C) Tract 1 (Regional Service Commercial)
West: PD 595 (RS-C) Tract 1 (Regional Service Commercial)

Land Use:

The subject site is developed with a single family structure. The properties to the south and west are undeveloped. The properties to the north and east are developed with non-residential structures.

Zoning/BDA History:

Z045-149. PD 595 was established by Ordinance No. 24726, passed by the Dallas City Council on September 26, 2001. (Ord. 24726)

Timeline:

February 27, 2009: 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, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

March 24, 2009: The Board Senior Planner mailed the applicant a letter that contained 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 30th deadline to submit additional evidence for staff to factor into their analysis and recommendation;
- the April 3rd deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the April public hearing after considering the information, evidence and testimony presented to them by the applicant and all other interested parties.

March 31, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

April 2, 2009 The Development Services Senior Engineer submitted a comment sheet (see attachment A).

April 14, 2009 The Board of Adjustment, Panel A, voted to hold this under advisement until May 19, 2009.

May 5, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

May 7, 2009 The applicant's representative submitted a revised elevation.

The Development Services Senior Engineer submitted a comment sheet (see attachment B).

STAFF ANALYSIS:

- The subject site is developed with a single family structure. This property is on a corner lot and has frontage on Sanger Avenue and Riggs Street.
- According to DCAD this 1,607 square foot single family structure was constructed in 2008 and is listed in "excellent" condition.
- The applicant proposes to maintain a 10 foot high solid fence in the Sanger Ave. and Riggs Street front yards which require a special exception of 6 feet. The applicant proposes to maintain a 9 foot and 7 inch high fence in the properties side yards, which will require a special exception of 7 inches.
- The applicant proposes to maintain an existing fence and gate in the 20' visibility triangles at the driveway approach.
- The City's Senior Engineer reviewed the site plans and has recommended denial of the special exception to the visibility triangle at the drive approach.
- The applicant has the burden of proof in establishing that granting the special exception to the visibility obstruction regulations does not constitute a traffic hazard.
- The applicant has the burden of proof in establishing that granting the special exception to the fence height regulation will not adversely affect neighboring properties.
- If the Board were to grant the special exception to the visibility obstruction regulations, it may impose compliance with submitted site plan and elevation. If the Board grants the special exception to the fence height regulations, staff recommends imposing the submitted site plan and elevation as a condition.

BOARD OF ADJUSTMENT ACTION: MAY 19, 2009

APPEARING IN FAVOR: Ed Simons, 900 Jackson, #640, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: **Harris**

I move that the Board of Adjustment, in Appeal No. **BDA 089-052**, on application of David Moynihan, **grant** the request of this applicant to construct and maintain a 10 foot high fence in the Sanger Avenue front yard and the Riggs Street front yard as special exceptions 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 elevation is required.

SECONDED: **Gabriel**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION #2: **Taft**

I move that the Board of Adjustment, in Appeal No. **BDA 089-052**, on application of David Moynihan, **grant** the request of this applicant to construct and maintain a fence in the visibility triangle at both the northwest and the southeast drive approach to the property’s driveway 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 and elevation is required.

SECONDED: **Harris**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION #3: **Gaspard**

I move to **amend** the previous motion made to include “a mirror to be added to the right side of the drive approach”.

SECONDED: **Gabriel**

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

NAYS: 0 -
MOTION PASSED: 5– 0 (unanimously)

MOTION #4: **Taft**

I move that the Board of Adjustment, in Appeal No. **BDA 089-052**, on application of David Moynihan, **grant** the request of this applicant to construct and maintain a fence in the visibility triangle at both the northwest and the southeast drive approach to the property's driveway 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 and elevation is required.
- A mirror is added to the right side of the drive approach.

SECONDED: **Harris**
AYES: 5 – Richmond, Taft, Gabriel, Harris, Gaspard
NAYS: 0 -
MOTION PASSED: 5– 0 (unanimously)

MOTION #5: **Gaspard**

I move that the Board of Adjustment, in Appeal No. **BDA 089-052**, on application of David Moynihan, **grant** the request of this applicant to construct and maintain a 9 foot, 7 inch high fence in both the southern and the western side yards as special exceptions 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 elevation is required.

SECONDED: **Gabriel**
AYES: 5 – Richmond, Taft, Gabriel, Harris, Gaspard
NAYS: 0 -
MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 089-061

BUILDING OFFICIAL'S REPORT:

Application of Joe M. McCall for a variance to the off-street parking regulations, special exceptions to the visual obstruction regulations, and a special exception to the

landscape regulations at 5835 Penrose Avenue. This property is more fully described as City Block F/2881 and is zoned D(A) which requires a front yard setback of 25 feet for off-street parking, a 20 foot visibility triangle at driveway and alley approaches and a 45 foot visibility triangle at street intersections, and requires mandatory landscaping. The applicant proposes to construct and maintain an off-street parking lot and provide a 2 foot front yard setback which will require a variance of 23 feet to the front yard setback regulations for off-street parking, to locate and maintain items in required visibility triangles which will require special exceptions to the visual obstruction regulations, and to construct and maintain a structure and provide an alternate landscape plan which will require a special exception to the landscape regulations.

LOCATION: 5835 Penrose Avenue

APPLICANT: Joe M. McCall

REQUESTS:

- The following appeals have been made in this application on a site developed with a church (Greenland Hills United Methodist Church):
 1. Variances to the off-street parking regulations of up to 23' are requested in conjunction with locating and maintaining 11 off-street parking spaces in the site's 25' Delmar Avenue front yard setback and 6 off-street parking spaces in the site's 25' Bremen Street front yard setback.
 2. Special exceptions to the visual obstruction regulations are requested in conjunction with locating and maintaining two off-street parking spaces/vehicles in visibility triangles - one of which is to be located in a 20' drive approach visibility triangle into the site from Delmar Avenue and the other to be located in the 45' intersection visibility triangle at Penrose Avenue and Delmar Avenue.
 3. A special exception to the landscape regulations is requested in conjunction with constructing and maintaining an approximately 4,800 square foot addition to the church with an approximately 8,000 square foot building footprint.

STAFF RECOMMENDATION (variance):

Approval, subject to compliance with the submitted revised site/landscape plan

Rationale:

- The subject site is restricted in its developable area and is different from other parcels of land given its size restricted by the number of mature trees on the site that according to the applicant cover approximately 40 percent of the total buildable area on the site, and its two 25' front yard setbacks. If the site were without mature trees and with the more typical one front yard setback, it is likely that the required off-street parking spaces could be located on the site outside of the required front yard setbacks.

- The applicant has also substantiated how granting the variances do not appear to be contrary to the public interest given that a support letter has been submitted from the Lower Greenville Neighborhood Association.

STAFF RECOMMENDATION (visual obstruction special exceptions):

Denial of the requests

Rationale:

- The City’s Development Services Senior Engineer has recommended that these requests be denied.
- The proposed parking spaces/parked vehicles in the two visibility triangles on the subject site would constitute a traffic hazard.

STAFF RECOMMENDATION (landscape special exception):

Approval, subject to the following conditions:

1. Compliance with the submitted revised site/ landscape plan is required.
2. Any existing landscape tree shown on the revised site/landscape plan that dies, or is removed, must be replaced with another large canopy tree (with a minimum caliper inch of 3”) within 20’ of the original tree.

Rationale:

- The City’s Chief Arborist supports the request with the conditions mentioned above imposed.
- The applicant has substantiated how strict compliance with the requirements of the Landscape Regulations of the Dallas Development Code (specifically related to street tree, perimeter landscape buffer strip, buffer plant materials, and design standard requirements) will unreasonably burden the use of the property – a property that has been established with a single use for a long period of time with a number of mature landscape materials and trees on it; and that the special exception will not adversely affect neighboring property, particularly given the number of mature plant materials and trees denoted on the submitted revised site/landscape plan to be retained/preserved on the site.

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 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; the variance is

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 the variance is 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.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

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

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

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

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

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

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

GENERAL FACTS (related to the parking variance):

- The subject site is one block wide with Bremen Street as its western boundary, Delmar Avenue as its eastern boundary, and Penrose Avenue as its southern boundary. Even though the Bremen Street and Delmar Avenue “sides” of the site function as the site’s side yards and the Penrose Avenue “side” functions as the site’s front yard, the subject site has two 25’ front yard setbacks along Bremen Street and Delmar Avenue and two 5’ side yard setbacks along Penrose Avenue (the south “side” of the site) and the north side of the site. The site has two 25’ front yard setbacks along Bremen Street and Delmar Avenue given that these frontages are the shorter of the street frontages.

- The Dallas Development Code states that in residential districts, any off-street parking for nonresidential uses must comply with the minimum front yard requirements of Section 51A-4.401.
- The minimum front yard setback on a D(A) (Duplex) zoned lot is 25 feet. The applicant has submitted a revised site/landscape plan indicating that 11 off-street parking spaces in the site's Delmar Avenue 25' front yard setback, some of which are as close as 2' from the front property line (or 23' into the 25' front yard setback). The applicant has submitted a site plan indicating that 6 off-street parking spaces in the site's Bremen Street 25' front yard setback, some of which are as close as 16' from the front property line (or 9' into the 25' front yard setback).
- The site appears to be relatively flat, is rectangular in shape (300' x 150'), and is 45,000 square feet (or approximately 1 acre) in area. The site is zoned D(A). The site has two 25' front yard setbacks. The submitted revised site/landscape plan denotes a number of mature trees on the site that, according to the applicant, cover approximately 40 percent of the total buildable area on the site.
- According to DCAD records, the property is developed with a "church building" built in 1945 that is 8,525 square feet in area.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a revised site plan;
 - letters that provide additional details about the requests;
 - elevations of the proposal and related photographs; and
 - a support letter from the president of the Lower Greenville Neighborhood Association.

GENERAL FACTS (related to the visual obstruction special exceptions):

- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at intersections and 20-foot visibility triangles at drive approaches); and
 - between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
 A revised site/landscape plan has been submitted that shows two off-street parking spaces in visibility triangles - one of which is to be located in a 20' drive approach visibility triangle into the site from Delmar Avenue and the other to be located in the 45' intersection visibility triangle at Penrose Avenue and Delmar Avenue.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a revised site plan;
 - letters that provide additional details about the requests;
 - elevations of the proposal and related photographs; and

- a support letter from the president of the Lower Greenville Neighborhood Association.

GENERAL FACTS (related to the landscape special exception):

- The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period.
A revised site/landscape plan has been submitted that according to the City of Dallas Chief Arborist is deficient from meeting mandatory provisions for buffer plant material and street trees (Section 51A-10.125) and design standards (Section 51A10.126).
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Chief Board of Adjustment Planner (see Attachment B). The memo stated the following:
 - The applicant is requesting relief from the buffer plant material/street tree and design standard requirements of Article X: The Landscape Regulations.
 - Trigger:
New construction of addition and new paved parking surface.
 - Deficiencies:
 1. Perimeter landscape buffer:
The code requires a perimeter landscape buffer around all four sides of the site. (The applicant proposes not to maintain the mandatory 10' wide landscape buffer on the east and west sides of the site due to the new parking spaces)
 2. Buffer plant materials:
The code requires a minimum of 19 plants groups around the property that would include a minimum of 19 large canopy trees and the addition of large non-canopy trees, small trees, and shrubs. (The applicant proposes 23 large canopy trees with 3 small trees and clusters of existing shrubs in an area that could be considered as a perimeter landscape buffer area).
 3. Street trees:
13 large street trees are required. (The applicant proposes to have 6 existing and 1 new street trees).
 4. Design standard:
Two design standards are required. (The applicant proposes to provide one design standard – a “screening of off-street parking” standard along the west, south, and east sides of the site.
 - Factors for consideration:
 - The property has existed with the single use for a long period of time and the planted landscape has matured and flourished. It is the defined purpose of the City of Dallas to “encourage the preservation of large trees, which, once

removed, can be replaced only after generations.” The City Arborists highly supports efforts to conserve as many of the originally planted trees on the lot in the process of development.

- Three trees are proposed to be planted along the north perimeter of the property that will be set back in order to minimize conflicts with overhead and underground utilities.
- One existing tree is proposed for removal in the new parking lot area where the city arborist office encourages its removal and replacement to encourage the protection and longevity of other surrounding trees.
- The owner has proposed to place a new addition and parking where the existing landscaping could be protected from construction. The removal of the large canopy trees for new development would (in the Chief Arborist’s opinion) have a negative impact to the local community and aesthetic appearance to the property.
- The perimeter landscape buffer is being mitigated in some part due to the screening of off-street parking proposed around the parking lots. The buffer plant materials may actually meet the required number of trees-to-shrub requirement for the whole property based on existing hedge rows. However, the plantings are not balance for their effect around the property. The site will be deficient in street trees per ordinance but has a substantial number of large trees within the yard area of the lot.
- Recommendation
 - Approval, subject to the following conditions.
 - Any existing landscape tree that dies or is removed must be replaced with another large canopy tree (a minimum caliper of 3”) within 20’ of the original tree.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a revised site plan;
 - letters that provide additional details about the requests;
 - elevations of the proposal and related photographs; and
 - a support letter from the president of the Lower Greenville Neighborhood Association.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is developed with a church (Greenland Hills United Methodist Church). The area to the north is developed with single family uses; and the areas to the east, south, and west are developed with duplex uses.

Zoning/BDA History:

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|--|---|
| 1. BDA 001-214, Property at 5835 Penrose Avenue (the subject site) | On August 28, 2001, the Board of Adjustment Panel A granted requests for special exceptions to the landscape and screening regulations and imposed the following condition: compliance with the submitted site plan and elevation plan is required. The case report stated that the requests were made in conjunction with: 1) a proposed expansion of sanctuary, classrooms, and parking area, and 2) providing a 4' high screening fence (rather than the required 6' high screening fence) at the rear side of the church. (The expansion that was the focus of this request appears to have not been constructed based on a recent field visit of the subject site by the Board Administrator). |
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Timeline:

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|-----------------|---|
| Undated: | The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report. |
| April 16, 2009: | The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case." |
| April 20, 2009: | The Board Administrator contacted the applicant by phone and shared the following information via email: <ul style="list-style-type: none">• an attachment that provided the public hearing date and panel that will consider the application; the May 4th deadline to submit additional evidence for staff to factor into their analysis; and the |

- May 8th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the requests; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- May 4, 2009 The applicant submitted additional information to the Board Administrator (see Attachment A).
- May 5, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- May 7, 2009 The Development Services Senior Engineer forwarded a Review Comment Sheet marked "Recommends that this be denied."
- May 11, 2009 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment B).

STAFF ANALYSIS (related to variances):

- The requests for variances to the off-street parking regulations focus on locating and maintaining 11 off-street parking spaces in the site's 25' Delmar Avenue front yard setback and 6 off-street parking spaces in the site's 25' Bremen Street front yard setback on a site developed with a church built in the 1940's. The proposed parking on the site to be located in the site's two front yard setbacks is triggered by the proposal to add an addition to the church which will displace some of the existing off-street parking on the subject site.
- The submitted revised site/landscape plan indicates that the 11 off-street parking spaces located in the site's Delmar Avenue 25' front yard setback are as close as 2' from the front property line (or 23' into the 25' front yard setback), and that the 6 off-street parking spaces located in the site's Bremen Street 25' front yard setback are as close as 16' from the front property line (or 9' into the 25' front yard setback).
- The site appears to be relatively flat, is rectangular in shape (300' x 150'), and is 45,000 square feet (or approximately 1 acre) in area. The site is zoned D(A). The site has two 25' front yard setbacks. The submitted revised site/landscape plan denotes a number of mature trees on the site that according to the applicant cover approximately 40 percent of the total buildable area on the site.
- The applicant has the burden of proof in establishing the following:
 - That granting the variances to the off-street parking 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 variances are necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same D(A) (Duplex) zoning classification.
- The variances would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same D(A) (Duplex) zoning classification.
- If the Board were to grant the variances to the off-street parking regulations, imposing a condition whereby the applicant must comply with the submitted site/landscape plan, the encroachments into these setbacks would be limited to what is shown on the submitted revised site/landscape plan which in this case are required off-street parking spaces that would be located as close as 2' from the Delmar Avenue front property line (or 23' into the 25' front yard setback), and as close as 16' from the Bremen Street front property line (or 9' into the 25' front yard setback).

STAFF ANALYSIS (related to the visual obstruction special exceptions):

- These requests focus on locating and maintaining two off-street parking spaces/vehicles in visibility triangles - one of which is to be located in a 20' drive approach visibility triangle into the site from Delmar Avenue and the other to be located in the 45' intersection visibility triangle at Penrose Avenue and Delmar Avenue.
- The Development Services Senior Engineer submitted a Review Comment Sheet marked "Recommends that this be denied."
- The applicant has the burden of proof in establishing that granting the special exceptions to the visual obstruction regulations and allowing a off-street parking space/vehicle to be located in a 20' drive approach visibility triangles into the site from Delmar Avenue and one off-street parking space/vehicle to be located in the 45' intersection visibility triangle at Penrose Avenue and Delmar will not constitute a traffic hazard.
- If these requests are granted, subject to compliance with the submitted revised site/landscape plan, two off-street parking spaces/vehicles would be "excepted" into these visibility triangles on the subject site.

STAFF ANALYSIS (related to the landscape regulations):

- The request focuses on obtaining leniency to the fully meeting the landscape regulations triggered by the applicant's proposal to construct and maintain an

approximately 4,800 square foot addition to the church with an approximately 8,000 square foot building footprint.

- A revised alternate site/landscape plan has been submitted whereby the applicant seeks an exception from the landscape requirements in the following ways:
 - not fully providing the perimeter landscape buffer on all four sides of the site.,
 - not fully providing the buffer plant materials on the site;
 - not fully providing the 13 large street trees on the site (6 existing and 1 new tree is proposed); and
 - not providing the two required design standards on the site (one design standard is proposed).
- The City of Dallas Chief Arborist supports the request with certain conditions to be imposed largely given the landscaping that is proposed on the site while taking into consideration the number of large trees and other mature landscape materials to be retained and/or preserved on the site.
- The applicant has the burden of proof in establishing the following:
 - Strict compliance with the requirements of the Landscape Regulations of the Dallas Development Code will unreasonably burden the use of the property; and
 - The special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose conditions that: 1) the applicant must comply with the submitted revised alternate landscape plan, and 2) any existing landscape tree shown on the revised site/landscape plan that dies, or is removed, must be replaced with another large canopy tree (with a minimum caliper inch of 3") within 20' of the original tree, the site would be "excepted" from full compliance with the perimeter landscape buffer, buffer plant, street tree and design standard requirements of Article X: The Landscape Regulations.

BOARD OF ADJUSTMENT ACTION: MAY 19, 2009

APPEARING IN FAVOR: Jim McCall, 1925 San Jacinto, #300, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Harris

I move that the Board of Adjustment, in Appeal No. **BDA 089-061**, on application of Joe M. McCall, **grant** the request of this applicant to construct and maintain a parking space in both the northern and the southern Delmar Avenue drive approach visibility triangles as a special exception to the visibility obstruction regulations 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 revised site plan and landscape plan is required.

SECONDED: Gabriel

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION #2: Harris

I move that the Board of Adjustment, in Appeal No. **BDA 089-061**, on application of Joe M. McCall, **grant** the request of this applicant to construct and maintain a parking space in both the 45 foot visibility triangle at the intersection of Delmar and Penrose as a special exception to the visibility obstruction regulations 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 revised site/landscape plan is required.

SECONDED: Gabriel

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION #3: Gaspard

I move that the Board of Adjustment, in Appeal No. **BDA 089-061**, on application of Joe M. McCall, **grant** the 23 foot variance to the off-street parking regulations requested by this applicant to allow parking in the Delmar Avenue and Bremen Street front yard setbacks 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 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 revised site/landscape plan is required.

SECONDED: Gabriel

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION #4: Gaspard

I move that the Board of Adjustment, in Appeal No. **BDA 089-061**, on application of Joe M. McCall, **grant** the request of this applicant to provide an alternate landscape plan as a special exception to the landscape requirements in the Dallas Development Code because our evaluation of the property and the testimony shows that strict compliance with the requirements will unreasonably burden the use of the property, the special exception will not adversely affect neighboring property and the requirements are not imposed by a site specific landscape plan approved by the city plan commission or city council. 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/landscape plan is required.
- Any existing landscape tree shown on the revised site/landscape plan that dies, or is removed, must be replaced with another large canopy tree (with a minimum caliper inch of 3 inches) within 20 feet of the original tree.

SECONDED: Gabriel

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION: **Harris**

I move to adjourn this meeting.

SECONDED: **Gabriel**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

1:42 P.M. - Board Meeting adjourned for **May 19, 2009**.

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.