

**BOARD OF ADJUSTMENT, PANEL A  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, COUNCIL CHAMBERS  
TUESDAY, JUNE 16, 2009**

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

MEMBERS ABSENT FROM BRIEFING: No one

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, Jordan Schweitzer, Panel Vice-Chair, Ben Gabriel, regular member, Ellen Taft regular member and Steve Harris, regular

MEMBERS ABSENT FROM HEARING: No one

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

**11:03 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **June 16, 2009** docket.

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**1:00 P.M.**

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

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel A May 19, 2009 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: JUNE 16, 2009**

**MOTION: Taft**

I move **approval** of the Tuesday, **May 19, 2009** public hearing minutes.

**SECONDED: Gabriel**

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

**NAYS: 0 -**

**MOTION PASSED: 5– 0 (unanimously)**

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**FILE NUMBER: BDA 089-068(K)**

**BUILDING OFFICIAL'S REPORT:**

Application of Jim Lee Mahoney for a special exception for a carport to the side yard setback regulation at 3949 Durango Drive. This property is more fully described as Lot 24 in City Block G/6175 and is zoned R-10(A), which requires a side yard setback of 6 feet. The applicant proposes to construct and maintain a carport for a single family residential dwelling in a side yard and provide a 0 foot setback which will require a special exception of 6 feet.

**LOCATION: 3949 Durango Drive**

**APPLICANT: Jim Lee Mahoney**

**REQUEST:**

- A special exception to the side yard setback regulations of 6 feet is requested to construct and maintain a carport in the side yard setback.

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to the side yard setback since the basis for this type of appeal is when in the opinion of the board, the carport will not have a detrimental impact on surrounding properties.

**STANDARD FOR A VARIANCE:**

The board may grant a special exception to the side yard requirements in this section for a carport for a single family or duplex use when, in the opinion of the board the carport will not have a detrimental impact on surrounding properties.

In determining whether to grant this special exception, the board shall consider the following factors:

- (A) Whether the requested special exception is compatible with the character of the neighborhood.
- (B) Whether the value of the surrounding properties will be adversely affected.
- (C) The suitability of the size and location of the carport.
- (D) The materials to be used in construction of the carport.

The storage of items other than motor vehicles is prohibited in a carport for which a special exception has been granted under this subsection.

**GENERAL FACTS:**

- Structures on lots zoned R-10(A) are required to provide a minimum side yard setback of 6 feet.
- A scaled site plan has been submitted that shows that the proposed carport will be located 0 feet from the side yard.
- According to DCAD, the site was developed in 1958 with a single family home that is in “good” condition with 1,470 square feet of living space. DCAD states that there are additional improvements on the subject site:
  - attached garage 264square feet
- The Dallas Development Code provides for the Board of Adjustment to consider special exceptions for carports in the side yard setback with a specific basis for this type of appeal.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-10 (A) (Single family district 10,000 square feet)  
North: R-10 (A) (Single family district 10,000 square feet)  
South: R-10 (A) (Single family district 10,000 square feet)

East: R-10 (A) (Single family district 10,000 square feet)  
West: R-10 (A) (Single family district 10,000 square feet)

**Land Use:**

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

**Zoning/BDA History:**

There is neither any zoning history nor board of adjustment history for this property or properties in the immediate vicinity.

**Timeline:**

- April 20, 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.
- May 21, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- May 22, 2009: The Board Senior Planner mailed the applicant's representative a letter that containing 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 June 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis and recommendation;
  - the June 5<sup>th</sup> 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 June public hearing after considering the information, evidence and testimony presented to them by the applicant and all other interested parties.
- June 2, 2009: 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 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.

**STAFF ANALYSIS:**

- The submitted site plan indicates that about 37percent (or 66 square feet) of the proposed carport structure’s 174 square foot footprint is to be located in the site’s 6’ side yard setback.
- The site is flat, rectangular in shape (69.5’ x 137.5’) and 9,556 square feet in area. The site is zoned R-10(A) where lots are typically 10,000 square feet in area.
- The applicant has the burden of proof in establishing the following:
  - That granting the special exception to the side yard setback regulations of 6 feet requested to maintain an approximately 174 square foot carport attached to a detached garage that is 0 feet from the side yard property line will not have a detrimental impact on surrounding properties.
- 1. Typically, staff has suggested that the Board impose conditions with this type of appeal. The following conditions would restrict the location and size of the carport in the side yard setback; require the carport in the side yard setback to be retained in its current design, material, and configuration; and would require the applicant to mitigate any water drainage related issues that the carport may cause on the lot immediately adjacent:
  1. Compliance with the submitted site plan, elevation, and sectional view document.
  2. The carport structure must remain open at all times.
  3. There is no lot-to-lot drainage in conjunction with this proposal.
  4. All applicable building permits are obtained.
  5. No item (other than a motor vehicle) may be stored in the carport.

**BOARD OF ADJUSTMENT ACTION: JUNE 16, 2009**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

**MOTION: Schweitzer**

I move that the Board of Adjustment grant application **BDA 089-068** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted site plan and section document is required.

- The carport structure must remain open at all times.
- Lot-to-lot drainage is not permitted in conjunction with this proposal.
- All applicable building permits must be obtained.
- No item (other than a motor vehicle) may be stored in the carport.

**SECONDED: Harris**

**AYES: 5** – Richmond, Schweitzer, Gabriel, Taft, Harris

**NAYS: 0** -

**MOTION PASSED: 5- 0** (unanimously)

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**FILE NUMBER:** BDA 089-075

**BUILDING OFFICIAL’S REPORT:**

Application of Ed Simons of Masterplan for a variance to the front yard setback regulation at 10011 N. Central Expressway. This property is more fully described as Lot 31A in City Block 7294 and is zoned MU-3(SAH) which requires a front yard setback of 35 feet for the portion of the structure over 45 feet in height due to the urban form setback. The applicant proposes to construct a structure and provide an 18 foot front yard setback which will require a variance of 17 feet.

**LOCATION:** 10011 N. Central Expressway

**APPLICANT:** Ed Simons of Masterplan

**REQUEST:**

- A restoration/reinstatement of a variance to the urban form front yard setback regulations of 17’ granted by Board of Adjustment Panel A in May of 2008 (BDA078-071) is requested in conjunction with constructing and maintaining an approximately 54’ high (reduced from the previously granted 60’ high) multifamily residential structure (The Fountains Apartments) on a site that is undeveloped.

The applicant is returning with nearly the exact same application granted in 2008 since the Dallas Development Code states that if the applicant fails to file an application for a building permit or certificate of occupancy within 180 days from the date of the favorable action of the board (which the applicant did not do), the request is automatically denied without prejudice, and the applicant must begin the process to have his request heard again. The applicant returns to the board with a re-filed application since he did not make the application for either the building permit or the certificate of occupancy within the code-prescribed required time frame.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the site plan and elevation is required.

Rationale:

- The site is restricted in its developable area and different from other parcels of land given a 16' wide D.P. & L. easement along its western boundary. This feature creates hardship on the lot and prohibits the applicant's ability to construct/maintain development on the site that is commensurate with the development upon other parcels of land in districts with the same MU-3 zoning classification.
- Granting the variance to the urban form front yard setback regulations (with the suggested conditions imposed) would not be contrary to the public interest since the portion of the proposed structure to be "varied" is:
  - Only approximately 54' in height or 9' above/beyond the 45' height in which the additional 20' urban form front yard setback begins; and
  - Located immediately adjacent to over 300' of right-of-way for Central Expressway and its related service roads.

### **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.

### **GENERAL FACTS:**

- Development on lots zoned MU-3 are required to provide a 15' front yard setback and an additional 20' setback for any portion of a structure above 45' in height. The applicant has submitted a site plan and elevation indicating a structure that is 53' 8" in height located as close as 18' from the site's front property line. Although the proposed structure complies with the 15' front yard setback for the portion 45' in height or less, the structure above 45' in height (its 4<sup>th</sup> level of residential use) is located 17' into the 35' urban form front yard setback.
- Staff has interpreted that the additional 20' setback provision for structures or portions of structures higher than 45' in height was enacted to discourage a canyon

effect that a structure may create once it exceeds a specific height, and that this additional front yard setback was enacted to ensure openness, light, and airflow between tower structures.

- The subject site is flat, rectangular in shape (202.5' x 142'), and, according to the application, 0.6599 acres in area. The applicant contends that the site's 16' D.P. &L. easement along its west side creates limitations to the development of the site. The site is zoned MU-3 (SAH) (Mixed Use)(Standard Affordable Housing). There are public deed restrictions on this site that limit uses on the site and maximum structure height to 60 feet. (The applicant has informed the Board Administrator that the proposed development does not conflict with these publicly-recorded deed restrictions).
- According to calculations taken from the submitted site plan by the Board Administrator, about 1,800 square feet (105' x 17') of the proposed approximately 17,000 square foot building footprint (105' x 165') of its 4<sup>th</sup> level is proposed to be located in the additional 20' urban form front yard setback.

## **BACKGROUND INFORMATION:**

### **Zoning:**

<u>Site:</u>	MU-3(SAH) (Mixed Use, Standard Affordable Housing)
<u>North:</u>	GO (A) (General Office)
<u>South:</u>	GO (A) (General Office)
<u>East:</u>	GO (A) (General Office)
<u>West:</u>	MU-3(SAH) (Mixed Use, Standard Affordable Housing)

### **Land Use:**

The subject site is undeveloped. The area to the north is developed with a communications use (Channel 11); the area immediately east is the North Central Expressway; the area to the south is developed with a hotel; and the area to the west is developed with multifamily use.

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

1. BDA001-193, Property located at 10011 N. Central Expressway (the subject site) On April 26, 2001, the Board of Adjustment Panel A took the following actions: 1) denied without prejudice a request for a parking special exception of 2 spaces; 2) granted a request for a variance to the front yard (urban form) setback regulations of 9' (subject to compliance with the submitted site plan and elevations); and 3) granted a request for a variance to the side yard (tower spacing) setback regulations (subject to compliance

- with the submitted site plan and elevation). The case report stated that these requests were made in conjunction with constructing/maintaining a four-story, 60' high apartment building (Park Fountain Apartments).
2. BDA078-071, Property located at 10011 N. Central Expressway (the subject site) On May 20, 2008, the Board of Adjustment Panel A granted a request for a variance to the front yard (urban form) setback regulations of 17' and imposed the submitted site plan and elevation as conditions to the request. The case report stated that these requests were made in conjunction with constructing and maintaining a 60' high multifamily residential structure (Parc Fountains Apartments) on a site that is undeveloped.

**Timeline:**

- April 23, 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.
- May 21, 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."
- May 21, 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 June 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the June 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the requests; and
  - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- June 2, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Development Services Assistant Director, the Board of Adjustment

Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

### **STAFF ANALYSIS:**

- This variance request focuses on reinstating an urban form front yard variance granted by the Board of Adjustment Panel A in May of 2008 – a request that returns to the board given that: 1) the applicant did not apply for a building permit or certificate of occupancy within 180 days from the board’s favorable action, and 2) the applicant has revised the plans/elevations imposed as conditions in conjunction with the previous request. (The revised plans indicate the proposed structure height at approximately 54’ while the previous plans denoted a structure that was to be 60’ in height).
- The re-filed application once again focuses on allowing approximately half of the height of the proposed structure’s 4<sup>th</sup> level to be located in the site’s urban form front yard setback required along the site’s street frontage which in this case is Central Expressway. The proposed structure complies with all setbacks with one exception: the structure between 45’ – 54’ in height is proposed to be located 18’ from the site’s front property line (or as much as 17’ into the total 35’ urban form front yard setback).
- The proposed structure that is between 45’ – 54’ in height to be located in the additional required 20’ front yard setback is only 9’ beyond the height in which the urban form setback becomes a factor, and is adjacent to an unusually wide right-of-way - in this case, Central Expressway/service road right-of-way over 300’ wide.
- The subject site is flat, rectangular in shape (202.5’ x 142’), and, according to the application, 0.6599 acres in area. The applicant contends that the site’s 16’ D.P. &L. easement along its west side creates limitations to the development of the site. The site is zoned MU-3 (SAH) (Mixed Use)(Standard Affordable Housing). There are public deed restrictions on this site that limit uses on the site and maximum structure height to 60 feet. (The applicant has informed the Board Administrator that the proposed development does not conflict with these publicly-recorded deed restrictions).
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the urban form front yard setback requested to construct and maintain an approximately 54’ high, 4-level multifamily residential structure will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope,

that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same MU-3 zoning classification.

- The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same MU-3 zoning classification.
2. If the Board were to grant the urban form front yard variance request of 17', imposing a condition whereby the applicant must comply with the submitted site plan and elevation, the structure would be limited to what is shown on these submitted plans – a structure that complies with setbacks 45' in height and below, but where 9' of the structure above 45' in height would be allowed to be located 18' from the site's front property line (or 17' into the 35' urban form front yard setback).

**BOARD OF ADJUSTMENT ACTION: JUNE 16, 2009**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Schweitzer**

I move that the Board of Adjustment grant application **BDA 089-075** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

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

SECONDED: **Gabriel**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

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FILE NUMBER: BDA 089-049(K)

**BUILDING OFFICIAL'S REPORT:**

Application of Santos Martinez for a special exception to the fence height regulation at 1609 N. Edgefield Avenue. This property is more fully described as part of Lot 2 in City Block 16/3977 and is zoned R-7.5(A) & PD 714 (Subdistrict 2A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 6 foot 6 inch fence in a required front yard setback which will require a special exception of 2 feet, 6 inches.

**LOCATION:** 1609 N. Edgefield Avenue

**APPLICANT:** Santos Martinez

**REQUESTS:**

Special exception to the fence height regulations of 2 foot and 6 inches to construct a fence that is 6 feet and 6 inches in a required front yard.

**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.

**GENERAL FACTS:**

- The site is zoned R-7.5(A) and PD 714 (subdistrict 2A), which limits the height of a fence in the front yard to 4 feet
- The applicant proposes construct to maintain a 6 foot 6 inch high fence.
- This application is being submitted in conjunction with BDA 089-050, 1300 Castle St, the adjoining property to the west.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-7.5(A) and PD 714 (Single family residential 7,500 square feet).  
North: R-7.5(A) (Single family residential 7,500 square feet).  
South: PD 714 (Subdistrict 2A) (Planned Development District).  
East: R-7.5(A) and PD 714 (Single family residential 7,500 square feet).  
West: PD 714 (Subdistrict 2A) (Planned Development District)..

**Land Use:**

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

**Zoning/BDA History:**

Z001-257, PD 714 was established by Ordinance No. 25898, passed by the Dallas City Council on February 23, 2005. (Ord.25898).

BDA 089-050, 1300 Castle St. a request for a special exception to the fence height regulation is scheduled to be heard by the Board of Adjustment on June 15, 2009.

**Timeline:**

February 27, 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.

April 18, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

April 28, 2009: The Board Senior Planner mailed the applicant's representative a letter that containing 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 May 4<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and recommendation;
- the May 8<sup>th</sup> 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 June public hearing after considering the information, evidence and testimony presented to them by the applicant and all other interested parties.

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 written request to delay this case until June 16, 2009.

June 2, 2009:        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 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.

**STAFF ANALYSIS:**

- The subject site zoned R-7.5(A) and PD 714 (Subdistrict A) and is currently undeveloped.
- The applicant proposes to maintain a 6 foot and 6 inch open wrought iron fence that surrounds the entire perimeter of the property.
- The subject site has frontage on both Castle Street and N. Windomere Street.
- 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, staff recommends imposing the submitted site plan and elevation as a condition.

**BOARD OF ADJUSTMENT ACTION: JUNE 16, 2009**

APPEARING IN FAVOR:            Santos Martinez, 900 Jackson St., #640, Dallas, TX

APPEARING IN OPPOSITION:    No one

MOTION#1:           **Harris**

I move that the Board of Adjustment, in Appeal No. **BDA 089-049**, on application of Santos Martinez, **grant** the request of this applicant to construct and maintain a six-foot-six inch fence in the Edgefield front yard setback 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 revised elevation is required.

SECONDED: **Gabriel**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

**\*Member Ellen Taft made a motion to reconsider the previous motion made to include both the Castle Street and Edgefield front yard setbacks.**

MOTION#2:           **Harris**

I move that the Board of Adjustment, in Appeal No. **BDA 089-049**, on application of Santos Martinez, **grant** the request of this applicant to construct and maintain a six-foot-six inch fence in both the Castle Street front yard setback and the Edgefield front yard setback 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 revised elevation is required.

SECONDED: **Taft**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

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**FILE NUMBER:** BDA 089-050(K)

**BUILDING OFFICIAL'S REPORT:**

Application of Santos Martinez for a special exception to the fence height regulation at 1300 Castle Street. This property is more fully described as part of Lot 1 in City Block 16/3977 and is zoned R-7.5(A) & PD 714 (Subdistrict 2A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 6 foot 6 inch fence in a required front yard setback which will require a special exception of 2 feet, 6 inches.

**LOCATION:** 1300 Castle Street

**APPLICANT:** Santos Martinez

**REQUESTS:**

Special exception to the fence height regulations of 2 foot and 6 inches to construct a fence that is 6 feet and 6 inches in a required front yard.

**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.

**GENERAL FACTS:**

- The site is zoned R-7.5(A) and PD 714 (subdistrict 2A), which limits the height of a fence in the front yard to 4 feet
- The applicant proposes construct to maintain a 6 foot 6 inch high fence.
- This application is being submitted in conjunction with BDA 089-049, 1609 N Edgefield, the adjoining property to the east.

**BACKGROUND INFORMATION:**

**Zoning:**

**Site:** R-7.5(A) and PD 714 (Single family residential 7,500 square feet).

North: R-7.5(A) (Single family residential 7,500 square feet).  
South: PD 714 (Subdistrict 2A) (Planed Development District).  
East: R-7.5(A) and PD 714 (Single family residential 7,500 square feet).  
West: PD 714 (Subdistrict 2A) (Planed Development District)..

**Land Use:**

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

**Zoning/BDA History:**

Z001-257, PD 714 was established by Ordinance No. 25898, passed by the Dallas City Council on February 23, 2005. (Ord.25898).

BDA 089-049, 1609 N. Edgefield a request for a special exception to the fence height regulation is scheduled to be heard by the Board of Adjustment on June 15, 2009.

**Timeline:**

February 27, 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.

April 18, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

April 28, 2009: The Board Senior Planner mailed the applicant's representative a letter that containing 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 May 4<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and recommendation;
- the May 8<sup>th</sup> 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 June public hearing after considering the information, evidence and testimony presented to them by the applicant and all other interested parties.

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 written request to delay this case until June 16, 2009.

June 2, 2009: 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 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.

**STAFF ANALYSIS:**

- The subject site zoned R7.5(A) and PD 714 (Sub-district A) and is currently undeveloped.
- The applicant proposes to maintain a 6 foot and 6 inch open wrought iron fence that surrounds the entire perimeter of the property.
- The subject site has frontage on both Castle Street and Edgefield Ave.
- 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, staff recommends imposing the submitted site plan and elevation as a condition.

**BOARD OF ADJUSTMENT ACTION: JUNE 16, 2009**

APPEARING IN FAVOR: Santos Martinez, 900 Jackson St., #640, Dallas, TX

APPEARING IN OPPOSITION: No one

**MOTION: Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 089-050**, on application of Santos Martinez, **grant** the request of this applicant to construct and maintain a six-foot-six inch high fence in both the Castle Street front yard setback and the Windomere front yard setback 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 revised elevation is required.

**SECONDED: Taft**

**AYES:** 5 – Richmond, Schweitzer, Gabriel, Taft, Harris

**NAYS:** 0 -

**MOTION PASSED:** 5– 0 (unanimously)

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**FILE NUMBER:** BDA 089-074(K)

**BUILDING OFFICIAL’S REPORT:**

Application of John Bakewell, represented by Chad Jones, for a special exception to the fence height regulation at 3860 Whitehall Drive. This property is more fully described as Lot 9 in City Block E/6402 and is zoned R-16(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 5 foot, 6 inch fence in a required front yard setback which will require a special exception of 1 foot, 6 inches.

**LOCATION:** 3860 Whitehall Drive

**APPLICANT:** John Bakewell  
Represented by Chad Jones,

**REQUESTS:**

Special exception to the fence height regulations of 1 foot and 6 inches to construct a fence that is 5 feet and 6 inches in a required front yard.

**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.

**GENERAL FACTS:**

- The site is zoned R 16(A) and has a platted building line of 40 feet in the front yard.
- The applicant proposes to maintain a 5 foot 6 inch high fence.
- The Dallas Development Code limits the height of fences in front yard setbacks to 4 feet in residential zoning.

**BACKGROUND INFORMATION:**

**Zoning:**

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

- April 23, 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.
- May 21, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- May 22, 2009: The Board Senior Planner mailed the applicant's representative a letter that containing 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 June 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis and recommendation;
- the June 5<sup>th</sup> 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 June public hearing after considering the information, evidence and testimony presented to them by the applicant and all other interested parties.

June 2, 2009: 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 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.

**STAFF ANALYSIS:**

- The property is developed with a single family structure and the surrounding properties are developed with single-family structures.
- The applicant proposes to construct and maintain an open wrought iron fence that is five-feet in height with solid columns five-feet and six-inches in height, and two gates that are a maximum height of 5 feet and 6 inches.
- The proposed fence runs 64 feet and 6 inches parallel to the front property line.
- During the site visit the senior planner did not observe any fences in the front yard of adjacent properties.
- 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, staff recommends imposing the submitted site plan and elevation as a condition.

**BOARD OF ADJUSTMENT ACTION: JUNE 16, 2009**

APPEARING IN FAVOR: John Bakewell, 3860 Whitehall, Dallas, TX

APPEARING IN OPPOSITION: Mark Ruth, 7319 Towing ST., Dallas, TX

MOTION: **Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 089-074**, on application of John Bakewell, represented by Chad Jones, **deny** the request of this applicant to construct and maintain a 5 foot 6 inch fence **without prejudice**, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: **Taft**

AYES: 4– Schweitzer, Gabriel, Taft, Harris

NAYS: 1 - Richmond

MOTION PASSED: 4–1

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MOTION: Harris

I move to adjourn this meeting.

SECONDED: Gabriel

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

**1:31 P.M.** - Board Meeting adjourned for **June 16, 2009.**

\_\_\_\_\_  
CHAIRPERSON

\_\_\_\_\_  
BOARD ADMINISTRATOR

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BOARD SECRETARY

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