

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
TUESDAY, JUNE 24, 2008**

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

MEMBERS ABSENT FROM BRIEFING: No one

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

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

MEMBERS ABSENT FROM HEARING: No one

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

10:00 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **June 24, 2008** docket.

1:00 P.M.

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

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel A May 20, 2008 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: June 24, 2008

MOTION: Taft

I move **approval** of the Tuesday, **May 20, 2008** public hearing minutes.

SECONDED: Gabriel

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: Unassigned

REQUEST: To waive the filing fee to be submitted in conjunction with a potential Board of Adjustment appeal

LOCATION: 1800 E. Illinois Avenue

**APPLICANT: New Comforter Church of God in Christ
Represented by Rev. Charles F. Lightner**

STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:

The Dallas Development Code states that the board may waive the filing fee for a board of adjustment application if the board finds that payment of the fee would result in substantial financial hardship to the applicant.

GENERAL FACTS:

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waivers/reimbursements:
 - The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.
 - The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board's miscellaneous docket for predetermination.
 - If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.
 - In making this determination, the board may require the production of financial documents.
- The applicant has submitted a letter to the Board Administrator (see Attachment A). The letter requested a waiver of the \$1,500.00 filing fee to be submitted in conjunction with a potential appeal to the Board of Adjustment, and provided some details as to why the applicant felt that the fee should be waived.

Timeline:

- | | |
|---------------|---|
| May 16, 2008 | The applicant submitted a letter requesting a waiver of the \$1,500.00 filing fee for a Board of Adjustment application that may be submitted/requested at the address referenced above. |
| May 27, 2008: | The Board of Adjustment Secretary randomly assigned this request to Board of Adjustment Panel A. |
| May 27, 2008 | <p>The Board Administrator wrote the applicant a letter that conveyed the following information:</p> <ul style="list-style-type: none"> • the public hearing date and panel that will consider the application; • the criteria/standard that the board will use in their decision to approve or deny the request; • the June 13th deadline to submit additional evidence to be incorporated into the Board's docket materials; • that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and • that the board will take action on the matter at the June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties. |

BOARD OF ADJUSTMENT ACTION: June 24, 2008

APPEARING IN FAVOR: Charles Lighter, 1800 E. Illinois, Dallas, TX
Hugh Woodson, PO Box 38178, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Schweitzer

I move to waive the filing fee to be submitted in conjunction with a potential Board of Adjustment appeal.

SECONDED: Gabriel

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MISCELLANEOUS ITEM NO. 3

FILE NUMBER: BDA 078-008

REQUEST: To extend the time period in which to file an application for a building permit or certificate of occupancy from the Board of Adjustment's favorable action on a request for special exception to the parking regulations of 298 spaces that was granted by Board of Adjustment Panel A on January 15, 2008.

LOCATION: 5944/5954 Luther Lane

APPLICANT: DeShazo, Tang, and Associates

STANDARD FOR EXTENDING THE TIME PERIOD IN WHICH TO APPLY FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY:

The Board of Adjustment Working Rules of Procedure states that a panel may not extend the time period for making application for a building permit or certificate of occupancy beyond 180 days from the date of its favorable action unless it makes a specific finding based on evidence presented at a public hearing that there are no substantially changed conditions or circumstances regarding the property to the satisfaction of the panel. In no event, however, may the board extend the time period beyond 18 months from the date of its favorable action.

GENERAL FACTS:

- The Dallas Development Code states the following with regard to board action:

- The applicant shall file an application for a building permit or certificate of occupancy within 180 days for the date of the favorable action of the board, unless the applicant files for and is granted an extended time period prior to the expiration of the 180 days. The filing of a request for an extended time period does not toll the 180 day time period. If the applicant fails to file an application within the time period, the request is automatically denied without prejudice, and the applicant must begin the process to have his request heard again.
- The Board of Adjustment Working Rules of Procedure state the following with regard to extensions of the time period for making application for a building permit or certificate of occupancy:
 - A panel may not extend the time period for making application for a building permit or certificate of occupancy beyond 180 days from the date of its favorable action unless it makes a specific finding based on evidence presented at a public hearing that there are no substantially changed conditions or circumstances regarding the property to the satisfaction of the panel. In no event, however, may the board extend the time period beyond 18 months from the date of its favorable action.

Timeline:

- January 15, 2008 The Board of Adjustment Panel A granted a request for a special exception to the parking regulations of 298 spaces. (The board imposed the following condition: The special exception shall automatically and immediately terminate if and when the office, financial institution with drive-in window, and hotel uses on the site are changed or discontinued). The case report stated that this request was made in conjunction with in conjunction with constructing and maintaining a new 220,000 square foot office tower (Park Cities Plaza) on a site developed with a hotel (Park Cities Hilton), office tower (Fidelity Office Tower) and related surface parking lot.
- January 18, 2008 The Board Administrator wrote the applicant’s representative a letter documenting the January 15th action of the board, and noting to “Contact Building Inspection at 320 E. Jefferson, Room 105 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.”
- June 10, 2008 The applicant’s representative submitted a letter to staff requesting that the Board extend the time period in which to file an application for a building permit or certificate of occupancy an additional 12 months beyond the 180 days they had to do so from the January 15, 2008 favorable action (see Attachment A). This letter stated that “there are no substantially changed conditions or circumstances regarding the property as initially presented to the Board.”

June 10, 2008: The Board Administrator responded to the applicant's representative by email informing him of the following:

- the public hearing date and panel that will consider the request;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the June 13th deadline to submit additional evidence to be incorporated into the Board's docket materials; and
- that additional evidence should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and if not, may result in delay of action on the appeal or denial.

BOARD OF ADJUSTMENT ACTION: June 24, 2008

APPEARING IN FAVOR: Steve Stoner, 2220 Canton St., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Schweitzer**

I move to extend the time period in which to file an application for a building permit or certificate of occupancy from the Board of Adjustment's favorable action on a request for special exception to the parking regulations of 298 spaces that was granted by Board of Adjustment Panel A on January 15, 2008.

SECONDED: **Taft**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 078-034

BUILDING OFFICIAL'S REPORT:

Application of 7124 Greenville, Ltd. represented by James Schnurr, for special exceptions to the sign regulations and the visual obstruction regulations at 7124 Greenville Avenue. This property is more fully described as lot 4B in City Block 6/5199 and is zoned MU-3 which allows only one detached sign per street frontage other than expressways, requires detached signs on the same premise to be at least 200 feet apart, and requires a 20 foot visibility triangle at a street and driveway intersections. The applicant proposes to construct a second additional detached premise sign atop an existing retaining wall in a visibility triangle which would require a special exception to the sign regulations and a special exception to the visual obstruction regulations.

LOCATION: 7124 Greenville Avenue

APPLICANT: 7124 Greenville, Ltd.
Represented by James Schnurr

REQUESTS:

- The following appeals have been made in this application:
 1. special exceptions to the sign regulations; and
 2. a special exception to the visual obstruction regulations.

The special exceptions are requested to:

- locate and maintain an additional detached sign on a site, and to locate and maintain this additional sign less than the required 200' distance from an existing detached sign on the site; and
- locate and maintain this additional detached sign atop an existing retaining wall in the northern 20' drive approach visibility triangle into the site from Greenville Avenue.

The site is developed with a retail use (Goody Goody Liquor);

The applicant is seeking to have these special exceptions "re-approved" from those granted on the site by Board of Adjustment Panel A in May of 2007 given slight modifications to the site and the board-imposed site plan/elevation imposed a condition to the requests a year ago. A retaining wall has recently been added on the site creating a situation whereby the applicant no longer complies with the elevation imposed as a condition to the requests in 2007.

STAFF RECOMMENDATION (sign special exceptions):

Approval, subject to the following condition:

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

Rationale:

- The special exceptions are requested to construct/maintain virtually the same proposed sign that Board of Adjustment "special excepted" in May of 2007. The proposed sign is in the same location as the previously-approved sign but is proposed to be located atop a 6' high retaining wall as opposed to a 20" high base/wall.

STAFF RECOMMENDATION (visual obstruction special exception):

Denial

Rationale:

- The City's Development Services Senior Engineer has submitted review comment sheet marked "Recommends that this be denied."

- The applicant has not substantiated how the items proposed to be located in the drive approach visibility triangle (in this case, a portion of a retaining wall and sign) do not constitute a traffic hazard.

STANDARD FOR A SPECIAL EXCEPTION TO THE SIGN REGULATIONS FOR AN ADDITIONAL DETACHED SIGN:

The Board of Adjustment may, in specific cases and subject to appropriate conditions, authorize one additional detached sign on a premise in excess of the number permitted by the sign regulations as a special exception to these regulations when the board has made a special finding from the evidence presented that strict compliance with the requirement of the sign regulations will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

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

GENERAL FACTS (related to the sign special exceptions):

- The Dallas Development Code states that only one detached sign is allowed per street frontage other than expressways, and that detached signs on the same premise must be located at least 200 feet apart.
A site plan/sign elevation document has been submitted that indicates the location of a “prop. monument sign” and an “exist pole sign” along the site’s Greenville Avenue street frontage approximately 45’ apart.
The “sign elevation” on the submitted site plan/sign elevation document denotes that the proposed sign is 4’ 2” high and 12’ long located atop a 6’ high concrete retaining wall. (No elevation of the existing pole sign has been submitted).
- On June 9, 2008, the applicant’s representative submitted additional information to staff regarding the request (see Attachment A). This information included a letter that provided additional details about the request.

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

- 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 site plan/sign elevation document has been submitted that indicates the location of a “prop. monument sign” located in the site’s northern 20’ drive approach visibility triangle into the site from Greenville Avenue. (According to dimensions taken from this plan, it appears that about 3’ – 5’ of the wall/sign will be located in the 20’ triangle.

The “sign elevation” on the submitted site plan/sign elevation document denotes that the proposed sign is 4’ 2” high and 12’ long (or about 48 square feet in area) located atop a 6’ high concrete retaining wall.

- On June 9, 2008, the applicant’s representative submitted additional information to staff regarding the request (see Attachment A). This information included a letter that provided additional details about the request.

BACKGROUND INFORMATION:

Zoning:

Site: MU-3 (Mixed Use)
North: MU-3 (Mixed Use)
South: MU-3 (Mixed Use)
East: MF-1(A) (Multifamily)
West: PD No. 453 (Planned Development District)

Land Use:

The site is currently developed as a retail use (Goody Goody Liquor). The areas to the north, south, and west are developed with retail uses; and the area to the east is developed with multifamily uses.

Zoning/BDA History:

1. BDA 067-061, 7124 Greenville Avenue (the subject site)

On May 15, 2007, the Board of Adjustment Panel A granted requests for a special exception to the sign and visual obstruction regulations, and imposed the following condition: compliance with the submitted site plan/elevation is required. The case report stated that the request was made in conjunction with special exceptions are requested to locate and maintain an additional detached sign on a site, and to locate and maintain this additional sign less than the required 200’ distance from an existing detached sign on the site; and locate and maintain this additional detached sign atop a retaining wall in the northern 20’ drive

approach visibility triangle into the site from Greenville Avenue.

Timeline:

- May 12, 2008: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 22, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."
- May 22, 2008: The Board Administrator contacted the applicant's representative and shared the following information by phone and email:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the June 9th deadline to submit additional evidence for staff to factor into their analysis;
 - the June 13th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and, if not, may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- June 9, 2008 The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A).
- June 10, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Planner, the Development Services Senior Engineer, the Building Inspection

Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

June 12, 2008

The Development Services Senior Engineer submitted a review comment sheet marked "Recommends that this be denied" commenting:

1. "The proposed sign will limit the ability of the driver exiting the site to watch out for fast-moving pedestrians southbound on Greenville Avenue.
2. The proposed sign appears to be constructed differently from that shown in the submitted site plan."

STAFF ANALYSIS (related to the sign special exceptions):

- The sign special exception requests are made to allow the construction and maintenance of basically the same sign that was "special excepted" by Board of Adjustment Panel A in May of 2007. The applicant is required to return to the board since the proposed sign does not match the elevation imposed as a condition with the request in May of 2007. The proposed sign is in the same location as the previously-approved sign but is now proposed to be located atop a 6' high retaining wall as opposed to a 20" high base/wall.
- The applicant proposes to retain an existing pole sign on the site about 30' from the Greenville Avenue front property line, and to add/maintain an approximately 48 square foot monument sign (reduced in size from the previously-approved 61 square foot monument sign) located about 9' from the Greenville Avenue front property line or 15' from the curb line.
- The site plan indicates that the existing and proposed signs would be located about 45' apart with the proposed monument sign erected/maintained on the north side of the drive approach into the site, and the existing pole sign maintained on the south side of the drive approach into the site.
- The applicant has the burden of proof in establishing the following:
 - That strict compliance with the requirement of the sign regulations (where in this case, the site would be limited to having only one sign on Greenville Avenue) will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.
- Granting these special exceptions (with a condition imposed that the applicant complies with the submitted site plan/elevation) would allow a 2nd sign on the site, and allow this sign to be located on the site less than 200' from an existing sign on the site. If the Board were to impose the site plan/elevation as a condition to the requests, the additional sign would be limited to the specific location and characteristics as shown of this document.
- If the board were to grant these requests for special exceptions to the sign regulations and impose the submitted site plan/elevation as a condition to these requests, no amendments would be necessary if the board were in turn to grant the applicant's other request in this application: a visual obstruction special exception.

However, if the board were to grant these sign special exception requests and deny the visual obstruction special exception request (i.e. allow an additional sign however, not in a visibility triangle), the submitted site plan/elevation would need to be amended accordingly.

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

- This request is made to locate/maintain a portion of a retaining wall/monument sign in the site's 20' northern drive approach visibility triangle into the site from Greenville Avenue.
- The Development Services Senior Engineer submitted a Review Comment Sheet marked "Recommends that this be denied" commenting "1) the proposed sign will limit the ability to drive exiting the site to watch out for fast-moving pedestrians southbound on Greenville Avenue; and 2) the proposed sign appears to be constructed differently from that shown in the submitted site plan."
- The applicant has the burden of proof in establishing the following:
 - Granting the special exception to the visibility obstruction regulations (whereby, according to the submitted site plan/elevation, a portion of a monument site/retaining wall located 15' from the curb line in the 20' visibility triangle at the northern drive approach into the site from Greenville Avenue) will not constitute a traffic hazard.
- Granting this special exception (with a condition imposed that the applicant complies with the submitted site plan/elevation) would "except" an additional detached sign atop a retaining wall in the site's northern 20' drive approach visibility triangle into the site from Greenville Avenue but be limited to the specific location and characteristics as shown of this site plan/elevation.
- If the board were to grant this request for special exception to the visual obstruction regulations and impose the submitted site plan/elevation as a condition to this request, no amendments would be necessary if the board were in turn to grant the applicant's other requests in this application: sign special exceptions. However, if the board were to grant this visual obstruction special exception request and deny the sign special exception requests (i.e. allow a retaining wall in a visibility triangle but not an additional sign), the submitted site plan/elevation would need to be amended accordingly.

BOARD OF ADJUSTMENT ACTION: JUNE 24, 2008

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Gabriel**

I move that the Board of Adjustment grant application **BDA 078-034** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas

Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

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

SECONDED: Taft

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 078-077

BUILDING OFFICIAL’S REPORT:

Application of George B. Ryan and Amanda S. Ryan for a special exception to the fence height regulation at 10430 Strait Lane. This property is more fully described as lot 1A (DCAD says 1B) in City Block 5524 and is zoned R-1ac(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 14 foot 2 inch fence in a required front yard setback which will require a special exception of 10 feet 2 inches.

LOCATION: 10430 Strait Lane

APPLICANT: George B. Ryan and Amanda S. Ryan

REQUEST:

- A special exception to the fence height regulations of 10’ 2” is requested in conjunction with constructing and maintaining the following in the site’s 40’ front yard setback on Strait Lane:
 - A 9’ high open wrought iron fence with 9’ 8” high brick columns;
 - Two 9’ high, approximately 26’ long solid brick entry gate wing walls with 10’ 10” high brick columns;
 - An 10’ high open wrought iron gate (with solid panel at the base) with 14’ 2” high brick entry gate columns (with approximately 3’ high finials atop included in this maximum height).

The site is being developed with a single family home. The applicant has submitted this request in order to construct and maintain a fence/gate along the site’s Strait Lane frontage that would match the heights of a fence/gate approved by the board along Calleja Way in 2004.

The site located at the northeast corner of Strait Lane and Calleja Way has previous fence height special exception history with Board of Adjustment Panel A:

- In June of 2004, the Board of Adjustment Panel A granted a special exception to the fence height regulations of 10' 2" on the subject site that was requested in conjunction with constructing and maintaining the following in the site's 40' front yard setback on *Calleja Way*:
 - a 9' high open wrought iron fence with 9'8" high columns,
 - 8' 8" high masonry wing walls on either side of 14' 2" high entry gates (with 10' 10" high entry columns).
- In January of 2007, the Board of Adjustment Panel A granted a special exception to the fence height regulations of 7' 10" on the subject site that was requested in conjunction with constructing and maintaining the following in the site's 40' front yard setback on *Strait Lane*:
 - A 7' high open wrought iron fence with 7' 4" high brick columns;
 - Two 7' high, 26' long solid brick entry gate wing walls with 9' 1" high brick columns;
 - An 8' 4" high open wrought iron gate (with solid panel at the base) with 11' 10" high brick entry gate columns.

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 subject site is located at the corner of Strait Lane and Calleja Way. The site has two front yard setbacks. The site has a front yard setback along Strait Lane given that this frontage is the shorter of the two street frontages, and a front yard setback along Calleja Way given that the continuity of the established setback must be maintained on this street since a house faces Calleja Way immediately east of the subject site. The only matter before the board with this request is a fence proposal that will exceed 4' in height in the site's Strait Lane front yard setback since the applicant was granted a fence height special exception of 10' 2" in June of 2004 (BDA 034-154). (The applicant has conveyed that a building permit for the home and fence was obtained in December of 2004, referencing the BDA approved setback for the fence height on Calleja Way. The application states that the owners are requesting this special exception to match the fence height of the original special exception of 2004 whereby the Strait Lane fence would match the board-approved Calleja Way fence).

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
The applicant has submitted a site plan and an elevation indicating a fence/wall and gate proposal that would be located in the site's Strait Lane front yard setback and would reach a maximum height of 14' 2".
- A site plan has been submitted that indicates the location of the proposal in the Strait Lane front yard setback. The following additional information was gleaned from this site plan:
 - The proposed fence would be approximately 250' in length parallel to Strait Lane with a recessed entryway, approximately 30' in length perpendicular to Strait Lane on the north and south.
 - The proposed fence is shown to be located approximately 9' from the Strait Lane front property line (or approximately 24' from the Strait Lane pavement line).
 - The proposed gate is to be located about 30' from the Strait Lane front property line (or approximately 44' from the Strait Lane pavement line).
- The following additional information was gleaned from the submitted elevation:
 - The columns and entry wing walls will be comprised of brick to match the color and pattern (Flemish Bond) of the house.
- A "Planting Plan" has been submitted that provides details of landscape materials to be provided adjacent to the proposal. The plant materials detailed on this plan focus on what is to be located adjacent to the solid component of the proposal: the two entry wing walls. The materials include 4, 65 gallon Patriot Holly; 12, 7 gallon Indian Hawthorne "Spring Rapture"/Loropetalum "Plum Delight"
- The proposed fence would be located on a site where two single family homes would have direct/indirect frontage to the proposed fence along Strait Lane. The home immediately west has an approximately 6' high open iron fence (with a 2' high masonry base) with 6' high wing walls and 6.5' high gates (which is a result of BDA034-193), the home immediately northwest has an approximately 4' high fence, and the lot southwest is undeveloped with no fence.
- The Board Administrator conducted a field visit of the site and surrounding area along Strait Lane (approximately 500 feet north and south of the site) and noted the following additional fence/walls beyond those described above which appeared to be located in the front yard setback (Note that these locations and dimensions are approximations):
 - an approximately 7' – 8' high solid masonry fence with approximately 8.5' high columns behind significant landscape materials located immediately north of the site (which is a result of Board action on BDA 89-003);
 - an approximately 6' high entry wall with 6.5' high entry columns located two lots immediately south of the site;
 - an approximately 10' high gate with 12' high columns (14' high with finials) located three lots south of the site;
 - an approximately 5' high open wrought iron fence with 6' high brick columns and 8' high entry gates and columns located two lots southwest of the site (which is a result of BDA 96-063);

- an approximately 6' high open iron fence (with a 2' high masonry base) with 6.5" high columns, and two 6.5' high open iron entry gates located immediately west of the site (which is a result of BDA034-103);
 - an approximately 5' high open iron fence with 5' high columns located immediately two lots northwest of the site; and
 - an approximately 4' high open board fence with 4' high stone columns, 7' high stone entry columns, and a 7' high arched open wrought iron gate located three lots northwest of the site.
- On June 10, 2008, the Building Inspection Development Code Specialist forwarded additional information that applicant has submitted to him beyond what was submitted with the original application (see Attachment A). This information included a notebook with the following components:
 - a document that provided additional details about the request; and
 - a section/elevation representing the proposed fence/column/gate proposal superimposed over the previously-approved fence/column/gate proposal.

BACKGROUND INFORMATION:

Zoning:

Site: R-1ac (A) (Single family district 1 acre)
North: R-1ac (A) (Single family district 1 acre)
South: R-1ac (A) (Single family district 1 acre)
East: R-1ac (A) (Single family district 1 acre)
West: R-1ac (A) (Single family district 1 acre)

Land Use:

The subject site is 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 067-004, 10430 Strait Lane (the subject site)

On January 16, 2007, the Board of Adjustment Panel A granted a request for a special exception to the fence height regulations of 7' 10" and imposed the following condition: compliance with the submitted site plan and elevation is required. The case report stated that the request was made in conjunction with constructing and maintaining the following in the site's 40' front yard setback on Strait Lane:

- A 7' high open wrought iron fence with 7' 4" high brick columns;
- Two 7' high, 26' long solid brick entry gate wing walls with 9' 1" high brick

columns;

- An 8' 4" high open wrought iron gate (with solid panel at the base) with 11' 10" high brick entry gate columns.

2. BDA 034-154, 10430 Strait Lane (the subject site)

On June 22, 2004, the Board of Adjustment Panel A took the following actions:

1. Granted a request to preserve an existing tree as a special exception to the minimum front yard requirements (subject to compliance with a submitted plan).
2. Denied a request for a variance to the front yard setback regulations without prejudice.
3. Granted a request for a variance to the height regulations (subject to compliance with a plan and elevation).
4. Granted a request to maintain a 14' 2" fence as a special exception along Calleja Way (subject to compliance with a site plan, "Planting Plan," and fence elevation).
5. Denied a request for a fence height special exception along Strait Lane without prejudice.

The case reports states that the requests were made in conjunction with constructing a 51.5'-high single family home partially located in the Calleja Way front yard setback, and a 9' high open wrought iron fence with 9'8" high columns, 8' 8" high masonry wing walls on either side of 14' 2" high entry gates (with 10' 10" high entry columns) along Strait Lane and Calleja Way. A request for a fence height special exception of 8' 8" that had been tentatively scheduled for Panel A's December 13, 2005 public hearing (then postponed indefinitely) was withdrawn on November 2, 2006.

3. BDA 045-296, 10430 Strait Lane (the subject site)

On September 22, 2004, the Board of Adjustment Panel B granted a request for a special exception to the fence regulations of 2' 6", subject to compliance with the submitted site plan, landscape plan, and fence/gate elevation. The staff report states

4. BDA 034-193, 10433 Strait Lane (the lot immediately west of the subject site)

5. BDA 89-003, 10444 Strait Lane (the lot immediately north of the subject site)

that the request was made to construct a 6'-high open iron fence (with a 2' high masonry base), 6' 6" high masonry columns, and two 6' 6" high open iron entry gates.

On January 10, 1989, the Board of Adjustment followed the staff recommendation and granted a request for a special exception to the fence regulations of 4' 7.5". The case report stated "The bulk of the fence will be 7 feet high with pilasters 7' 6" high. The only portion of the fence that is 8' 7.5" high is the pilasters at the gate. The solid fence will be softened by additional landscaping, and the existing chain link fence of the south portion of the side is hardly noticeable due to dense plant materials." The board imposed the site plan and landscape plan as conditions to the special exception request.

6. BDA 86-132, the southeast corner of Strait Lane and Calleja Way (a pan-handled shaped lot immediately south and southeast from the subject site)

On March 25, 1986, the Board of Adjustment followed the staff recommendation and granted a request for a special exception to the fence regulations of 7' 8". The motion reflected in the minutes for this case states the following: "I move that the Board of Adjustment grant the request of this applicant to maintain a 6 ft. fence in height with columns (4) not to exceed 8 ft. in height with decorative caps and details as a special exception to the height requirement for fences contained in the Dallas Development Code." The board further moved that the following conditions be imposed: "The fence height should be measured from the driveway to the center column; and the fence should be constructed in accordance with the site plan submitted and marked exhibit "A" and dated February 3, 1986 except for the height provisions." The motion was amended to reflect: "The fence height should be measured from the average existing grade." (Note that it appears from the Board Administrator's field visit that this fence, if ever constructed on this site, has since been removed).

7. BDA 93-063, 10349 Strait Lane

On April 27, 1993, the Board of Adjustment

(two lots southwest of the subject site)

followed the staff recommendation and granted a request for a special exception to the fence regulations of 4' requested in conjunction with constructing an 8' high fence. The Board granted a fence special exception "to maintain a 6' wrought iron fence with an 8' gate and columns of 6.5'."

Timeline:

- April 24, 2008 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 22, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."
- May 23, 2008: The Board Administrator forwarded the following information to the applicant via email:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the June 9th deadline to submit additional evidence for staff to factor into their analysis;
 - the June 13th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and, if not, may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- June 10, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Planner,

the Development Services Senior Engineer, the Building Inspection Development Code Specialist.

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

June 10, 2008 The Building Inspection Development Code additional information that applicant has submitted to him beyond what was submitted with the original application (see Attachment A).

STAFF ANALYSIS:

- This request focuses on a fence/column/gate proposal on the site's Strait Lane frontage: a proposal that would match the heights of a previously-approved fence height special exception in 2004 on the site's Calleja Way frontage, and/or a proposal that would be about 2.5' higher than the previously-approved fence height special exception in 2007 on the site's Strait Lane frontage.
- A scaled site plan has been submitted documenting the location of the proposed fence, columns, wing walls and gate relative to their proximity to the property line and pavement line (the fence is shown to be located about 9' from the property line or about 24' from the pavement line). The site plan clearly shows the length of the proposal relative to the entire lot (the proposal is about 250' long parallel to Strait Lane and about 30' long perpendicular).
- A document has been submitted with a scaled partial and full elevation of the proposal. These elevations document the heights and materials of the proposal: 9' high open wrought iron fence with 9' 8" high brick columns; two 9' high, 26' long solid brick entry gate wing walls with 10' 10" high brick columns; and a 10' high open wrought iron gate (with solid panel at the base) with 14' 2" high brick entry gate columns (with approximately 3' high finials atop included on this maximum height).
- The proposed fence would be located on a site where two single family homes would have direct/indirect frontage to the proposal along Strait Lane. The home immediately west has an approximately 6' high open iron fence (with a 2' high masonry base) with 6' high wing walls and 6.5' high gates (which is a result of BDA034-193), the home immediately northwest has an approximately 4' high fence, and the lot southwest is undeveloped with no fence.
- As of June 16, 2008, no letters had been submitted to staff in support or in opposition to the proposal.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the fence, entry gate wing walls, columns, and gate that are proposed to exceed 4' in height) will not adversely affect neighboring property.
- Granting this special exception of 10' 2" with a condition imposed that the applicant complies with the submitted site plan and elevation would assure that the proposal would be constructed and maintained in the location and of the heights and materials as shown on these documents.

BOARD OF ADJUSTMENT ACTION: JUNE 24, 2008

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

***Member Steve Harris recused himself and did not hear or vote on this case.**

MOTION: Gabriel

I move that the Board of Adjustment grant application **BDA 078-077** 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 is required.

SECONDED: Taft

AYES: 4 – Richmond, Gabriel, Schweitzer, Taft

NAYS: 0 -

MOTION PASSED: 4– 0 (unanimously)

FILE NUMBER: BDA 078-073(K)

BUILDING OFFICIAL’S REPORT:

Application of Raul A. Najera represented by Perla O. Najera for a special exception to the side yard setback regulations and for a special exception to the visibility obstruction regulations at 11226 Webb Chapel Court. This property is more fully described as Lot 11A in City Block 16/6440 and is zoned R-10(A) which requires a side yard setback of 6 feet and requires a 20 foot visibility triangle at driveway and alley approaches. 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 6 foot special exception and to construct and maintain a fence in required visibility obstruction triangles at a driveway and at an alley, which will require special exceptions to the visibility obstruction regulations.

LOCATION: 11226 Webb Chapel Court

**APPLICANT: Raul A. Najera
Represented by Perla O. Najera**

REQUEST:

- A special exception to the side yard setback regulations of 6 feet is requested to construct and maintain a carport in the site's side yard setback and a special exception to the visibility obstruction regulation to maintain a fence in the property's visibility triangle.

STAFF RECOMMENDATION (SIDE YARD SETBACK FOR CARPORT):

No staff recommendation is made on this or any request for a special exception for a carport in 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.

STAFF RECOMMENDATION (VISIBILITY OBSTRUCTION):

Denial:

Rationale:

- The City's Senior Engineer has recommended denial for the following reasons (see attachment):
 1. The fence at the driveway onto Webb Chapel Road may create a traffic hazard if the entry vehicle is blocked by the gate.
 2. The fence in the 45' x 45' intersection visibility triangles.
 3. No objection to the fence at alley.

STANDARD FOR A SPECIAL EXCEPTION:

The board may grant a special exception to the minimum 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 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.

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

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

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

GENERAL FACTS:

- Structures on lots zoned R-10(A) are required to provide a minimum side yard setback of 6 feet. The applicant is requesting to maintain a carport that is on the property line, or would require a special exception of 6 feet and provide a side yard set back of 0 feet.
- The site is flat and approximately 16,900 (99' x 185') square feet. According to DCAD the site was developed in 1963 and is in good condition with 1,704 square feet of living space and includes the following additional improvements:
 - Attached garage (575 square feet)
 - Attached carport (828 square feet)
- The submitted site plan indicated the existing carport is approximately 3,388 square feet being 13' 4" in height
- 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.
- The submitted site plan indicates the 8' tall fence is within the visibility triangles of the alley and drive way off of Webb Chapel Road.

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-7.5 (A) (Single family district 7,500 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 no case history for neither this site nor any sites in the immediate area.

Timeline:

- April 2, 2008 The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- April 17, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- April 18, 2008: The Board of Adjustment’s Senior Planner contacted the applicant and shared the following information by telephone and letter:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the May 5th deadline to submit additional evidence for staff to factor into their analysis;
 - the May 9th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the May public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.
- May 1, 2008 The Board of Adjustment’s Senior Planner contacted the applicant’s representative by telephone and requested a revised site plan clearly showing location of fence and visibility triangles.
- May 5, 2008 The applicant’s representative requested the case be delayed until June 25, 2008 (see attachment).
- June 10, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearing. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Chief Arborist, and the Assistant City Attorney to the Board.
- Comment review sheet was submitted by the City’s Senior Engineer (see attachment).

STAFF ANALYSIS:

- The submitted site plan indicates an area approximately 916 square feet to be within the property's 6 foot side yard setback, or an area 9' x 98.5'
 - The site is flat and irregular shape being approximately 16,890 square feet. The site is zoned R-10(A) where lots are typically 10,000 square feet in area.
 - The applicant is requesting to maintain the existing carport in the side yard setback and a fence in the visibility triangles.
 - According to the submitted site plan the existing carport is approximately 3,388 square feet. DCAD records indicate additional improvements of a metal attached carport of 828 square feet.
 - The fence is a solid metal fence with operable gates. The site plan indicates the gates are open wrought iron. A site visit by the Board of Adjustment's Senior planner reveals a solid metal fence and gate.
 - The fence encroaches upon the visibility triangle of the alley to the south of the property and the drive approach on the west property line (Webb Chapel Road).
 - The submitted elevation indicates the existing carport is 13' 4" in height.
 - The applicant has the burden of proof in establishing the following:
 - That granting the special exception to the side yard setback regulations of 6' requested to maintain an approximately 3,388 square foot carport attached to a single family home that is 0' from the front yard property line (or 6' into the 6' side yard setback) will not have a detrimental impact on surrounding properties.
 - o That granting the special exception to the visibility obstruction regulation does not create a traffic hazard.
 - Staff is recommending denial of the special exception to the visibility obstruction regulation (see attachment).
 - Granting this special exception would allow the carport to remain in its current location 0' away from the site's side yard property line (or 6' into the required 6' side yard setback). Granting the special exception to the visibility obstruction will allow the fence to remain in the visibility triangle.
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 24, 2008

APPEARING IN FAVOR: Victor Alvarez, 3108 Sombrers Dr., Dallas, TX

APPEARING IN OPPOSITION: Tommy Hines, 3336 Whitehall Dr., Dallas, TX

MOTION# 1: **Taft**

I move that the Board of Adjustment, in Appeal No. **BDA 078-073** on application of Raul A. Najera, represented by Perla O. Najera, **deny** the special exception to the side yard setback regulations requested by this applicant **without** prejudice, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that the carport will have a detrimental impact on surrounding properties.

SECONDED: **Harris**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION# 2: **Taft**

I move that the Board of Adjustment, in Appeal No. **BDA 078-073** on application of Raul A. Najera, represented by Perla O. Najera, **deny** the visibility obstruction special exception at the alley requested by this applicant **without** prejudice, because our evaluation of the property, the testimony shows that granting the application would constitute a traffic hazard.

SECONDED: **No one**

MOTION # 3: **Harris**

I move that the Board of Adjustment, in Appeal No. **BDA 078-073** on application of Raul A. Najera, represented by Perla O. Najera, **grant** the request of this applicant to construct and maintain a fence in a visibility triangle at the alley 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 dated **6/23/08** is required.

SECONDED: **Gabriel**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION # 4: **Harris**

I move that the Board of Adjustment, in Appeal No. **BDA 078-073** on application of Raul A. Najera, represented by Perla O. Najera, **deny** the visibility obstruction special exception at the drive approach requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would constitute a traffic hazard.

SECONDED: Taft

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 078-074(K)

BUILDING OFFICIAL’S REPORT:

Application of Zone Systems, Inc., represented by Peter Kavanagh, for a variance to the side yard setback regulations at 9642 Larchcrest Drive. This property is more fully described as Lot 1 in City Block P/7527 and is zoned R-7.5(A), which requires a side yard setback of 5 feet. The applicant proposes to construct and maintain a single family residential structure and provide a 2 foot 4 inch side yard setback which will require a variance of 2 feet 8 inches.

LOCATION: 9642 Larchcrest Drive

APPLICANT: Zone Systems, Inc.

REQUEST:

- A variance to the side yard setback regulations of 2 feet 8 inches is requested in conjunction with constructing and maintaining an addition to a single family home in the site’s Walnut Hill 5’ side yard setback on a site that is developed with a single family home.

STAFF RECOMMENDATION:

- Denial.

Rationale:

- Although the property is not flat and has two retaining walls, the applicant has not substantiated how development on this specific parcel of land 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 in districts with the same zoning classification.

- Staff concludes the property does not have a restrictive shape, area, or slope. The property has been developed since 1972 with a 2,281 square foot home.

STANDARD FOR A VARIANCE:

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

GENERAL FACTS:

- Structures on lots zoned R-7.5(A) are required to provide a minimum side yard setback of 5'. The site is located on the corner of Larchcrest Drive and Walnut Hill Lane.
- The site is rectangular in shape (85' x 125') and approximately 10,625 square feet in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area. The proposed developed encroaches on the site's northern property line (Walnut Hill Lane).
- The submitted site plan indicates there are two retaining walls on the property.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5ac (A) (Single family district 7,500 square feet)
North: R-7.5ac (A) (Single family district 7,500 square feet)
South: R-7.5ac (A) (Single family district 7,500 square feet)
East: SUP 949 (Special Use Permit)
West: R-7.5ac (A) (Single family district 7,500 square feet)

Land Use:

The subject site is developed with a single family home. The property to the east is developed with a school. The properties to the north, south, and west, are single family homes.

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:

- April 10, 2008 The applicant’s representative submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- May 22, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- May 23, 2008: The Board of Adjustment’s Senior Planner contacted the applicant’s representative and shared the following information by phone and mail:
- 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 June 9th deadline to submit additional evidence for staff to factor into their analysis;
 - the June 13th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the June public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.
- June 10, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearing. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building 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 submitted site plan indicates the property is developed with a two story brick home, a frame shed and a one story frame.
 - DCAD states the property is developed with a one story 2,281 square foot single family home (built in 1972) that is in average condition. Additional improvements listed are and enclosed garage 550 square feet, and a small addition of 675 square feet.
 - The site is rectangular in shape 85' x 125 ' and approximately 10, 625 square feet in area. The site plan indicates there are several retaining walls on the property.
 - Properties in the R7.5(A) zoning typically are 7,500 square feet and have a side yard setback of 5 feet. The applicant is requesting a variance of 2 feet 8 inches to the side yard setback requirement.
 - The applicant has the burden of proof in establishing the following:
 - That granting the variance to the side yard setback regulations of 2 feet 8 inches requested in conjunction with constructing and maintaining a single family home in the site's walnut Hill Lane side yard setback will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site (a site that is rectangular in shape (125' x 85') and 10,625 square feet in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the R-7.5(A) zoning classification.
2. If the Board were to grant the front yard variance request of 2 feet 8 inches, imposing a condition whereby the applicant must comply with the submitted site plan, the structure in the side yard setback would be limited to that shown on this plan – which in this case is a single family structure located 2 feet 4 inches from the site's Walnut Hill side property line.

BOARD OF ADJUSTMENT ACTION: JUNE 24, 2008

APPEARING IN FAVOR: Peter Kavanagh, 1620 Handley Dr., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Taft

I move that the Board of Adjustment, in Appeal No. **BDA 078-074**, on application of Zone Systems, Inc., represented by Peter Kavanagh, **grant** the two-foot-eight-inch variance to the side yard setback regulations because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: Gabriel

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 078-089

BUILDING OFFICIAL’S REPORT:

Application of Steve Lieberman, represented by Dean W. Smith, for a special exception to the fence height regulations and for a variance to the side yard setback regulations at 9908 Rockbrook Drive. This property is more fully described as Lot 14A in City Block 5543 and is zoned R-1ac(A) which limits the height of a fence in the front yard to 4 feet and the height of a fence in a side yard to 9 feet, and requires a 10 foot side yard setback. The applicant proposes to construct a 10 foot high fence in a required front and side yard setback which will require a special exception of up to 6 feet, and to construct and maintain a structure and provide a 3 foot side yard setback which will require a variance of 7 feet.

LOCATION: 9908 Rockbrook Drive

APPLICANT: Steve and Lisa Lieberman
Represented by Dean W. Smith

REQUESTS:

- The following appeals have been made in this application:

1. Special exceptions to the *front* yard fence height regulations of 6' and to the *side* yard fence height regulations of 1' are requested in conjunction with constructing and maintaining a 10' high black metal fence with black chainlink fabric in the site's 40' Meadowood Road front yard setback, and in the site's 10' northern and eastern side yard setbacks; and
2. A variance to the side yard setback regulations of 7' is requested in conjunction with constructing and maintaining three light poles/two basketball goals for a recreation court in the site's eastern 10' side yard setback on a site developed with a single family home.

STAFF RECOMMENDATION (related to the 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.

STAFF RECOMMENDATION (related to the variance):

Denial

Rationale:

- Although granting the variance for the three 23' high light poles/two 13.5' high basketball goal structures does not appear to be contrary to the public interest, and although the site is different from other parcels of land in the R-1ac(A) zoning district since it has two 40' front yard setbacks (and therefore two side yard setbacks), staff recommends denial since neither the two front yard setbacks nor any other physical site characteristic precludes the applicant from developing this parcel of land in a manner commensurate with development found on other parcels of land in the same zoning district. The features of the site allow the applicant to locate the proposed recreation court with its lights and goal structures in compliance with the required 10' side yard setback and still have over 80' of open space between the proposed recreation court and the existing swimming pool on the 462' long subject site. Although the applicant contends that providing the required 10' side yard setback would impact a "nice Red Oak tree" (identified on another submitted exhibit as an "8" Oak", staff does not feel that this size/location of this tree in this case acts as a constraint in developing the site already developed with a large home, garage, and swimming pool.
- The applicant has not substantiated how the physical features of the flat, rectangular-shaped, 462' long, 134' wide, approximately 1.5 acre site constrain it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same R-1ac(A) zoning classification while simultaneously complying with code standards including side yard setback regulations. The site appears to be long enough to construct/maintain the recreation court in compliance with the setbacks with the only obstacle/constraint being an 8" oak tree.

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.

STANDARD FOR A VARIANCE:

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

GENERAL FACTS (related to fence height special exceptions):

- 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, and may not exceed 9' above grade when located in the require side yard in all districts except multifamily.
The subject site is located at the northeast corner of Rockbrook Drive and Meadowood Road. The site has a 40' front yard setback along its western boundary: Rockbrook Drive (since it is the shorter of the two street frontages) and a 40' front yard setback along its southern boundary: Meadowood Road. (Even though the Meadowood Road frontage is the longer of the two street frontages, it is deemed a front yard in order to maintain the continuity of the established setback of homes to the east of the site that front southward and eastward onto Meadowood Road). The site has a 10' side yard setback along its northern and eastern boundary.
The applicant has submitted a scaled site plan/elevation indicating a 10' high black metal fence with black chainlink fabric located in the site's 40' Meadowood Road front yard setback and in the site's eastern 10' side yard setback. (No fence/column/gate is noted on the plan or elevation that would exceed 4' in height in the site's Rockbrook Drive front yard setback).
- The submitted scaled site plan/elevation indicates that the proposed 10' high chain link fence located in the site's 40' Meadowood Road front yard setback has the following additional characteristics:

- approximately 55' in length parallel to Meadowood Road and 16' in length perpendicular;
- located approximately 24' from the site's Meadowood Road front property line (or approximately 36' from the Meadowood Road pavement line);
- Notation of "screened plant material to be placed in front of fence" and "existing screening hedgerow along fence to remain." (Note that the hedgerow along Meadowood Road noted on the submitted plan is part of a condition that was imposed as part of the fence height special exception approved by the board on the site in 2002 made in conjunction with constructing/maintaining a 6' high vinyl coated (black) cyclone fence that is on the site but hidden from the street by this existing hedge. See the "Zoning/BDA History" section of this case report for further details).
- The submitted scaled site plan/elevation indicates that the proposed 10' high chain link fence located in the site's 10' eastern side yard setback has the following additional characteristics:
 - approximately 110' in length parallel to the eastern side property line and 5' in length perpendicular;
 - located approximately 5' from the site's eastern side property line.
- The submitted scaled site plan/elevation indicates that the proposed 10' high chain link fence located in the site's 10' northern side yard setback has the following additional characteristics:
 - approximately 56' in length parallel to the northern side property line and 5' in length perpendicular;
 - located approximately 3' from the site's northern side property line.
- There is one single family home that has direct frontage to the proposed 10' high fence in the required Meadowood Road front yard.
- There is one single family home to the north and east of the site adjacent to where the 10' high fence is proposed in the site's two required side yards. These homes are not visible from the site given existing landscaping/screening materials.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences above four (4) feet high other than the fence on the subject site that appears to have been "excepted" by the board *with conditions* in 2002: (BDA012-139) which appeared to be located in a front yard setback along Meadowood Road or other fences above nine (9) feet high which appeared to be located in a side or rear yard setback.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a narrative providing additional details about the requests,
 - a series of plans showing buildable area on the lot relative to others in the same zoning district; and
 - photos of the site and neighboring area.

GENERAL FACTS (related to the variance):

- Single family structures on lots zoned R-1ac(A) are required to provide a minimum side yard setback of 10'. The site is located at the northeast corner of Rockbrook Drive and Meadowood Road and has two front yard setbacks. Because the site has two front yard setbacks, the site has two side yard setbacks of 10' and no rear yard setback of 3' that would be required since the lot has an alley on its eastern boundary.
A scaled site plan/elevation document has been submitted that shows three "light poles" and two "b.b. goals" that are located as close as 3' from the site's eastern side property line (or 7' into the 10' side yard setback). (No encroachment is proposed in the site's northern side yard setback).
- According to DCAD records, the site is developed with the following:
 - a structure built in 1999 that is in "very good" condition with 10,596 square feet of living area;
 - a 1,338 square foot garage; and
 - a pool.
- The subject site is zoned R-1ac(A), is flat, rectangular in shape (approximately 465' x 135'), and approximately 62,800 square feet (or 1.44 acres) in area where lots are typically 43,560 square feet or 1 acre in area.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a narrative providing additional details about the requests,
 - a series of plans showing buildable area on the lot relative to others in the same zoning district; and
 - photos of the site and neighboring area.

BACKGROUND INFORMATION:

Zoning:

Site: R-1 (A) (Single family district 1 acre)
North: R-1 (A) (Single family district 1 acre)
South: R-1 (A) (Single family district 1 acre)
East: R-1 (A) (Single family district 1 acre)
West: R-1 (A) (Single family district 1 acre)

Land Use:

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

Zoning/BDA History:

- | | |
|---|---|
| 1. BDA 012-139, 9908 Rockbrook Drive (the subject site) | On February 26, 2002, the Board of Adjustment Panel A granted a request for a |
|---|---|

special exception to the fence height regulations of 2' 6" and imposed the following conditions: compliance with the submitted site/fence elevation plan and landscape plan is required, and the existing landscaping (hedge) shall remain in place along the entire length of the 6' high vinyl coated (black) cyclone fence along Meadowood Road, or when needed must be replaced and retained with minimum 6' height at maturity such that the entire length of the fence will not be visible from the Meadowood Road. The case report stated that the request was made in conjunction with constructing and maintaining a "6'-0" high vinyl coated (black) cyclone fence" in the Meadowood Road front yard to replace, according to a notation on a submitted site plan, a "6'-6" high existing galvanized cyclone fence."

2. BDA 045-265, 9863 Rockbrook Drive (the lot immediately west of the subject site)

On August 15, 2005, the Board of Adjustment Panel C granted a request to the special exception to the fence height regulations of 4' and imposed the following condition: Compliance with the revised submitted site plan/fence elevation/wall elevation is required. The case report stated that the request was made to "compliment the fence by maintaining 8'-00" in height brick wall in south corner of property with existing brick caps; 6'-00" in height wrought iron gate will be installed between existing columns; construct alley fence with max. height of 8'-00".

3. BDA034-178, 9863 Rockbrook Drive (the lot immediately west of the subject site)

On April 18, 2005, the Board of Adjustment Panel C denied a request to the fence height regulations of 4' without prejudice. The case report stated that the request was made to construct a 6'-high decorative wrought iron fence with 6'-6" high masonry columns, and 6'-high wrought iron entry gates in the required Rockbrook Drive and Meadowood Road front yard setbacks; and maintaining a portion of an existing 8' high masonry wall in

the Rockbrook Drive front yard setback.

4. BDA034-177, 9863 Rockbrook Drive (the lot immediately west of the subject site)

On April 18, 2005, the Board of Adjustment Panel C granted a request for a variance to the front yard setback regulations of 23 feet, and imposed the following conditions: 1) compliance with the submitted site/landscape plan and elevation is required; and 2) relocation of the air conditioning units outside a required setback. The case report states that variances were requested to maintain an approximately 700 square foot portion of a two-story single family home, and to add an a/c unit both either located or to be located in the Meadowood Road front yard setback.

5. BDA023-138, 9863 Rockbrook Drive (the lot immediately west of the subject site)

On April 19, 2004, the Board of Adjustment Panel C denied a request for a variance to the front yard setback regulations of 23 feet without prejudice. The staff had recommended that the board grant the request, subject to compliance with the submitted site plan. The case report states that variances to the front yard setback regulations were requested to maintain an approximately 700 square foot portion of a two-story single family home, and to add an a/c unit both either located or to be located in the Meadowood Road front yard setback.

Timeline:

- April 25, 2008: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 22, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."
- May 27, 2008: The Board Administrator contacted the applicant's representative and shared the following information by phone and email:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the June 9th deadline to submit additional evidence for staff to factor into their analysis;
- the June 13th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and, if not, may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

June 9, 2008 The applicant's representative submitted additional information to the Board Administrator (see Attachment A).

June 10, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist.

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

STAFF ANALYSIS (related to fence height special exceptions):

- The requests are made to construct/maintain a 10' high black metal fence with black chainlink fabric in the site's 40' Meadowood Road front yard setback, and in the site's 10' northern and eastern side yard setbacks.
- Although the site is located at the corner of Rockbrook Drive and Meadowood Road and has two front yard setbacks, no proposal is proposed to be erected or maintained in the site's Rockbrook Drive front yard setback.
- A scaled site plan/elevation has been submitted indicating that the location of the fence in the front and side yard setbacks, its height (10'), and its materials (black metal fence with black chainlink fabric).
- With regard to landscape materials, the submitted site plan denotes an "existing screening hedgerow along fence to remain" along Meadowood Road but makes no specific reference to materials to be located to the proposed fence in the site's northern and eastern side yard setbacks.

- There is one single family home that has direct frontage to the proposed 10' high fence is proposed in the required Meadowood Road front yard.
- There is one single family home to the north and east of the site adjacent to where the 10' high fence is proposed in the site's two required side yards. These homes are not visible from the site given existing landscaping/screening materials.
- No other fences were noted above four (4) feet high other than the fence on the subject site that appears to have been "excepted" by the board *with conditions* in 2002: (BDA012-139) which appeared to be located in a front yard setback along Meadowood Road or other fences above nine (9) feet high which appeared to be located in a side or rear yard setback.
- As of June 16, 2008, no letters had been submitted to staff in support or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the *front* yard fence height regulations of 6' (whereby a 10' high fence in the site's Meadowood Road front yard setback) and a special exception to the *side* yard fence height special exception of 1' (whereby a 10' high fence in the site's northern and eastern side yard setbacks) does not adversely affect neighboring property.
- Granting these special exceptions to the fence height regulations of 6' to the *front* yard fence height regulations and 1' to the *side* yard setback regulations with a condition imposed that the applicant complies with the submitted site plan/elevation would provide assurance that the proposed fence would be maintained in the locations and of the height/material shown on this document.

STAFF ANALYSIS (related to the variance):

- The applicant has made a side yard variance request of 7' to allow the construction and maintenance three light poles/two basketball goals for a recreation court in the site's 10' eastern side yard setback.
- The site is zoned R-1ac(A) and is different from most single family zoned lots in that it has two front yard setbacks (and as a result, two side yard setbacks). The site is however, approximately 1.5 acres in area (approximately 0.5 acres larger than most lots in the zoning district), and is approximately 460' long and 135' wide. The site is relatively flat and is developed with a house (with over 10,000 square feet of living area), a 1,300 square foot garage, and a pool.
- According to dimensions taken from the submitted site plan, there would be over 80' of open space between the existing swimming pool and the proposed recreation court if the required 10' side yard setback were provided along the site's eastern boundary. According to the submitted "Exhibit E," there is an "8" oak" that the applicant has stated would be impacted by the tennis court if it were moved west.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the side yard setback regulations requested in conjunction with constructing and maintaining three light poles/two basketball goal structures will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.

- The variance to the side yard setback regulations of 7' is necessary to permit development of the subject site (a site that is developed with a single family home with over 10,000 square feet of living area, a 1,300 square foot garage, and a pool, that is flat, rectangular in shape, over 460' long, and over 130' wide, and approximately 1.5 acres in area in a zoning districts where lots are typically 1 acre in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-1ac(A) zoning classification.
- The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the R-1ac(A) zoning classification.
- If the Board were to grant the variance request, subject to the submitted site plan/elevation, the structures in the site yard setback would be limited to what is shown on this document– which in this case are three, 23' high light pole and two, 13.5' high basketball goal structures located as close as 3' from the site's eastern side property line (or as much as 7' into this 10' side yard setback).

BOARD OF ADJUSTMENT ACTION: JUNE 24, 2008

APPEARING IN FAVOR: Greg Wyatt, Wyatt & Assoc., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: **Harris**

I move that the Board of Adjustment, in Appeal No. **BDA 078-089**, on application of Steve Lieberman, represented by Greg Wyatt, **grant** the request of this applicant to construct and maintain a 10-foot-high fence on the property's front yard 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: **Taft**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION #2: **Harris**

I move that the Board of Adjustment, in Appeal No. **BDA 078-089**, on application of Steve Lieberman, represented by Greg Wyatt, **grant** the request of this applicant to construct and maintain a 10-foot-high fence on the property's side yard 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, Gabriel, Schweitzer, Taft, Harris

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION #3: Harris

I move that the Board of Adjustment, in Appeal No. **BDA 078-089**, on application of Steve Lieberman, represented by Greg Wyatt, **grant** the seven foot variance to the side yard setback regulations because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Taft

AYES: 4 – Richmond, Gabriel, Taft, Harris

NAYS: 1 - Schweitzer

MOTION PASSED: 4– 0

FILE NUMBER: BDA 078-059

BUILDING OFFICIAL'S REPORT:

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

LOCATION: 3103 Colonial Avenue

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

REQUEST:

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

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

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

(1) Amortization of nonconforming uses.

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

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

(i) The character of the surrounding neighborhood.

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

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

(iv) The hours of operation of the use.

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

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

(vii) The extent to which public disturbances may be created or perpetuated by continued operation of the use.

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

GENERAL FACTS:

- The subject site is zoned PD No. 595 (CC Community Commercial Subdistrict) that permits a "hotel or motel" use with an SUP (Specific Use Permit).
- The Dallas Development Code establishes the following provisions for "hotel or motel" use in Section 51A-4.205 (1):
 - "Hotel or motel."
 - (A) Definition: A facility containing six or more guest rooms that are rented to occupants on a daily basis.

- City records indicate that the hotel or motel use on the subject site first became nonconforming on September 30, 1987 with the passage of Ordinance No. 19700. The hotel or motel use on the subject site remained nonconforming when it was rezoned from GR to CR on July 18, 1989 with the passage of Ordinance No. 20314. The nonconformity was reinforced again on September 26, 2001 when the property was rezoned from CR to PD No. 595 (Ordinance 24726).
- The Dallas Development Code states that “nonconforming use” means “a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time.”
- The owner of the site could eliminate the nonconforming use status of the existing motel use by obtaining an SUP (Specific Use Permit) from City Council.
- The owner of the site could transition the use on the site from motel use to any use that is permitted by right in the site’s existing PD No. 595 (CC Community Commercial Subdistrict) zoning classification. Uses permitted by right in this zoning district include a number of commercial and business service uses, institutional and community service uses, office uses, recreation uses, retail and personal service uses, transportation uses, and utility and public service uses.
- On April 4, 2008, the applicant’s representative submitted additional information to the Board Administrator on this application beyond what was originally submitted with the application in late February of 2008 (see Attachment A). This information included 41 letters referenced by the applicant’s representative as “letters of complaints supporting our claim of non-compliance against the Colonial Inn Motel.”
- On April 4, 2008, the attorney representing the owner of the nonconforming motel submitted information to the Board Administrator on this application (see Attachment B). This information included a letter requesting: a dismissal of the application, a denial of the application, and/or for “continuance” of the application.
- The Board of Adjustment conducted a public hearing on the matter on April 15, 2008 where the following occurred:
 - the Board Administrator circulated an amended page to be substituted for a page in the originally mailed case report – a page that confirmed among other things, the dates in which CO’s were issued, and the dates in which the use on the site became nonconforming;
 - the attorney representing the applicant submitted written documentation to the members (see Attachment D);
 - verbal testimony was given by a number of citizens who supported the application, and attorneys representing the applicant and the owner of the motel;
 - the applicant showed a video regarding the nonconforming motel;
 - the applicant amended the application to include the St. Philip’s School in addition to the St. Philip’s School PSA; and
 - the Board delayed action on the application and called a special hearing to be held on April 22, 2008 for the purpose of continuing its consideration on whether continued operation of the nonconforming motel has an adverse affect on nearby properties. (The board suggested that the applicant consider reviewing submitted letters that were either unsigned or illegibly signed by the April 22nd hearing, and

- that any additional evidence that either party wanted the board to be mailed prior to the April 22nd special hearing to be submitted no later than April 17th.)
- On April 17, 2008, the attorney representing the owner of the nonconforming motel submitted information to the Board Administrator on this application (see Attachment E). This information included the following:
 - a map of the area representing properties owned by St. Philip's, property owned by other property owners, and the location of the subject site;
 - a copy of the City of Dallas's response to their open records request;
 - a copy of a contract offer to Jay Ma Corporation for the Colonial House Motel property.
 - On April 17, 2008, the applicant's representative submitted additional information to the Board Administrator (see Attachment F). This information was described as "letters that have already been submitted to the board, with new serial number and names and addresses of the writers on them."
 - On April 22, Board of Adjustment conducted a public hearing on the matter on April 15, 2008 where the following occurred:
 - the attorney representing the applicant submitted a copy of a City "master permit" for property located at 3103 Colonial Avenue to the members;
 - the attorney representing the owner of the motel submitted a document entitled "Crime Statistics from 2000 to 2007" to the members; and
 - the attorney representing the owner of the motel submitted a printed copy of the power point show shown at the public hearing to the Board Administrator.
 - The Board of Adjustment determined at their April 22nd hearing, that based on the evidence and testimony presented to them, that continued operation of the nonconforming motel use would have an adverse effect on nearby properties, and set a hearing date June 24, 2008 for the purpose of establishing a compliance date for this nonconforming use.
 - All information submitted by the applicant and owner of the motel (including but not limited to previous attachments entitled "Attachment A," "Attachment B," and Attachment C", "Attachment D," "Attachment E," "Attachment F," and information submitted at the April 22nd hearing) related to whether continued operation of the nonconforming motel use would have an adverse effect on nearby properties has been retained in the case file and is available for review upon request.
 - On April 23 and 29, and May 27, 2008, subpoenas duces tecum and interrogatories were sent to the attorney representing the owner and/or the owner of the nonconforming motel use.
 - On May 23, 2008, the attorney representing the owner of the nonconforming motel use submitted a document entitled "Objections and Responses to the Subpoena Duces Tecum and Interrogatories" (see Attachment G).
 - On June 2, 2008, the Assistant City Attorney assisting on this application sent a letter to the attorney representing the owner of the nonconforming motel use in response to the "Objections and Responses" document. The letter states among other things that since the owner had refused to provide the documentation requested in the Boards' subpoena evidencing its investment in the property, the City would have no choice but to present an estimated recoupment period based

upon public records and information from generally accepted sources evidencing investments and income within the hotel/motel industry. Although a June 9th deadline was given to submit additional information, none was submitted within this time frame.

- On June 12, 2008, the Assistant City Attorney assisting on this application forwarded a letter addressed to the Board of Adjustment Chair requesting that the board suspend their documentary evidence rule in order for the City to present documentary evidence in excess of five pages at their June 24th hearing (see Attachment H).
- On June 16, 2008, the attorney representing the owner of the nonconforming motel use submitted a document entitled "Objections and Responses to the Supplemental Subpoena Duces Tecum and Interrogatories" (see Attachment I).

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The site is currently developed with a motel use (Colonial House Motel). The area to the immediate north is developed with a vacant office/retail structure; the area to the immediate east is undeveloped; the area to the immediate south is developed as a tree farm; and the area to the west is developed with commercial uses and plow fields.

Zoning/BDA History:

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

Timeline:

February 29, 2008: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

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

March 20, 2008: The Board Administrator wrote/sent the owner of the site (Jay Ma Corporation) a letter (with a copy to the applicant's representative)

that informed them that a Board of Adjustment case had been filed against their property. The letter included the following enclosures:

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

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

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

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

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

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

April 15, 2008: The Board of Adjustment conducted a public hearing on this appeal where they delayed action on the application and called a special hearing to be held on April 22, 2008 for the purpose of continuing

its consideration on whether continued operation of the nonconforming motel has an adverse affect on nearby properties.

- April 17, 2008 The attorney for the owner of the nonconforming motel use submitted information on this application (see Attachment E).
- April 17, 2008 The applicant's representative submitted additional information on this application (see Attachment F).
- April 22, 2008: The Board of Adjustment conducted a public hearing on this appeal. The board determined based on the evidence and testimony presented to them at the public hearing that continued operation of the nonconforming motel use would have an adverse effect on nearby properties, and set a hearing date October 15, 2007 for the purpose of establishing a compliance date for this nonconforming use.
- April 23 & 29, 2008: A subpoena duces tecum and interrogatories were sent to the attorney representing the owner of nonconforming use on the subject site.
- May 23, 2008: The attorney representing the owner of the nonconforming use on the subject site submitted a document entitled "Objections and Responses to the Subpoena Duces Tecum and Interrogatories" (see Attachment G).
- May 27, 2008: A subpoena duces tecum and interrogatories were sent to the the owner of nonconforming use on the subject site.
- June 2, 2008: The Assistant City Attorney assisting on this application sent a letter to the attorney representing the owner of the nonconforming motel use in response to the "Objections and Responses" document. The letter states among other things that since the owner had refused to provide the documentation requested in the Boards' subpoena evidencing its investment in the property, the City would have no choice but to present an estimated recoupment period based upon public records and information from generally accepted sources evidencing investments and income within the hotel/motel industry. Although a June 9th deadline was given to submit additional information, none was submitted within this time frame.
- June 10, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Planner,

the Development Services Senior Engineer, the Building Inspection Development Code Specialist

June 12, 2008: The Assistant City Attorney assisting on this application sent a letter to the Board Chair requesting that the board suspend their documentary evidence rule in order for the City to present documentary evidence in excess of five pages at their June 24th hearing (see Attachment H).

June 16, 2008: The attorney representing the owner of the nonconforming use on the subject site submitted a document entitled "Objections and Responses to the Supplemental Subpoena Duces Tecum and Interrogatories" (see Attachment I).

STAFF ANALYSIS:

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

Commercial Subdistrict) zoning classification. Uses permitted by right in this zoning district include a number of commercial and business service uses, institutional and community service uses, office uses, recreation uses, retail and personal service uses, transportation uses, and utility and public service uses.

- On April 22, 2008, the Board of Adjustment determined at their public hearing that continued operation of the nonconforming motel use would have an adverse effect on nearby property, and set a hearing date of June 24, 2008 for the purpose of establishing a compliance date for this nonconforming use.
- The purpose of the Board of Adjustment's June 24th public hearing is to establish a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period. (The Dallas Development Code states that for purposes of this paragraph, "owner" means the owner of the nonconforming use at the time of the board's determination of a compliance date for the nonconforming use).
- The Dallas Development Code states that the following factors must be considered by the board in determining a reasonable amortization period:
 - The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.
 - Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
 - Any return on investment since inception of the use, including net income and depreciation.
 - The anticipated annual recovery of investment, including net income and depreciation.
- The attorney for the owner of the motel has submitted a document entitled "Objections and Responses to the Subpoena Duces Tecum and Interrogatories" (Attachment G), and a document entitled "Objections and Responses to the Supplemental Subpoena Duces Tecum and Interrogatories" (Attachment I).
- The Assistant City Attorney assisting on this application has forwarded a letter addressed to the Board of Adjustment Chair requesting that the board suspend their documentary evidence rule in order for the City to present documentary evidence in excess of five pages at their June 24th hearing (see Attachment H).
- The Dallas Development Code additionally states that if the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.

BOARD OF ADJUSTMENT ACTION: APRIL 22, 2008

APPEARING IN FAVOR: P. Michael Jung, 7143 Fisher Rd, Dallas, TX
Terry Flowers, 401 Royal Crest, DeSoto, TX

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

Meenal Patel, 3103 Colonial Ave., Dallas, TX
Jitendra Patel, 3103 Colonial Ave., Dallas, TX
Anthony Garrett, 1629 Pennsylvania, Dallas, TX
James Brown, 1629 Pennsylvania, Dallas, TX

MOTION: Harris

I move that the Board of Adjustment in Appeal No. **BDA 078-059**, based on the evidence presented at the public hearing, find that continued operation of this nonconforming use will have an adverse effect on nearby properties, based on the following factors:

- The nonconforming use of the Colonial House Motel no longer suits the character of the surrounding neighborhood. With the finding of fact that the Colonial House Motel is located across the street and side proximity to the St. Phillips School and Community Center, a teaching center for young children in the City of Dallas, zoned PD 597.
- The Colonial House Motel is operating in a manner that may threaten public health or safety and create or perpetuate public disturbances by the continued operation of its use. With the finding of fact that members of the St. Phillips School and Community Center faculty, parents of St. Phillips School Parent School Association, and Forest heights neighborhood community members have submitted evidence to support their witness of criminal activity, public nuisance and disturbance, or acts that have occurred on or near the proximity of the Colonial House Motel that have threatened public safety.
- In finding that the continued operation of the Colonial House Motel will have an adverse affect that is contributory in nature on nearby properties. We wish to set a hearing date of **June 24, 2008** for the purpose of establishing a compliance date for this nonconforming use.

SECONDED: Taft

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

NAYS: 0 –

MOTION PASSED: 5– 0

2:20 P.M.: Break

2:25 P.M.: Resumed

***Member Jordan Schweitzer was excused from the meeting and replaced by member Jim Gaspard to hear and vote on this matter.**

BOARD OF ADJUSTMENT ACTION: JUNE 24, 2008

APPEARING IN FAVOR: Michael Jung, 7143 Fisher, Dallas, TX

APPEARING IN OPPOSITION: Mark Cronenwett, 4166 Wilada Dr., Dallas, TX
Jason Mathis, 7128 Woodland Terrace, Dallas, TX
Menal Patel, 3103 Colonial Ave., Dallas, TX
Helen Reynolds, 901 Main St., Dallas, TX

APPEARING FOR THE CITY: Atty Shereen El Domeiri, 1500 Marilla, Dallas, TX

Andrew McRoberts, 3505 Dartmouth, Highland, PK
Al DiFrancesco, 4001 Garrison PL, Plano, TX

MOTION #1: **Gaspard**

I move that the Board of Adjustment suspend the rules and accept the evidence that is being presented to us today.

SECONDED: **Taft**

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

NAYS: 0 –

MOTION PASSED: 5– 0(unanimously)

MOTION #2: **Gaspard**

I move that the Board of Adjustment, in Appeal No. **BDA 078-059**, provide a compliance date of **December 31, 2008** for the nonconforming hotel or motel use currently being operated on the property located at 3103 Colonial Avenue, because the facts and testimony show that the owner's actual investment in the use, before the time that the use became nonconforming, can be amortized within this time period. I further move that the owner's certificate of occupancy for the hotel or motel use be revoked on **December 31, 2008**, unless the hotel or motel use becomes a conforming use.

SECONDED: **Gabriel**

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

MOTION: **Gaspard**

I move to adjourn this meeting.

SECONDED: **Gabriel**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (Unanimously)

4:29 P.M. - Board Meeting adjourned for **June 24, 2008**.

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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