

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM
TUESDAY, AUGUST 15, 2006**

MEMBERS PRESENT AT BRIEFING: Rob Richmond, Chair, Peggy Hill, Panel Vice-Chair, Ben Gabriel, regular member, Jordan Schweitzer, regular member, and Scott Griggs, regular member

MEMBERS ABSENT FROM BRIEFING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Claire Swann, Asst. City Attorney, Donnie Moore, Chief Planner, Danny Sipes, Development Code Specialist, Jennifer Hiromoto, Senior Planner, Chau Nguyen, Traffic Engineer, Mike Sultan, Chief Arborist and Trena Law, Board Secretary

MEMBERS PRESENT AT HEARING: Rob Richmond, Chair, Peggy Hill, Panel Vice-Chair, Ben Gabriel, regular member, Jordan Schweitzer, regular member, and Scott Griggs, regular member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Claire Swann, Asst. City Attorney, Donnie Moore, Chief Planner, Danny Sipes, Development Code Specialist, Jennifer Hiromoto, Senior Planner, Mike Sultan, Chief Arborist, Chau Nguyen, Traffic Engineer and Trena Law, Board Secretary

10:05 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **August 15, 2006** 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 June 20, 2006 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: AUGUST 15, 2006

MOTION: Hill

I move to approve the Board of Adjustment Panel A June 20, 2006 public hearing minutes.

SECONDED: Gabriel

AYES: 5 – Richmond, Hill, Gabriel, Schweitzer, Griggs

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

A briefing will be conducted by the Board of Adjustment Chief Planner and the Assistant City Attorney to the Board of Adjustment on the status of providing staff recommendations on specific types of board of adjustment appeals.

***This was not an action item.**

FILE NUMBER: BDA 056-159

BUILDING OFFICIAL'S REPORT:

Application of Zad Roumaya, represented by Will Pinkerton, for a special exception to the visibility obstruction regulations at 1111 S. Akard Street. This property is more fully described as Lot 1A in City Block A/441 and is zoned PD-317 which requires a 45 foot visibility triangle at street intersections. The applicant proposes to construct a multi-family dwelling and locate a part of the structure within the required visibility triangle which would require a special exception. Referred to the Board of Adjustment in accordance with Section 51A-4.602 (d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 1111 S. Akard Street

APPLICANT: Zad Roumaya
Represented by Will Pinkerton

REQUEST:

- A special exception to the visibility obstruction regulations is requested to complete and maintain a portion of the condominium structure in the 45'-visibility triangle at the signalized intersection of one-way westbound W. Griffin Street and S. Akard Street.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISIBILITY OBSTRUCTION REGULATIONS:

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

GENERAL FACTS:

- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at intersections and 20-foot visibility triangles at drive approaches); and
 - between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).The applicant requests to complete and maintain a portion of a condominium structure (a balcony) in the 45'-visibility triangle at the intersection of W. Griffin Street (which is one-way westbound) and S. Akard Street on the north corner of the subject site.
- The applicant states that part of the 45' visibility triangle is being provided but due to the slope of the property, the top 2'-3' of the required triangle (an area between 2.5 – 8 feet) is obstructed by the balcony of the building.
- The applicant states that the Dallas Development Code states that a 30' visibility triangle is required at street intersections in CA (Central Area) zoning districts, and that the site's Subdistrict 3 of PD 317 is effectively a CA zoning district because of its setbacks, height restrictions, FAR, and uses that are all very similar.
- This appeal was originally scheduled to be heard by the Board of Adjustment Panel A on June 20, 2006. However, the board was informed of a discovery made by the applicant earlier that morning that precluded their ability to take action on this appeal at their public hearing: the address for this case on the posted agenda was incorrect. The address on the posted agenda indicated 111 S. Akard Street when the correct address for the subject site was 1111 S. Akard Street. This error delayed action on this appeal until the board's next public hearing scheduled for August 15, 2006.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 317(Planned Development District)
North: PD No. 317(Planned Development District)
South: PD No. 317(Planned Development District)
East: PD No. 317(Planned Development District)
West: PD No. 317(Planned Development District)

Land Use:

The subject site is being developed as a 49-unit condominium structure. The areas to the north, east, south, and west are developed with a mix of uses including hotel, office, and residential.

Zoning/BDA History:

1. BDA 056-008, 1111 S. Akard Street (the subject site)

On October 19, 2005, the Board of Adjustment Panel B granted a request for a special exception to the parking regulations of 23 spaces. The board imposed the following condition with this request: the special exception shall automatically and immediately terminate if and when the multifamily use on the site is changed or discontinued. The case report states that the request was made in conjunction with constructing and maintaining a 49-unit condominium.

1. BDA 056-046, 1111 S. Akard Street (the subject site)

On December 13, 2005, the Board of Adjustment Panel A granted a request for a special exception to the sign regulations, subject to the following conditions: compliance with the submitted site plan and elevation is required; a sign-face is limited to the south side of the relocated billboard; and the poles that support the existing billboard on the site should be utilized to mount the relocated billboard. The case report states that the special exception was requested to remove one face of an existing billboard and to relocate the remaining poles and board approximately 18' to the south and 6' to the west of the existing

billboard's current location.

Timeline:

- October 27, 2006 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 15, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- March 16, 2006: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the March 24th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - the April 10th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the April public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- June 5, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Chief Arborist, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.
- June 7, 2006 The Development Services Senior Engineer submitted a review comment sheet marked "No objections." The engineer added the following comments:
- "Traffic signal at S. Akard St. and Griffin St. West.

- Griffin Street West is one-way westbound.”

June 20, 2006: The Board of Adjustment was informed at their briefing of an error made on the posted agenda regarding the address of the subject site that would preclude the board from holding a public hearing on this matter at their June 20th public hearing.

July 26, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; 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 Development Services Senior Engineer has submitted a review comment sheet indicating that he has no objections to the request for a special exception to the visibility obstruction regulations commenting that the item in the intersection visibility triangle (a balcony) is located at a signalized intersection and at an intersection where one of the streets is a one-way street.
- The balcony located in the intersection triangle is not an issue for eastbound traffic on Griffin Street (West) since this street is a one-way westbound street.
- 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 and elevation, a balcony on the condominium located in the top 2-3’ of the visibility triangle at the W. Griffin Street/S. Akard Street intersection triangle) will not constitute a traffic hazard.
- If this request is granted, subject to compliance with the submitted site plan and elevation, a balcony on the condominium structure would be “excepted” into the 45’ W. Griffin Street/S. Akard Street intersection visibility triangle.

BOARD OF ADJUSTMENT ACTION: AUGUST 15, 2006

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Gabriel

I move that the Board of Adjustment **grant** the following application listed on the uncontested docket because it appears, from our evaluation of the properties and all

relevant evidence that the application satisfies all the requirements of the Dallas Development Code and are consistent with the general purpose and intent of the Code. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Hill

AYES: 5 – Richmond, Hill, Gabriel, Schweitzer, Griggs

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 056-173(J)

BUILDING OFFICIAL'S REPORT:

Application of John M. Whitfill for a special exception to allow a second electric meter 7040 Tokalon Drive. This property is more fully described as Lot 8 and part of 7 in City Block A/4417 and is zoned R-7.5(A) which allows only 1 electric meter. The applicant proposes to obtain an additional electric meter which would require a special exception. Referred to the Board of Adjustment in accordance with Section 51A-4.209(b)(6)(E)(v) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 7040 Tokalon Drive

APPLICANT: John M. Whitfill

REQUEST:

- A special exception to the single family use regulations is requested in conjunction with adding a second electrical meter on a site developed with a single family home.

STANDARD FOR A SPECIAL EXCEPTION TO THE SINGLE FAMILY USE REGULATIONS TO AUTHORIZE AN ADDITIONAL ELECTRICAL METER IN A SINGLE FAMILY ZONING DISTRICT:

The board may grant a special exception within the single family use regulations to authorize more than one electrical utility service or more than one electrical meter on a lot in a single family, duplex, or townhouse district when, in the opinion of the board, the special exception will:

- (aa) not be contrary to the public interests;
- (bb) not adversely affect neighboring properties; and

- (cc) not be used to conduct a use not permitted in the district where the building site is located.

GENERAL FACTS:

- “Single family” use is defined in the Dallas Development Code as “one dwelling unit located on a lot.”
- In a single family, duplex, or townhouse district, a lot for a single family use may be supplied by not more than one electrical utility service, and metered by not more than one electrical meter.
- The subject site is 1.39 acres and developed with, according to DCAD records, a single family home that is in good condition built in 1928 with 4,587 square feet of living area, a 1,330 square foot guest house, 720 square foot detached garage, and 540 square foot servants quarters.
- This site plan indicates location of the proposed second electric meter on an existing meter base, adjacent to the accessory structure labeled “cottage”.
- The site plan indicates that the additional electric meter will be located 20 feet from the nearest property line which in this case is the side property line on the east.
- The applicant has indicated on the application that the second electric meter will serve the cottage located behind the main house. He states the cottage has inadequate electric power and plans for a family member to live in the cottage.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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

Timeline:

- May 18, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 12, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 17, 2006: The Board Senior Planner contacted the applicant and conveyed the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the August 4th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- July 26, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; the Chief Arborist, and the Assistant City Attorney to the

No review comment sheets were received on this case.

STAFF ANALYSIS:

- The applicant has the burden of proof in establishing that the additional electrical meter will not be contrary to the public interests; not adversely affect neighboring properties; and not be used to conduct a use not permitted in the district where the building site is located.

- If the Board were to approve the special exception request, subject to imposing a condition that the applicant comply with the submitted site plan, the applicant could construct or install a second electrical meter in the location shown on the site plan.

BOARD OF ADJUSTMENT ACTION: AUGUST 15, 2006

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Gabriel

I move that the Board of Adjustment **grant** the following application listed on the uncontested docket because it appears, from our evaluation of the properties and all relevant evidence that the application satisfies all the requirements of the Dallas Development Code and are consistent with the general purpose and intent of the Code. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: Hill

AYES: 5 – Richmond, Hill, Gabriel, Schweitzer, Griggs

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 056-179

BUILDING OFFICIAL'S REPORT:

Application of DeShazo Tang and Associattes, represented by John J. DeShazo Jr., for a special exception to the parking regulations at 13302 (aka 13338) Preston Road. This property is more fully described as a tract of land in City Block 7438 and is zoned RR which requires parking to be provided. The applicant proposes to maintain an existing shopping center and provide 351 of the proposed 380 required parking spaces which would require a special exception of 29 parking spaces. Referred to the Board of Adjustment in accordance with Section 51A-4.311 (a) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions

LOCATION: 13302 (aka 13338) Preston Road

APPLICANT: DeShazo Tang and Associattes,
Represented by John J. DeShazo Jr.

REQUEST:

- A special exception to the off-street parking regulations of 29 spaces (or 8% of the required off-street parking) is requested in conjunction with reallocating leasing areas/uses within an existing shopping center (The Preston Valley View Shopping Center).

STANDARD FOR A SPECIAL EXCEPTION TO THE OFF-STREET PARKING REGULATIONS:

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
 - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.

- (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
 - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
 - (E) The availability of public transit and the likelihood of its use.
 - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
 - 4) In granting a special exception, the board may:
 - (A) establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
 - (B) impose restrictions on access to or from the subject property; or
 - (C) impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
 - 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
 - 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
 - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
 - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

GENERAL FACTS:

- The applicant has provided a list of existing, planned, and conceivable uses for the center. This list includes the following: private recreation club, furniture store, general merchandise or food store greater than 3,500 square feet, general merchandise or food store 3,500 square feet or less, restaurant with drive-in or drive-through service, restaurant without drive-in or drive through service.
- The Dallas Development Code requires the following parking requirements for the existing, planned, or conceivable uses on the subject site:
 - 3 spaces are required for each game court and 1 space is required for each additional 150 square feet of floor for "private recreation, club, or area" use.
 - 1 space is required for every 500 square feet of floor area for "furniture store" use.
 - 1 space is required for every 200 square feet of floor area for "general merchandise or food store 3,500 square feet or less" and "general merchandise or food store greater than 3,500 square feet" uses.
 - 1 space is required for every 100 square feet of floor area for "restaurant without drive-in or drive-through" and "restaurant with drive-in or drive-through" uses.

- The applicant proposes to provide 351 (or 92%) of the total required 380 off-street parking spaces on the site.
- A study submitted in conjunction with the application indicates that the center has 60,214 square feet of area that is/can be leased.
- No enlargements or additions to the existing structures in the center are planned in conjunction with this request. This special exception request is triggered by the applicant's intent to possibly reallocate uses within the existing center. (The applicant informed the Board Administrator that this request was triggered by the owner's intent to possibly reallocate some existing retail uses/spaces to restaurant uses/spaces).
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included a list of existing, planned, and conceivable uses as identified in the Dallas Development Code to be considered by the Board of Adjustment in their determination on the appeal, and an amended "Executive Summary."

BACKGROUND INFORMATION:

Zoning:

Site: RR (Regional Retail)
North: PD No. 17 (Planned Development District restricted to Local Retail-3 uses)
South: PD No. 16 (Planned Development District restricted to Local Retail-3 uses)
East: SUP No. 502 (Specific Use Permit for Private Recreation Club and Area)
West: RR (Regional Retail)

Land Use:

The subject site is developed with a shopping center (The Preston Valley View Center). The areas to the north, south, and west are developed with retail uses; and the area to the east is developed with a private recreation center use.

Zoning/BDA History:

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| <p>1. BDA 990-236, 13141 Preston Road (the area immediately west of the subject site)</p> | <p>On April 18, 2000, the Board of Adjustment Panel B granted a request for a special exception to the off-street parking regulations of 1,123 spaces (or 15% of the total parking requirement). The board imposed the following conditions: compliance with the submitted site plan is required, and the special exception automatically and immediately terminates if and when the retail and restaurant uses on the site area changed or discontinued; and that improvements to</p> |
|---|--|

Dilbeck Lane access to the Valley View Center be put in place as soon as it is feasible. The case report stated that the request was made in conjunction with constructing a 20-screen theater (located in the Valley View Mall shopping center) and 25,000 square feet of restaurants to be located in the southwest corner of the subject site.

Timeline:

- June 22, 2006 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 11, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 12, 2006: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the requests;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the July 24th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - the August 4th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- July 24, 2006 The applicant submitted information beyond what was submitted with the original application (see Attachment A).
- July 26, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August

public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; the Chief Arborist, and the Assistant City Attorney to the Board.

August 2, 2006 The Development Services Senior Engineer submitted a review comment sheet marked "Has no objections." The engineer made the following additional comment:
- "Based on the parking analysis dated 4/24/2006."

STAFF ANALYSIS:

- 92 percent of the required off-street parking spaces are proposed to be provided in conjunction with the possible reallocation of leasing areas/uses within an existing shopping center (The Preston Valley View Shopping Center).
- No enlargements or additions to the existing structures in the center are planned in conjunction with this request. This special exception request is triggered by the applicant's intent to possibly reallocate the distribution of uses within the existing center.
- According to information in the submitted parking study, it appears that there is intent to reduce the amount of "furniture store" and "general merchandise" uses on the site, and to increase the amount of "restaurant" use on the site.
- Granting this request, subject to the condition that the special exception of 29 spaces automatically and immediately terminates if and when the proposed mix of uses on the site is changed or discontinued, would allow the approximately 60,000 square foot center to be potentially leased with this mix of uses.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the proposed mix of uses does not warrant the number of off-street parking spaces required, and
 - The special exception of 29 spaces (or 8% of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- The applicant has submitted a parking study that summarizes the projected parking demand of the proposed development based upon an hourly shared parking analysis of the site. The study determined that the highest cumulative site parking demand generated by the new development would be 244 spaces. (351 spaces are proposed to be provided on the site and 380 spaces are required for the proposed uses on the site).
- The Development Services Senior Engineer has commented that he has no objections to this request based on the April 24, 2006, parking analysis prepared by the applicant.

BOARD OF ADJUSTMENT ACTION: AUGUST 15, 2006

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Gabriel**

I move that the Board of Adjustment **grant** the following application listed on the uncontested docket because it appears, from our evaluation of the properties and all relevant evidence that the application satisfies all the requirements of the Dallas Development Code and are consistent with the general purpose and intent of the Code. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception shall automatically and immediately terminate if and when the private recreation club, personal service use, furniture store, general merchandise or food store greater than 3,500 square feet, general merchandise or food store 3,500 square feet or less, restaurant with drive-in or drive-through service, or restaurant without drive-in or drive-through service on the site is changed or discontinued.

SECONDED: **Hill**

AYES: 5 – Richmond, Hill, Gabriel, Schweitzer, Griggs

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 056-181

BUILDING OFFICIAL'S REPORT:

Application of Susan Howard represented by Karl A. Crawley, for a variance to the front yard setback regulations at 1207 North Oak Cliff Boulevard. This property is more fully described as Lot 11 in City Block 10/4630 and is zoned R-7.5(A) which requires a front yard setback of 25 feet. The applicant proposes to construct a structure and provide a 23 foot front yard setback which would require a variance of 2 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

LOCATION: 1207 North Oak Cliff Boulevard

APPLICANT: Susan Howard
Represented by Karl A. Crawley

REQUEST:

- A variance to the front yard setback regulations of 2' is requested in conjunction with constructing and maintaining a porch that would attach to single family 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:

- A 25' front yard setback is required in the R-7.5 (A) zoning district. The applicant has submitted a site plan indicating a proposed porch (approximately 33' long and 8' wide) that would attach to a single family home and would be located as its closest point, 23' from the front property line (or at most, 2' into the 25' front yard setback).
- The submitted site plan denotes an approximately 7 square foot triangular area of the proposed approximately 260 square foot porch that is located in the 25' front yard setback. (The site plan appears to denote the building footprint of an existing porch that the new porch would replace – an existing porch that complies with the 25' front yard setback and that is approximately 5' long and 6' wide).
- The site is flat, virtually triangular in shape, and, according to the application, 12,809.89 square feet in area. The site is zoned R-7.5 (A) where lots are typically 7,500 square feet in area.
- DCAD records indicate that the site is developed with a single family home in good condition built in 1941 with 3,799 square feet of living space, and a 399 square foot attached garage.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included existing and proposed front elevations, and a proposed new side elevation of the home on the site.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5 (A) (Single family district 7,500 square feet)

North: R-7.5 (A) (Single family district 7,500 square feet)
South: R-7.5 (A) (Single family district 7,500 square feet)
East: R-7.5 (A) (Single family district 7,500 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 home. The areas to the north, east, south, and west are developed with single family uses.

Zoning/BDA History:

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

Timeline:

- June 21, 2006 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 11, 2006: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- July 12, 2006: The Board Administrator left a message with the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the July 24th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - the August 4th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

July 13, 2006 The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).

July 26, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; 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 site is flat, virtually triangular in shape, and, according to the application, 12,809.89 square feet in area. The site is zoned R-7.5 (A) where lots are typically 7,500 square feet in area.
- The submitted site plan denotes an approximately 7 square foot triangular area of the proposed approximately 260 square foot rectangular-shaped porch that is located in the 25' front yard setback.
- The applicant has the burden of proof in establishing the following related to the front yard variance request:
 - That granting the variance to the front yard setback regulations of 2' requested to construct and maintain a porch that would attach to an existing single family home will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance to the front yard setback regulations of 2' requested to construct and maintain a porch that would attach to an existing single family home is necessary to permit development of the subject site (a site that is developed with a single family home, and a site that is virtually triangular in shape, and, according to the application, 12,809.89 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 to the front yard setback regulations of 2' requested to construct and maintain a porch that would attach to an existing single family home would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5 (A) zoning classification.

- If the Board were to grant the front yard variance request of 2', imposing a condition whereby the applicant must comply with the submitted site plan, the only structure that would be permitted to encroach into the front yard setback would be an approximately 7 square foot area of an approximately 260 square foot porch that would be located (at its northern edge) 23' from the site's front property line (or 2' into the 25' front yard setback).

BOARD OF ADJUSTMENT ACTION: AUGUST 15, 2006

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

***1:09 P.M. Griggs recused himself and did not vote.**

MOTION: Schweitzer

I move that the Board of Adjustment, in Appeal No. **BDA 056-181**, on application of Susan G. Howard, represented by Masterplan, **grant** the two-foot variance to the front yard setback regulations, because our evaluation of the property 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 conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: Gabriel

AYES: 4 – Richmond, Hill, Gabriel, Schweitzer

NAYS: 0 -

MOTION PASSED: 4– 0 (unanimously)

FILE NUMBER: BDA 056-184

BUILDING OFFICIAL'S REPORT:

Application of Gwth, L.P. represented by Masterplan, Karl A. Crawley, for a variance to the front yard setback regulations at 2429 North Hall Street. This property is more fully described as Lots 1 and 16 in City Block P/582 and is zoned PD-225 which requires that 70% of the setback corridor be occupied by a structure. The applicant proposes to construct a residential development and provide structures which do not cover 70% of the setback corridor which would require a variance. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

LOCATION: 2429 North Hall Street

APPLICANT: Gwth, L.P.
Represented by Masterplan, Karl A. Crawley

REQUEST:

- Variances to the front yard setback regulations, specifically, the minimum building width requirement for structures located in the “setback corridor” of PD No. 225 are requested in conjunction with constructing and maintaining a shared access development with 8 single family attached homes on a site that is currently undeveloped.

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:

- The subject site is located in the Interior Mid-Rise Office/Residential Subdistrict of PD No. 225 where all structures must have a minimum front yard setback of 8'. The applicant proposes to construct and maintain single family homes that would provide this minimum 8' front yard setback in its two front yard setbacks along Hugo Street on the southwest side of the subject site and along Hall Street on the northeast side of the subject site.
- However, the Interior Mid-Rise Office/Residential Subdistrict of PD No. 225 requires an additional “minimum building width” whereby all buildings and structures must have a front building wall that extends though the “setback corridor” along a line generally parallel to the street for a distance that is at least 70 percent of a number equal to the length of the minimum front yard setback line minus any required setbacks at either end of the minimum front yard setback line. (The setback corridor

is a 10' wide corridor that runs across the width of the lot from the minimum front setback line – in this case, an area within 8' – 13' from the front property line).

The applicant proposes to construct single family attached homes that are 35.5' wide, a width that is only 60% of the site's 50' wide Hugo Street frontage and only 57.7% of the site's 62' wide Hall Street frontage.

- The intent of the “minimum building width” requirement in PD No. 225 was most likely made part of the tailor-made PD (State-Thomas) zoning district of the site and surrounding area to encourage an urban environment where the bulk of the building massing (70%) is located at a relatively close distance from the street – where required parking for a structure would be located behind the structure instead of in front of it.
- The site is zoned PD No. 225, and is undeveloped, flat, pan-handle in shape, and, according to the application, 0.3696 acres in area. The site has two front yard setbacks: one on the southwest side of the site along Hugo Street, the other on the northeast side of the site along Hall Street.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included a letter that further explained the scope and merits of the requests.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	PD No. 225 (Planned Development District)
<u>North:</u>	PD No. 193 (MF-2 Subdistrict) (SUP 113 & 1058) (Planned Development District, Specific Use Permit)
<u>South:</u>	PD No. 225 (Planned Development District)
<u>East:</u>	PD No. 225 (Planned Development District)
<u>West:</u>	PD No. 225 (Planned Development District)

Land Use:

The subject site is undeveloped. The areas to the north and west are developed as a cemetery (Greenwood Cemetery); the area to the east is under development; and the area to the south is developed with multifamily uses.

Zoning/BDA History:

1. BDA 056-162, 2429 N. Hall Street (the subject site) On June 19, 2006, the Board of Adjustment Panel C granted a request for a special exception to the landscape regulations. The board imposed the following condition: compliance with the submitted alternate landscape plan is required. The case report stated that the request was made in conjunction with constructing and maintaining a “shared access development”

with 8 single family homes on a site that was undeveloped.

2. BDA 045-107, 3201 State Street (the lot immediately east of the subject site)

On November 16, 2004, the Board of Adjustment Panel A granted a request for a variance to the front yard setback regulations of 5' (subject to compliance with a revised site plan to be submitted to the board administrator reflecting the lack of lot lines), granted a request for a special exception to the landscape regulations (subject to compliance with a revised site/landscape plan that does not have reference to shared access development to be submitted to the board administrator), and denied a request for a variance to the parking regulations of 16 parking spaces without prejudice. The case report stated that the requests were made in conjunction with a "shared access development" proposal that would include 652 single family lots on a site that was undeveloped.

3. BDA 001-218, 2406-34 Ellis Street, 3115 State Street, 2414 Ellis Street and 2421 Hugo Street (the lot immediately south of the subject site)

On June 19, 2001, the Board of Adjustment Panel A granted requests for variances to the front yard setback regulations of 8' requested in conjunction with constructing a 177-unit townhouse development on the site. The board imposed the following condition: compliance with the submitted site plan is required. The case report stated that most of the variance needs were for "minimal encroachments into setbacks, most of which are for stairwells."

Timeline:

- Undated The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 11, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 12, 2006: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;

- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the July 24th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the August 4th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

July 24, 2006 The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A).

July 26, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; 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 site is undeveloped, flat, pan-handle in shape, and, according to the application, 0.3696 acres in area. The site has two front yard setbacks: one on the southwest side of the site along Hugo Street, the other on the northeast side of the site along Hall Street.
- The site is zoned PD No. 225 which includes a development standard not found in standard zoning classifications: a "minimum building width" provision. This provision requires 70% of the building frontage to be located (in this case) within 8' – 13' of the property line. Although the proposed townhomes are located within this setback corridor on Hall and Hugo Streets, the *width* of the proposed townhomes do not meet the additional 70% building *width* requirement since only 57% of the building's

width on Hall Street is proposed, and only 60% of the building's width on Hugo Street is proposed.

- The applicant contends that the building width requirement cannot be met given the narrowness of the site coupled with the minimum 20' width requirement for the Shared Access drive/fire lane that provides access to the proposed eight attached townhomes from Hall and Hugo Streets.
- The applicant has the burden of proof in establishing the following:
 - That granting the variances to the front yard setback regulations (specifically, building width regulations for the width of a structure in the front yard setback corridor) requested to construct and maintain an eight home shared access development will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variances to the front yard setback regulations (specifically, building width regulations for the width of a structure in the front yard setback corridor) requested to construct and maintain an eight home shared access development are necessary to permit development of the subject site (a site that is undeveloped, and a site that is flat, pan-handle in shape, and, according to the application, 0.3696 acres in area, 62' wide on Hall Street and, for practical purposes, 50' wide on Hugo Street) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 225 zoning classification.
 - The variances to the front yard setback regulations (specifically, building width regulations for the width of a structure in the front yard setback corridor) requested to construct and maintain an eight home shared access development would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD No. 225 zoning classification.

If the Board were to grant the front yard variance requests, imposing a condition whereby the applicant must comply with the submitted site plan, the 8-"unit" shared access development could be developed whereby 57% (or 13% less than the required 70%) of the structure's width would be located in the Hall Street front yard setback, and 60% (or 10% less than the required 70%) of the structure's width would be located in the Hugo Street front yard setback.

BOARD OF ADJUSTMENT ACTION: AUGUST 15, 2006

APPEARING IN FAVOR: Karl Crawley, 900 Jackson St., #640, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Hill

I move that the Board of Adjustment, in Appeal No. **BDA 056-184**, on application of GWTH LP, represented by Masterplan, **grant** the variance to the front yard setback regulations, specifically the minimum building width requirement for structures located in the “setback corridor” of PD No. 225, because our evaluation of the property 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 conditions 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, Hill, Gabriel, Schweitzer, Griggs

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 056-195

BUILDING OFFICIAL'S REPORT:

Application of Behringer Harvard Northwest Highway LP., represented by Rob Baldwin, for a special exception to the fence height regulations at 4434 West Northwest Highway. This property is more fully described as Lots 1-7 in City Block 3/5573 and is zoned R-10(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 10 foot fence in the required front yard setback which would require a special exception of 6 feet. Referred to the Board of Adjustment in accordance with Section 51A-4.602 (a) (6) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 4434 West Northwest Highway

APPLICANT: Behringer Harvard Northwest Highway LP.,
Represented by Rob Baldwin

REQUEST:

- A special exception to the fence height regulations of 6’ is requested in conjunction with constructing and maintaining the following in the site’s 30’ front yard setback along Northwest Highway:
 - an 8’ 1” high brick wall with 8’ 6” high columns; and
 - two 8’ 1” high open wrought iron entry gates with 10’ high entry columns.(The site is currently being developed as a shared access development/single family home subdivision).

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
The applicant has submitted a site plan and elevation indicating a wall and columns that would exceed 4' in height reaching a maximum height of 10'.
- The site is under development as a shared access development/single family home subdivision. According to the applicant's representative, the entire property is considered a single lot for setback purposes because it is being developed as a shared access development, and, as a result, the frontage along Northwest Highway is considered a front yard. If the site were zoned TH-2 zoning like the property to the west, the lots on the site that back to Northwest Highway would have rear yards against Northwest Highway as each lot is considered individually, and the fence, columns, and gates could reach 9' in height by right without a special exception to the fence height regulations.
- The following additional information was gleaned from the originally submitted unscaled site plan:
 - The proposed wall located in the 30' front yard setback would be approximately 500' in length, linear in design, and on the property line. (The distance of the wall from the curb line cannot be derived from this site plan).
- A revised site plan/elevation was submitted on July 28, 2006 (see Attachment A). The following additional information was gleaned from the submitted revised scaled site plan/elevation:
 - The proposed wall located in the 30' front yard setback is located about 1' from the property line or about 11' from the Northwest Highway curb line.
 - The two ingress/egress points to the site are recessed where the proposed wall is located outside the 20' visibility triangles at the drive approaches into the site.
- There has not been a landscape plan submitted in conjunction with this request that specifies any landscape materials to be placed adjacent to the proposed wall.
- There are three single family homes (across a 6-lane divided thoroughfare) that would have direct frontage to the proposed wall, none of which have fences in their front yard setbacks.
- The Board Administrator conducted a field visit of the site and surrounding area along Northwest Highway (about 500' to the east and west) and noted the following visible fences above four (4) feet high which appeared to be located in the front yard setback. (Note that these locations and dimensions are approximations):
 - An 8' high wall located immediately west of the subject site that may be permitted by right if it is construed to be a wall located in the side or rear yard setback.

- An 8' high wall (with 8.5' high columns) located immediately east of the subject site that is the result of an approved fence height special exception granted by the Board of Adjustment in May of 2005 (BDA 045-201).
- An 8' high wall located immediately north of the subject site that may be permitted by right if it is construed to be a wall located in the side or rear yard setback.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachments A and B). This information included the following:
 - a revised scaled site plan/elevation document;
 - a letter that explained in greater detail the nature and scope of the request and why it should be granted; and
 - photos of the site and surrounding area.

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: TH-3 (A) (Townhouse district)

Land Use:

The subject site is under development. The areas to the north, east, and west are developed with single family uses; and the area to the south is undeveloped.

Zoning/BDA History:

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| <ol style="list-style-type: none"> 1. BDA 045-201, 4460 W. Northwest Highway (the lot immediately east of the subject site) | <p>On May 18, 2005, the Board of Adjustment Panel B granted a request for a special exception to the fence height regulations of 4' 6". The board imposed the following condition: compliance with the submitted site plan and wall section is required. The case report stated that the request was made to construct and maintain an 8' high solid stone wall with 8' 6" high stone columns in the 30' front yard setback along Northwest Highway on a site being developed as a shared access development.</p> |
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Timeline:

- June 23, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 11, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 13, 2006: The Board Administrator left a message with the applicant's representative that conveyed the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the July 24th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - the August 4th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- July 26, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; the Chief Arborist, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- July 28 & August 7, 2006: The applicant's representative submitted information beyond what was submitted with the original application (see Attachments A and B).

August 2, 2006

The Development Services Senior Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met." The engineer made the following additional comments:

1. "Fence is outside the 45' x 45' intersection visibility triangles at Bretton Woods Way and Northwest Highway intersection; and
2. Fence is outside the 20' x 20' driveway visibility triangles."

STAFF ANALYSIS:

- A revised scaled site plan/elevation has been submitted that documents the location of the proposed wall in the Northwest Highway front yard setback relative to the front property line (about 1' off) and curb line (about 11' off). The revised scaled site plan/elevation denotes recessed ingress/egress points that the applicant's representative has stated are in compliance with the visibility obstruction regulations at the drive approaches into the site from Northwest Highway.
- The revised scaled site plan/elevation denotes a partial view of the proposal specifying that the wall will be brick and 8' 1" in height with columns to reach 8' 6" in height, and that the entry gates that will be open wrought iron and 8' 1" in height with 10' high entry columns.
- There has not been a landscape plan submitted in conjunction with this request that specifies any landscape materials to be placed adjacent to the proposed wall.
- There are three single family homes (across a 6-lane divided thoroughfare) that would have direct frontage to the proposed wall, none of which have fences in their front yard setbacks.
- The Board Administrator conducted a field visit of the site and surrounding area along Northwest Highway (about 500' to the east and west) and noted three visible fences above four (4) feet high which appeared to be located in the front yard setback.
- As of August 7th, no letters have been submitted in opposition or in support to the special exception.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 6' (whereby the proposed 8' 1" high brick wall and open wrought iron entry gates with 10' high entry columns) will not adversely affect neighboring property.
- Granting this special exception of 6' with a condition imposed that the applicant complies with the submitted revised site plan/elevation would assure that the proposed wall, columns, and gates that exceed 4' in height would be constructed and maintained as shown on this document.

BOARD OF ADJUSTMENT ACTION: AUGUST 15, 2006

APPEARING IN FAVOR:

Rob Baldwin, 401 Exposition, Dallas, TX

APPEARING IN OPPOSITION:

Nancy Kenty, 8723 Canyon Dr., Dallas, TX
Rue Henry, 4803 Shadywood, Dallas, TX
Janet Stone, 4922 W NW Hwy, Dallas, TX

MOTION: Hill

I move that the Board of Adjustment in Appeal No. **BDA 056-195**, hold this matter under advisement until **September 19, 2006** so that the applicant may come back to the board with a landscape plan.

SECONDED: Gabriel

AYES: 5 – Richmond, Hill, Gabriel, Schweitzer, Griggs

NAYS: 0 -

MOTION PASSED: 5- 0 (unanimously)

FILE NUMBER: BDA 056-196(J)

BUILDING OFFICIAL'S REPORT:

Application of Barry Brewer for a variance to the front yard setback regulations at 2902 Midway Plaza Road. This property is more fully described as Lot 14 in City Block 28/7614 and is zoned R-7.5(A) which requires a front yard setback of 25 feet. The applicant proposes to construct a single family dwelling and provide a 7 foot front yard setback which would require a variance of 18 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

LOCATION: 2902 Midway Plaza Road

APPLICANT: Barry Brewer

REQUEST:

- A variance to the front yard setback regulations of 18' is requested in conjunction with constructing a single family residence.

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:

- The site appears flat, irregular in shape, and approximately 17,800 square feet in area (0.40 acres).
- The request site is zoned where lots are typically 7,500 square feet in area.
- A 25'-front yard setback is required in the R-7.5(A) zoning district.
- The Development Code states that the front yard in a single family district is the shorter frontage if a corner lot has two street frontages of unequal distance and the longer frontage is governed by side yard regulations. Notwithstanding this, the continuity of the established setback along street frontage must be maintained.
- The site plan indicates that the single family structure will provide a 7' front yard setback.
- A site plan has been submitted that indicates the area of the single family structure proposed to be located in the 25'-front yard setback is approximately 779.4 square feet (18' x 43.3'). The footprint of the single family structure is indicated as approximately 2,078 square feet.
- DCAD records indicate that the site is undeveloped.

BACKGROUND INFORMATION:

Zoning:

- Site: R-7.5(A) (Single Family Residential 7,500 square feet)
- North: R-7.5(A) (Single Family Residential 7,500 square feet)
- South: R-7.5(A) (Single Family Residential 7,500 square feet)
- East: R-7.5(A) (Single Family Residential 7,500 square feet) and TH-2(A) (Townhouse)
- West: R-7.5(A) (Single Family Residential 7,500 square feet)

Land Use:

The subject site is undeveloped. The area to the north is duplex and single family residential uses; the area to the east is developed with single family uses; the area to the south is undeveloped; the area to the west is developed with a church.

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:

- June 27, 2006 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 12, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 17, 2006: The Board Senior Planner contacted the applicant and conveyed the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the August 4th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- July 26, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; the Chief Arborist, and the Assistant City Attorney to the Board.
- No review comment sheets were received.

STAFF ANALYSIS:

- The submitted site plan indicates that the single family structure provides a 7' front yard setback.

- Approximately 779.4 square feet (18' x 43.3') encroaches in to the front yard setback. The footprint of the single family structure is indicated as approximately 2,078 square feet.
- The plat map indicates the request site is approximately 17,800 square feet.
- If the Board were to grant the request, imposing a condition whereby the applicant must comply with the submitted site plan, the amount of additional encroachment into the front yard setback would be limited in this case to an area of approximately 779.4 square feet.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance of 18' to the front yard setback will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The front yard setback variance of 18' is necessary to permit development of the subject site (that appears flat, irregular in shape, and approximately 17,800 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 front yard setback variance of 18' would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.
- Granting this variance would allow approximately 779.4 square feet of a single family structure to encroach into the 15' front yard setback.

BOARD OF ADJUSTMENT ACTION: AUGUST 15, 2006

APPEARING IN FAVOR: Barry Brewer, 721 Mannington, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Hill

I move that the Board of Adjustment, in Appeal No. **BDA 056-196**, on application of Barry Brewer, **grant** the 18 foot variance to the front 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 conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: Gabriel

AYES: 3 – Richmond, Hill, Gabriel,

NAYS: 2 - Schweitzer, Griggs

MOTION FAILED: 3– 2

MOTION #2: Schweitzer

I move that the Board of Adjustment, in Appeal No. **BDA 056-196**, on application of Barry Brewer, **deny** the variance requested by this applicant **without prejudice**, 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 not result in unnecessary hardship to this applicant.

SECONDED: Hill

AYES: 4 – Richmond, Hill, Gabriel, Schweitzer

NAYS: 1 - Griggs

MOTION PASSED: 4– 1

FILE NUMBER: BDA 056-187(J)

BUILDING OFFICIAL'S REPORT:

Application of Fellowship Church c/o Brad Stoval, represented by Kimley-Horn and Associates Inc., Jeff Linder for a variance to the sidewalk regulations at 2809 Ross Avenue. This property is more fully described as a tract of land in City Block A/566 and is zoned PD-708 which requires a 10 foot sidewalk to be installed with new construction. The applicant proposes to construct an addition and provide a 5 foot wide sidewalk which would require a variance of 5 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102 (d) (10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

LOCATION: 2809 Ross Avenue

APPLICANT: Fellowship Church c/o Brad Stoval
Represented by Kimley-Horn and Associates Inc., Jeff Linder

REQUEST:

- A variance to the sidewalk regulations of 5' is requested in conjunction with constructing an addition.

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:

- The request site is currently developed with a church and a cell tower.
- The property is zoned Planned Development District No. 708, the Arts District Extension Planned Development District, which requires a 10' sidewalk for new construction.
- The applicant's representative provided a letter with the application explaining the purpose for the variance request. Photos of the 5' sidewalk were also submitted with the application.
- The submitted site plan shows the location of the portion of the site having a 5' sidewalk adjacent to Central Expressway service road, approximately 185 linear feet. The site plan also shows a 10' sidewalk on the remainder of the request site, approximately 640 linear feet adjacent to Flora Street, Ross Avenue, and the other portion of the site adjacent to Central Expressway.
- Sec. 51P-708.104(n) states that all regulations in Central Area-1 District standards apply unless otherwise provided in PD 708. Central Area-1 District regulations require a minimum sidewalk of 10 feet. This is the specific requirement that the applicant is seeking relief from.
- The site appears flat, irregular in shape, and approximately 1.74 acres in area. The site has a retaining wall on the west property line.
- DCAD indicates that the request site is developed with a 25,218 square foot distribution warehouse and a 17,000 square foot office built in 1968. The site visit shows that the request site has been remodeled for a church use.

BACKGROUND INFORMATION:

Zoning:

Request Site: PD 708 (Arts District Extension PD)
North: PD 708 (Arts District Extension PD)

South: CA-1(A) (Central Area-1)
East: PDD 298 Subdistrict 1 (Bryan Place Special Purpose District)
West: PD 708 (Arts District Extension PD)

Land Use:

The request site is developed with a church use and a cell tower. The area to the north is undeveloped; the area to the south is undeveloped and developed with a utility; the area to the west is developed with office and theater uses; and to the east is Central Expressway.

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:

- June 23, 2006 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 12, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 17, 2006: The Board Senior Planner contacted the applicant and conveyed the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the August 4th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

July 26, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; the Chief Arborist, and the Assistant City Attorney to the Board.

No review comment sheets were received.

STAFF ANALYSIS:

- The submitted site plan shows a 5' sidewalk at the southwest corner of the request site, from the intersection of Ross Avenue to the driveway. The site plan provides a 10' sidewalk adjacent to all other street frontages.
- Granting this variance, subject to the submitted site plan, would allow a 5' wide sidewalk in the location shown.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance of 5' to the sidewalk regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The sidewalk variance of 5' is necessary to permit development of the subject site (that is flat, irregular in shape, and approximately 1.74 acres) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD 708 zoning classification.
 - The sidewalk variance of 5' would not to be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD 708 zoning classification.

BOARD OF ADJUSTMENT ACTION: AUGUST 15, 2006

APPEARING IN FAVOR: Jeff Linder, 2809 Ross Ave., Dallas, TX

APPEARING IN OPPOSITION: Karen Pemberton, 3211 Trebold PL, Dallas, TX

MOTION #1: Griggs

I move that the Board of Adjustment, in Appeal No. **BDA 056-187**, on application of Fellowship Church, represented by Kimley-Horn and Associates Inc., **deny** the variance requested by this applicant **with prejudice**, 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 not result in unnecessary hardship to this applicant.

SECONDED: Schweitzer

AYES: 2 – Schweitzer, Griggs

NAYS: 3 – Richmond, Hill, Gabriel

MOTION FAILED: 3– 2

MOTION #2: Hill

I move that the Board of Adjustment, in Appeal No. **BDA 056-187**, on application of Fellowship Church, represented by Kimley-Horn and Associates Inc., **grant** the five foot variance to the sidewalk 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 conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: Gabriel

AYES: 3 – Richmond, Hill, Gabriel

NAYS: 2 – Schweitzer, Griggs

MOTION FAILED: 3– 2

MOTION #3: Hill

I move that the Board of Adjustment, in Appeal No. **BDA 056-187**, on application of Fellowship Church, represented by Kimley-Horn and Associates Inc., **deny** the variance requested by this applicant **without prejudice**, 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 not result in unnecessary hardship to this applicant.

SECONDED: Gabriel

AYES: 3 – Richmond, Hill, Gabriel

NAYS: 2 – Schweitzer, Griggs

MOTION PASSED: 3– 2

MOTION: Hill

I move to adjourn this meeting.

SECONDED: Gabriel

AYES:5— Richmond, Hill, Gabriel, Schweitzer, Griggs

NAYS: 0 -

MOTION PASSED: 5– 0 (Unanimously)

2:30 P.M. - Board Meeting adjourned for August 15, 2006.

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.