

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
TUESDAY, SEPTEMBER 16, 2008**

MEMBERS PRESENT AT BRIEFING: Rob Richmond, Chair, Jordan Schweitzer, Panel Vice-Chair, Ben Gabriel, 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, Chau Nguyen, Traffic Engineer and Trena Law, Board Secretary

MEMBERS PRESENT AT HEARING: Rob Richmond, Chair, Jordan Schweitzer, Panel Vice-Chair, Ben Gabriel, regular member, Ellen Taft regular member, and Steve Harris, regular 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, Chau Nguyen, Traffic Engineer and Trena Law, Board Secretary

11:02 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **September 16, 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 August 12, 2008 public hearing minutes as amended.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 16, 2008

MOTION: Schweitzer

I move **approval** of the Tuesday, **August 12, 2008** public hearing minutes as amended.

SECONDED: Gabriel

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 078-102

BUILDING OFFICIAL'S REPORT:

Application of Fred Yick, represented by Jim Copus of the Michael R. Coker Company, for a special exception to the parking regulations at 8989 Forest Lane. This property is more fully described as Lot 5 in City Block A/8410 and is zoned CR which requires parking to be provided. The applicant proposes to maintain a structure with restaurant without drive-in or drive-through service, office, medical clinic or ambulatory surgical center use, personal service, and general merchandise or food store less than 3500 square feet uses, and provide 250 of the required 283 parking spaces which will require a special exception of 33 spaces (12% reduction) to the parking regulations.

LOCATION: 8989 Forest Lane

**APPLICANT: Fred Yick
Represented by Jim Copus of the Michael R. Coker Company**

REQUEST:

- A special exception to the off-street parking regulations of 33 parking spaces (or a 12 percent reduction of the required off-street parking) is requested in conjunction with leasing suites within an existing approximately 41,000 square foot shopping center (Forest View Plaza) with a mix of restaurant without drive-in or drive through service, office, medical clinic or ambulatory surgical center, personal service, and general merchandise or food store less than 3,500 square foot uses.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The special exception of 33 spaces automatically and immediately terminates if and when the restaurant without drive-in or drive through service office, medical clinic or ambulatory surgical center, personal service, and general merchandise or food store less than 3,500 square foot uses on the site are changed or discontinued.

Rationale:

- Although staff had originally recommended denial of this request largely based on the lack of support from the Development Services Senior Engineer, staff (including the senior engineer) now supports the request based on the applicant's representative's parking analysis submitted on August 22, 2008.
- The applicant has substantiated how the parking demand generated by the restaurant without drive-in or drive through service office, medical clinic or ambulatory surgical center, personal service, and general merchandise or food store less than 3,500 square foot uses does not warrant the number of off-street parking spaces required, nor that the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. In this case, the applicant has submitted a parking study/analysis that the Development Services Senior Engineer concluded was a key component in obtaining his approval. The parking demand analysis of the parking study/analysis of August 22, 2008 supports the occupancy of approximately 11,800 square feet of leasable retail area within the approximately 41,000 square foot center that can be accommodated by the existing parking supply of 250 spaces that is 33 spaces less than the code required parking.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or

one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.

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

GENERAL FACTS:

- The Dallas Development Code requires the following off-street parking requirements:

- Restaurant without drive-in or drive-through service use (as a main use): 1 space per 100 square feet of floor area.
- Office use: 1 space per 333 square feet of floor area.
- Medical center or ambulatory surgical center use: 1 space per 200 square feet of floor area.
- Personal service center use: 1 space per 200 square feet of floor area.
- General merchandise or food store greater than 3,500 square feet: 1 space per 200 square feet of floor area. If more than ten off-street parking spaces are required for this use, handicapped parking must be provided pursuant to code.

Materials within the application and Building Official's Report state that 250 (or 88 percent) of the required 283 spaces will be provided in conjunction with leasing more than 12,700 square feet of retail spaces that has remained vacant for more than 18 years.

- On August 1, 2008, the applicant's representative submitted additional information to staff regarding the request (see Attachment A). This information included the following:
 - two maps indicating "peak parking counts" on July 22, 2008 from 6:00 p.m. to 7:30 p.m. and on July 25, 2008 from 12:00 p.m. to 1:30 p.m.; and
 - a table that lists the businesses in the center along with their hours of operation and required parking.
- On August 12, 2008, the Board of Adjustment conducted a public hearing on this matter where the board delayed action on this matter until September 16, 2008 in order to allow the applicant's representative an opportunity to submit additional information to the Development Services Senior Engineer in an attempt to garner his support of the request.
- On August 22, 2008, the applicant's representative submitted a revised parking analysis to staff (see Attachment B).

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	CR (Community Retail)
<u>North:</u>	MF-2(A) (Multifamily)
<u>South:</u>	CR (Community Retail)
<u>East:</u>	CR and SUP 742 (Community Retail and Specific Use Permit)
<u>West:</u>	IR (Industrial Research)

Land Use:

The subject site is developed with an approximately 40,000 square foot retail center (Forest View Plaza). The area to the north is developed with multifamily uses; the area to the east is developed with a nursing home use and retail uses; the area to the south is developed with commercial uses; and the area to the west is developed with office use (Texas Instruments).

Zoning/BDA History:

1. BDA 034-106, property located at 8989 Forest Lane (the subject site)

On December 9, 2003, the Board of Adjustment Panel A granted a request for a special exception to the parking regulations of 27 spaces and imposed the following conditions: 1) the special exception of 27 spaces shall automatically and immediately terminate if and when the retail, restaurant and office uses on the site are changed or discontinued. (It is agreed and understood that changes in the existing or future tenant mix or the physical location of the tenants on the site shall not in and of itself be grounds for termination of this special exception); and 2) the restaurant use on the site may not have more than 16,000 square feet of floor area at any given time. The case report stated that the request was requested in conjunction with facilitating the leasing of more than 12,000 square feet of retail space that has remained vacant for more than 18 years in an existing retail center (Forest View Plaza. The applicant proposes to provide 254 of the required 281 required off-street parking spaces.

Timeline:

- June 26, 2008: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 16, 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."
- July 17, 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 July 28th deadline to submit additional evidence for staff to factor into their analysis;
- the August 1st 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 August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

July 29, 2008: 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 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.

August 1, 2008 The Development Services Senior Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments: "A parking study/analysis is needed to substantiate the request. The "Forest View Parking Analysis" submitted with the application is considered a parking table showing only spaces required per code. Ref: BDA034-106." (Note the Development Services Senior Engineer's review comment sheet of November 24, 2003 regarding BDA034-106 was marked "Has no objections if certain conditions are met" with the following comments: "1) In the parking analysis, indicate percentage of compact parking spaces; and 2) Due to vacant retail spaces and different types of business, parking spaces may be shared by overlapping uses.")

August 1, 2008 The applicant's representative submitted additional information to the Board Administrator (see Attachment A).

August 12, 2008: The Board of Adjustment conducted a public hearing where the board delayed action on this matter until September 16, 2008 in order to allow the applicant's representative an opportunity to

submit additional information to the Development Services Senior Engineer in an attempt to garner his support of the request.

August 22, 2008: The applicant's representative submitted additional documentation to staff (see Attachment B).

August 26, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Assistant Director of Development Services, 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, and the Assistant City Attorney to the Board.

August 25, 2008 The Development Services Senior Engineer submitted a review comment sheet marked "Has no objections" with the following comments: "Based on the parking analysis submitted on August 22, 2008."

STAFF ANALYSIS:

- This parking special exception request is made in conjunction with leasing suites with certain uses within an existing approximately 41,000 square foot shopping center. Although no additional square footage is planned in conjunction with this request, the applicant seeks a reduction of the required off-street parking spaces in order to lease some of the suites within the center with uses that have a higher parking requirement than what presently exist in the center.
- This parking special exception request is for a reduction of 33 parking spaces (or a 12 percent reduction of the required spaces) in order to lease the center with a certain amount of square footage allotted for a mix of restaurant without drive-in or drive through service office, medical clinic or ambulatory surgical center, personal service, and general merchandise or food store less than 3,500 square foot uses.
- This subject site has already achieved a parking special exception of 27 spaces from Board of Adjustment Panel A in December of 2003. But with the proposed mix of uses requested in conjunction with the current application, the applicant must return to the board in order to:
 - 1) increase the previous reduction/special exception by 6 spaces (only 27 spaces were "excepted" in 2003);
 - 2) add 332 square feet of restaurant use beyond the 16,000 square foot restaurant use maximum that the applicant was conditioned to in 2003; and
 - 3) add "medical clinic or ambulatory surgical center" use (a use that the applicant had not requested or was not conditioned to in 2003).
- The applicant proposes to provide 250 (or 88 percent) of the required 283 spaces in conjunction with the proposed designation/leasing of uses within the existing shopping center.

- The Development Services Senior Engineer has indicated that he would have no objections to this request based on the parking analysis submitted on August 22, 2008.
- The parking demand analysis of the parking study/analysis of August 22, 2008 supports the occupancy of approximately 11,800 square feet of leasable retail area within the approximately 41,000 square foot center that can be accommodated by the existing parking supply of 250 spaces that is 33 spaces less than the code required parking.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by restaurant without drive-in or drive through service office, medical clinic or ambulatory surgical center, personal service, and general merchandise or food store less than 3,500 square foot uses does not warrant the number of off-street parking spaces required, and
 - The special exception of 33 spaces (or 12 percent of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- Granting this request, subject to the condition that the special exception of 33 spaces automatically and immediately terminates if and when the restaurant without drive-in or drive through service office, medical clinic or ambulatory surgical center, personal service, and general merchandise or food store less than 3,500 square foot uses are changed or discontinued, would allow the applicant to lease the shopping center with this mix of uses.

BOARD OF ADJUSTMENT ACTION: AUGUST 12, 2008

APPEARING IN FAVOR: Jim Copus, 1428 Lomond, Allen, TX

APPEARING IN OPPOSITION: No one

MOTION: Harris

I move that the Board of Adjustment in Appeal No. **BDA 078-102**, hold this matter under advisement until **September 16, 2008**.

SECONDED: Gabriel

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 16, 2008

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Harris

I move that the Board of Adjustment grant application **BDA 078-102** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- The special exception shall automatically and immediately terminate if and when the restaurant without drive-in or drive through service, office, medical clinic or ambulatory surgical center, personal service, and general merchandise or food store less than 3,500 square foot uses on the site are changed or discontinued.

SECONDED: Taft

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 078-120(K)

BUILDING OFFICIAL’S REPORT:

Application of Lelious A. Johnson for a variance to the building height regulations at 4110 S. Lamar Street (aka 4106 & 4114). This property is more fully described as Lots 2, 3, & 4 in City Block 1682 and is zoned PD 595 (NC) which limits the maximum building height to 26 feet due to a residential proximity slope. The applicant proposes to construct a nonresidential structure for a church use with a building height of 39 feet 4 inches which will require a variance of 13 feet 4 inches.

LOCATION: 4110 S. Lamar Street (aka 4106 & 4114)

APPLICANT: Lelious A. Johnson

REQUESTS:

The applicant proposes to construct a nonresidential structure for a church use with a building height of 39 feet 4 inches, which will require a 13 foot 4 inch variance to the maximum building height regulation due to a residential proximity slope.

STAFF RECOMMENDATION (Variance):

Approval

Rationale:

- Staff concluded the proposed development will not be contrary to public interest due to the single family residential proximity to the proposed development.
- A variance is necessary to permit development of this particular site because it differs from other parcels of land in the same PD 595 (NC) zoning district due to its restrictive, irregular shape.

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 is zoned PD 595 which allows for the proposed use of the site, St. Paul Baptist Church.
- PD 595 states that any portion of a structure over 26 feet in height may not be located above a 1-to-3 residential proximity slope. It further states the maximum height of any structure is 30 feet.
- The applicant is proposing to construct and maintain a nonresidential structure that will be 39 feet in height.
- The site has frontage on four streets (South Lamar, Poplar, Holmes, and Pine). Properties to the east on Holmes St are zoned PD 595(R-5(A)) and are developed with single family structures.

BACKGROUND INFORMATION:

Zoning:

Site: PD 595 (NC) (Neighborhood Commercial Subdistrict)
North: PD 595 (NC) (Neighborhood Commercial Subdistrict)
South: PD 595 (RS-MU) (Regional Service Mixed Use Subdistrict)
East: PD 595 (R-5(A)) (Single family residential 5,000 square feet)
West: PD 595 (RS-MU) (Regional Service Mixed Use Subdistrict)

Land Use:

The subject site is developed. The properties to the east are developed with single family structures. The properties to the south and west are developed with commercial uses. The property to the north is undeveloped.

Zoning/BDA History:

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

Timeline:

- July 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.
- August 14, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- August 15, 2008: The Board of Adjustment Senior Planner, contacted the applicant and shared the following information by phone and letter:
- the public hearing date and panel that will consider the application;
 - the criteria and standard that the board will use in their decision to approve or deny the request;
 - the August 25 deadline to submit additional evidence for staff to factor into their analysis;
 - the September 5th 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 September public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.

August 26, 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 comment sheets were submitted in conjunction with this application.

STAFF ANALYSIS:

- PD 595 was established by Ordinance No. 24726 on September 26, 2001.
 - The NC neighborhood Commercial Subdistrict is characterized by small institutional and community service, office, and retail and personal service uses primarily serving nearby residential areas. The scale, intensity, and design of structures are similar to surrounding residential areas so as to minimize the impact on surrounding neighborhoods.
 - According to DCAD the property is developed with a commercial warehouse (9,240 square feet) that was constructed in 1945 and is in poor condition.
 - This site is different from other properties in the PD595 (NC) zoning in that it has an irregular shape that limits the developable area on the lot. The property has four front yards along Lamar, Pine, Holmes, and Poplar Streets.
 - The applicant submitted a site plan and elevation in conjunction with this application. The submitted elevation indicates the existing truss on the structure is 35 feet in height. The applicant is requesting a variance to allow a maximum height of 39 feet.
 - The submitted elevation illustrates a structure with varying heights ranging from 14 feet in height to 39 feet.
 - The residential proximity slope requirement is created by the single family structures in the PD 595(R-5(A)) zoning to the east of the property, where many structures appear to be abandoned. The submitted elevations shows roof line to be increasing from 28 feet to 39 feet in height along span of 228 linear feet.
 - The code states the proximity slope for zoning category of residential site of origin is 1 to 3 and the extent of this requirement is indefinite.
1. If the Board were to grant the height variance request, imposing a condition whereby the applicant must comply with the submitted site plan, the structures would be limited to height that is shown on this plan.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 16, 2008

APPEARING IN OPPOSITION: No one

MOTION: Harris

I move that the Board of Adjustment grant application **BDA 078-120** 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: 5 – Richmond, Schweitzer, Gabriel, Taft, Harris

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 078-118(K)

BUILDING OFFICIAL'S REPORT:

Application of Robert Reeves for a special exception to the fence height regulations at 5103 Southbrook Drive (aka 4954 W. Northwest Hwy.). This property is more fully described as Lot 1J in City Block 5/5578 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 an 11 foot fence in a required front yard setback which will require a special exception of 7 feet.

LOCATION: 5103 Southbrook Drive (aka 4954 W. Northwest Hwy.)

APPLICANT: Robert Reeves

REQUEST:

A special exception to the fence height regulations of 7' is requested in conjunction with constructing and maintaining a solid fence and gate in the site's Northwest Highway 40' front yard setback and a special exception of 1' to maintain a 10' fence in the property's western side yard setback.

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The subject site is located on Northwest Highway. The site has two front yard setbacks one along Northwest Highway and another on Southbrook Drive. The front yard along Southbrook Drive is at the end of a cul-de-sac.
- The applicant is proposing to maintain an 11’ solid fence and gate along Northwest Highway frontage and to maintain a 10’ fence in the property’s western side yard.
- 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 a person shall not erect or maintain a fence in a required side yard more than nine feet above grade.

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 067-144
(the subject site) | On October 15, 2007, the Board of Adjustment Panel C took the following actions:
1. Granted a request to the floor area |
|--------------------------------------|--|

ratio regulations of 7,641.5 square feet.

2. BDA 078-027

On February 12, 2008, the Board of Adjustment Panel A took the following action:

1. Denied a requested for a special exception to the fence height regulation.

Timeline:

- July 23 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.
- August 14 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- August 15 2008: The Board of Adjustment’s Senior Planner contacted the applicant’s representative and shared the following information via telephone and letter:
- the public hearing date and panel that will consider the application;
 - the criteria and standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the August 25th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board’s docket;
 - the September 5th 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 September public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.
- August 26, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September

public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- A scaled site has been submitted that document the location of the proposed wall, fence, columns, and gates relative to their proximity to the property line.
- A scaled elevation has been submitted that documents the height of the stucco wall to be 8'6" in height, the columns and stone caps to be 9' in height, and an ornamental wrought iron fence 11' in height.
- There are other solid fences existing on neighboring properties on Northwest Highway.
- The scaled site plan details the following information regarding the placement and dimensions of the fence.
 - The fence along the Northwest Highway front yard;
 - 9' tall stucco wall with stone cap. (65 linear feet), wall will have columns
 - Decorative iron gate, 11' in height.
 - The fence along the western property line:
 - 10' tall stucco wall with stone caps 10 linear feet.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the fence, wall, columns, and gate that are proposed to exceed 4' in height) will not adversely affect neighboring property.
- Granting this special exception of 7' in the required front yard and 1' in the required side yard with conditions imposed that the applicant complies with the submitted site plan and elevation would assure that the proposed fences, columns, and gates are constructed and maintained as shown on these documents.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 16, 2008

APPEARING IN FAVOR: Robert Reeves, 900 Jackson St., #160, Dallas, TX

APPEARING IN OPPOSITION: Janet Stone, 4922 W. NW Hwy, Dallas, TX
Pat White, 4714 Wildwood Road, Dallas, TX
Nancy Kenty, 8723 Canyon Dr., Dallas, TX

MOTION #1: Schweitzer

I move that the Board of Adjustment, in Appeal No. **BDA 078-118**, on application of Robert Reeves, **grant** the request of this applicant to construct and maintain an 11-foot-high fence on the property's Northwest Highway 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 site plan and elevation is required.

SECONDED: Harris

AYES: 4 – Richmond, Schweitzer, Gabriel, Harris

NAYS: 1 - Taft

MOTION PASSED: 4– 1

MOTION #2: Schweitzer

I move that the Board of Adjustment, in Appeal No. **BDA 078-118**, on application of Robert Reeves, **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 site plan and elevation is required.

SECONDED: Gabriel

AYES: 4 – Richmond, Schweitzer, Gabriel, Harris

NAYS: 1 - Taft

MOTION PASSED: 4– 1

FILE NUMBER: BDA 078-121

BUILDING OFFICIAL'S REPORT:

Application of Adam Sanderson, represented by the Michael R. Coker Company, for a special exception to the single family use regulations at 4821 Tremont Street. This property is more fully described as Lot 15 in City Block A/795 and is zoned PD-97(H/11) which limits the number of dwelling units to one. The applicant proposes to construct an additional dwelling unit which will require a special exception.

LOCATION: 4821 Tremont Street

APPLICANT: Adam Sanderson
Represented by the Michael R. Coker Company

September 16, 2008 Public Hearing Notes:

- The applicant's representative testified at the public hearing that he was not in a position where he felt that he needed to submit a revised site plan to the board based upon discussions that he had had with city staff from Building Inspection and the City Attorney's Office. The Board Administrator had the applicant's representative acknowledge at the hearing on the possibility that the City could deny permits for the accessory structure as shown on the submitted site plan, and if denied, the approved special exception request would become void if the board were to impose the submitted site plan as a condition to the special exception.

REQUEST:

- A special exception to the single family regulations is requested in conjunction with maintaining an approximately 555 square foot additional dwelling unit on a site currently developed with a single family home. The existing additional dwelling unit that is the issue of this request is located atop an existing detached accessory/garage structure and according to the applicant's representative was in place when the applicant purchased the property in September of 2007.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to authorize an additional dwelling unit in any single family zoning district since the basis for this type of appeal is *when in the opinion of the board*, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties. In granting a special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

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

The board may grant a special exception within the single family use regulations to authorize an additional dwelling unit in any single family zoning district when, in the opinion of the board, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties. In granting a special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

GENERAL FACTS:

- The Dallas Development Code limits the number of dwelling units on any lot where a single family use is permitted to one dwelling unit. In addition, the Dallas Development Code defines “single family” use as “one dwelling unit located on a lot;” and a “dwelling unit” as “one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms.”
A revised site plan has been submitted denoting a building footprint part of which is labeled “existing dwelling unit (top floor)/existing garage” and part of which is labeled “new addition.” Revised first and second floor plans have also been submitted denoting that the portion of the existing 2-story accessory structure that is the nature of this request. The revised second floor plan denotes the “dwelling unit” area comprised of a bath, wet bar, and an area that is unlabeled but presumed to be living area. A September 5th letter from the applicant’s representative describes the dwelling unit area as being 555 square feet.
- Originally, first and second floor plans had been submitted denoting that the accessory structure’s first floor would be comprised of an “existing garage” that was about 480 square feet in area with a “new workout rm.” that was about 350 square feet in area for a total 1st floor area of 866 square feet; and that the accessory structure’s second floor would be comprised of an “existing living/kitchen/bath” that was about 480 square feet in area with an “arts studio” and “storage room” that was about 350 square feet in area for a total 2nd floor area of 808 square feet.
The existing accessory structure (prior to the proposed addition) on the original plans was comprised of rooms that appeared to include a kitchen/living area and bath whereby the Building Official had deemed it not only an “accessory structure” but a “dwelling unit” as well.
- DCAD records indicate that the site is developed with the following:
 - a single family home built in 1922 in excellent condition with 2,665 square feet of living area;
 - a 506 square foot “attached servants quarters;”
 - a 506 square foot detached garage; and
 - a 250 square foot “outbuilding.”

- The original application included an additional request for a variance to the FAR (Floor Area Ratio) regulations of 663 square feet requested in conjunction with constructing/maintaining a two-story, workout room/arts studio addition (with an approximately 350 square foot building footprint) to the existing two-story garage/living/kitchen/bath accessory structure whereby the expanded accessory structure would be greater than 25 percent of the main structure. This request was withdrawn by the applicant on August 26, 2008.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment B). This information included the following:
 - a document that further explains the nature of the request and why it should be granted; and
 - a revised site plan and floor plans.

The revised site plan and revised floor plans submitted to staff on September 5th were a follow-up to the withdrawal of the FAR variance request on August 26, 2008. The applicant's representative stated that these revised plans represented a revised scenario where two separate accessory structures had been created (separated by a 2-hour fire wall and 1 ½ hour fire rated doors) which documented why the original request for an FAR variance was no longer needed since both separate accessory structures (one being the existing dwelling unit, the other being the new addition) were individually less than 25 percent of the floor area of the main structure on the site.
- However Building Inspection has stated that the revised September 5th site plan/floor plans do not represent two separate accessory structures and are not in compliance with the Dallas Development Code provisions related to accessory structures. (Building Inspection staff has informed the applicant's representative of this interpretation). As a result, the applicant will have a choice to submit revised plans at the September 16th hearing that Building Inspection deems to be in compliance with the Code's accessory structure provisions, OR if the applicant chooses to retain the revised September 5th plans, an application must be re-filed that requests a variance to the FAR regulations that would be scheduled for either a Board of Adjustment Panel A public hearing in October or November of 2008.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 97 (H-11)(Planned Development District, Historic Overlay District)
North: PD No. 97 (H-11)(Planned Development District, Historic Overlay District)
South: PD No. 97 (H-11)(Planned Development District, Historic Overlay District)
East: PD No. 97 (H-11)(Planned Development District, Historic Overlay District)
West: PD No. 97 (H-11)(Planned Development District, Historic Overlay District)

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:

- July 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.
- August 14, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A
- August 14, 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 August 26th deadline to submit additional evidence for staff to factor into their analysis;
 - the September 5th 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 September public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- August 26, 2008: The applicant's representative submitted an email requesting to withdraw the variance to the FAR regulations component of the application.
- August 26, 2008 The Building Inspection Development Code Specialist forwarded a revised Building Official's Report to the staff (see Attachment A).
- August 26, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Assistant Director of Development Services, 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, and the Assistant City Attorney to the Board.

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

Sept. 5, 2008: The applicant's representative submitted additional information to staff beyond what was submitted with the original application (see Attachment B).

STAFF ANALYSIS:

- This request focuses on maintaining an additional "dwelling unit" structure that according to the applicant has been in place on the subject site since the applicant purchased the property in September of 2007 – a "dwelling unit" structure in this case that is 555 square feet in area, is located atop a detached garage accessory structure, and is comprised of a "bath," "wet bar," and an area that is unlabeled on the submitted revised 2nd floor plan but presumed to be living area.
- The site is zoned PD No. 97 (H-11) where the Dallas Development Code permits one dwelling unit per lot. The site is developed with a single family home/dwelling unit, and the applicant proposes to maintain the existing second/additional dwelling unit on the site hence the special exception request.
- This request centers on the function of what is located inside the structure. Building Inspection has deemed the second floor of the existing accessory structure a "dwelling unit" based on what is shown on the submitted 2nd floor plan.
- The applicant has the burden of proof in establishing that the additional dwelling unit will not be used as rental accommodations (by providing deed restrictions, if approved) and does not adversely affect neighboring properties.
- If the Board were to approve the request for a special exception to the single family regulations, they may feel it is necessary in order to help assure that the special exception will not adversely affect neighboring properties for the applicant to submit a site plan that can be imposed as a condition to the request that: 1) accurately portrays the dimensions/building footprint of the existing structure, and 2) complies with Dallas Development Code regulations related to accessory structures. To date, no such site plan has been submitted.
- The Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 16, 2008

APPEARING IN FAVOR: Michael Coker, 2700 Swiss Ave., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Harris**

I move that the Board of Adjustment, in Appeal No. **BDA 078-121** on application of Adam Sanderson, represented by Michael R. Coker Co., **grant** the request of this applicant to maintain an additional dwelling unit on the property, because our evaluation of the property and testimony shows that the additional dwelling unit will not be used as rental accommodations nor adversely affect neighboring properties. 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 shown on page 4-8d and floor plan shown on page 4-8f are required.
- The property must be deed restricted to prohibit the additional dwelling unit on the site from being used as rental accommodations.

SECONDED: **Taft**

AYES: 4 – Richmond, Gabriel, Taft, Harris

NAYS: 1 - Schweitzer

MOTION PASSED: 4– 1

FILE NUMBER: BDA 078-116

BUILDING OFFICIAL’S REPORT:

Application of James B. Daniels, represented by Santiago Pena, for a special exception to the fence height regulations at 4421 Walnut Hill Lane. This property is more fully described as Lot 8 and the western 10 feet of Lot 7 in City Block 2/5538 and is zoned R-16(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain a 9 foot fence in a required front yard setback which will require a special exception of 5 feet.

LOCATION: 4421 Walnut Hill Lane

APPLICANT: James B. Daniels
Represented by Santiago Pena

September 16, 2008 Public Hearing Notes:

- The applicant and his representative designated one of the two submitted elevations as the one to be considered by the board at the public hearing.
- The applicant and his representative and opposition to the request submitted photographs to the board at the public hearing.
- The Board of Adjustment delayed action on this request until October 14th encouraging the applicant to: 1) meet with staff to get a better understanding of the type of materials that needed to be submitted in conjunction with this type of request, and 2) meet with the two opposing property owners (one who testified at the hearing, the other who had written a letter) in an attempt to form a mutually agreed upon proposal (perhaps one of a lesser height and/or different materials).

REQUEST:

- A special exception to the fence height regulations of 5’ is requested in conjunction with completing and maintaining (according to the application, Building Official’s Report, and one of two submitted elevations) a 9’ high solid cedar fence/wall with two open steel tube gates in the site’s 30’ front yard setback on a site developed with a single family home.

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The Dallas Development Code states that a fence may not exceed 4’ above grade when located in the required front yard in all residential districts except multifamily districts.
The applicant has submitted a site plan, two elevations, and a written document, some of which state that the proposal will reach a maximum height of 9 feet.
- The following additional information was gleaned from the submitted scaled site plan:
 - The plan denotes a fence line described as “erect 8’ fence.”
 - The proposal appears to be approximately 110’ in length parallel to the street and approximately 18’ in length perpendicular to the street on both “sides” of the site in the front yard setback.

- The proposal appears to be located about 12' from the front property line or approximately 20' from the pavement line.
- The proposal appears to be in compliance with the City's visual obstruction regulations from what is shown on the submitted site plan, however, the Board Administrator has forwarded a copy of these regulations to the applicant for him to make a determination as to whether the proposal is indeed in compliance with these regulations based upon what the Board Administrator observed on the site from his field visit.
- The location of the gates that are to exceed 4' in height are not noted on the submitted site plan.
- The following additional information was gleaned from the one of two submitted elevations:
 - An 8' 3" high cedar 1" x 6" x 8' slat fence with two slide gates (custom steel gates 2 1/2" x 2 1/2" x 1/4" square) that appear to be slightly higher than 8' in height.
- The following additional information was gleaned from the other of two submitted elevations:
 - A 9' high (1" x 6" cedar uprights with 2" x 6" cedar cap) fence/wall with two gates (2' x 2" steel tube).
- The applicant's representative submitted additional documentation regarding his request (see Attachment A). This additional documentation describes among other things how "the fence height that we are trying to achieve is a total height of 9'." This document also describes the following:
 - "Two each beautiful wrought iron gates for front entry @ Walnut Hill Lane." (No heights mentioned).
 - "Four, beautifully hand, made steel and wrought iron entry scones at each entry/exit point of fence."
 - "Board on board overlap fence construction, with top and bottom full board runners." (No heights mentioned or denoted on either of the two submitted elevations).
 - "Dark Mahogany stain on interior and exterior of the complete fence structure." (Not denoted on either of the two submitted elevations).
 - "Landscaping to match the existing interior at front and sides of house." (Not denoted on the either of the two submitted elevations or the submitted site plan).

The document describes the landscaping as follows:

 - "Installation of (4) 10 gal Crate Myrtles along front curved area of fence, between the circle drive entries.
 - Installation of (14) 5 gal 48" high Scotch pine Trees, in between the Crate Myrtles, alongside the curved area of the fence.
 - Installation of Mulch and Filler Dirt along fence to accept the new plantings stated above.
 - Installation of Bluebonnets and Lilly's and a variety of Colorful Plant life to be used as filler between the larger plantings.
 - Installation of new Sod as needed in front of newly constructed fence areas at both outer areas of the circular driveway. These areas will have the same forms of plant life (as above) installed to accommodate the two side areas of the front yard.

- The completed landscaping will have a strict maintenance regimen and shall be changed according to seasonal conditions.”

(Note that none of these materials are denoted on either of the two elevations or the submitted site plan).

- The Board Administrator emailed the applicant’s representative his concern of the fence height discrepancies on the two submitted elevations and on the submitted site plan, and encouraged the applicant’s representative to consider submitting revised documents with consistent information in order for the board to adequately access what the actual proposal is, and in turn, begin to access whether the proposal adversely affects neighboring property (see Attachment B).
- There is one single family home (with an approximately 6’ high solid stone fence/wall in its front yard setback) that would have direct frontage to the proposal on the subject site. (This fence/wall immediately south of the site has no recorded history as a board of adjustment application).
- The Board Administrator conducted a field visit of the site and surrounding area and other than the fence/wall mentioned above on the lot directly south of the subject site, noted no other visible fences/walls above four (4) feet high which appeared to be located in the front yard setback.
- The applicant’s representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included a document providing additional details about the request.

BACKGROUND INFORMATION:

Zoning:

Site: R-16 (A) (Single family district 16,000 square feet)
North: R-16 (A) (Single family district 16,000 square feet)
South: R-1ac (A) (Single family district 1 acre)
East: R-16 (A) (Single family district 16,000 square feet)
West: R-16 (A) (Single family district 16,000 square feet)

Land Use:

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

Zoning/BDA History:

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

Timeline:

- July 7, 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.
- August 14, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- August 14, 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 August 26th deadline to submit additional evidence for staff to factor into their analysis;
 - the September 5th 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 September public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- August 26, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Assistant Director of Development Services, 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, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- September 1, 2008 The applicant's representative submitted additional information to the Board Administrator (see Attachment A).

STAFF ANALYSIS:

- This request focuses on completing and maintaining a solid fence/wall in the site's front yard setback that according to some of the documents submitted with the application will reach a maximum height of 9'.
- A site plan has been submitted that denotes a line that appears to represent where the applicant intends to "erect 8' fence." Two elevations have been submitted, one denoting a 9' high fence/wall and another denoting an 8' 3" high fence/wall. A document has been submitted stating that "the fence height that we are trying to achieve is a total height of 9". This document provides a description of the proposal (including certain landscape materials to be installed/maintained) but without a corresponding site plan and elevation that provides notations of what is described in this document.
- As a result of the series of plan/elevations and document with contradictory information, along with the description nature of what is proposed without these features being documented on a site plan and elevation, it is difficult to access what is being proposed, or for the board to impose conditions in conjunction with granting this request that assures that the proposal would not adversely affect neighboring property or that to impose conditions from what has been submitted that could be easily enforced.
- Although staff has strongly encouraged the applicant to submit a clear singular representation of what is proposed, no such representation of the proposal (i.e. a singular site plan with corresponding singular fence elevation) has been submitted to date.
- There is one single family home (with an approximately 6' high solid stone fence/wall in its front yard setback) that would have direct frontage to the proposal on the subject site. (This fence/wall immediately south of the site has no recorded history as a board of adjustment application).
- No other visible fences/walls other than the one mentioned above were noted in the immediate area above four (4) feet high which appeared to be located in the front yard setback.
- As of September 8, 2008, no letters had been submitted to staff either in support or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 5' (whereby a proposal that would reach a maximum 9' in height) will not adversely affect neighboring property.
- If the Board were to grant this special exception to the fence height regulations of 5', they may feel it is necessary for the applicant to submit/designate a site plan and elevation that clearly document the heights and materials of every component (fence/column/gate) of the proposal (including any landscape materials that the board may feel in necessary to provide to soften/buffer the solid fence/wall) in order to assure that the special exception does not adversely affect neighboring property. Without such plans or conditions imposed, the applicant would have no limitations to heights (other than nothing to exceed 9') or to building materials.
- Granting this request for a special exception to the fence height regulations does not provide any relief that the applicant may determine is needed on the subject site to

address existing/future violations to the Dallas Development Code's Visual Obstruction Regulations.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 16, 2008

APPEARING IN FAVOR: James Daniels, 4421 Walnut Hill Ln, Dallas, TX
Santiago Pena, 4421 Walnut Hill, Dallas, TX

APPEARING IN OPPOSITION: Ana Saldana, 4431 Walnut Hill, Dallas, TX

MOTION #1: Harris

I move that the Board of Adjustment, in Appeal No. **BDA 078-116**, on application of James B. Daniels, represented by Santiago Peña, **deny** the special exception requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: Taft

***Member Steve Harris withdrew this motion after discussion and therefore no vote was called on this matter.**

MOTION #2: Harris

I move that the Board of Adjustment in Appeal No. **BDA 078-116** hold this matter under advisement until **October 14, 2008**.

SECONDED: Taft

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION: Harris

I move to adjourn this meeting.

SECONDED: Gabriel

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

NAYS: 0 -

MOTION PASSED: 5– 0 (Unanimously)

2:24 P.M. - Board Meeting adjourned for **September 16, 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.