

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM
TUESDAY, SEPTEMBER 19, 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, 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, Mike Sultan, Chief Arborist, and Trena Law, Board Secretary

10:06 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **September 19, 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 August 15, 2006 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 19, 2006

MOTION: Hill

I move to approve the Board of Adjustment Panel A August 15, 2006 public hearing minutes.

SECONDED: Gabriel

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 056-207

BUILDING OFFICIAL'S REPORT:

Application of Colleen Murray for a special exception to the landscape regulations at 4151 McKinney Avenue. This property is more fully described as a tract of land in City Block 1/1519 and is zoned PD No. 193 which requires mandatory landscaping for new square footage and/or paving. The applicant proposes to construct an addition and provide an alternate landscape plan which would require a special exception.

LOCATION: 4151 McKinney Avenue

APPLICANT: Colleen Murray

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with obtaining a final CO (Certificate of Occupancy) and building permit on a site being developed with an approximately 4,100 square foot office use (Katy Trail Animal Hospital).

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan* is required.

Rationale:

- The alternate landscape plan submitted with the appeal does not appear to compromise the spirit and intent of the landscaping requirements of PD No. 193 since there are areas on this plan (landscape site area for the entire lot, general planting area within the required front yard, and special planting area within the required front yard) exceeding the landscape requirements that will compensate for areas where the plan is deficient of the requirements (the sidewalk and street tree location, street tree species, and planting area requirements).
- The City's Chief Arborist supports the request.

* Note that a revised landscape plan was submitted to staff on September 8, 2006. None of the information conveyed in this case report reflects this revised landscape plan given that it was submitted past the August 30th staff review team meeting. The Board Administrator has encouraged the applicant to submit this revised plan to the Chief Arborist in a timely manner to allow him to bring altered comments regarding this revised alternate landscape plan to the September 19th briefing hearing.

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

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

GENERAL FACTS:

- The Dallas Development Code requires full compliance with the Landscape Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet.
The applicant is proposing an alternate landscape plan that does not fully comply with the landscape regulations, specifically a landscape plan where, according to the City of Dallas Chief Arborist, the applicant is specifically requesting relief from the sidewalk and street tree location, street tree specie, and specific planting area requirements.
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner (see Attachment B). The memo stated the following:

- The applicant is requesting relief from the landscape requirements of PD 193, more specifically, relief from the sidewalk location, species and location of street trees, and the specific planting area requirements.
- The special exception request is triggered by an increase in non-permeable coverage and new construction.
- Deficiencies:
 1. The applicant is required to provide a 6' wide sidewalk between 5' – 12' from the back of curb.
The applicant is proposing to provide a 4' wide sidewalk between 11.5' and 15.5' from the back of curb.
 2. The applicant is required to provide one, 3.5" diameter street tree for every 25 feet of street frontage, and locate them between 2.5' – 5' from the back of curb (which on this site is 4 trees)
The applicant is proposing to provide four 2.5' diameter trees located 6' from the back of curb and not on the PD No. 193 tree list.
 3. The applicant is required to designate 60% of the required front yard (1,000 square feet) as "landscape site area" (600 square feet).
The applicant is proposing to provide an approximately 450 square foot landscape site area within the required front yard.

Factors for consideration:

- The sidewalk is further from the curb than the requirement and joins the sidewalk in front of both adjacent properties. The street trees are just 1" in diameter less than the requirement but expected to gain at least that much within the first two growing seasons. The applicant chose a species that is not on the PD No. 193 tree list in an effort to create a water efficient (xeriscape) landscape design. The species that is selected (desert willow) is drought tolerant and quite attractive. This species is also appropriate for planting below the existing overhead power lines.
- The deficiency in the landscape site area within the required front yard is more than compensated for with the additional landscaping provided on-site and within the required front yard. The proposed alternate landscape plan far exceeds the following requirements: landscape site area for the entire lot, general planting area within the required front yard and the special planting area within the required front yard.
- The arborist recommends approval.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a letter that provided additional details about the request;
 - a copy of a site plan that indicates areas on the site where concrete has been removed; and
 - a copy of the alternate landscape plan.
- On September 8, 2006, the applicant submitted additional information beyond what was submitted with the original application, and beyond the August 30th staff review team meeting (see Attachment C). This information included the following:
 - a letter that provided additional details about the request;

- a copy of a revised site plan and a revised alternate landscape plan.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (GR Subdistrict) (Planned Development District, General Retail)
North: PD No. 193 (GR Subdistrict) (Planned Development District, General Retail)
South: PD No. 193 (MF-2 Subdistrict) (Planned Development District, Multifamily)
East: PD No. 193 (GR Subdistrict) (Planned Development District, General Retail)
West: PD No. 193 (GR Subdistrict) (Planned Development District, General Retail)

Land Use:

The subject site is being developed with an office use (Katy Trail Animal Hospital). The areas to the north, east, and west are developed with office and retail uses; and the area to the south is developed with multifamily 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 26, 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.
- August 17, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- August 17, 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 August 28th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
 - the September 8th 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/evidence and testimony presented to them by the applicant and all other interested parties.

August 28, 2006 The applicant submitted additional information to the Board Administrator (see Attachment A).

August 29, 2006 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the special exception to the landscape regulations (see Attachment B).

August 30, 2006: 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 Building Inspection 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.

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

Sept. 8, 2006 The applicant submitted additional information to the Board Administrator (see Attachment C). This information was submitted past the August 30th staff review team meeting, therefore was not factored into the staff recommendation.

STAFF ANALYSIS:

- An alternate landscape plan was submitted with the original application that, according to the City of Dallas Chief Arborist, is not fully complying with the sidewalk and street tree location, street tree specie, and specific planting area requirements.
- The applicant has the burden of proof in establishing the following:
 - The special exception (where an alternate plan has been submitted that, according to the Chief Arborist, is not fully providing the required 6’ wide sidewalks between 5’ – 12’ from the back of curb on the site, is not fully providing the street trees between 2.5’ – 5’ from the back of the curb; and is not fully providing the full amount of landscape site area in the required front yard yet is

exceeding landscape site area for the entire lot, general planting area within the required front yard, and special planting area within the required front yard) will not compromise the spirit and intent of the section of the ordinance (Section 26: Landscape, streetscape, screening, and fencing standards).

- If the Board were to grant this request and impose a condition that the applicant must comply with the originally submitted alternate landscape plan, the final building permit and Certificate of Occupancy could be issued on the site, where the site would be “excepted” from full compliance to the sidewalk and street location, street tree specie, and specific planting area requirements of the Oak Lawn PD landscape ordinance.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 19, 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 revised alternate landscape plan is required.

SECONDED: **Schweitzer**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 056-210

BUILDING OFFICIAL'S REPORT:

Application of Allegro Holdings, LTD, represented by Rob Baldwin, for a special exception to the fence height regulations at 5423 Park Lane. This property is more fully

described as a tract of land in City Block 2/5590 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 8 foot 6 inch fence in the required front yard setback, which would require a special exception of 4 feet 6 inches.

LOCATION: 5423 Park Lane

APPLICANT: Allegro Holdings, LTD
Represented by Rob Baldwin

REQUEST:

- A request has been made for a special exception to the fence height regulations of 4' 6". A "gate elevation" has been submitted that indicates a "6' 6" (TYP.)" high decorative iron fence with 8' high brick columns, and an 8.5' high decorative iron gate with 8.5' high entry columns. In addition, a site plan has been submitted that indicates that the fence is proposed to be located in the site's Park Lane 40' front yard setback on a site being 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 and "gate elevation" indicating a fence/gate that would reach a maximum height of 8.5'.
- The following additional information was gleaned from the originally submitted document entitled "conceptual:"
 - The proposed fence located in the 40' front yard setback was shown to be approximately 80' in length parallel to Park Lane, and located approximately 1' off of the site's front property line or about 6' from the pavement line.
 - The proposed gate was shown to be located about 7' from the Park Lane front property line or about 13' from the Park Lane pavement line.

(The fence appeared to be located in the 20' visibility triangles at the drive approach however the applicant had not made application for this type of appeal).

- The following additional information was gleaned from a *revised* document (with a revised scale) entitled "site plan:"
 - The proposed fence located in the 40' front yard setback would be approximately 160' in length parallel to Park Lane, and located approximately 2' off of the site's front property line or about 12' from the Park Lane pavement line.
 - The proposed gate is to be located about 14' from the Park Lane front property line or about 20' from the Park Lane pavement line.
- (This revised plan indicates that the proposed fence and gate will be located outside of the 20' visibility triangles at the drive approach).
- No landscape plan or landscape materials have been noted to be provided in conjunction with this proposal.
 - There is one single family home that would have direct frontage to the proposed fence with an approximately 9' high open wrought iron fence in its front yard (a result of a fence special exception granted in November of 2000).
 - The Board Administrator conducted a field visit of the site and surrounding area along Park Lane (from Alva Court to Holloway Road) 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):
 - A 9' high open wrought iron fence with 10' high columns and a 11.5' high entry gates immediately south of the subject site that is the result of an approved fence height special exception granted by the Board of Adjustment in November of 2000 (BDA 990-360).
 - A 6' high open wrought iron fence with 7' high columns and a 8' high entry gate with 8.5' high entry columns immediately east of the subject site that is the result of an approved fence height special exception granted by the Board of Adjustment in September of 2000 (BDA 990-342).
 - The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a letter that provides additional details about the request; and
 - copies of a revised site plan and elevation of the proposal.

BACKGROUND INFORMATION:

Zoning:

Site: R-1 ac (A) (Single family district 1 acre)
North: R-1 ac (A) (Single family district 1 acre)
South: R-1 ac (A) (Single family district 1 acre)
East: R-1 ac (A) (Single family district 1 acre)
West: R-1 ac (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 990-364, 5404 Park Lane (the lot immediately south of the subject site)
On November 14, 2000, the Board of Adjustment Panel B granted requests for special exceptions to the single family and fence height regulations of 11' 3". The board imposed the following conditions related to the single family regulations special exception: 1) the applicant must deed restrict the property to prevent use of the additional dwelling unit as rental accommodations; and 2) compliance with the submitted site plan is required. The board imposed the following conditions related to the fence height regulations special exception: compliance with the submitted site plan and elevation is required. The case report stated that the requests were made to construct and maintain a guest quarters on the site, and a 9' 2" high fence with 10' 3" high brick columns and an 11' 3" high entry gate.
2. BDA 990-342, 5435 Park Lane (the lot immediately east of the subject site)
On September 26, 2000, the Board of Adjustment Panel A granted a request for special exception to the fence height regulations of 4.5'. The board imposed the following conditions: 1) compliance with a modified elevation from what was submitted that reduces the heights of the proposal at the front entryway to 8.5 feet high be submitted to the board administrator; and 2) compliance with the submitted site plan is required. The case report stated that the request was made to construct and maintain a 6' 8" high open wrought iron fence with an 8' high solid brick wall with 10' high solid masonry columns at the entry, 11' high entry columns, and an approximately 6' – 8.5' high open metal entry gate.

Timeline:

- July 28, 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.
- August 17, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- August 18, 2006: The Board Administrator emailed the applicant’s representative 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 28th deadline to submit additional evidence for staff to factor into their analysis;
 - the September 8th 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/evidence and testimony presented to them by the applicant and all other interested parties.
- August 28, 2006 The applicant’s representative submitted information beyond what was submitted with the original application (see Attachment A).
- August 30, 2006: 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 Building Inspection 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.
- No review comment sheets with comments were submitted in conjunction with this application.

STAFF ANALYSIS:

- A scaled site plan has been submitted that documents the location of the entire proposed fence in the site's front yard setback (about 160' long parallel to Park Lane), and its location relative to the front property line (about 2' off) and pavement line (about 12' off). The revised site plan also indicates that the proposal will be in compliance with the visibility obstruction regulations.
- A scaled "gate elevation" has been submitted that depicts a partial view of the proposed fence, columns, gate, and entry columns. This revised "gate elevation" indicates the maximum height and building materials of the fence (6' 6" TYP decorative iron), columns (8' brick), entry gate (8' 6" decorative iron), and entry columns (8' 6" brick).
- There is one single family home that would have direct frontage to the proposed fence with an approximately 9' high open wrought iron fence in its front yard (a result of a fence special exception granted in November of 2000).
- Two fences in the immediate area were noted that exceeded 4' in height and were located in a front yard setback. One fence is immediately south of the site, the other is immediately east of the site. Both fences appear to be the result of fence height special exceptions granted by the Board of Adjustment in the last six years.
- As of September 11th, no letters had been submitted in support or opposition to the special exception.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' 6" (whereby the proposal that exceeds 4' in height and reaches as high as 8' 6") will not adversely affect neighboring property.
- Granting this special exception of 4' 6" with conditions imposed that the applicant complies with the submitted revised site plan and "gate elevation" would assure that the proposed fence, columns, and gate would be constructed and maintained as shown on these documents where, in this case, the fence, columns, and gate would be held to specific heights, locations, and building materials.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 19, 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 revised site plan and "gate elevation" is required.
- No portion of the fence or gate may exceed eight-feet, six inches in height.

SECONDED: Schweitzer

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 056-217

BUILDING OFFICIAL'S REPORT:

Application of Sterling Mansoori for a special exception to the parking regulations at 17084 Dallas Parkway. This property is more fully described as Lot 2A in City Block 8229 and is zoned RR which requires parking to be provided for a personal service use. The applicant proposes to convert an office use to a personal service use and provide 45 of the required 53 parking spaces, which would require a special exception of 8 spaces to the parking regulations.

LOCATION: 17084 Dallas Parkway

APPLICANT: Sterling Mansoori

REQUEST:

- A special exception to the off-street parking regulations of 8 spaces (or 15% of the required off-street parking) is requested in conjunction with transitioning the use of an existing structure from “office” use to a massage therapy spa or “personal service” use.

STAFF RECOMMENDATION:

Approval, subject to the following conditions:

1. The special exception of 8 spaces automatically and immediately terminates if and when the proposed personal service use on the site is changed or discontinued; and
2. The special exception automatically and immediately terminates if and when it is determined by the city that the structure on the site has in excess of 15 massage rooms.

Rationale:

- The Development Services Senior Engineer supports the request.
- The applicant has submitted a parking study stating that the existing approximately 10,500 square foot structure will be comprised of 15 massage rooms which will in turn require 32 parking spaces (15 spaces per customers, 15 spaces for therapists, and 2 spaces for office staff).

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 parking requirements for the existing and planned uses on the subject site:
 - 1 space is required per 333 square feet of floor area for “office” use.
 - 1 space is required per 200 square feet of floor area for “personal service” use.The applicant proposes to provide 45 (or 85%) of the total required 53 off-street parking spaces on the site if the 10,635 square foot structure were used for “personal service” use.
- No enlargement or addition to the existing structure on the subject site is planned in conjunction with this request. This special exception request is triggered by the applicant’s intent to transition/convert the former “office” use on the site (which required 31 off-street parking spaces) to a massage therapy spa or “personal service” use (which would require 53 off-street parking spaces).

BACKGROUND INFORMATION:

Zoning:

Site: RR (Regional Retail)
North: RR (Regional Retail)
South: RR (Regional Retail)
East: RR (Regional Retail)
West: Town of Addison

Land Use:

The subject site is developed with vacant structure previously occupied with “office” use. The areas to the north, east, south, and west are developed with office 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:

- August 4, 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.
- August 17, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- August 18, 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 August 28th deadline to submit additional evidence for staff to factor into their analysis;
 - the September 8th 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/evidence and testimony presented to them by the applicant and all other interested parties.
- August 30, 2006: 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 Building Inspection 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.
- August 30, 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 applicant's parking analysis/study of his existing, smaller (9-room) establishment.
 - Limit to 15-room maximum at the new location."

STAFF ANALYSIS:

- 85 percent of the required off-street parking spaces is proposed to be provided in conjunction with the transitioning the use of an existing structure from “office” use to a massage therapy spa or “personal service” use.
- No enlargement or addition to the existing structure on the site is planned in conjunction with this request. This special exception request is triggered by the applicant’s intent to transition the use within the existing structure to a use with a higher parking requirement.
- Granting this request, subject to the condition that the special exception of 8 spaces automatically and immediately terminates if and when the proposed personal service use on the site is changed or discontinued, would allow the approximately 10,500 square foot structure to be leased with a personal service use.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the proposed personal service use does not warrant the number of off-street parking spaces required, and
 - The special exception of 8 spaces (or 15% 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 analysis stating that the approximately 10,500 square foot structure on the subject site is planned to have 15 massage rooms that would necessitate 32 off-street parking spaces: 15 spaces per customers, 15 spaces for therapists, and 2 spaces for staff. As a result, the applicant contends that the 45 spaces provided on the site is ample for the planned 15 massage rooms but would also be sufficient for 20 or more massage rooms.
- The Development Services Senior Engineer has commented that he has no objections to this request based on the applicant’s parking analysis/study of his existing smaller (9-room) establishment, and additionally suggests that the board impose a condition to the special exception that the structure on the site be limited to a personal service use having not more than 15 massage rooms.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 19, 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 will automatically and immediately terminate if and when the proposed personal service use (a massage therapy spa) on the site is changed or discontinued;
- The maximum number of massage rooms is 15.

SECONDED: Hill

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.
- The Board of Adjustment held a public hearing on this matter on August 15, 2006. The board delayed action until September 19th in order for the applicant's representative to meet with opposing property owners, and to consider/provide a landscape plan that would denote landscape materials to be planted on the street side of the proposed Northwest Highway wall.
- The applicant's representative has submitted no additional information to staff as of September 12, 2006.

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:

- | | |
|---|---|
| <p>1. BDA 045-201, 4460 W. Northwest Highway (the lot immediately east of the subject site)</p> | <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> |
|---|---|

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.”
- August 15, 2006: The Board of Adjustment conducted a public hearing on the request but delayed action until their next scheduled public hearing to be held on September 19, 2006.
- August 23, 2006: The Board Administrator wrote the applicant’s representative a letter that conveyed the August 15th action taken by the board, and informed the applicant of the September 8th deadline to submit any additional information to be incorporated into the board’s docket.
- August 30, 2006: 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 Building Inspection 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.

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

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 September 12th, 7 letters had been submitted in opposition to the request and no letters had been submitted in support.
- 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)

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 19, 2006

APPEARING IN FAVOR: Rob Baldwin, 401 Exposition, Dallas, TX

APPEARING IN OPPOSITION: Pat White, 4714 Wildwood Rd, Dallas, TX

MOTION: Hill

I move that the Board of Adjustment in Appeal No. **BDA 056-195**, hold this matter under advisement until **October 17, 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 056-204

BUILDING OFFICIAL'S REPORT:

Application of Hudson Lockett III Architect for a special exception to the fence height regulations at 9901 Meadowbrook Drive. This property is more fully described as a tract of land in City Block 5601 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 8 foot fence in the required front yard setback which would require a special exception of 4 feet.

LOCATION: 9901 Meadowbrook Drive

APPLICANT: Hudson Lockett III Architect

REQUEST:

- A special exception to the fence height regulations of 4' is requested in conjunction with constructing and maintaining a 6' high chain link fence with 6' – 8' high stone entry wing walls, and an approximately 7.5' high steel gate to be located in the site's Meadowbrook Drive 40' 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 document (which includes an elevation, a site/fence plan, and a landscape plan indicating a fence/gate/entry wing wall proposal that would reach a maximum height of 8’.
- The following additional information was gleaned from the site/fence plan:
 - The proposed fence located in the 40’ front yard setback would be approximately 150’ in length parallel to Meadowbrook Drive with a recessed entry gate.
 - The proposed fence is to be located about 3’ from the front property line or about 24’ from the pavement line.
 - The proposed gate is to be located about 14’ from the front property line or about 35’ from the pavement line.
- The following information was gleaned from the landscape plan:
 - 30 “Ilex x “Nellie R. Stevens” to be located on the street side of the proposed fence.
- There are no single family homes that would have direct frontage to the proposed fence given that lots immediately to the east of the subject site front either north or south to Edlen Drive – a street that terminates at the subject site.
- The Board Administrator conducted a field visit of the site and surrounding area along Meadowbrook Drive (approximately 500’ north and south of the subject site) and noted one other fence above four (4) feet high which appeared to be located in the front yard setback. This fence, located immediately south of the subject site, is an approximately 5.5’ high open metal fence with 6’ high columns and approximately 7.5’ high entry gate. This fence is the result of an approved fence height special exception granted by the Board of Adjustment in September of 1997 (BDA 967-305).

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	R-1 ac (A) (Single family district 1 acre)
<u>North:</u>	R-1 ac (A) (Single family district 1 acre)
<u>South:</u>	R-1 ac (A) (Single family district 1 acre)
<u>East:</u>	R-1 ac (A) (Single family district 1 acre)
<u>West:</u>	R-1 ac (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 967-306, 9831 On September 23, 1997, the Board of

Meadowbrook Road (the lot immediately south of the subject site)

Adjustment Panel A granted a request for special exception to the fence height regulations of 3.5'. The board imposed the following conditions related to the single family regulations special exception: compliance with the submitted revised site plan, fence elevation plan, and gate elevation plan is required. The case report stated that the request was made to construct and maintain a 5' 5" high open metal fence with 6' high stone columns and a 7.5' high open metal gate.

Timeline:

- July 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.
- August 17, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- August 18, 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 August 28th deadline to submit additional evidence for staff to factor into their analysis;
 - the September 8th 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/evidence and testimony presented to them by the applicant and all other interested parties.
- August 30, 2006: 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 Building Inspection 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.

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

STAFF ANALYSIS:

- A document has been submitted including a scaled site/fence plan that documents the location of the entire proposed fence/gate/entry wing wall proposal in the site's front yard setback (about 150' long parallel to Meadowbrook Drive), and its location relative to the front property line (about 3' off) and pavement line (about 24' off). (This plan indicates that the recessed gate will be about 14' from the front property line or about 35' from the pavement line).
- A document has been submitted including a scaled elevation that denotes the building materials and maximum height of the proposed fence (6' open chain link), entry wing walls (6' – 8' stone), and gate (7.5' steel).
- A document has been submitted including a landscape plan that denotes 30 "Ilex x "Nellie R. Stevens" to be located on the street side of the proposed fence.
- There are no single family homes that would have direct frontage to the proposed fence given that lots immediately to the east of the subject site front either north or south to Edlen Drive – a street that terminates at the subject site.
- One other fence above 4' in height in a front yard setback was noted in a field visit of the site and surrounding area along Meadowbrook Drive (approximately 500' north and south of the subject site). This fence, located immediately south of the subject site, is an approximately 5.5' high open metal fence with 6' high columns and approximately 7.5' high entry gate. This fence is the result of an approved fence height special exception granted by the Board of Adjustment in September of 1997 (BDA 967-305).
- As of September 11th, no letters had been submitted in support or opposition to the special exception.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' (whereby the proposed 6' high open chain link fence that would be located behind a Nellie R. Stevens hedge with 6' – 8' high stone wing walls, and a 7.5' high steel gate) will not adversely affect neighboring property.
- Granting this special exception of 4' with conditions imposed that the applicant complies with the submitted site plan/landscape plan/elevation would assure that the proposed fence/gate/entry wing walls would be constructed and maintained as shown on this document.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 19, 2006

APPEARING IN FAVOR: Hudson Lockett, 5738 Velasco, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Schweitzer**

I move that the Board of Adjustment in Appeal No. **BDA 056-204**, on application of Hudson Lockett, III, **grant** the request of this applicant to construct an eight foot high fence on the property 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 conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan/landscape plan/elevation is required.
- That 5 gallon containers, 4 feet on center of Ilex x or Nellie R. Stevens be planted.

SECONDED: **Hill**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 056-215

BUILDING OFFICIAL'S REPORT:

Application of Lee Park and Arlington Hall Conservancy, represented by John Williams, for a special exception to the landscape regulations at 3400 Turtle Creek Boulevard. This property is more fully described as a tract of land in City Block 991 and is zoned PD No. 193 which requires mandatory landscaping for additions and new paving. The applicant proposes to construct an addition and new paving and provide an alternate landscape plan which would require a special exception.

LOCATION: 3400 Turtle Creek Boulevard

APPLICANT: Lee Park and Arlington Hall Conservancy
Represented by John Williams

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with increasing non-permeable coverage on a site developed as a public park (Lee Park).

STAFF RECOMMENDATION:

Approval (with no conditions since the applicant has submitted a plan to be considered in concept only)

Rationale:

- The City's Chief Arborist supports the landscape special exception request.

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

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

GENERAL FACTS:

- The application specifically requests: approval of the submitted plan in concept only and the waiving of all PD 193 requirements including: designated lot and front yard and landscape area requirement, sidewalk, street trees, along with the screening of off-street parking and loading spaces.”
- The Dallas Development Code requires full compliance with the Landscape Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet.
The applicant is requesting a special exception to the landscape regulations of PD No. 193, more specifically, according to the City of Dallas Chief Arborist, relief from the sidewalk location, street tree location, street tree, surface parking screening, and designated planting requirements of PD No. 193.
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner (see Attachment A). The memo stated the following:
 - The applicant is requesting relief from the landscape requirements of PD 193, more specifically, relief from the sidewalk location, street tree, surface parking screening, and designated planting area requirements.
 - The special exception request is triggered by an increase in non-permeable coverage.
 - Deficiencies:
 - There are many deficiencies for this property. Due to the unique circumstances and because the plan is still somewhat conceptual at this point, the arborist will explain the specific deficiencies to the board during the September 19th briefing.
 - Factors for consideration:
 - This is a very unique project in that it is a city park undergoing major renovation and redesign. The perimeter sidewalks are existing and the park

houses many large mature trees. The view corridors into the park would be compromised if street trees were added along all street frontages at a density of one tree for every 25' of frontage. The different planting area requirements are probably met for the entire site but not for the areas considered the required front yard. Again, most of the improvements, including new sidewalks and landscaping, are internal to the site and not at the perimeter of the property. Strict compliance with the landscape requirements would be detrimental to the park and its design.

- The arborist recommends approval.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (Planned Development District)
North: PD No. 193 (Planned Development District)
South: PD No. 193 (Planned Development District)
East: PD No. 193 (Planned Development District)
West: PD No. 193 (Planned Development District)

Land Use:

The subject site is developed as a park (Lee Park). The areas to the north, south, and west are developed with office and residential uses; and the area to the east is developed with park use.

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:

- August 2, 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.
- August 17, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- August 17, 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 August 28th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
- the September 8th 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/evidence and testimony presented to them by the applicant and all other interested parties.

August 30, 2006: 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 Building Inspection 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.

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

August 30, 2006 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the special exception to the landscape regulations (see Attachment A).

STAFF ANALYSIS:

- An alternate landscape plan that denotes existing and proposed landscape materials to be maintained / located on the site has not been submitted. The application states that the applicant seeks "approval of the submitted plan in concept only."
- The City of Dallas Chief Arborist states that the applicant is seeking relief from the sidewalk location, street tree, surface parking screening, and designated planting area requirements of PD No. 193.
- The applicant has the burden of proof in establishing the following:
 - The special exception will not compromise the spirit and intent of the section of the ordinance (Section 26: Landscape, streetscape, screening, and fencing standards).

- If the Board were to grant this request and impose a condition (per the applicant's request) that the applicant must comply with the submitted alternate landscape plan in concept only, the site would be "excepted" from full compliance to the sidewalk location, street tree, surface parking screening, and designated planting area requirements of the Oak Lawn PD landscape ordinance.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 19, 2006

APPEARING IN FAVOR: John Williams, 4060 Travis St. #18, Dallas, TX
John Armstrong, 2615 State, Dallas, TX

APPEARING IN OPPOSITION: No one

APPEARING FOR THE CITY: Michael Hellman, 1500 Marilla, Dallas, TX

MOTION: Griggs

I move that the Board of Adjustment in Appeal No. **BDA 056-215**, on application of Lee Park and Arlington Hall Conservancy, represented by John Williams, **grant** the request of this applicant to provide an alternate landscape plan as a special exception to the landscape requirements contained in PD 193 because our evaluation of the property and the testimony shows that this special exception will not compromise the spirit and intent of the Oak Lawn Ordinance. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the alternate landscape plan’s concept is required.
- Full compliance with the landscape requirements of PD 193 is required with the following exceptions. The applicant does not have to meet the requirements for:
 - Street tree regulations,
 - Sidewalks, and
 - The minimum square feet of special planting area required for both the entire lot and the required front yard.

SECONDED: Gabriel

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 056-206

BUILDING OFFICIAL'S REPORT:

Application of AMLI Residential, represented by Jackson Walker L.L.P/Susan Mead and Jonathan Vinson, for a special exception to the landscape regulations and for variances to the front yard setback regulations at 2800 Routh Street. This property is more fully described as City Block 956 and is zoned PD No. 193 which requires mandatory landscaping for new construction, and requires a 25 foot front yard setback for all portions of a structure over 36 feet in height. The applicant proposes to construct a structure and provide an alternate landscape plan which would require a special exception to the landscape regulations. In addition, the applicant proposes to construct a building with a height in excess of 36 feet and provide a 10 foot front yard setback which would require a variance of 15 feet to the front yard setback regulations.

LOCATION: 2800 Routh Street

**APPLICANT: AMLI Residential
Represented by Jackson Walker L.L.P/Susan Mead and Jonathan Vinson**

REQUESTS:

- The following appeals have been made in this application:
 1. a special exception to the landscape regulations; and
 2. variances to the front yard setback regulations of 15 feet.

These appeals are requested in conjunction with constructing and maintaining an approximately 60' high, 4 level multifamily structure with an approximately 86,000 square foot building footprint on a site that is developed with a mixed use development (The Quadrangle). (The proposed structure is to be located on the portion of the subject site that currently serves as part of the surface parking lot for the existing mixed use development).

STAFF RECOMMENDATION (Landscape Special Exception):

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan is required.

Rationale:

- The alternate landscape plan submitted with the appeal does not appear to compromise the spirit and intent of the landscaping requirements of PD No. 193 since the areas on the site that do not/would not fully comply with the landscaping requirements are those areas that are currently developed with structures built in the mid-60's prior to the adoption of PD No. 193. The portion of the site that the applicant intends to build on is in full compliance with the landscaping requirements.
- The City's Chief Arborist supports the request.

STAFF RECOMMENDATION (Front Yard Variances):

Denial

Rationale:

- The 6.32 acre subject site is flat, generally rectangular in shape (325' on the northeast, 345' on the southwest, 783' on the northwest, and 768' on the southeast). The site encompasses a full city block that is zoned PD No. 193 (GR Subdistrict). As a result, the site has four front yard setbacks which is typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural.
- Although there may be developments in the area that do not appear to provide the additional front yard setback that is required on the subject site, different zoning districts on immediately adjacent or nearby lots may have differing development standards from that which are required on the subject site that allow a different type of building envelope by right.
- The "certain restrictive covenants" that the applicant's representative has identified as being placed on the subject site are not characteristics/features (as are the parcel of land's physical site constraints related to its restrictive area, shape or slope)

related to what the board can consider as features creating property hardship that in turn necessitates a variance to a development standard.

- The applicant has not substantiated how the site's restrictive area, shape and/or slope preclude its development (in this case, with a structure that could meet the applicable development standards including the additional 15' front yard setback provision for the portion of the structure that would exceed 36' in height) in a manner commensurate with other developments found on other similarly-zoned lots.

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

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

STANDARD FOR A VARIANCE:

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

GENERAL FACTS (related to the landscape special exception):

- The original application submitted on July 27, 2006, stated that a request had been made to "obtain a special exception to the applicable landscape regulations and approval of an alternate landscape plan for the area of request, which alternative landscape plan fully complies with P.D. 193." (Neither the originally submitted application nor the originally submitted plans described what was triggering the landscape special exception on what was originally identified as a 2.5 acre site (the surface parking lot that functions to serve a mixed use development immediately adjacent to the subject site: The Quadrangle).

- On August 18, 2006, the Board Administrator met with the applicant's representative and inquired as to how the site would be deficient in meeting the landscape regulations. The applicant's representative said that the site was not deficient to the landscape regulations, however, the lot immediately adjacent to the site (The Quadrangle) was. The administrator stated his confusion as to why this request was needed on the designated subject site (a subject site that the applicant's representative outlined on zoning and plat maps as "half" of the Quadrangle block and denoted on the application as 2.5 acres in area) if it was going to fully meet the landscape regulations. The applicant's representative stated that he would most likely be adding another application for the subject site: a variance to height regulations. The administrator encouraged the applicant's representative to add the height variance and perhaps expand his subject site to include the whole Quadrangle block by early the following week, particularly considering that the staff review team meeting where staff recommendations would be made was scheduled to be held on August 30th.
- On August 25, 2006, the applicant's representative submitted an amended application (and related materials) that expanded the subject site to include the entire block (at 6.32 acres) and added a request for variances to the front yard setback regulations (specifically the additional front yard setback required for the portion of the proposed structure to exceed 36' in height) made in conjunction with constructing and maintaining a multifamily structure (see Attachment A).
- The Dallas Development Code requires full compliance with the Landscape Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet.
The applicant is proposing an alternate landscape plan that does not fully comply with the landscape regulations, specifically a landscape plan where, according to the City of Dallas Chief Arborist, the applicant is specifically requesting relief from the street tree and sidewalk requirements.
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner (see Attachment D). The memo stated the following:
 - The applicant is requesting relief from the landscape requirements of PD 193, more specifically, relief from the street tree, sidewalk, and planting area requirements.
 - The special exception request is triggered by new construction.
 - Deficiencies (that apply to the portion of the lot NOT being proposed for redevelopment):
 1. The applicant is required to provide one, 3.5" diameter street tree for every 25' feet of street frontage to be located 2.5' – 5' from the back of curb (which on this site is 52 trees: 19 on Laclede, 14 on Routh, and 19 on Howell)
The applicant is proposing to provide 0 trees in the tree planting zone and 20 trees that function as street trees around the perimeter of the property (2 on Laclede, 8 on Routh, and 10 on Howell).
 2. The applicant is required to provide a 6' wide sidewalk between 5' – 12' from the back of curb.

The applicant is proposing to provide a 5'+ wide sidewalk at the back of curb.

3. The applicant is required to provide 7,886 square feet of landscape site area in the required front yard; 1,576 square feet of general planting area in the required front yard, and 789 square feet of special planting area in the required front yard.

The applicant is proposing to provide 4,864 square feet of landscape site area in the required front yard; 4,031 square feet of general planting area in the required front yard, and 627 square feet of special planting area in the required front yard.

Factors for consideration:

- A large portion of the lot (greater than 50%) falls under different ownership and has been developed for many years. The part of the site proposed for redevelopment is capable of meeting all of the landscape requirements of PD No. 193. If the city's landscape ordinance (Article X) applied, there would be an option of creating an artificial lot for the purpose of determining the landscape requirements. The artificial lot would include only the area of redevelopment, thus the non-compliant portion of the subject site would not impact the redevelopment.
 - The arborist recommends approval.
- On August 25th and 28th, 2006, the applicant's representative submitted the following additional information to the Board Administrator (see Attachments A and B):
 - an amended application which added a front yard setback variance request and expanded the area of the subject site from 2.5 acres to 6.32 acres;
 - an amended/expanded zoning map/plat map of the site;
 - a tax certificate and owner's affidavit from the owner of the expanded area of the subject site;
 - an elevation of the proposal; and
 - a site plan of the proposal.
- The applicant's representative submitted additional information beyond what was submitted with the original and revised applications (see Attachment C). This information included a letter that provided additional details about the requests. (The applicant's representative has also submitted a copy of restrictive covenants on the site that will be available for review at the briefing/public hearing).
- On September 8, 2006, the applicant's representative submitted additional information beyond what was submitted with the original and revised applications, and beyond the August 30th staff review team meeting (see Attachment E). This information included a letter that provided additional details about the requests, an aerial photo of the site and surrounding area, a birds-eye rendering of the site, an illustrative site/landscape plan of the site, photos of the site and surrounding area, and a colored elevation of the proposal.

GENERAL FACTS (related to the variances):

- The minimum front yard setback must be provided for all building and structures in the PD No. 193 (GR Subdistrict) zoning district:
 - 10' for the first 36' in height.
 - 25' for all portions of a building above 36' in height.

The applicant has submitted an elevation that indicates a 60' high, 4 level multifamily structure, and a site plan that indicates the provision of a 10' front yard setback along Howell Street, Vine Street, and Laclede Street for the portion of the proposed structure up to 36' in height but not the additional 15' setback required for the portion of the structure above 36' in height. The additional 15' setback for structures (or portions of structures) higher than 36' in height discourages a canyon effect that a structure may create once it exceeds a specific height. This front yard setback was enacted to ensure openness, light, and airflow between tower structures.
- The 6.32 acre subject site is flat, generally rectangular in shape (325' on the northeast, 345' on the southwest, 783' on the northwest, and 768' on the southeast). The site encompasses a full city block that is zoned PD No. 193 (GR Subdistrict). As a result, the site has four front yard setbacks which is typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural.
- On August 25th and 28th, 2006, the applicant's representative submitted the following additional information to the Board Administrator (see Attachments A and B):
 - An amended application with added a front yard setback variance request and expanded the area of the subject site from 2.5 acres to 6.32 acres;
 - An amended/expanded zoning map/plat map of the site;
 - A tax certificate and owner's affidavit from the owner of the expanded area of the subject site;
 - An elevation of the proposal; and
 - A site plan of the proposal.
- The applicant's representative submitted additional information beyond what was submitted with the original and revised applications (see Attachment C). This information included a letter that provided additional details about the requests. (The applicant's representative has also submitted a copy of restrictive covenants on the site that will be available for review at the briefing/public hearing).
- On September 8, 2006, the applicant's representative submitted additional information beyond what was submitted with the original and revised applications, and beyond the August 30th staff review team meeting (see Attachment E). This information included a letter that provided additional details about the requests, an aerial photo of the site and surrounding area, a birds-eye rendering of the site, an illustrative site/landscape plan of the site, photos of the site and surrounding area, and a colored elevation of the proposal.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (GR Subdistrict) (Planned Development District, General Retail)

North: PD No. 193 (GR Subdistrict) (Planned Development District, General Retail)
South: PD No. 193 (GR Subdistrict) (Planned Development District, General Retail)
East: PD No. 193 (PDS 7) (Planned Development District, Planned Development Subdistrict 7)
West: PD No. 193 (GR Subdistrict) (Planned Development District, General Retail)

Land Use:

The 6.32 acre subject site is developed with a mixed use development (The Quadrangle). The areas to the north, east, south, and west are developed with a mix of office and retail 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 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.
- August 17, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- August 18, 2006: The Board Administrator met 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 August 28th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
 - the September 8th 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/evidence and

testimony presented to them by the applicant and all other interested parties.

August 25 & 28, 2006: The applicant and the applicant's representative met with the Board Administrator. The applicant's representative submitted an amended application and additional materials related to the requests at hand (see Attachments A and B).

August 29, 2006 The applicant's representative submitted additional information to the Board Administrator (see Attachment C).

August 30, 2006: 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 Building Inspection 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.

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

Sept. 6, 2006 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the special exception to the landscape regulations (see Attachment D).

Sept. 8, 2006 The applicant's representative submitted additional information to the Board Administrator (see Attachment E). This information was submitted past the August 30th staff review team meeting therefore was not information that was factored into the staff recommendations on the landscape special exception or front yard variance requests.

STAFF ANALYSIS (related to the landscape special exception):

- An alternate landscape plan has been submitted with this request where, according to the City of Dallas Chief Arborist, there are areas on the subject site (the area of the site NOT proposed for redevelopment) that are not fully complying/would not fully comply with street tree, sidewalk, and planting area requirements.
- The applicant has the burden of proof in establishing the following:
 - The special exception (where an alternate plan has been submitted that, according to the Chief Arborist, is providing 0 of the required 52 street trees in the required tree planting zone; a 5'(+)) of the required 6' wide sidewalk; and lesser amounts of landscape site area in the required front yard and special

planting area in the required front yard) will not compromise the spirit and intent of the section of the ordinance (Section 26: Landscape, streetscape, screening, and fencing standards).

- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted alternate landscape plan, the proposed multifamily structure could be constructed on the site whereby the currently developed part of the site would be “excepted” from full compliance to the street tree, sidewalk, and planting area requirements of the Oak Lawn PD landscape ordinance.

STAFF ANALYSIS (related to the variances):

- The 6.32 acre subject site is flat, generally rectangular in shape (325’ on the northeast, 345’ on the southwest, 783’ on the northwest, and 768’ on the southeast). The site encompasses a full city block that is zoned PD No. 193 (GR Subdistrict). As a result, the site has four front yard setbacks which is typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural.
- The applicant has submitted a site plan and elevation indicating that the 10’ front yard setback will be provided for the portion of the proposed structure up to 36’ in height. The plans do not show the provision of the additional 15’ setback that is required for the portion of the building that exceeds 36’ in height.
- The applicant has the burden of proof in establishing the following related to the front yard variance requests:
 - That granting the variances to the front yard setback regulations of 15’ along Howell Street, Vine Street, and Laclede Street requested to construct and maintain the 60’ high, 4 level multifamily structure will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variances are necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 193 (GR Subdistrict) zoning classification.
 - The variances would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD No. 193 (GR Subdistrict) zoning classification.
- If the Board were to grant the front yard variance requests of 15’, imposing a condition whereby the applicant must comply with the submitted site plan and elevation, the structure above 36’ in height in the front yard setbacks would be limited to what is shown on these submitted plans – a structure that is 60’ in height with an approximately 86,000 square foot building footprint that is 10’ from the Howell Street, Vine Street, and Laclede Street front property lines (or 15’ into the 25’ front yard setback for portions of a structure that exceeds 36’ in height).

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 19, 2006

APPEARING IN FAVOR: Jonathan Vinson, 901 Main Street, Dallas, TX
Brian Adams, 1708 N. Griffin, Dallas, TX
Taylor Bowen, 2740 N. Dallas Pkwy, # 280, Plano, TX
Clifford Wong, 5757 Alpha Rd, # 505, Dallas, Texas

APPEARING IN OPPOSITION: Frank Stich, 4224 N. Hall, Dallas, TX

MOTION #1: **Hill**

I move that the Board of Adjustment in Appeal No. **BDA 056-206**, on application of Lee AMLI Residential, represented by Jackson Walker LLP, **grant** the request of this applicant to provide an alternate landscape plan as a special exception to the landscape requirements contained in PD 193 because our evaluation of the property and the testimony shows that this special exception will not compromise the spirit and intent of the Oak Lawn Ordinance. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted alternate landscape plan is required.

SECONDED: **Gabriel**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION #2: **Hill**

I move that the Board of Adjustment in Appeal No. **BDA 056-206**, hold the front yard variance under advisement until **October 17, 2006**.

SECONDED: **Gabriel**

AYES: 3 – Richmond, Hill, Gabriel

NAYS: 2 – Schweitzer, Griggs

MOTION PASSED: 3– 2

FILE NUMBER: BDA 056-213

BUILDING OFFICIAL'S REPORT:

Application of R. Enclave at Grove Hill II, LTD represented by Rob Baldwin for a variance to the front yard setback regulations at 2860 Lacompte Drive. This property is more fully described as Lot 49 in City Block 26/6129 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 15 foot front yard setback which would require a variance of 10 feet.

LOCATION: 2860 Lacompte Drive

APPLICANT: R. Enclave at Grove Hill II, LTD
Represented by Rob Baldwin

REQUEST:

- A variance to the front yard setback regulations of 10' is requested in conjunction with constructing and maintaining a single family home that would be located in the undeveloped site's Belteau Lane 25' front yard setback.

STAFF RECOMMENDATION:

Denial

Rationale:

- The site is encumbered with two front yard setbacks that limit the area for development for a single family home to between 20 and 30 feet in width as the lot width ranges from between 50 and 60 feet in width. However, staff concludes that the hardship on this site is self-created since the narrow area of developable space remaining on the site is the result of the property being platted by the applicant in this configuration.

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 proposes to construct and maintain a single family home with an approximately 3,120 square foot building footprint that would be located in one of the site's two, 25' front yard setbacks. The home is proposed to be located 15' from the site's Belteau Lane front property line (or 10' into the 25' front yard setback).
- The site is located at the corner of Lacompte Drive and Belteau Lane, and has two 25' front yard setbacks: one along Lacompte Drive (given that this side of the site is the shorter of the two street frontages), and the other along Belteau Lane (given the configuration of adjacent lots south of the subject site that front onto Belteau).
- The Dallas Development Code states the following with regard to front yard provisions for residential district:
 - If a corner lot in a single family, duplex, or agricultural district has two street frontages of equal distance, one frontage is governed by the front yard regulations of this section, and the other frontage is governed by the side yard regulations. If the corner lot has two street frontages of unequal distance, the shorter frontage is governed by this section, and the longer frontage is governed by side yard regulations. Notwithstanding this provision, the continuity of the established setback along street frontage must be maintained.
- The site's longer frontage is along Belteau Lane, however, this longer frontage is deemed a front yard setback in order to maintain the established setback of lots/homes along this street to the south that "front" Belteau Lane.
- The site plan indicates that the single family home is in compliance with the 25' front yard setback along Lacompte Drive.
- According to calculations made by the Board Administrator from the submitted site plan, approximately 780 square feet of the 3,120 square foot building footprint would be located in the 25' Belteau Lane front yard setback.
- The site is flat, slightly irregular in shape (approximately 61' on the north, 50.42' on the south, 175' on the east, and 158' on the west), and approximately 9,200 square feet in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a letter that provides additional details about the request;
 - a plan that shows the orientation of lots adjacent to the subject site;
 - a site plan that indicates the required and proposed building lines;
 - a plan that indicates the buildable and unbuildable portions of the lot; and

- photographs of the site and surrounding area.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5 (A)(SUP 1502) (Single family district 7,500 square feet, Specific Use Permit)
North: R-7.5 (A)(SUP 1502) (Single family district 7,500 square feet, Specific Use Permit)
South: R-7.5 (A)(SUP 1502) (Single family district 7,500 square feet, Specific Use Permit)
East: R-7.5 (A)(SUP 1502) (Single family district 7,500 square feet, Specific Use Permit)
West: R-7.5 (A)(SUP 1502) (Single family district 7,500 square feet, Specific Use Permit)

Land Use:

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

Zoning/BDA History:

On July 7, 2003, the City Council created an ordinance establishing Specific Use Permit No. 1502 on property including the subject site and surrounding area. The SUP was established to create private streets and certain ingress/egress points.

Timeline:

- July 28, 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.
- August 17, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- August 18, 2006: The Board Administrator emailed the applicant's representative with 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 28th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
 - the September 8th 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/evidence and testimony presented to them by the applicant and all other interested parties.

August 28, 2006 The applicant’s representative submitted information beyond what was submitted with the original application (see Attachment A).

August 30, 2006: 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 Building Inspection 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.

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

STAFF ANALYSIS:

- The site is flat, slightly irregular in shape (approximately 61’ on the north, 50.42’ on the south, 175’ on the east, and 158’ on the west), and approximately 9,200 square feet in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- The site has two 25’ front yard setbacks: one along Lacompte Drive (that the proposed home would be in compliance with), and the other along Belteau Lane (that the proposed home would encroach into by 10’).
- A 20’ to 30’ wide area for development remains on the site as its width ranges from 50’ to 60’ once a 25’ front yard setback is accounted for on the east side of the site, and a 5’ side yard setback is accounted for on the west side of the site. The applicant states that the 20’-wide building pad is not wide enough to accommodate a doorway and the required two-car garage that is needed to house the required off-street parking.
- According to calculations made by the Board Administrator from the submitted site plan, approximately 780 square feet of the 3,120 square foot building footprint would be located in the 25’ Belteau Lane 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 10' requested to construct and a single family home with an approximately 3,100 square foot building footprint will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
- The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.
- The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.

If the Board were to grant the front yard variance request of 10', imposing a condition whereby the applicant must comply with the submitted site plan, the structure in a front yard setback would be limited to that which is shown on this plan – a structure that is located 15' from the site's Belteau Lane front property line (or 10' into the site's 25' Belteau Lane front yard setback).

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 19, 2006

APPEARING IN FAVOR: Rob Baldwin, 401 Exposition, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Hill

I move that the Board of Adjustment in Appeal No. **BDA 056-213** on application of Enclave at Grove Hill II, represented by Rob Baldwin, **deny** the variance requested by this applicant **with** prejudice, because our evaluation of the property and the testimony shows that the hardship is self imposed.

SECONDED: Griggs

AYES: 3 – Hill, Gabriel, Griggs

NAYS: 2 – Richmond, Schweitzer

MOTION PASSED: 3– 2

MOTION: Schweitzer

I move to adjourn this meeting.

SECONDED: Gabriel

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

NAYS: 0 -

MOTION PASSED: 5– 0 (Unanimously)

2:24 P.M. - Board Meeting adjourned for September 19, 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.