

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
TUESDAY, OCTOBER 16, 2007**

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

MEMBERS ABSENT FROM BRIEFING: No one

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

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

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Casey Burgess, Asst. City Attorney, Donnie Moore, Chief Planner, Todd Duerksen, Development Code Specialist, Chau Nguyen, Traffic Engineer and Trena Law, Board Secretary

10:38 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **October 16, 2007** docket.

1:01 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 September 18, 2007 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: OCTOBER 16, 2007

MOTION: Schweitzer

I move **approval** of the Tuesday, **September 18, 2007** public hearing minutes.

SECONDED: Gabriel

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

To approve the Board of Adjustment Panel A’s 2008 Public Hearing Schedule (see Attachment A for proposed schedule).

BOARD OF ADJUSTMENT ACTION: OCTOBER 16, 2007

MOTION: Gabriel

I move **approval** of the Board of Adjustment Panel A’s 2008 Public Hearing Schedule.

SECONDED: Taft

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

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 067-145

BUILDING OFFICIAL’S REPORT:

Application of W. Troy Dudley for a special exception to the fence height regulations at 4121 Avondale Avenue. This property is more fully described as Lots 1-8 in City Block 2/1507 and is zoned PD No. 193 (PDS 59) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to maintain a 6 foot fence in a required front yard setback which will require a special exception of 2 feet.

LOCATION: 4121 Avondale Avenue

APPLICANT: W. Troy Dudley

October 16, 2007 Public Hearing Notes:

- The Board Administrator explained at the briefing that upon further review of the originally submitted site plan it was determined that it was not to scale. As a result, dimensions provided in the case report were incorrect, and that since no submitted plan was to scale, that dimensions of the fence from the property line/pavement lines could not be gleaned.
- The applicant submitted a revised scaled site plan at the public hearing.

REQUEST:

- A special exception to the fence height regulations of 2' is requested in conjunction with maintaining a 6' high board-on-board cedar fence in the site's 20' Avondale Avenue and 10' Throckmorton Street front yard setbacks on a site developed with a multifamily complex (Eden).

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 subject site is located at the northwest corner of Avondale Avenue and Throckmorton Street. The site is zoned PDS 59 (where the only permitted uses in this subdistrict are those uses permitted in the TH-4 Townhouse Subdistrict) of PD No. 193. This zoning district states that a 20' front yard setback must be provided along Avondale Avenue and that a 10' front yard setback must be provided along Throckmorton Street.
The applicant had submitted a site plan with the original application with a hand-drawn line that appeared to be the location of the existing fence/wall on the site. In addition, the applicant had submitted a partial fence/wall elevation with the original

application notation indicating “Six (6) foot tall cedar fence cedar posts spaced every six (6) feet.”

On October 5, 2007, the applicant submitted additional materials to the Board Administrator (see Attachments A and B). A revised site/landscape plan was included in this submittal – a plan (not to scale) that delineated the location of the fence located in the site’s Throckmorton Street 10’ front yard setback as well as the site’s Avondale Avenue 20’ front yard setback. Although all written correspondence from the applicant mentioned a special exception need only along the site’s Avondale Avenue frontage, the Board Administrator established with the applicant on October 5th that the special exception need was along both site’s street frontages since the plan submitted on October 5th indicated a 6’ high fence/wall located in the site’s two front yard setbacks.

- The originally submitted site plan indicated a hand-drawn line that was located approximately 375’ in length along Avondale Avenue, approximately 12’ from the Avondale Avenue front property line or about 19’ from the Avondale Avenue pavement line. It appeared from this submitted site plan that the 6’ high fence was in compliance with the fence height regulations along Throckmorton Street since the hand-drawn line on this plan (that was the assumed fence location) was located 10’ from the site’s Throckmorton Street front property line and outside the required front yard.
- The revised site plan submitted on October 5th (see Attachment B) is at an enlarged 1” = 20’ scale, therefore not to scale. As a result, dimensions of the fence’s length, distance from property lines/curb lines can not be gleaned. The Board Administrator was however able to assess with the applicant on October 5th that the fence was located in the site’s Throckmorton Street 10’ front yard setback as well as what was believed to be the only issue at the time of application submittal: the fence in the site’s Avondale Avenue 20’ front yard setback. The revised site plan denotes the provision of certain landscape materials but other than notations made pertaining to existing trees, the revised plan does not note sizes or amounts of other landscape materials to be added/retained adjacent to the existing fence/wall.
- There is no single family home that has direct frontage to the existing fence/wall.
- The Board Administrator conducted a field visit of the site and surrounding area and noted two other fences/walls above four (4) feet high both along Avondale Avenue. One fence/wall is located immediately west of the subject site - a fence/wall that is approximately 6’ in height and comprised of solid board. The other fence is located immediately southeast of the subject site – a fence that is approximately 6’ in height comprised of open metal with brick columns.
- The applicant submitted information beyond what was submitted with the original application (see Attachments A and B). This information included the following:
 - a document providing additional details about the request;
 - a letter in support from a neighboring condominium association;
 - a copy of a city permit to build the fence;
 - copies of site plans;
 - photographs of the fence on the site; and
 - a copy of a revised site/landscape plan.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (PDS 59) (Planned Development District)
North: PD No. 193 (MF-2) & (PDS 59)(Planned Development District, Multifamily)
South: PD No. 193 (MF-2)(Planned Development District, Multifamily)
East: PD No. 193 (PDS 59) (Planned Development District)
West: PD No. 193 (MF-2)(Planned Development District, Multifamily)

Land Use:

The subject site is developed with a multifamily complex. The areas to the north, east, south, and west are developed with residential 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 23, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Sept. 20, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Sept. 21, 2007: 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 September 28th deadline to submit additional evidence for staff to factor into their analysis;
 - the October 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the October public hearing after considering the information/evidence and

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

Oct. 1, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October 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 Chief Arborist, and the Assistant City Attorney to the Board.

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

Oct. 5, 2007 The applicant submitted additional information to the Board Administrator (see Attachments A and B).

STAFF ANALYSIS:

- The request is made to maintain a 6' high board-on-board cedar fence in the site's front yard setbacks along Throckmorton Street and Avondale Avenue on a site developed with a multifamily complex.
- A scaled site plan indicating the exact location of the existing fence line has not been submitted. As of October 8th, a scaled site plan has been submitted that denotes the *approximate* location of the existing fence, and an *unscaled* site plan has been submitted that denotes the exact location of the fence.
- A partial elevation of the existing fence/wall on the site has been submitted. The applicant states that this partial elevation is a representation of the any component (fence/gate/column) higher than 4' in the site's Avondale Avenue and Throckmorton Street front yard setbacks: an elevation depicting a 6' high "cedar fence cedar posts spaced every six (6) feet."
- There is no single family home that has direct frontage to the existing fence/wall.
- Two other fences/walls above four (4) feet high were noted in the immediate vicinity of the site both along Avondale Avenue. One fence/wall is located immediately west of the subject site - a fence/wall that is approximately 6' in height and comprised of solid board. The other fence is located immediately southeast of the subject site – a fence that is approximately 6' in height comprised of open metal with brick columns.
- As of October 8, 2007, two letters had been submitted in support of the request, and no letters had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 2' (whereby the existing 6' high fence/wall in the site's Avondale Avenue and Throckmorton Street front yard setbacks) does not adversely affect neighboring property.
- Although a partial elevation of the existing fence has been submitted, the board may feel that it is important for the applicant to submit a scaled site plan that denotes the exact location of the existing fence/wall in the site's two required front yard setbacks. Usually in conjunction with granting a fence height special exception, the board

imposes a scaled site plan denoting the fence/wall location on a site once they have assessed that the proposal over 4' does not adversely affect neighboring property. This type of condition imposed in conjunction with a fence height special exception would provide assurance that (in this case) the existing fence/wall would be maintained in the location and of the height/material shown on the submitted documents.

- In addition, the board should note that the submitted revised unscaled site/landscape plan only notes the location and number of trees that are to be maintained adjacent to the existing fence/wall. This revised unscaled site/landscape plan denotes specific landscape materials but does not specifically mention the number or sizes of materials. If the board feels that the provision of certain landscape materials adjacent to the fence/wall is an aspect of whether the fence adversely affects neighboring property, they may request that the applicant submit a plan that provides more specificity to the sizes and numbers of Asian Jasmine, Nandinas, etc. shown on the submitted revised plan.

BOARD OF ADJUSTMENT ACTION: OCTOBER 16, 2007

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Gaspard**

I move that the Board of Adjustment grant application **BDA 067-145** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted unscaled site plan and partial fence/wall elevation is required.

SECONDED: **Gabriel**

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

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 067-126

BUILDING OFFICIAL'S REPORT:

Application of City Of Dallas (Parks Department), represented by Zone Systems, Inc., for a special exception to the landscape regulations at 3410 Armstrong Avenue. This property is more fully described as Lots 41-43 in City Block M/1537 and is zoned PD-193 (LC) which requires mandatory landscaping. The applicant proposes to construct a nonresidential use and provide an alternate landscape plan which will require a special exception to the landscape regulations.

LOCATION: 3410 Armstrong Avenue

APPLICANT: City Of Dallas (Parks Department)
Represented by Zone Systems, Inc.

October 16, 2007 Public Hearing Notes:

- The applicant's representative submitted a revised landscape plan at the public hearing.

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with paving an existing unimproved parking lot.

STAFF RECOMMENDATION:

Denial

Rationale:

- The City's Chief Arborist recommends denial of this request since there is insufficient landscape information to provide an adequate review to advise the board.
- The applicant has not substantiated how approval of this request (subject to the submitted site plan) would not compromise the spirit and intent of the landscaping requirements of PD No. 193.

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:

- PD No. 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind.

The applicant's representative has submitted a site plan where, according to the City of Dallas Chief Arborist, the applicant seeks relief from compliance with the PD No. 193's landscape, streetscape, screening and fencing standards.

- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner pertaining to the submitted site plan (see Attachment A). The memo stated the following:
 - The special exception request is triggered by the construction of a new parking lot with improved surface.
 - Deficiencies:
 1. PD 193 landscape standards are not addressed on the proposed landscape plan. The landscape area on the property is not described. The screening landscaping for the Katy Trail is not located on the property.
 2. The required sidewalk is not located under PD 193 landscaping standards. The site does not have the required street trees at the required ratio of 1:25 linear feet. The site does not provide 10% landscape area required for LC zoning standards.
 3. The landscape plan is not descriptive for the identification of plant materials or irrigation standards. There is insufficient information to give analysis of the landscape areas shown on the plans.
 - Factors for consideration:
 - The corner triangular parking area is adjacent to an electric utility substation. It is recommended that any landscaping on this property be irrigated with only low-pressure direct irrigation systems for public safety purposes.
 - The landscape plan does not provide plant material information or irrigation methods that would be utilized on the property of the Katy Trail. It is unclear how irrigation will be provided to the triangular planting area near the drive entry.
 - Recommendation:
 - Denial:
 - The site is deficient of PD 193 standard for screening from the street and street trees. At the time of this report, there is insufficient landscape information to provide an adequate review to advise the Board. The applicant has not provided a suitable planting plan or irrigation plan for analysis.
 - If the Board chooses to approve the submitted plan, the Chief Arborist also recommends that a separate landscape plan identifying specific plant materials and irrigation system be provided with an application for the

grading/paving permit for the installation of the parking lot. Plant materials must comply with PD 193 approved plant species.

- The applicant's representative submitted additional written documentation to the board at the September 18th public hearing (see Attachment B). This information included photos of the site and adjacent property, and plans that the applicant's representative represented as plans that conceptually addressed concerns expressed in a letter from the Oak Lawn Committee. (Note that none of these plans were represented or identified as a plan that would allow the Chief Arborist to make the necessary assessment of how the proposal was deficient in meeting the landscape regulations).
- On September 18, 2007, the Board of Adjustment delayed action on this request until October 16, 2007, and encouraged the applicant to submit a landscape plan to the Chief Arborist that would allow a proper assessment of how the proposal was deficient in meeting the landscape regulations.
- As of October 8, 2007, no additional information/plan had been submitted by the applicant.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (LC Subdistrict) (Planned Development District, Light Commercial)
North: PD No. 193 (LC Subdistrict) (Planned Development District, Light Commercial)
South: PD No. 193 (LC Subdistrict) (Planned Development District, Light Commercial)
East: PD No. 193 (LC Subdistrict) (Planned Development District, Light Commercial)
West: PD No. 193 (LC Subdistrict) (Planned Development District, Light Commercial)

Land Use:

The subject site is developed as an unimproved parking lot. The areas to the north and west are developed as the Katy Trail; the area to the east is developed with retail and warehouse uses; and the area to the south is developed with a utility 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:

July 16, 2007: 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 16, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- August 17, 2007: 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 August 27th deadline to submit additional evidence for staff to factor into their analysis and discuss at the staff review team meeting;
 - the September 7th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the September public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- August 28, 2007: 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 Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- The Dallas Code Compliance Manager submitted a review comment sheet marked "Has no objections."
- Sept. 7, 2007 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment A).
- Sept. 18, 2007 The Board of Adjustment conducted a public hearing on this matter whereby the board delayed action on the application until October 16, 2007.
- Sept. 24, 2007: The Board Administrator wrote the applicant's representative a letter that conveyed the following information:
- the September 28th deadline to submit additional evidence for staff to factor into their analysis and discuss at the staff review team meeting; and

- the October 5th deadline to submit additional evidence to be incorporated into the Board's docket materials.

Oct. 1, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October 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 Chief Arborist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- As of October 8, 2007, the applicant has not submitted a revised landscape plan for review/consideration. According to the City of Dallas Chief Arborist, the site plan submitted with the original application and presented at the September 18th briefing/hearing provides insufficient landscape information to provide an adequate review to advise the Board. The city arborist has identified that PD 193 landscape standards are not addressed on the plan, that sidewalks are not meeting locational requirements of the ordinance, that the site does not meet the required number of street trees or 10% landscape area, and that the plan is not descriptive for the identification of plant materials or irrigation standards.
- The applicant has the burden of proof in establishing the following:
 - The special exception (where a plan has been submitted that does not provide adequate landscape information to allow the City's Chief Arborist the ability to provide an adequate review of the issues at hand) 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 merely that the applicant must comply with the submitted site plan, the final Certificate of Occupancy could be issued on the site, where the site could be developed with a surface parking lot and be "excepted" from full compliance to the requirements of the Oak Lawn PD landscape ordinance including but not necessarily limited to (given the vagueness of information on the site plan) the site not meeting the standards related to location of sidewalks, the number of street trees, the amount of required landscape area, and plant materials and irrigation.
- The City's Chief Arborist recommends that if the Board chooses to approve the request that in addition to imposing the submitted site plan as a condition, that a separate landscape plan identifying specific plant materials and irrigation system be provided with an application for the grading/paving permit for the installation of the parking lot whereby the plant materials on this plan be of those that must comply with PD 193 approved plant species.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 18, 2007

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

APPEARING IN OPPOSITION: No one

MOTION: **Schweitzer**

I move that the Board of Adjustment in Appeal No. **BDA 067-126**, hold this matter under advisement until **October 16, 2007** so that the applicant may come back with a landscape plan.

SECONDED: **Gabriel**

AYES: 4 – Richmond, Gabriel, Schweitzer, Ruiz

NAYS: 0 -

MOTION PASSED: 4– 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: OCTOBER 16, 2007

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

APPEARING IN OPPOSITION: No one

MOTION: **Gaspard**

I move that the Board of Adjustment, in Appeal No. **BDA 067-126**, on application of the City of Dallas, represented by Zone Systems, Inc., **grant** the request of this applicant for a special exception to the landscaping requirements contained in PD 193, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that this special exception will not compromise the spirit and intent of Section 51P-193.126 of the Dallas Development Code. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the landscape plan submitted on **10/16/07** is required with replacement of the two large live oak trees with smaller trees recommended by Oncor not to exceed 25 feet in height.

SECONDED: **Schweitzer**

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

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 067-142

BUILDING OFFICIAL'S REPORT:

Application of Thomas D. Malone for a special exception to the fence height regulations at 1439 Sereno Drive. This property is more fully described as Lot 1 in City Block 2/5321 and is zoned R-10(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to maintain an 8 foot 9 inch fence in a required front yard setback which will require a special exception of 4 feet 9 inches.

LOCATION: 1439 Sereno Drive

APPLICANT: Thomas D. Malone

REQUEST:

- A special exception to the fence height regulations of 4' 9" is requested in conjunction with maintaining an 8' 9" high board-on-board cedar fence and gate in the site's 30' Hermosa Drive 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 subject site is located at the southwest corner of Sereno Drive and Hermosa Drive. The site has a 30' front yard setback along Sereno Drive (since it is the shorter of the two street frontages) and a 30' front yard setback along Hermosa Drive. (Even though the Hermosa Drive frontage is the longer of the two street frontages, it is deemed a front yard in order to maintain the continuity of the established setback of homes to the west of the site that front southward onto Hermosa Drive).

The applicant has submitted a scaled survey plat/site plan and an elevation indicating a fence/wall and gate that reaches a maximum height of 8' 9" in the site's Hermosa Drive front yard setback. (No fence/column/gate is noted on the plan or elevation that would exceed 4' in height in the site's Sereno Drive front yard setback).

- The submitted scaled survey plat/site plan indicates that the existing fence/wall and gate located in the site's Hermosa Drive 30' front yard setback has the following additional characteristics:
 - approximately 130' – 135' in length parallel to Hermosa Drive, and approximately 21' perpendicular to Hermosa Drive;
 - fence/wall located approximately 8' from the site's Hermosa Drive front property line (or approximately 22' from the Hermosa Drive pavement line);
 - linear in design with a recessed gate/entryway (located approximately 17' from the site's Hermosa Drive front property line or approximately 31' from the Hermosa Drive pavement line);
 - with regard to landscape materials there are two circles labeled "14" Maples" located on either side of the existing fence/wall in the Hermosa Drive front yard setback perpendicular to Hermosa Drive, and four circles that appear to be some form of tree located between the existing fence/wall and the Hermosa Drive front property line/pavement line.
- Fence/wall/gate elevation have been submitted that detail an "8'-9" board-on-board cedar fence with metal posts on 6'-0" centers" as well as 4 "crape myrtles" located on the Hermosa Drive street side of the existing fence/wall.
- There is no single family home that has direct frontage to the existing fence/wall. The house immediately adjacent to the fence/wall on the site (across the street on Hermosa Drive) fronts north to Sereno Drive.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences above four (4) feet high which appeared to be located in a front yard setback.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - photos of the fence on the site and of other fences in the area;
 - a table of market and taxable values; and
 - a copy of a petition of those neighbors/owners who support the request (along with a map indicating where the petitioners are located).

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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

Timeline:

- August 20, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Sept. 20, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Sept. 21, 2007: 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 September 28th deadline to submit additional evidence for staff to factor into their analysis;
 - the October 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the October public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Oct. 1, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October 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 Chief Arborist, and the Assistant City Attorney to the Board.

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

Oct. 5, 2007

The applicant submitted additional information to the Board Administrator (see Attachment A).

STAFF ANALYSIS:

- The request is made to maintain an 8' 9" high board-on-board cedar fence in the site's 30' front yard setback along Hermosa Drive on a site developed with a single family home.
- Although the site is located at the corner of Sereno Drive and Hermosa Drive and has two front yard setbacks, no proposal is proposed to be erected or maintained higher than 4' in the site's Sereno Drive front yard setback.
- A scaled survey plat/site plan indicates that the existing fence/wall and gate located in the site's Hermosa Drive 30' front yard setback is approximately 130' – 135' in length parallel to Hermosa Drive, approximately 21' perpendicular to Hermosa Drive; fence approximately 8' from the site's Hermosa Drive front property line (or approximately 22' from the Hermosa Drive pavement line), a recessed gate/entryway (located approximately 17' from the site's Hermosa Drive front property line or approximately 31' from the Hermosa Drive pavement line).
- Fence/wall/gate elevations have been submitted that detail an "8'-9" board-on-board cedar fence with metal posts on 6'-0" centers" as well as 4 "crape myrtles" located on the Hermosa Drive street side of the existing fence/wall.
- With regard to landscape materials, the submitted site plan denotes two circles labeled "14" Maples" located on either side of the existing fence/wall in the Hermosa Drive front yard setback perpendicular to Hermosa Drive, and four circles that appear to be some form of tree located between the existing fence/wall and the Hermosa Drive front property line/pavement line.
- There is no single family home that has direct frontage to the existing fence/wall. The house immediately adjacent to the fence/wall on the site (across the street on Hermosa Drive) fronts north to Sereno Drive.
- No other fences were noted in the immediate area above four (4) feet high which appeared to be located in a front yard setback.
- As of October 8, 2007, four letters and a petition signed 26 neighbors/owners had been submitted in support, and 2 letters had been submitted in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' 9" (whereby the existing 8' 9" high fence in the site's Hermosa Drive front yard setback) does not adversely affect neighboring property.
- Granting this special exception to the fence height regulations of 4' 9" with a condition imposed that the applicant complies with the submitted survey plat/site plan and elevations would provide assurance that the existing fence would be maintained in the location and of the height/material shown on these documents.

BOARD OF ADJUSTMENT ACTION: OCTOBER 16, 2007

APPEARING IN FAVOR: Dean Malone, 1439 Sereno Dr., Dallas, TX
Earl Johnson, 1524 No. Buckner, Dallas, TX
Dotty Vidal, 1518 El Campo, Dallas, TX
Melanie Landay, 1510 Sereno Dr., Dallas, TX
Daniel Schmalzer, 1421 El Campo, Dallas, TX
William Letart, 9503 El Pation, Dallas, TX

APPEARING IN OPPOSITION: James Moriarty, 9425 Hermosa Drive

MOTION: **Gaspard**

I move that the Board of Adjustment, in Appeal No. **BDA 067-142**, on application of Thomas D. Malone, **grant** the request of this applicant to construct and maintain an eight-foot-nine-inch-tall 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 condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted survey plat/site plan and elevations is required.

SECONDED: **Gabriel**

AYES: 4 – Richmond, Gabriel, Schweitzer, Gaspard

NAYS: 1– Taft

MOTION PASSED: 4 – 1

FILE NUMBER: BDA 067-147

BUILDING OFFICIAL’S REPORT:

Application of David Larsen Designs for special exceptions to the fence height and visibility obstruction regulations at 5432 Falls Road. This property is more fully described as Lot 5 in City Block 3/5604 and is zoned R-1ac(A) which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct a 6 foot fence in a required front yard setback which will require a special exception to the fence height regulations 2 feet, and to locate items within visibility triangles which will require special exceptions to the visibility obstruction regulations.

LOCATION: 5432 Falls Road

APPLICANT: David Larsen Designs

REQUESTS:

- The following appeals had been made with the original application:
 1. A special exception to the fence height regulations of 2' had been requested in conjunction with constructing and maintaining the following in the site's 40' Hollow Way Road front yard setback:
 - a 6' high open wrought iron fence and entry gate with two 6' metal entry posts and one 6' high stone column parallel to Hollow Way Road;
 - a 6' high chain link fence perpendicular to Hollow Way Road on the south side of the site; and
 - a 6' high stone column located perpendicular to Hollow Way Road on the north side of the site
 2. Special exceptions to the visibility obstruction regulations had been requested in conjunction with constructing and maintaining two columns in the site's two, 20' drive approach visibility triangles into the site from Hollow Way Road.

Note that the applicant amended his original application for these two submitted special exceptions with the submittal of a revised site plan to staff on September 28, 2007 – a plan that deleted the location of columns in required drive approach visibility triangles shown on the originally submitted plan. (The revised site plan indicates no item to be located/or maintained in any required visibility triangle on the site hence no longer creating a need to a request a special exception to the visibility obstruction regulations).

STAFF RECOMMENDATION (fence height special exception):

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

STAFF RECOMMENDATION (visibility obstruction special exception):

Denial without prejudice

Rationale:

- The applicant's submittal of a revised site plan on September 28th (see Attachment A) eliminated his need for this special exception. The revised site plan shows that the proposal will be in full compliance with the visibility obstruction regulations. (Note that no request was put in writing to withdraw this request, hence, staff's recommendation that the board address it by denying it without prejudice).

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STANDARD FOR A SPECIAL EXCEPTION TO THE VISIBILITY OBSTRUCTION REGULATIONS:

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

GENERAL FACTS (related to the fence height special exception):

- 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 subject site is located at the intersection of Falls Road and Hollow Way Road. The site has a 40' front yard setback along Falls Road (since this frontage is the shorter of the site's two frontages) and a 40' front yard setback along Hollow Way Road. (Even though the Hollow Way Road frontage is the longer of the two street frontages, it is deemed a front yard in order to maintain the continuity of the established setback of homes to the south of the site that front eastward onto Hollow Way Road).
- The applicant has submitted a scaled site plan and elevations indicating a proposal that reaches a maximum height of 6' in the site's Hollow Way Road front yard setback. (No fence/column/gate is noted on the plan or elevation that would exceed 4' in height in the site's Falls Road front yard setback).
- The submitted revised scaled site plan indicates that the proposal to be located in the site's Hollow Way Road 40' front yard setback has the following additional characteristics:
 - approximately 150 in length parallel to Hollow Way Road, and approximately 34' perpendicular to Hollow Way Road;
 - located approximately 6' from the site's Hollow Way front property line (or approximately 21' from the Hollow Way Road pavement line); and
 - linear in design.
- There is one single family home that would have direct frontage to the proposed fence/wall. (This single family home has an approximately 6' high open wrought iron fence in its front yard setback on *Falls Road* that appears to have been "special excepted" by the board in 1997: BDA967-290. Note that the majority of the length of this fence facing west on Hollow Way Road is located in this site's side yard setback).
- The Board Administrator conducted a field visit of the site and surrounding area along Hollow Way Road (approximately 500 feet north and south of the site) and noted no other additional fence/walls that appeared to be located in the front yard setback and to exceed 4' in height.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - photos of other fences in the area;
 - a revised site plan; and

- copies of the originally submitted fence elevations.

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

- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at intersections and 20-foot visibility triangles at drive approaches); and
 - between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).The applicant had submitted a site plan with the original application that indicated two columns located in the two 20' visibility triangles at the drive approach into the site from Hollow Way Road. However, the applicant basically amended his original application for these special exceptions to the visibility obstruction regulations upon the submittal of a revised site plan on September 28, 2007 (see Attachment A) – a plan that indicated no item to be located/or maintained in any required visibility triangle on the site (hence no longer requiring a request for a special exception to the visibility obstruction regulations).

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA 067-028, 5432 Falls Road (the subject site) On February 13, 2007, the Board of Adjustment Panel B granted requests for a special exception to the fence height regulations of 4' and a special exception to the visibility obstruction regulations at drive approaches into the site from Hollow Way Road. The board imposed the following conditions with the fence height special exception: compliance with the submitted

scaled site plan and revised scaled elevation is required, and the fence must be located 20' from the edge of the existing pavement line. The board imposed the following conditions with the visibility obstruction special exception: compliance with the submitted scaled site plan and revised scaled elevation is required, and any landscape materials located in the required visibility triangle areas must be maintained outside the area between two-and-a-half and eight feet in height measured from the top of the adjacent street curb (or grade of the portion on the street adjacent to the visibility triangle). The case report stated that a special exception to the fence height regulations of 4' was requested in conjunction with constructing and maintaining the following in the site's 40' front yard setback along Hollow Way Road: an approximately 150' long, 6' high open wrought iron fence and entry gate with 8' stone columns parallel to Hollow Way Road; and an approximately 40' long, 6' high chain link fence perpendicular to Hollow Way Road on the south side of the site; and a special exception to the visibility obstruction regulations was requested in conjunction with constructing and maintaining two 8' high stone columns and possibly landscape materials in the site's two, 20' drive approach visibility triangles into the site from Hollow Way Road. The site was being developed with a single family home.

2. BDA 967-290, 9750 Hollow Way Road (the lot immediately east of the subject site)

On September 15, 1997, the Board of Adjustment Panel C granted requests for a special exception to the fence height regulations of 3' and a special exception to the visibility obstruction regulations at drive approaches and at an intersection. The board imposed the following conditions with these requests: compliance with the submitted elevation plan, and the amended site/landscape plan indicating no fence

located in the Falls Road/Hollow Way Road visibility triangle is required. (The board noted that this action did not authorize the use of public right-of-way or authorize a license to use the public right-of-way for landscape materials). The case report stated that the requests were made to construct/maintain a 6' high open wrought iron fence with 6.5' high brick columns and a 7' high open wrought iron pedestrian entry gate, and to maintain landscape materials in triangles.

3. BDA 87-112, 5507 Winston Court (the lot immediately southeast of the subject site)

On January 13, 1987, the Board of Adjustment denied a request for a special exception to the fence height regulations of 4' without prejudice. The case report stated that the request was made to construct a combination wrought iron and brick fence with 8' columns.

Timeline:

- August 24, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Sept. 20, 2007: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."
- Sept. 24, 2007: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the requests;
 - the September 28th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
 - the October 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to

“documentary evidence,” and may result in delay of action on the appeal or denial; and

- that the board will take action on the matter at the October public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Sept. 29, 2007 The applicant submitted information beyond what was submitted with the original application (see Attachment A).

Oct. 1, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October 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 Chief Arborist, and the Assistant City Attorney to the Board.

Oct. 2, 2007 The Development Services Senior Engineer forwarded a review comment sheet marked “Has no objections” commenting:

- “Updated submitted site plan shown at the staff review team meeting indicates that the fence and columns for the gate are no longer in the 20’ x 20’ visibility triangles.”

STAFF ANALYSIS (related to the fence height special exception):

- The request is made to construct and maintain generally a 6’ high open fence (open wrought iron and chain link) in the site’s 40’ front yard setback along Hollow Way Road on a site developed with a single family home.
- Although the site is located at the corner of Falls Road and Hollow Way Road and has two front yard setbacks, no fence/gate/column is proposed to be erected or maintained higher than 4’ in the site’s Falls Road front yard setback.
- This special exception is generally a restoration of a special exception to the fence height regulations considered/granted on this site by Panel A in February of 2007. In February of 2007, the board granted requests for a special exception to the fence height regulations of 4’ and a special exception to the visibility obstruction regulations at drive approaches into the site from Hollow Way Road, and imposed the following conditions with the fence height special exception: compliance with the submitted scaled site plan and revised scaled elevation is required, and the fence must be located 20’ from the edge of the existing pavement line. The current request is very much the same request as in February other than the height requested in the fence height special exception has been reduced from 4’ to 2’, and there is no longer any item proposed to be located in a visibility triangle. Because the board tied the previous requests to a specific site plan and elevations in February of 2007, any amendment to what was placed as a condition to these requests required a new application, even in this case where the current fence height special exception application on this site is less than what was originally applied for and granted.

- A revised scaled site plan has been submitted that documents the location of the proposed fence, columns, and gate relative to their proximity to the property line and pavement line. The revised site plan clearly shows the length of the proposal relative to the entire lot. The proposal is about 150' in length parallel to Hollow Way Road and about 34' in length perpendicular to the street on the south side of the site, and is located approximately 6' from on the site's Hollow Way Road front property line. The revised site plan shows that the fence to exceed 4' in height is limited to the site's Hollow Way front yard setback.
- Scaled elevations have been submitted that represent partial fence elevations. These elevations document the heights and materials of the proposal: a 6' high open wrought iron fence and entry gate with 6' high metal columns parallel to Hollow Way Road, a 6' high chain link fence perpendicular to Hollow Way Road on the south side of the site, and one 6' high stone column perpendicular to Hollow Way Road on the north side of the site.
- There is one single family home that would have direct frontage to the proposed fence/wall. (This single family home has an approximately 6' high open wrought iron fence in its front yard setback on Falls Road that appears to have been "special excepted by the board in 1997: BDA967-290. Note that the majority of the length of this fence facing west on Hollow Way Road is located in this site's side yard setback).
- No other additional fence/walls were noted that appeared to be located in the front yard setback and or to exceed 4' in height along Hollow Way Road (approximately 500 feet north and south of the site).
- As of October 8, 2007, no letters had been submitted to staff in support or opposition to the proposal.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the fence, posts, column, and entry gate that are proposed to exceed 4' in height) will not adversely affect neighboring property.
- Granting this special exception of 2' with conditions imposed that the applicant complies with the submitted revised site plan and elevations would assure that the proposed fences, posts, column, and gate would be constructed of/maintained as/limited to the materials, heights, and location shown on these documents.

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

- The Development Services Senior Engineer has commented that he has no objections to the requests since the updated submitted site plan shown at the staff review team meeting indicates that the fence and columns for the gate are no longer in the 20' x 20' visibility triangles.
- The applicant submitted a revised site plan on September 28, 2007 (see Attachment A) – a plan that indicated no item to be located/or maintained in any required visibility triangle on the site (hence no longer requiring a request for a special exception to the visibility obstruction regulations). No request for withdrawal of this request was put in writing to staff therefore staff recommends that the board address

this request (that appears from the revised site plan to be no longer needed) by denying it without prejudice.

BOARD OF ADJUSTMENT ACTION: OCTOBER 16, 2007

APPEARING IN FAVOR: David Larsen, 13329 Rolling Hills, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Schweitzer

I move that the Board of Adjustment, in Appeal No. **BDA 067-147**, on application of David Larsen Designs, **grant** the request of this applicant to construct and maintain a six-foot-tall 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 condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Gabriel

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

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

MOTION #2: Schweitzer

I move that the Board of Adjustment, in Appeal No. **BDA 067-147**, on application of David Larsen Designs, **deny** the fence height special exception to the visibility obstruction regulations requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: Gabriel

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

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

MOTION: Schweitzer

I move to adjourn this meeting.

SECONDED: Gabriel

AYES: 5– Richmond, Gabriel, Schweitzer, Taft, Gaspard
NAYS: 0 -
MOTION PASSED: 5– 0 (Unanimously)

2:17 P.M. - Board Meeting adjourned for **October 16, 2007**.

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.