

**BOARD OF ADJUSTMENT, PANEL A  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, COUNCIL CHAMBERS  
TUESDAY, OCTOBER 17, 2006**

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

MEMBERS ABSENT FROM BRIEFING: Scott Griggs, regular member

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Claire Swann, Asst. City Attorney, Donnie Moore, Chief Planner, Jennifer Hiromoto, Senior 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 Johnny Jefferson, alternate member

MEMBERS ABSENT FROM HEARING: Scott Griggs, regular member

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

**10:40 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **October 17, 2006** docket.

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**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.

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel A September 19, 2006 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: OCTOBER 17, 2006**

**MOTION:** Hill

I move to approve the Board of Adjustment Panel A September 19, 2006 public hearing minutes.

**SECONDED:** Jefferson

**AYES:** 5 – Richmond, Hill, Gabriel, Schweitzer, Jefferson

**NAYS:** 0 -

**MOTION PASSED:** 5– 0 (unanimously)

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**MISCELLANEOUS ITEM NO. 2**

**FILE NUMBER:** Unassigned

**REQUEST:** To waive the \$1,000.00 filing fee to be submitted in conjunction with potential Board of Adjustment appeal to establish a compliance date for a nonconforming motel use

**LOCATION:** 1126 E. 8<sup>th</sup> Street

**APPLICANT:** Michael Davis and Dwaine Caraway

**STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT TO ESTABLISH A COMPLIANCE DATE FOR A NONCONFORMING USE:**

The Dallas Development Code states that the board may waive the filing fee for a board of adjustment application if the board finds that payment of the fee would result in substantial financial hardship to the applicant. In making this determination, the board may require the production of financial documents. Notwithstanding the above, the board may waive the fee for a request to establish a compliance date under Section 51A-4.704(a)(1) only if:

- (A) the applicant is a corporeal person for whom payment of the fee would result in substantial financial hardship; or
- (B) a written request for a fee waiver is signed by owners, as evidenced by the last approved city tax roll, of 20 percent or more of real property within 200 feet, including streets and alleys, of the boundary of the lot containing the nonconforming use.

**GENERAL FACTS:**

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waiver/s reimbursements:
  - The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.
  - The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board’s miscellaneous docket for predetermination.
  - If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.
  - In making this determination, the board may require the production of financial documents.
  - Notwithstanding the above, the board may waive the fee for a request to establish a compliance date under Section 51A-4.704(a)(1) only if:
    - (A) the applicant is a corporeal person for whom payment of the fee would result in substantial financial hardship; or
    - (B) a written request for a fee waiver is signed by the owners, as evidenced by the last approved tax roll, of 20 percent or more of real property within 200 feet, including streets and alleys, of the boundary of the lot containing the nonconforming use.
- The applicant submitted a letter to staff requesting a waiver of a filing fee to be submitted in conjunction with a possible Board of Adjustment issue (see Attachment A). This letter contained some details on the applicants’ finances.

**Timeline:**

- Sept. 13, 2006      The applicants submitted a letter requesting a fee waiver of \$1,000.00 for a Board of Adjustment application that may be requested at the address referenced above pertaining to a nonconforming use located at 1126 E. 8<sup>th</sup> Street.
- Sept. 19, 2006:    The Board of Adjustment Secretary randomly assigned this request to Board of Adjustment Panel A.
- Sept. 19, 2006:    The Board Administrator wrote the applicants a letter (copying the record owner of the subject site) that conveyed the following information (see Attachment B):

- the public hearing date and panel that will consider the fee waiver request;
- the criteria/standard that the board will use in their decision to approve or deny the fee waiver 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 noon, October 6<sup>th</sup> 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 October public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

**BOARD OF ADJUSTMENT ACTION: OCTOBER 17, 2006**

APPEARING IN FAVOR: Frank Hernandez, 7161 Wayne, Dallas, TX75223

APPEARING IN OPPOSITION: No one

MOTION: **Schweitzer**

I move that the Board of Adjustment in Miscellaneous Item #2, **deny** the request to waive the filing fee to be submitted in conjunction with potential Board of Adjustment appeal.

SECONDED: **Jefferson**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

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### **MISCELLANEOUS ITEM NO. 3**

**FILE NUMBER:** Unassigned

**REQUEST:** To waive the \$600.00 filing fee to be submitted in conjunction with a potential Board of Adjustment appeal

**LOCATION:** 9567 Highfield Drive

**APPLICANT:** Briggette Jordan Crisler

#### **STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:**

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

#### **GENERAL FACTS:**

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

#### **Timeline:**

Sept. 22, 2006      The applicant submitted a letter requesting a waiver of the filing fee for a Board of Adjustment application that may be submitted/requested at the address referenced above (see Attachment A).

Sept. 29, 2006:      The Board of Adjustment Secretary randomly assigned this request to Board of Adjustment Panel A.

- Sept. 29, 2006: The Board of Adjustment Senior Planner wrote the applicant a letter that conveyed the following information:
- the public hearing date and panel that will consider the request;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the 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 noon, October 6<sup>th</sup> 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 October public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

October 6, 2006 The applicant submitted additional materials related to her finances (see Attachment B).

**BOARD OF ADJUSTMENT ACTION: OCTOBER 17, 2006**

APPEARING IN FAVOR: Bridgette Crisler, 9567 Highfield Dr., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Hill

I move that the Board of Adjustment **grant** the request to waive the filing fee to be submitted in conjunction with potential Board of Adjustment appeal.

SECONDED: Jefferson

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

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**FILE NUMBER:** BDA 056-224(J)

**BUILDING OFFICIAL'S REPORT:**

Application of Richard Carter, AIA for a variance to the front yard setback and parking regulations at 1541 W. Colorado Blvd. This property is more fully described as lot 6 in city block 8/3826 and is zoned CD-13, which requires a 20 foot setback for an enclosed parking space and requires a front yard setback of 25 feet for an accessory structure. The applicant proposes to construct an accessory garage and provide a 6 foot front yard setback, which would require a variance of 19 feet to the front yard setback regulations and provide a 6 foot setback for an enclosed parking space, which would require a variance of 14 feet to the parking regulations.

**LOCATION:** 1541 W. Colorado Blvd

**APPLICANT:** Richard Carter, AIA

**REQUEST:**

- A variance to the front yard setback regulations of 19' and a variance of 6' to the off-street parking regulations are requested in conjunction with constructing a detached accessory garage structure on a site that is currently developed with a single family use.

**STAFF RECOMMENDATION:**

Approval, subject to compliance with the revised site plan and submitted elevation

Rationale:

- The lot's restrictive shape and slope preclude its development in a manner commensurate with other developments found on similarly-zoned CD-13 lots.
- Granting the variances, subject to compliance with the revised site plan and submitted elevation, would limit the front yard encroachment to the subject site's Olympia Drive front yard setback, as shown on these plans.
- Transportation Engineer Nguyen does not object to the off-street parking variance request and notes the cul-de-sac should have limited local traffic and no sidewalk exists along Olympia Drive.
- The revised site plan and elevation have received Conservation District review approval for compliance with CD-13 regulations.

**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 for accessory structures located in a front yard in CD 13, the Kessler Park Conservation District.
- The request site has two front yards according the Dallas Development Code because the site has unrestricted frontage on two streets and the property to the east on Olympia creates an established front yard that the subject property must maintain.
- The submitted site plan showed the location of the proposed garage, which showed the two car garage to have a staggered façade, and provided a front yard setback of 4'.
- The applicant's representative met with the Conservation District planner for compliance with the CD-13 requirements. After this review, the site plan was revised to line up the proposed garage more closely with the detached garage on the adjacent property to the east. The revised site plan and submitted elevation have received Conservation District review approval.
- The revised, scaled site plan shows the proposed garage provides a 6' setback adjacent to Olympia Drive.
- The applicant could build the garage structure without a garage door (or enclosed parking spaces) if the board were to deny the variance request. The need for the parking variance is to allow the parking spaces in the structure to be enclosed with a garage door.
- The revised site plan identifies the location of a sewer easement at the northern half of the property, a utility easement at the northeast portion, and three trees that the applicant's representative names as the restrictions of the lot.
- The submitted elevation indicates that the proposed garage would have a brick façade to match the main structure.
- The site appears to be somewhat sloped, wedge shaped, tapering at the northern side, and 10,463 square feet in area. The site has 80' wide frontage along Colorado Boulevard and narrows to approximately 40' of frontage along Olympia Drive.
- DCAD records indicate that the site is developed with a 2,989 square foot structure built in 1935 in very good condition.



## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: CD-13 Kessler Park Conservation District  
North: CD-13 Kessler Park Conservation District  
South: CD-13 Kessler Park Conservation District  
East: CD-13 Kessler Park Conservation District  
West: CD-13 Kessler Park Conservation District

### **Land Use:**

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

### **Zoning/BDA History:**

1. Z034-176 On May 25, 2005, the City Council approved a conservation district for single family uses on approximately 410 acres generally bounded by Kessler Parkway, Sylvan Avenue, Stewart Drive, and Plymouth Road.

### **Timeline:**

- August 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.
- Sept. 20, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Sept. 28, 2006: The Board of Adjustment Senior Planner provided the applicant a letter by hand delivery to convey 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 October 6<sup>th</sup> 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 October public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

October 2, 2006: 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 Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

October 2, 2006 The applicant’s representative submitted a revised site plan and received Conservation District review approval.

**STAFF ANALYSIS:**

- The site appears to be somewhat sloped, wedge shaped, tapering at the northern side, and 10,463 square feet in area. The site has 80’ wide frontage along Colorado Boulevard and narrows to approximately 40’ of frontage along Olympia Drive.
- The applicant’s representative has identified an irregular shape, easements, mature trees, and “extreme topography” that restrict the subject property.
- Transportation Engineer Nguyen does not object to the request and notes the cul-de-sac should have limited local traffic and no sidewalk exists along Olympia Drive.
- The applicant has the burden of proof in establishing the following related to the front yard variance and off-street parking regulations variance requests:
  - That granting the variances 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 is necessary to permit development of the subject site (a site that is developed with a single family structure, and a site that is sloped, wedge shaped, and 10,463 square feet in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same CD-13 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 CD-13 zoning classification.

- If the Board were to grant the front yard variance request of 19' and the enclosed parking setback variance of 6', imposing a condition whereby the applicant must comply with the revised site plan, the structures in the setback would be limited to that what is shown on the revised site plan.
- Typically, when the Board has found that this type of variance request is warranted, they have imposed the following conditions:
  - Compliance with the submitted site plan is required.
  - An automatic garage door must be installed and maintained in working order at all times.
  - At no time may the area in front of the garage be utilized for parking of vehicles.
  - All applicable permits must be obtained.
 These conditions are imposed to assure that the variance will not be contrary to public interest.

**BOARD OF ADJUSTMENT ACTION: OCTOBER 17, 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:

In conjunction with the front yard setback variance:

- Compliance with the submitted site plan is required.

In conjunction with the parking variance:

- Compliance with the submitted site plan is required.
- An automatic garage door must be installed and maintained in working order at all times.
- At no time may the area in front of the garage be utilized for parking of vehicles

**SECONDED: Jefferson**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

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**FILE NUMBER:** BDA 056-232(J)

**BUILDING OFFICIAL'S REPORT:**

Application of Yun F. Huang Lee, represented by Ed Simons, for a special exception to the fence height regulations at 4525 Sylvester Street. This property is more fully described as Lots 1-10 in City Block 10/2293 and is zoned PD-193, which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 6 foot 9 inch fence in the required front yard setback, which would require a special exception of 2 feet 9 inches.

**LOCATION:** 4525 Sylvester Street

**APPLICANT:** Yun F. Huang Lee  
Represented by Ed Simons

**REQUEST:**

- A special exception to the fence height regulations of 2'9" is requested in conjunction with constructing a 6'9" high wrought iron fence sliding gates to be located in the site's Sylvester Street, Hawthorne Avenue, and Lucas Drive 15' front yard setbacks on a site developed with a multifamily use.

**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 request originally included a visibility obstruction special exception application. The applicant withdrew the visibility obstruction special exception on October 5, 2006 and submitted a revised the site plan on October 9, 2006.
- PD 193 states that in MF-2 and MF-3 multifamily subdistricts, a fence located in the required front yard may be built to an average height of 7 feet and a maximum height of 9 feet above grade if all conditions in the following subparagraph are met:
  - The main building does not exceed 36 feet in height;

- There are no front street curb cuts, front yard driveways, or front entryways to garages or parking;
- A minimum setback of 12 feet is provided between the fence and projected street curb, and;
- All portions of the fence exceeding 4 feet in height are set back at least 2 feet from the lot line.
- The site plan shows that the proposed fence does not meet the second or third of the above criteria.
- Because PD 193 does not specify any further restrictions, PD 193 refers back to Chapter 51 for regulations the PD does not specifically state or exempt.
- Chapter 51 of the Dallas Development Code states that in all residential districts a fence may not exceed four feet above grade when located in the required front yard.
- The revised site plan with the application indicated that the proposed fence and gates in the front yard setback have the following characteristics:
  - Approximately 58' in length at the northwest portion along Hawthorne Avenue located approximately 9' from the property line;
  - Approximately 44' in length at the northeast corner along Hawthorne Avenue located approximately 10' from the property line;
  - Approximately 498' in length along Sylvester Street located on the property line;
  - Approximately 40' in length along the southeast corner at Sylvester and Lucas located approximately 10' from the property line;
  - Approximately 68' in length at the southwest corner along Lucas Avenue located approximately 8' from the property line.
- The elevation shows the proposed height and materials of the 6'-0" open wrought iron fence and gates
- No landscape plan or landscape materials have been noted to be provided in conjunction with this proposal.
- The Board Administrator conducted a field visit of the site and surrounding area and noted two fences that appeared to be above 4' in height in a front yard setback located at the multifamily use northeast of the request site and a single family use to the northwest across Hawthorne Avenue.
- The revised site plan shows the fence would not obstruct the 30' visibility triangle at the street/street intersections or the 20' visibility triangle at driveway/street intersections.

**BACKGROUND INFORMATION:**

**Zoning:**

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

### **Land Use:**

The subject site is developed with a multifamily use. The area to the north is developed with multifamily and single family residential uses; the area to the east is undeveloped; and the area to the west, southeast, and south 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 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.
- Sept. 20, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Sept. 25, 2006: The Board of Adjustment Senior Planner mailed the applicant a letter to convey 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 October 6<sup>th</sup> 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 October public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- October 2, 2006: 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 Development Services Senior Engineer, the Building Inspection Development Code

Specialist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

October 2, 2006 Transportation Engineer Nguyen submitted a review comment sheets with comments were submitted in conjunction with this application.

October 5, 2006 The applicant submitted an email requesting withdrawal of the special exception to the visibility obstruction regulations portion of his application.

October 9, 2006 The applicant submitted a revised site plan.

**STAFF ANALYSIS:**

- A revised, scaled site plan has been submitted that documents the location of the entire proposed fence/gate in the site's front yard setback, and its location relative to the front property line.
- A fence/gate elevation has been submitted that denotes the maximum height of the proposed gate/fence (6'- 9") and building materials (wrought iron).
- No landscape plan or notation of landscape materials to be planted adjacent to the fence have been submitted in conjunction with the appeal.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 2'9" (whereby the proposed 6'9" high fence/gate) will not adversely affect neighboring property.
- Granting this special exception of 2'9" with conditions imposed that the applicant complies with the revised site plan and submitted elevations would assure that the proposed fence and gate would be constructed and maintained as shown on these documents.

**BOARD OF ADJUSTMENT ACTION: OCTOBER 17, 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 elevations is required.

**SECONDED: Jefferson**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

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**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:
  1. an 8' 1" high brick wall with 8' 6" high columns; and
  2. 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 19<sup>th</sup> 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 had submitted no additional information to staff as of September 12, 2006.
- The Board of Adjustment held a public hearing on this matter on September 19, 2006. The board delayed action until October 17<sup>th</sup> in order for the applicant's representative to continue his meetings with opposing property owners, and to continue considering/providing 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 conveyed the following information to the Board Administrator in an October 3<sup>rd</sup> email:
  - The applicant's representative has hired a landscape architect for the neighbors and they (the neighbors) are preparing their own landscaping plan which will be submitted.
  - A meeting was held today (October 3<sup>rd</sup>) where a plan should be devised by the end of next week.

### **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:**

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

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.

**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 24<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board’s docket;
- the August 4<sup>th</sup> 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 15<sup>th</sup> action taken by the board, and informed the applicant of the September 8<sup>th</sup> 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.
- Sept. 19, 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 October 17, 2006.

**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 October 9th, 18 letters had been submitted in opposition to the request, 1 letter had been submitted that was neither in support or in opposition, 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)

**BOARD OF ADJUSTMENT ACTION: OCTOBER 17, 2006**

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

APPEARING IN OPPOSITION: No one

MOTION: Jefferson

I move that the Board of Adjustment, in Appeal No. **BDA 056-195**, on application of Behringer Harvard Northwest Highway L.P., represented by Rob Baldwin, **grant** the request of this applicant to construct a ten-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 condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan/elevation provided on Sheet No. 201 and Sheet No. 301 is required.
- The landscaping along Northwest Highway must comply with the attached landscape plan, prepared by Camille LaFoy and dated October 13, 2006.
- Lots 1 through 7 will have at least two (2) additional trees planted on each lot; while the remaining lots will have at least three (3) trees planted on each lot.
- The tree mitigation on site will comply with the spirit and intent of the attached landscape plan, prepared by Camille LaFoy and dated October 13, 2006. The exact location of trees, other than those to be placed along Northwest Highway, will be coordinated with the City of Dallas Arborist.

**SECONDED: Schweitzer**

**AYES: 5 – Richmond, Hill, Gabriel, Schweitzer, Jefferson**

**NAYS: 0 -**

**MOTION PASSED: 5– 0 (unanimously)**

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**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 were 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 were 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).

Note that on September 19, 2006, the Board of Adjustment granted the request for the special exception to the landscape regulations (subject to compliance with the submitted landscape plan) and delayed action on the variances until October 17, 2006.

**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 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 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 30<sup>th</sup> 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.
- On October 5, 2006, the applicant's representative submitted a letter to staff requesting that the action on the variance requests be delayed until November 14, 2006 in order to continue discussions with the Oak Lawn Committee (see Attachment G).

**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 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis/recommendation;
  - the September 8<sup>th</sup> 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 30<sup>th</sup> 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.

Sept. 19, 2006: The Board of Adjustment conducted a public hearing on the requests. The board granted the request for a special exception to the landscape regulations but delayed action on the variance requests until their next scheduled public hearing to be held on October 17, 2006. (The applicant's representative submitted additional information at the public hearing – a document that is included in this case report entitled "Attachment F").

October 5, 2006 The applicant's representative submitted additional information to the Board Administrator (see Attachment G).

## **STAFF ANALYSIS:**

- 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 variance under advisement until **October 17, 2006**.

SECONDED: **Gabriel**

AYES: 3 – Richmond, Hill, Gabriel

NAYS: 2 – Schweitzer, Griggs

MOTION PASSED: 3– 2

**BOARD OF ADJUSTMENT ACTION: OCTOBER 17, 2006**

APPEARING IN FAVOR: Jonathan Vinson, 901 Main St., #6000, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Hill

I move that the Board of Adjustment in Appeal No. **BDA 056-206**, hold this matter under advisement until **November 14, 2006**.

SECONDED: Gabriel

AYES: 4 – Richmond, Hill, Gabriel, Schweitzer

NAYS: 1 - Jefferson

MOTION PASSED:4– 1

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FILE NUMBER: BDA 056-222(J)

**BUILDING OFFICIAL'S REPORT:**

Application of Andrew Schildcrout for a special exception to the fence height regulations at 13428 Hughes Lane. This property is more fully described as Lot 4 in City Block A/7439 and is zoned R-16(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 6 foot 6 inch fence in the required front yard which would require a special exception of 2 feet 6 inches.

LOCATION: 13428 Hughes Lane

APPLICANT: Andrew Schildcrout

**REQUEST:**

- A special exception to the fence height regulations of 2'6" is requested in conjunction with constructing a 6' high wrought iron fence with 6'6" high concrete columns to be located in the site's 35' 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 scaled site plan and elevation indicating a fence/gate proposal that would reach a maximum height of 6'6".
- The following additional information was measured from the site plan:
  - The proposed fence/gate located in the 35' front yard setback would be approximately 305'6" in length located along the 309' front property line adjacent to Hughes Lane; 35' in length perpendicular to Hughes Lane on the south side of the subject site; and 35' along the east property line at the northern most portion of the subject site.
  - The proposed fence is to be located approximately 1' from the front property line and the vehicular gate is to be located 22' from the curb line.
- The submitted elevation shows the height and materials of proposed fence as a 6' high wrought iron fence with 6'6" high concrete columns.
- No landscape plan or landscape materials have been noted to be provided in conjunction with this proposal.
- There are three single family homes that would have direct frontage to the proposed fence.
- Senior Planner Hiromoto conducted a field visit of the site and surrounding area and did not observe any fences in a required front yard. A fence that may exceed 4' in height was observed to the north related to the golf course to the east. A fence exceeding 4' in height was noted to the north on residential uses which is may be a side yard.

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: R-16 (A) (Single family district 16,000 square feet)
- North: R-16 (A) (Single family district 16,000 square feet)
- South: R-16 (A) (Single family district 16,000 square feet)
- East: R-1/2 ac (A) (Single family district 1/2 acre) and SUP 123
- West: R-16 (A) (Single family district 16,000 square feet)

**Land Use:**

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

**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 5, 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.
- Sept. 20, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Sept. 25, 2006: The Board of Adjustment Senior Planner mailed the applicant a letter to convey 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 October 6<sup>th</sup> 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 October public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- October 2, 2006: 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 Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.



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

**STAFF ANALYSIS:**

- A scaled site plan has been submitted that documents the location of the entire proposed fence and gate in the site’s front yard setback.
- A fence elevation has been submitted that denotes the maximum height of the proposed gate (6’- 6”) and building materials (fence to be wrought iron and columns to be concrete).
- No landscape plan or notation of landscape materials to be planted adjacent to the fence have been submitted in conjunction with the appeal.
- There are three single family homes that would have direct frontage to the proposed fence.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 2’6” (whereby the proposed 6’6” high fence/gate) will not adversely affect neighboring property.
- Granting this special exception of 2’6” with conditions imposed that the applicant complies with the submitted site plan and elevation would assure that the proposed fence and gate would be constructed and maintained as shown on these documents.

**BOARD OF ADJUSTMENT ACTION: OCTOBER 17, 2006**

APPEARING IN FAVOR: Andrew Schildcrout, 13428 Hughes Ln, Dallas, TX.

APPEARING IN OPPOSITION: No one

MOTION: **Hill**

I move that the Board of Adjustment, in Appeal No. **BDA 056-222**, on application of Andrew Schildcrout, **grant** the request of this applicant to construct an six-foot, six-inch 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 condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: **Gabriel**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

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MOTION: **Hill**

I move to adjourn this meeting.

SECONDED: **Gabriel**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (Unanimously)

**1:45 P.M.** - Board Meeting adjourned for October 17, 2006.

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CHAIRPERSON

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BOARD ADMINISTRATOR

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BOARD SECRETARY

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