

**BOARD OF ADJUSTMENT, PANEL A  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, COUNCIL CHAMBERS  
TUESDAY, NOVEMBER 13, 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

**10:30 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **November 13, 2007** docket.

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**1:02 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 October 16, 2007 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: NOVEMBER 13, 2007**

**MOTION:** Gabriel

I move **approval** of the Tuesday, **October 16, 2007** public hearing minutes.

**SECONDED:** Gaspard

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

**NAYS:** 0 -

**MOTION PASSED:** 5– 0 (unanimously)

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**MISCELLANEOUS ITEM NO. 2**

**FILE NUMBER:** BDA 067-050

**REQUEST:** To extend the time period in which to file an application for a building permit or certificate of occupancy from the Board of Adjustment’s favorable action on a request for special exception to the parking regulations of 57 spaces that was granted by Board of Adjustment Panel A on June 12, 2007.

**LOCATION:** 13101 Preston Road

**APPLICANT:** Shafer Property Company  
Represented by Masterplan

**STANDARD FOR EXTENDING THE TIME PERIOD IN WHICH TO APPLY FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY:**

The Board of Adjustment Working Rules of Procedure states that a panel may not extend the time period for making application for a building permit or certificate of occupancy beyond 180 days from the date of its favorable action unless it makes a specific finding based on evidence presented at a public hearing that there are no substantially changed conditions or circumstances regarding the property to the satisfaction of the panel. In no event, however, may the board extend the time period beyond 18 months from the date of its favorable action.

**GENERAL FACTS:**

- The Dallas Development Code states the following with regard to board action:

- The applicant shall file an application for a building permit or certificate of occupancy within 180 days for the date of the favorable action of the board, unless the applicant files for and is granted an extended time period prior to the expiration of the 180 days. The filing of a request for an extended time period does not toll the 180 day time period. If the applicant fails to file an application within the time period, the request is automatically denied without prejudice, and the applicant must begin the process to have his request heard again.
- The Board of Adjustment Working Rules of Procedure state the following with regard to extensions of the time period for making application for a building permit or certificate of occupancy:
  - A panel may not extend the time period for making application for a building permit or certificate of occupancy beyond 180 days from the date of its favorable action unless it makes a specific finding based on evidence presented at a public hearing that there are no substantially changed conditions or circumstances regarding the property to the satisfaction of the panel. In no event, however, may the board extend the time period beyond 18 months from the date of its favorable action.

**Timeline:**

- June 12, 2007      The Board of Adjustment Panel A granted a request for a special exception to the parking regulations of 57 spaces. (The board imposed the following condition: The special exception shall automatically and immediately terminate if and when the office and financial institution with drive-in window uses on the site is changed or discontinued). The case report stated that this request was made in conjunction with constructing and maintaining a financial institution with drive-in window on a site currently developed with an office (Bankers Financial Mortgage).
- June 19, 2007      The Board Administrator wrote the applicant’s representative a letter documenting the June 12<sup>th</sup> action of the board, and noting to “Contact Building Inspection at 320 E. Jefferson, Room 105 to file an application for a building permit or certificate of occupancy within 180 days from the date of the favorable action of the board.”
- October 25, 2007    The applicant’s representative submitted a letter to staff requesting that the Board extend the time period in which to file an application for a building permit or certificate of occupancy (beyond the 180 days to do so from the June 12, 2007 favorable action (see Attachment A). This letter stated that “there have been no changes to the property” but did not specify how much additional time was being requested.
- October 29, 2007:    The Board Administrator responded to the applicant’s representative by email informing him of the following:

- 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;
- that additional evidence should adhere to the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and if not, may result in delay of action on the appeal or denial;
- that the board will take action on the matter at the November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties; and
- it may be beneficial to specify how much additional time was being sought to make application for the building permit or CO with the understanding that the board’s rules limit this time extension not to exceed more than 18 months from the board’s favorable action.

**BOARD OF ADJUSTMENT ACTION: NOVEMBER 13, 2007**

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

APPEARING IN OPPOSITION: No one

MOTION: **Gaspard**

I move to extend the time period in which to file an application for a building permit or certificate of occupancy an additional 180 days beyond the 180 days the applicant had to do so from board’s favorable action on June 12, 2007.

SECONDED: **Gabriel**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

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FILE NUMBER: BDA 067-075

**BUILDING OFFICIAL’S REPORT:**

Application of Nicolas Trejo for a special exception to the fence height regulations at 930 Riverwood Road. This property is more fully described as tract 11 in City Block 7959 and is zoned R-7.5(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to maintain an 8 foot fence in the required front yard which would require a special exception of 4 feet.

LOCATION: 930 Riverwood Road

**APPLICANT:** Nicolas Trejo

**REQUEST:**

- A special exception to the fence height regulations of 4' is requested in conjunction with maintaining a 6' high solid wood fence and 8' high open metal gate with four 7' high concrete block columns flanked by two 6' high concrete block entry wing walls in the site's 25' front yard setback. (The site is developed with a church: Iglesia Riverwood).

**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 submitted a scaled site plan and a revised elevation denoting that the proposal reaches a maximum height of 8 feet.
- The following additional information was gleaned from the submitted scaled site plan:
  - Approximately 380' in length parallel to the street with a recessed entry way. (Of this total length, about 60' of it is comprised of a 30' gate with two 15' long curved entry wing walls).
  - Fence approximately on the property line (or 12' from the pavement line).
  - Gate approximately 30' from the property line (or 42' from the pavement line).
- There appears to be two single family homes that have direct frontage to the existing fence/wall.
- The Board Administrator conducted a field visit of the site and surrounding area along Riverwood Road (approximately 500' north and south of the site) and noted no other visible fences above 4' high which appeared to be located in the front yard setback.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included a revised elevation that

increased the special exception need from 3' (to maintain a maximum 7' high column) to 4' (to maintain an 8' high gate).

## **BACKGROUND INFORMATION:**

### **Zoning:**

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

### **Land Use:**

The subject site is being developed with a church: Iglesia Riverwood. The areas to the north, east, south, and west appear to be developed with single family uses.

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

1. Miscellaneous Item #5, 930 Riverwood Road (the subject site) On May 15, 2007, the Board of Adjustment Panel A waived the filing fee to be submitted in conjunction with an application on the subject site.

### **Timeline:**

- March 30, 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.
- October 18, 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 Rules of Procedure that states, "If any preliminary action is required on a case, including but not limited to a fee waiver or waiver of the two year waiting period, the case must be returned to the panel taking the preliminary action."
- October 18, 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 October 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
- the November 2<sup>nd</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 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 November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

October 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Development Services Current Planning Assistant Director, 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.

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

November 2, 2007 The applicant submitted information beyond what was submitted with the original application (see Attachment A).

November 2, 2007 The Building Inspection Development Code Specialist forwarded a revised Building Official's Report to the Board Administrator (see Attachment B).

### **STAFF ANALYSIS:**

- A scaled site plan and revised elevation have been submitted that document the location and materials of the proposal that exceeds 4' in height in the front yard setback which in this case is an approximately 380' long, generally 6' high solid wood fence. (About 60' of the proposal is two, 30' long concrete wing walls comprised of 7' high blocks flanking an 8' high open metal gate). With the exception of completing entry columns with column caps, this request is made to *maintain* a fence/wall/gate on the site.
- There appears to be two single family homes that have direct frontage to the proposal, and no visible fences above 4' in height were noted in the general vicinity of the site.
- As of November 5th, no letters had been submitted in support or in opposition to the request.

- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' (whereby the proposal that would exceed 4' in height) will not adversely affect neighboring property.
- Granting this special exception of 4' with a condition imposed that the applicant complies with the submitted site plan and revised elevation would assure that the fence/wall/entry columns/gate would be completed/maintained to the materials, heights, and location as shown on these documents.

**BOARD OF ADJUSTMENT ACTION: November 13, 2007**

APPEARING IN FAVOR: Dora Ortiz, 8335 Bohanno Dr., Dallas, TX  
Nicolas Trejo, 930 Riverwood, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Gabriel**

I move that the Board of Adjustment, in Appeal No. **BDA 067-075**, on application of Nicolas Trejo, **grant** the request of this applicant to construct and maintain an eight-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 site plan and revised elevation is required.

SECONDED: **Taft**

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

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

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FILE NUMBER: BDA 067-153

**BUILDING OFFICIAL’S REPORT:**

Application of Vadim Krasovitsky, represented by Robert Baldwin, for a variance to the side yard setback regulations at 6125 Challedon Lane. This property is more fully described as Lot 89S in City Block 16/7667 and is zoned R-7.5(A) which requires a 5 foot side yard setback. The applicant proposes to construct a single family residence and provide a 3 foot 9 inch setback which will require a variance of 1 foot 3 inches.

LOCATION: 6125 Challedon Lane

APPLICANT: Vadim Krasovitsky



Represented by Robert Baldwin

**REQUEST:**

- A variance to the side yard setback regulations of 1' 3" is requested in conjunction with maintaining a portion of a single family house in the site's western 5' side yard setback.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The site is different from other parcels of land in that it is slightly smaller in area than lots typically found in R-7.5(A) zoning, and is irregular in shape – characteristics that create hardship and preclude it from being developed in a manner commensurate (in this case, with a house with an approximately 1,500 square foot building footprint) with development on other parcels of land zoned R-7.5(A) that are 7,500 square feet in area and are rectangular in shape.
- Granting this variance does not appear to be contrary to the public interest since the portion of the structure in the side yard setback is small (about 15 square feet) and is directly adjacent to 20' wide alley (as opposed to being adjacent to another single family home).

**STANDARD FOR A VARIANCE:**

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

**GENERAL FACTS:**

- Structures on lots zoned R-7.5(A) are required to provide a minimum side yard setback of 5'.  
According to the submitted application and Building Official's report, a 1' 3" side yard setback variance is requested. A site plan has been submitted that shows a structure located 3.9' from the site's western side property line.
- According to calculations taken from the site plan by the Board Administrator, an approximately 15 square foot triangular area of the approximately 1,500 square foot building footprint is located in the site's western 5' front yard setback.
- The site is sloped, triangular in shape (176' x 147' x 98') and approximately 7,200 square feet in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- DCAD records indicate that the site is developed with the following:
  - a single family home built in 2007 with 1,389 square feet of living space; and
  - a 273 square foot attached garage.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
  - a document that provided additional details about the request;
  - photos of the site; and
  - a property survey of the site.

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

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

**Zoning/BDA History:**

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

**Timeline:**

- Sept. 26, 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.
- October 18, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- October 18, 2007: The Board Administrator contacted the applicant's representative and shared the following information by phone and email:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the October 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
  - the November 2<sup>nd</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 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 November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- October 26, 2007 The applicant's representative submitted additional information to the Board Administrator (see Attachment A).
- October 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Development Services Current Planning Assistant Director, 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.

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

**STAFF ANALYSIS:**

- This variance request is made in conjunction with maintaining an approximately 15 square foot area of a single family structure in the site's western 5' side yard setback

- a house with a foundation that was (according to the applicant’s representative) poured where the applicant was told to do so.
- The site is sloped, triangular in shape (176’ x 147’ x 98’) and approximately 7,200 square feet in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the side yard setback regulations of 1’ 3” requested in conjunction with maintaining an approximately 15 square foot portion of a single family home in the site’s western side yard setback will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance is necessary to permit development of the subject site (a site that is developed with a single family home with an approximately 1,500 square foot building footprint, and a site that is triangular in shape, sloped, and approximately 7,200 square feet in area, zoned R-7.5(A)) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.
  - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the R-7.5(A) zoning classification.
- If the Board were to grant the side yard variance request of 1’ 3”, imposing a condition whereby the applicant must comply with the submitted site plan, the structure in the side yard setback would be limited to that shown on this plan – which in this case is an approximately 15 square foot area of a single family home that is located 3’ 9” from the site’s western side property line (or 1’ 3” into the western 5’ side yard setback).

**BOARD OF ADJUSTMENT ACTION: November 13, 2007**

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

APPEARING IN OPPOSITION: No one

MOTION: **Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 067-153**, on application of Vadim Krasovitsky, represented by Robert Baldwin, **grant** the one-foot-three-inch variance to the side yard setback regulations because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

**SECONDED: Gabriel**

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

**NAYS:** 0–

**MOTION PASSED:** 5 – 0 (unanimously)

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**FILE NUMBER:** BDA 067-155

**BUILDING OFFICIAL’S REPORT:**

Application of CEI Engineering Associates, Inc., represented by Kiew Kam, for a special exception to the parking regulations at 10976 Harry Hines Blvd. This property is more fully described as Lot 3 in City Block A/6468 and is zoned IM which requires parking to be provided. The applicant proposes to construct a nonresidential general merchandise or food store greater than 3500 square feet use and provide 28 of the 37 required parking spaces which will require a special exception of 9 spaces.

**LOCATION:** 10976 Harry Hines Blvd

**APPLICANT:** CEI Engineering Associates, Inc.  
Represented by Kiew Kam

**REQUEST:**

- A special exception to the off-street parking regulations of 9 parking spaces (or 24% of the required off-street parking) is requested in conjunction with constructing and maintaining an approximately 7,400 square foot “general merchandise or food store greater than 3,500 square feet” use (AutoZone) on a site developed with a vacant commercial structure.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- The special exception shall automatically and immediately terminate if and when the “general merchandise or food store greater than 3,500 square feet” use is changed or discontinued.

Rationale:

- The Development Services Senior Engineer has no objections to the request based on letters (and traffic counts) submitted by the applicant’s representative.
- The applicant has substantiated how the parking demand generated by the use does not warrant the number of off-street parking spaces required, and that the special

exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
  - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
  - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
  - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
  - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
  - (E) The availability of public transit and the likelihood of its use.
  - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
  - (A) establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
  - (B) impose restrictions on access to or from the subject property; or
  - (C) impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance

establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:

- (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
- (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

**GENERAL FACTS:**

- The Dallas Development Code requires the following off-street parking requirements:
  - General merchandise or food store greater than 3,500 square feet: 1 space per 200 square feet of floor area. If more than ten off-street parking spaces are required for this use, handicapped parking must be provided pursuant to code. The application and Building Official’s Report state that 28 (or 76 percent) of the required 37 spaces will be provided.
- The applicant’s representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included a letter that included further details about the request (including parking counts at an average AutoZone store at a variety of specific times).

**BACKGROUND INFORMATION:**

**Zoning:**

Site: CS (Commercial Service)  
North: CS (Commercial Service)  
South: IM (Industrial Manufacturing)  
East: IM (Industrial Manufacturing)  
West: IR, SUP 709(Industrial Research, Specific Use Permit)

**Land Use:**

The subject site is developed with a vacant commercial structure. The areas to the north, east, and south are developed with commercial uses; and the area to the west is developed as a cemetery.

**Zoning/BDA History:**

- 1. Z067-267, Harry Hines Boulevard and Walnut Hill Lane, southeast corner (the subject site and the lots immediately north to Walnut      On October 24, 2007, the City Council granted an application for and adopted an ordinance establishing a CS Commercial Service District on property zoned IM

**Timeline:**

- Sept. 27, 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.
- October 18, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- October 18, 2007: The Board Administrator contacted the applicant's representative and shared the following information by phone and email:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the October 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
  - the November 2<sup>nd</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 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 November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- October 23, 2007 The applicant's representative submitted additional information to the Board Administrator (see Attachment A).
- October 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Development Services Current Planning Assistant Director, 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.
- November 1, 2007 The Development Services Senior Engineer submitted a review comment sheet marked "Has no objections" with the following comments: "Letter dated 10/25/07 and 9/24/07."



**STAFF ANALYSIS:**

- The applicant proposes to provide 28 (or 76 percent) of the required 37 spaces for a new approximately 7,400 square foot “general merchandise or food store greater than 3,500 square feet” use (AutoZone) on a site developed with a vacant commercial structure.
- According to the applicant, because about half of the structure’s square footage is set for self-service with the other approximately half being set for “employ assisted sales,” the number of customers/employees in the store will be restricted where not more than 28 parking spaces will be needed at the store’s busiest time.
- Granting this request, subject to the condition that the special exception of 9 spaces automatically and immediately terminates if and when the “general merchandise or food store greater than 3,500 square feet” use is changed or discontinued, would allow the development of the proposed approximately 7,400 square foot structure to be leased with this specific use.
- The applicant has the burden of proof in establishing the following:
  - The parking demand generated by the “general merchandise or food store greater than 3,500 square feet” use does not warrant the number of off-street parking spaces required, and
  - The special exception of 9 spaces (or 24 percent of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- The Development Services Senior Engineer has indicated that he has no objections to this request.

**BOARD OF ADJUSTMENT ACTION: November 13, 2007**

APPEARING IN FAVOR: Kiew Kam, 3030 LBJ Freeway, #1250, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 067-155**, on application of CEI Engineering Associates, Inc., represented by Kiew Kam, **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development Code by nine parking spaces, because our evaluation of the property and the testimony shows that the parking demand generated by the proposed use on the site does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard nor increase traffic congestion on adjacent and nearby streets. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception shall automatically and immediately terminate if and when the general merchandise or food store greater than 3,500 square feet use limited

to the store selling auto parts and accessories on the site is changed or discontinued.

**SECONDED: Gabriel**

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

**NAYS:** 0–

**MOTION PASSED:** 5 – 0 (unanimously)

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**FILE NUMBER:** BDA 067-157

**BUILDING OFFICIAL’S REPORT:**

Application of Zone Systems, Inc. represented by Peter Kavanagh, for a special exception to the single family regulations at 5370 Meaders Lane. This property is more fully described as Lot 5 in City Block E/5517 and is zoned R-1ac(A) which limits the number of dwelling units to one. The applicant proposes to construct an additional dwelling unit which will require a special exception to the single family zoning regulations.

**LOCATION:** 5370 Meaders Lane

**APPLICANT:** Zone Systems, Inc.  
Represented by Peter Kavanagh

**November 13, 2007 Public Hearing Notes:**

- The applicant authorized the board administrator to revise the originally submitted site plan at the public hearing changing the original reference of a new two story cabana to a new *one* story cabana.

**REQUEST:**

- A special exception to the single family regulations is requested in conjunction with constructing and maintaining a second dwelling unit/"cabana" 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 authorize an additional dwelling unit in any single family zoning district since the basis for this type of appeal is *when in the opinion of the board*, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties. In granting a special exception, the board shall require the applicant to deed

restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

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

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

**GENERAL FACTS:**

- The Dallas Development Code limits the number of dwelling units on a lot zoned R-1ac (A). In addition, the Dallas Development Code defines “single family” use as “one dwelling unit located on a lot;” and a “dwelling unit” as “one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms.”  
A site plan has been submitted that denotes a “new two story cabana” that is located in the southeast corner of the site.  
Building Inspection has determined from the submitted site and floor plans that this proposed structure is a “dwelling unit.”
- Submitted floor plans indicate that first floor of the proposed structure will be comprised of a game room, pool room, exercise room , pool equipment room, and bath; and that the second floor will be comprised of an office and bath.
- According to the submitted site plan, the proposed structure has a first floor square footage of 1,820 (with a total square footage of 2,272 square feet), and the existing main structure has a first floor square footage of 7,501 (with a total square footage of 9,645 square feet).
- Submitted elevations of the proposed structure indicate a 2-story structure that is approximately 28’ high.
- The site plan states that the site is 46,177 square feet in area.
- The subject site is developed with, according to DCAD records, the following:
  - a single family home in very good condition built in 2003 with 7,738 square feet of living area;
  - a 997 square foot attached garage; and
  - a pool.
- The site plan indicates that the additional “dwelling unit” structure is located nearest the southeast corner of the site, approximately 10’ at its closest point to the property to the east, and approximately 21’ at its closest point to the property to the south.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-1ac(A) (Single Family Residential 1 acre)  
North: R-1ac(A) (Single Family Residential 1 acre)  
South: R-1ac(A) (Single Family Residential 1 acre)  
East: R-1ac(A) (Single Family Residential 1 acre)  
West: R-1ac(A) (Single Family Residential 1 acre)

**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 residential uses; and the area to the east is vacant/undeveloped.

**Zoning/BDA History:**

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

**Timeline:**

- Sept. 26, 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.
- October 18, 2007:    The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- October 23, 2007:    The Board Administrator contacted the applicant and shared the following information by phone and email:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the October 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
  - the November 2<sup>nd</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 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 November public hearing after considering the information/evidence and

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

October 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Development Services Current Planning Assistant Director, 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.

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

### **STAFF ANALYSIS:**

- The site is zoned R-1ac(A) where the Dallas Development Code permits one dwelling unit per lot. The site is developed with a single family home/dwelling unit, and the applicant proposes to construct/maintain a 2<sup>nd</sup> dwelling unit/“cabana” structure on the site hence the special exception request.
- The request is to allow an additional dwelling unit on the subject site. This request centers on the function of what is proposed inside the structure. Building Inspection has deemed the proposed structure a “dwelling unit” based on what is shown on the submitted floor plans. If the board were to deny this request, the structure could be built with modifications to the function/use inside the structure (or to the floor plans). If the board were to deny the request, no modifications to structure’s footprint, height, or location would be necessary since the structure complies with zoning code development standards.
- The applicant has the burden of proof in establishing that the additional dwelling unit will not be used as rental accommodations (by providing deed restrictions) and not adversely affect neighboring properties.
- If the Board were to approve the request for a special exception to the single family regulations, subject to imposing a condition that the applicant comply with the submitted site plan, the “dwelling unit” structure would be restricted to the specific location and footprint shown on this plan, which in this case is a “dwelling unit” structure with an approximately 1,800 square foot building footprint situated on an approximately 1 acre site with a single family home (with an approximately 7,500 square foot building footprint) that is approximately 10’ at its closest point to the property to the east, and approximately 21’ at its closest point to the property to the south.
- The Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

### **BOARD OF ADJUSTMENT ACTION: November 13, 2007**

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

APPEARING IN OPPOSITION: Sheryl Maas, 5947 Club Oaks Dr., Dallas, TX  
Cynthia Fieldman, 5358 Meaders Ln., Dallas, TX

**MOTION: Gaspard**

I move that the Board of Adjustment, in Appeal No. **BDA 067-157** on application of Zone Systems, represented by Peter Kavanagh, **grant** the request of this applicant to maintain an additional dwelling unit on the Property, because our evaluation of the property and testimony shows that the additional dwelling unit will not be used as rental accommodations nor adversely affect neighboring properties. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan is required.
- The property must be deed restricted to prohibit the additional dwelling unit on the site from being used as rental accommodations.

**SECONDED: Gabriel**

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

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

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**FILE NUMBER:** BDA 067-166

**BUILDING OFFICIAL’S REPORT:**

Application of Wan Kim for special exceptions to the sign regulations at 3010 Frankford Road. This property is more fully described as Lot 10 in City Block V/8752 and is zoned CR which limits the setback, effective area, and height of signs. The applicant proposes to construct a detached premise monument sign with a setback of 22 feet 5 inches, 440 square feet in effective area, and 44 feet high which will require special exceptions of up to 10 percent of the setback, effective area, and height requirements to the sign regulations.

**LOCATION:** 3010 Frankford Road

**APPLICANT:** Wan Kim

**November 13, 2007 Public Hearing Notes:**

- The applicant and opposing property owners submitted photographs of the site and surrounding area at the public hearing.

**REQUESTS:**

- Special exceptions to the sign regulations pertaining to height, effective area, and setback are requested in conjunction with erecting and maintaining a 44' high expressway sign with a 440 square foot effective area located 22.5' from the site's Bush Turnpike service road front property line. The site is currently under development as an office use (American Mortgage Funds Office Building).

**STAFF RECOMMENDATION:**

Approval of the requests, subject to the following condition:

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

Rationale:

- The applicant has substantiated how strict compliance with the requirements of the sign regulations (i.e. the sign providing the required 25' setback, the required 400 square foot effective area, and the required 40' height) will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.
- The proposed sign with a 10 percent lesser setback, a 10 percent larger effective area, and a 10 percent higher height is justified largely by the fact that the site is lower in elevation to the property to the north on Frankford Road and to the east on the Bush Turnpike service road.

**STANDARD FOR A SPECIAL EXCEPTION TO THE SIGN REGULATIONS:**

The Board of Adjustment may, in specific cases and subject to appropriate conditions, authorize a special exception for a detached premise sign of up to 10 percent of the setback, effective area, and height requirements of this article when the board has made a special finding from the evidence presented that strict compliance with the requirement of the sign regulations will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.

**GENERAL FACTS:**

- The Dallas Development Code states that an expressway sign with a minimum setback of 25 feet may have a maximum height of 40 feet and a maximum effective area of 400 square feet.

The submitted sign elevation indicates that the proposed sign will reach 44' in height (or 10 percent higher than the 40' maximum height allowed for an expressway sign with a minimum setback of 25 feet).

The submitted sign elevation indicates that the proposed sign will be 440' in area (or 10 percent larger than the 400' maximum effective area allowed for an expressway sign with a minimum setback of 25 feet).

The submitted site plan indicates that the proposed sign is to be located 22.5' from the Bush Turnpike service road front property line (or 10 percent less than the required 25' front yard setback if a sign is 40' high with an effective area of 400 square feet).

- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included a document that provided additional details about the request.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: CR (Community Retail)  
North: CR (Community Retail)  
South: R- 5(A) (Single family residential 5,000 square feet)  
East: TH-3(A) (Townhouse)  
West: R- 5(A) (Single family residential 5,000 square feet)

### **Land Use:**

The site is currently under development. The area to the north is undeveloped; the area to the east is the George Bush Turnpike; and the areas to the 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:**

October 1, 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.

October 18, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

October 18, 2007: The Board Administrator contacted the applicant and shared the following information by phone and email:



- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the October 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
- the November 2<sup>nd</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 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 November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

October 25, 2007 The applicant submitted additional information to the Board Administrator (see Attachment A).

October 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Development Services Current Planning Assistant Director, 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.

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

**STAFF ANALYSIS:**

- These requests for special exceptions to the sign regulations are requested to construct a 44' high 440 square foot monument expressway sign located 22.5' from the Bush Turnpike service road property line.
- The applicant has the burden of proof in establishing the following:
  - That strict compliance with the requirement of the sign regulations (where in this case, an expressway monument sign could be erected/maintained on the site that would 10 percent closer to the Bush Turnpike service road property line, 10 percent higher and 10 percent larger than what is permitted by right) will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.

- Granting these special exceptions to the sign regulations (with a condition imposed that the applicant complies with the submitted site plan and elevation) would restrict the proposed expressway sign to the specific location, height, and effective area as shown on these documents.

**BOARD OF ADJUSTMENT ACTION: November 13, 2007**

**APPEARING IN FAVOR:** Ash Abraham, 5107 Scarborough, Dallas, TX  
 Wan Kim, 3010 Frankford, Dallas, TX  
 Elise Johnston, 4748 Old Bent Tree #305, Dallas, TX

**APPEARING IN OPPOSITION:** Rose Harder, 7306 Heathermore, Dallas, TX  
 Ann Murphy, 19126 Windmill Lane, Dallas, TX

**MOTION #1: Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 067-166** on application of Wan Kim, **grant** the two-and-a-half-foot special exception to the setback requirement for detached premise signs, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that strict compliance with the provisions of Article VII of the Dallas Development Code will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the City of Dallas and its citizens in accomplishing the objectives of that article. I further move that the following condition be imposed to further the purpose and intent of Article VII of the Dallas Development Code:

- Compliance with the submitted site plan is required.

**SECONDED: Gabriel**

**AYES:** 3 – Richmond, Gabriel, Schweitzer

**NAYS:** 2– Taft, Gaspard

**MOTION FAILED:** 3 – 2

**\*Since the motion to grant did not get four concurring votes, the motion failed and was therefore deemed denied with prejudice.**

**MOTION #2: Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 067-166** on application of Wan Kim, **deny** the special exception to the effective area requirement for detached premise signs requested by this applicant **without** prejudice because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that any financial hardship or inequity that may result from strict compliance with the provisions of Article VII of the Dallas Development Code is outweighed by the benefit to be received by the citizens of the City of Dallas in promoting the health, safety, and welfare of the public in accomplishing the objectives of that article.

**SECONDED: Gaspard**

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

**NAYS:** 0–

**MOTION PASSED:** 5 – 0 (unanimously)

**MOTION #3: Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 067-166** on application of Wan Kim, **deny** the special exception to the height requirement for detached premise signs requested by this applicant **without** prejudice because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that any financial hardship or inequity that may result from strict compliance with the provisions of Article VII of the Dallas Development Code is outweighed by the benefit to be received by the citizens of the City of Dallas in promoting the health, safety, and welfare of the public in accomplishing the objectives of that article.

**SECONDED: Gabriel**

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

**NAYS:** 0–

**MOTION PASSED:** 5 – 0 (unanimously)

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**FILE NUMBER:** BDA 067-161

**BUILDING OFFICIAL’S REPORT:**

Application of J. G. Moore, represented by Karl A. Crawley of Masterplan, for special exceptions to the fence height regulations and tree preservation regulations at 1103 Cedar Hill Avenue. This property is more fully described as Lots 1-5 and the common area in City Block C/3386 and is zoned R-7.5(A) which limits the height of a fence in the front yard to 4 feet and requires mandatory landscaping. The applicant proposes to construct an 8 foot high fence in the required front yard setback which will require a 4 foot special exception to the fence regulations; and to construct a residential development and provide an alternate tree mitigation plan which will require a special exception to the tree preservation regulations.

**LOCATION:** 1103 Cedar Hill Avenue

**APPLICANT:** J. G. Moore  
Represented by Karl A. Crawley of Masterplan

**November 13, 2007 Public Hearing Notes:**

- The Board Administrator explained at the beginning of the public hearing that this case could not be called or heard given that staff had discovered an error in which

this case was noticed to surrounding property owners. The administrator explained that the City would be required to re-notice and re-advertise the application in accordance with statute and code provisions.

**REQUESTS:**

- The following appeals had been made in this application:
  1. A special exception to the fence height regulations of 4' is requested in conjunction with constructing and maintaining what appears on the submitted elevation to be an approximately 6.5' high combination open/solid fence/wall with approximately 7.5'- 8' high columns, and an approximately 7.5' high gate on a site being developed as a single family shared access development.
  2. A special exception to the tree preservation regulations is requested in conjunction with removing protected trees on a site being developed as a single family share access development.

**STAFF RECOMMENDATION (related to 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 (related to the tree preservation special exception):**

Delay action until Board of Adjustment Panel A's January 15, 2008 public hearing

Rationale:

- The applicant has not submitted any detailed information related to this request, and has requested that the board delay action on this specific request until Panel A's January 2008 public hearing.

**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 TREE PRESERVATION REGULATIONS:**

The board may grant a special exception to the tree preservation regulations of this article upon making a special finding from the evidence presented that:

- (1) strict compliance with the requirements of this article will unreasonably burden the use of the property;
- (2) the special exception will not adversely affect neighboring property; and

- (3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

In determining whether to grant a special exception, the Board shall consider the following factors:

- the extent to which there is residential adjacency;
- the topography of the site;
- the extent to which landscaping exists for which no credit is given under this article; and
- the extent to which other existing or proposed amenities will compensate for the reduction of landscaping.

**GENERAL FACTS (related to 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.

A site plan/elevation has been submitted that denotes that the highest component of the proposal would reach 8' in height.

- The following additional information was gleaned from the submitted site plan/elevation:
  - Approximately 180' in length parallel to Cedar Hill Avenue with a recessed entryway;
  - The fence/wall is located approximately on the front property line or about 11' from the pavement line. The gate is located approximately 13' from the front property line or about 24' from the pavement line.

Note that a solid board fence/wall was noted on either side of the subject site in the Board Administrator's field trip of the site and surrounding area. This solid board fence appears higher than 4' in height and appears to be located on the site in its front yard setback perpendicular to Cedar Hill Avenue. Although no submitted plan or elevation makes note of this existing solid wood fence/wall, the applicant's representative has verbally informed the administrator that this fence is on the site and would be added as part of the request since it exceeds 4' in height.

- Although the applicant's representative has submitted a letter that describes the construction of a "wrought iron, stone, and brick screening wall," the submitted site plan/elevation document does not specify/denote the materials of the fence/wall, columns, or gate.
- There are four single family homes that would have direct frontage to the proposal, none of which have fences in a front yard setback that appears to exceed 4' in height.
- 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 the front yard setback.

- The applicant's representative submitted additional documentation to staff beyond that submitted with the original application (see Attachments A and B). This information included letters that provided additional details about the requests.

**GENERAL FACTS (related to the tree preservation special exception):**

- The Dallas Development Code requires full compliance with the Tree Preservation Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet.  
Although the submitted application makes reference to "the tree mitigation requirements to allow an alternate mitigation plan," no plan was submitted with the application, and on November 5, 2007, the applicant's representative submitted a letter (see Attachment B) requesting that the "landscape portion" of the request be postponed until the board's January hearing to determine the needs associated with the tree preservation part of the request, and to possibly add another request for an alternate landscape plan.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-7.5(A) (Single family 7,500 square feet)  
North: R-7.5(A) (Single family 7,500 square feet)  
South: R-7.5(A) (Single family 7,500 square feet)  
East: PD No. 160 (Planned Development)  
West: R-7.5(A) (Single family 7,500 square feet)

**Land Use:**

The subject site is currently under development. The areas to the north, east, south, and west appear to be 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:**

- Sept. 28, 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.
- October 18, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

- October 18, 2007: The Board Administrator contacted the applicant's representative and shared the following information by phone and email:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the October 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
  - the November 2<sup>nd</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 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 November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

October 29 & Nov. 5, 2007 The applicant's representative submitted additional information to staff beyond what was submitted with the original application (see Attachments A and B).

October 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Development Services Current Planning Assistant Director, 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.

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

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

- A scaled site plan/elevation has been submitted that documents the location of the proposal located parallel to Cedar Hill Avenue which in this case is an approximately 6.5' high combination open/solid fence/wall with approximately 7.5'- 8' high columns, and an approximately 7.5' high gate; a fence/wall that is about 180' in length, about 0' – 11' from the property line (or about 13' – 24' from the pavement line). No documentation has been submitted pertaining to an existing solid wood fence above 4' in height that appears to be located in the site's 25' front yard setback on the north and south sides of the site, perpendicular to Cedar Hill Avenue.

- A letter has been submitted by the applicant’s representative that describes the construction of a “wrought iron, stone, and brick screening wall,” however, the submitted site plan/elevation document does not specify/denote the materials of the proposed fence/wall, columns, or gate.
- There are four single family homes that would have direct frontage to the proposal, none of which have fences in a front yard setback that appears to exceed 4’ in height.
- No other fences above four (4) feet high which appeared to be located in a front yard setback were noted by the Board Administrator in a field visit of the site and surrounding area.
- As of November 5<sup>th</sup>, no letters had been submitted in support or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4’ (whereby the proposed fence/wall, columns, and gate to exceed 4’ in height in the site’s two front yard setbacks) will not adversely affect neighboring property.
- Granting this special exception to the fence height regulations of 4’ with the condition imposed that the applicant complies with the submitted site plan/elevation would provide assurance that the proposal would be constructed and maintained in the location as shown on this document, however, would provide no assurance as to the materials of the proposal since none have been noted on any submitted document. Although the submitted elevation leads one to believe that the proposal would be comprised of certain materials, and a letter has been submitted that describes a “wrought iron, stone, and brick screening wall,” a fence special exception of 4’ with only the submitted site plan/elevation imposed as a condition would allow the proposal (fence/wall/column/gate) to be comprised of any material.
- In addition it should be noted that unless the applicant were to add details/to submit a revised site plan/elevation that provided information about a solid board fence above 4’ in height in the front yard setback perpendicular to Cedar Hill Avenue, that no fence would be permitted to exceed 4’ in height other than what is shown on the submitted site plan/elevation if it were to be imposed as a condition to this request.

**STAFF ANALYSIS (related to the tree preservation special exception):**

Although the submitted application makes reference to “the tree mitigation requirements to allow an alternate mitigation plan,” no plan was submitted with the application, and on November 5, 2007, the applicant’s representative submitted a letter (see Attachment B) requesting that the “landscape portion” of the request be postponed until the board’s January hearing to determine the needs associated with the tree preservation part of the request, and to possibly add another request for an alternate landscape plan.

\*\*\*\*\*

**MOTION: Gaspard**

I move to adjourn this meeting.

**SECONDED: Gabriel**

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



NAYS: 0 -  
MOTION PASSED: 5- 0 (Unanimously)

**2:22 P.M.** - Board Meeting adjourned for **November 13, 2007**.

\_\_\_\_\_  
CHAIRPERSON

\_\_\_\_\_  
BOARD ADMINISTRATOR

\_\_\_\_\_  
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.