

NOTICE FOR POSTING
MEETING OF
BOARD OF ADJUSTMENT, PANEL B
WEDNESDAY, MAY 21, 2008

Briefing:	10:30 A.M.	L1FN CONFERENCE CENTER AUDITORIUM
Public Hearing:	1:00 P.M.	L1FN CONFERENCE CENTER AUDITORIUM

Purpose: To take action on the attached agenda, which contains the following:

- 1) Zoning Board of Adjustment appeals of cases the Building Official has denied.
- 2) And any other business that may come before this body and is listed on the agenda.

*** All meeting rooms and chambers are located in Dallas City Hall, 1500 Marilla, Dallas, Texas 75201**

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05-21-2008

ZONING BOARD OF ADJUSTMENT, PANEL B
WEDNESDAY, MAY 21, 2008
AGENDA

BRIEFING	L1FN CONFERNCE CENTER AUDITORIUM	10:30 A.M.
PUBLIC HEARING	L1FN CONFERNCE CENTER AUDITORIUM	1:00 P.M.

Donnie Moore, Chief Planner
Steve Long, Board Administrator
Kyra Blackston, Senior Planner

MISCELLANEOUS ITEM

Approval of the Wednesday, April 16, 2008 Board of Adjustment Public Hearing Minutes	M1
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UNCONSTESTED CASE

BDA 078-044	2701 Harry Hines Boulevard REQUEST: Application of Felix Limited, represented by Masterplan, for a special exception to the landscape regulations	1
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HOLDOVER CASE

BDA 078-050	2811 McKinney Avenue REQUEST: Application of Masterplan for a variance to the front yard setback regulations and a special exception to the landscape regulations	2
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REGULAR CASES

BDA 078-065	5332 Edmondson Avenue REQUEST: Application of Shelley Barrineau for a variance to the off-street parking regulations	3
BDA 078-066(K)	4710 Alta Vista Lane	4

REQUEST: Application of Robert Ernst for a special exception to the fence height regulations and for a special exception to the visibility obstruction regulations

BDA 078-068 4949 Calleja Way

5

REQUEST: Application of Richard and Trea Yip, represented by Robert Baldwin, for special exceptions to the fence height and visual obstruction regulations

EXECUTIVE SESSION NOTICE

The Commission/Board may hold a closed executive session regarding any item on this agenda when:

1. seeking the advice of its attorney about pending or contemplated litigation, settlement offers, or any matter in which the duty of the attorney to the Commission/Board under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act. [Tex. Govt. Code §551.071]
2. deliberating the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.072]
3. deliberating a negotiated contract for a prospective gift or donation to the city if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.073]
4. deliberating the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or to hear a complaint or charge against an officer or employee unless the officer or employee who is the subject of the deliberation or hearing requests a public hearing. [Tex. Govt. Code §551.074]
5. deliberating the deployment, or specific occasions for implementation, of security personnel or devices.. [Tex. Govt. Code §551.076]
6. discussing or deliberating commercial or financial information that the city has received from a business prospect that the city seeks to have locate, stay, or expand in or near the city and with which the city is conducting economic development negotiations; or deliberating the offer of a financial or other incentive to a business prospect. [Tex. Govt. Code §551.086]

(Rev. 6-24-02)

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel B April 16, 2008 public hearing minutes.

FILE NUMBER: BDA 078-044

BUILDING OFFICIAL'S REPORT:

Application of Felix Limited, represented by Masterplan, for a special exception to the landscape regulations at 2701 Harry Hines Boulevard. This property is more fully described as Lot 1 in City Block 927 and is zoned PD-193 (I-2) which requires mandatory landscaping. The applicant proposes to provide an alternate landscape plan which would require a special exception to the landscape regulations.

LOCATION: 2701 Harry Hines Boulevard

APPLICANT: Felix Limited
Represented by Masterplan

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with obtaining a final Certificate of Occupancy on a lot developed with a surface parking lot.

(Note that this case was originally scheduled to be heard by the Board of Adjustment Panel B on April 16, 2008 but was not able to be called/heard given a notification error).

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan is required.

Rationale:

- The landscape plan submitted in conjunction with this request is virtually identical to the landscape plan that was imposed as a condition to a previous landscape special exception request granted on the subject site by Board of Adjustment Panel B in August of 2007: BDA067-078. The applicant returns with a new landscape special exception application/request in that the landscape plan imposed as a condition in 2007 can not be implemented given provisions on this former plan that conflict with a city provision that requires that the ramp at the corner of Payne Street and Harry Hines Boulevard must be barrier free and must not be "landscaped" as shown on the August 2007 landscape plan.
- The City's Chief Arborist once again recommends approval of this request whereby if the condition mentioned above is imposed the special exception would not compromise the spirit and intent of the landscaping requirements of PD No. 193.

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

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

GENERAL FACTS:

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

The applicant's representative has submitted an alternate landscape plan (see Attachment A) that, according to the City of Dallas Chief Arborist, is deficient in meeting the street tree, sidewalk location, and off-street parking screen requirements of the PD No. 193 landscape regulations.

- The Board of Adjustment Panel B has granted a special exception to the landscape regulations and a special exception to the visual obstruction regulations on the subject site in August of 2007 (BDA067-078). The appeals at that time were granted imposing a landscape/site plan that the applicant states he is not able to comply with. The applicant's representative has stated in a March 25th email that he does not need to re-apply for a visual obstruction special exception since he has determined that "that approval remains valid."
- The City of Dallas Chief Arborist has submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner pertaining to the submitted landscape plan (see Attachment B). The memo stated the following:
 - The special exception request is triggered by the new parking lot and changes from plan approved for case #067-078.
 - Deficiencies:
 1. The applicant is required to provide 5 street trees and a 6' wide sidewalk between 5' – 12' from the back of curb.
The applicant is proposing to provide 3 street trees and up to a 4' wide sidewalk between 13' -15' from the back of curb. (No change regarding number of trees from what was shown on the original plan under #067-078 but one change made to the sidewalk from what was shown on the original plan under #067-078: a maximum 4' sidewalk is proposed along the street curb with the amount reconstructed at the corner of Payne and Harry Hines Boulevard with the adjustment made within the lot directing the sidewalk to the exit driveway).
 2. The applicant is required to provide a 3.5' high off-street parking screen.

The applicant is proposing to provide partial screening of off-street parking. This partial screening includes large evergreen shrubs within a designated landscape area for the property. (No change from what was shown on the original plan under #067-078).

- Factors for consideration:
 - The owner originally proposed to install two planting beds for a total of 624 square feet (being 15.6% of the 4,000 square foot lot) and an additional 82 square foot grass area in the parkway. *Under the new proposal, an existing 16 square foot landscape area with grass would be added to an existing parkway landscape area. The sidewalk would separate this from an interior 263 square foot landscape area planted with Asian Jasmine.*
 - The applicant is seeking to maintain a *required* existing barrier free ramp at the corner of Payne and Harry Hines. The ramp was not considered on the original plan. The primary adjustment to this plan would be to relocate the sidewalk into the property from Payne Street and distributing the pedestrian traffic onto the driveway instead of at a parkway.
 - The sidewalk is subject to city construction standards and permit requirements.
 - The owner proposes one 3.5" caliper bald cypress, two 3" caliper crape myrtle trees and Asian jasmine ground cover for the planting beds within the lot.
 - The owner is proposing to install 24 large evergreen shrubs to provide a partial screening of the parking lot from the street frontages.
 - Automatic irrigation will be provided for all planting materials.
 - The owner proposes to install a 3' high wrought iron fence along the property line along Payne Street.
 - The north parking spaces cross the lot line and face into a rock and soil ledge that rises up to an adjacent car lot. This screens the parking lot from the parking lot to the north.
 - Additional screening along Harry Hines Boulevard is not allowable on the current plan due to visibility triangle restrictions.
 - Overhead utility lines run along the property in the parkway on Payne Street and Harry Hines Boulevard. Small trees can be planted in the tree planting zone beneath the utilities but their growth habits may create pedestrian obstructions along the sidewalks as they grow out and could become a public safety concern with vehicle-to-pedestrian visual interaction at the busy intersection during heavy traffic times.
- Recommendation:
 - Approval.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (I-2 Subdistrict) (Planned Development District, Industrial)
North: PD No. 193 (I-2 Subdistrict) (Planned Development District, Industrial)
South: PD No. 582 (Planned Development District)
East: PD No. 193 (I-2 Subdistrict) (Planned Development District, Industrial)

West: PD No. 193 (I-2 Subdistrict) (Planned Development District, Industrial)

Land Use:

The subject site is developed as a parking lot. The areas to the north, south, and west are developed with parking lots; and the area to the east is developed with office uses.

Zoning/BDA History:

1. Miscellaneous Item #2, 2701 Harry Hines Boulevard (the subject site)

On April 16, 2008, Board of Adjustment Panel B waived the two year limitation on a request for a landscape special exception that was granted on August 15, 2007 in conjunction with BDA067-078 in order for the board to consider a new landscape special exception request on the subject site (BDA067-044).
2. BDA 067-078, 2701 Harry Hines Boulevard (the subject site)

On August 15, 2007, the Board of Adjustment Panel B granted a request for a special exception to the landscape regulations (and imposed the revised landscape/site plan dated 8-14-07 and that all plantings must be kept in a healthy, live condition as conditions to the request), and granted a request for special exceptions to the visual obstruction regulations (and imposed the revised landscape/site plan dated 8-14-07 as a condition to the request). The case report stated that the requests were made in conjunction with obtaining a final Certificate of Occupancy on a lot developed with a surface parking lot; and to locate a parked vehicle in one of the site's two 20' visibility triangles at the drive approach into the site from Harry Hines Boulevard, and locating a parked vehicle in the 45' visibility triangle at the intersection of Harry Hines Boulevard and Payne Street.
3. BDA 012-144, 2635 Harry Hines Boulevard (the lot immediately southeast of the subject site)

On May 20, 2002, the Board of Adjustment Panel C denied a request for a variance to the landscape regulations without prejudice and granted a request for a special exception to the landscape regulations imposing the following condition to the request: Compliance with the submitted revised landscape plan is required. The case report stated that the requests were made to

4. BDA 012-143, 2722-2728 Akard Street, 2721-2727 Harry Hines Boulevard (the lot immediately northwest of the subject site)

maintain a surface parking lot.

On August 27, 2002, the Board of Adjustment Panel A granted a request for a variance to the landscape regulations imposing the following condition to the request: Compliance with the submitted revised landscape plan is required. The case report stated that the requests were made to construct and maintain a surface parking lot on a site that was undeveloped.

Timeline:

- February 22, 2008: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- March 20, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."
- March 20, 2008: The Board Administrator contacted the applicant's representative and shared the following information by phone and email:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the March 31st deadline to submit additional evidence for staff to factor into their analysis;
 - the April 4th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and, if not, may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the April public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- March 31, 2008 The applicant's representative submitted additional information to the Board Administrator (see Attachment A).
- April 1, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public

hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

April 7, 2008 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment B).

May 6, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Assistant Director of Development Services, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

STAFF ANALYSIS:

- This request focuses on seeking a minor amendment to a landscape plan that was imposed as a condition in conjunction with a landscape special exception granted by the Board of Adjustment Panel B in August of 2007. The applicant cannot comply with one provision shown on the August 2007 board-imposed plan – a provision that shows a landscape area at the intersection of Payne Street and Harry Hines Boulevard that conflicts with a city provision that requires this the ramp at this intersection to be barrier (or landscape) free.
- The alternate landscape plan submitted in conjunction with this application is virtually the same plan imposed as a condition in August of 2007. One exception has been made that being the removal of about (according to the applicant's representative) 82 square feet of grass/landscape area at the Payne Street/Harry Hines Boulevard intersection.
- Once again, according to the City of Dallas Chief Arborist, the applicant has submitted an alternate landscape plan that is deficient in meeting the street tree, sidewalk location, and parking screen requirements of the PD No. 193 landscape regulations – an alternate plan that the Chief Arborist supports.
- The applicant has the burden of proof in establishing the following:
 - The special exception (where a revised alternate landscape plan has been submitted that virtually mirrors the board-approved landscape plan of August of 2007 with the exception of removing a landscape area at the Payne Street/Harry Hines Boulevard intersection) will not compromise the spirit and intent of the section of the ordinance (Section 26: Landscape, streetscape, screening, and fencing standards).
- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted alternate landscape plan, the final Certificate of Occupancy could be issued on the site, where the site would (once again) be “excepted” from full compliance to the street tree, sidewalk location, and off-street parking screen requirements of the Oak Lawn PD landscape ordinance.

FILE NUMBER: BDA 078-050

ORIGINAL BUILDING OFFICIAL'S REPORT:

Application of Masterplan for a variance to the front yard setback regulations at 2811 McKinney Avenue. This property is more fully described as Lots 1, 2, & 3 in City Block 955 and Lot 1 in City Block 1/955 and is zoned PD-193 (LC) which requires a front yard setback of 10 feet. The applicant proposes to construct and maintain a structure and provide a 2 foot front yard setback which will require a variance of 8 feet.

REVISED BUILDING OFFICIAL'S REPORT:

Application of Masterplan for a variance to the front yard setback regulations and a special exception to the landscape regulations at 2811 McKinney Avenue. This property is more fully described as Lots 1, 2, & 3 in City Block 955 and Lot 1 in City Block 1/955 and is zoned PD-193 (LC) which requires a front yard setback of 10 feet and requires mandatory landscaping. The applicant proposes to construct and maintain a nonresidential structure and provide a 2 foot front yard setback which will require an 8 foot variance to the front yard setback regulations, and provide an alternate landscape plan which will require a special exception to the landscape regulations.

LOCATION: 2811 McKinney Avenue

APPLICANT: Masterplan

REQUESTS:

- The following appeals have been made in this application:
 1. A variance to the front yard setback regulations of 8' is requested in conjunction with constructing and maintaining, according to the application, an "open awning" (or according to the submitted site plan, a "covered patio") that would attach to an existing retail use (Christi's Restaurant) in the site's 10' McKinney Avenue front yard setback; and
 2. A special exception to the landscape regulations is requested in conjunction with increasing the nonpermeable coverage of the lot which in this case is an approximately 700 square foot canopy that would attach to a multi-story mixed use structure that was constructed in the mid 80's.

STAFF RECOMMENDATION (front yard variance):

Denial

Rationale:

- Staff concluded that there was no property hardship to the site that warranted a front yard variance in this case requested to construct and maintain a canopy to cover an existing patio on one of the approximately five ground level suites for an existing restaurant use located within an existing relatively new (mid 80's) large mixed use structure on the site. Even though this site is somewhat irregular in shape, this characteristic (nor its size or slope) does not create hardship or preclude its development in a manner commensurate with other developments found in the same PD No. 193 (LC) zoning district. The physical characteristics of the subject site do not warrant a canopy in the front yard setback for one or any of the ground level suites in the existing building on the subject site.
- The applicant had not substantiated how the physical features of the flat, somewhat irregularly-shaped, 1.38 acre site constrain it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 193 (LC) zoning classification while simultaneously complying with code standards including front yard setback regulations.

STAFF RECOMMENDATION (landscape special exception):

Approval, subject to the following conditions:

- Existing planting areas and tree selections must be maintained in their current locations as specified on the submitted landscape plan for the Property.
- Any future plant changes must conform to the general location and plant type specifications designated per this plan and must be approved by the Building Official. Any removed large tree must be replaced with another tree at a minimum of 3.5" caliper and be of the same species, except that:
 - Due to potential overhead utility conflicts, any tree that is removed along the Howell Street tree planting zone must be replaced with a small tree species allowed in PD 193 unless an alternate selection is specified by the Tax Increment Finance District and approved by the Building Official.
 - Due to potential overhead utility conflicts, any tree that is removed along the McKinney Avenue tree planting zone must be replaced with a small tree species allowed in PD 193 unless an alternate selection is specified by the Tax Increment Finance District and approved by the Building Official.
- All existing plant materials at the date of the hearing must be maintained under the General Maintenance requirements of PD 193. All outside garbage dumpsters must be screened per PD 193 specifications.
- All conditions for tree preservation under Article X apply to this Property.
- When any additional work on the lot is performed that increases the existing building height, floor area, or nonpermeable coverage of the lot, the landscape requirements of PD 193 must be applied to the property.

Rationale:

- The City's Chief Arborist recommends approval of this request whereby if the conditions mentioned above are imposed the special exception would not compromise the spirit and intent of the landscaping requirements of PD No. 193.

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.

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

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

GENERAL FACTS (related to the variance):

- The minimum front yard setback for “other permitted structures” (which would include an awning) on lots zoned PD No. 193 (LC Subdistrict) is 10’.
A revised site plan has been submitted that a “covered patio” structure that is as close as 2’ from the site’s McKinney Avenue front property line (or as much as 8’ into the 10’ setback) (see Attachment A).
- According to calculations taken by the Board Administrator from the site plan submitted on March 25th, the “covered patio” structure is 50’ long and ranges from 13’ – 16’ in width. It appears that roughly half of the canopy is proposed to be located in the 10’ front yard setback.
- According to the submitted “plan view” plan submitted on May 8th, the awning structure is 56’ long and 12’ wide. Since full scale plans of this document have not been submitted, staff is not able to determine how much of the canopy is proposed to be located in the 10’ front yard setback.
- The site is flat, irregular in shape, and according to the application, 1.38 acres in area. The site is zoned PD No. 193 (LC). The site has three, 10’ front yard setbacks which is typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural.
- DCAD records indicate that the site is developed with the following:
 - an office building with 79,393 square feet built in 1984;

- a parking garage with 94,533 square feet built in 1984;
 - a retail strip with 16,561 square feet built in 1984; and
 - a restaurant with 6,439 square feet built in 1984.
 - The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a revised site plan, elevation, and section;
 - a document that provided additional details about the request; and
 - photos of the subject site.
 - The Board of Adjustment conducted a public hearing on April 16, 2008 on the originally submitted variance request. The applicant stated at the hearing that he had determined that it was necessary for him to add a request for a special exception to the landscape regulations in conjunction with the canopy addition given that the site does not comply with these regulations. As a result, the applicant requested a delay of action on the variance request until the board's May hearing for him to add the landscape special exception request and to continue substantiating his original front yard setback variance request.
 - On May 8th and 9th, the applicant submitted information beyond what was submitted with the original application, beyond what was discussed at the May 6th staff review team meeting (see Attachments C and D). This information included the following:
 - a document that provided further details about the request;
 - photo-shopped before/after photos of the portion of the site on which the canopy sits/will sit*;
 - a "plan view;" and
 - a revised landscape plan
- * One of the photo-shopped images describes the proposed canopy as "Veranda Vinyl Laminated Polyester Cover."

GENERAL FACTS (related to landscape special exception):

- PD No. 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood tornado, riot, act of the public enemy, or accident of any kind.
The applicant submitted a revised landscape plan on May 9, 2008 (see Attachment D). According to the City of Dallas Chief Arborist, this alternate landscape plan is deficient in meeting the street tree, sidewalk location, off-street parking screen, possibly (but not likely) landscape site area, general planting area, and special planting area requirements; and possibly the garbage storage area landscaping provisions of the PD No. 193 landscape regulations.
- On May 8th and 9th, the applicant submitted information beyond what was submitted with the original application, beyond what was discussed at the May 6th staff review team meeting (see Attachments C and D). This information included the following:
 - a document that provided further details about the request;

- photo-shopped before/after photos of the portion of the site on which the canopy sits/will sit*;
- a “plan view;” and
- a revised landscape plan
- The City of Dallas Chief Arborist has submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner pertaining to the submitted landscape plan (see Attachment E). The memo stated the following:
 - The special exception request is triggered by the addition of floor area to property with new proposed canopy for restaurant uses.
 - Deficiencies:
 1. The applicant is required to provide 26 street trees (1 tree per 25 linear feet of frontage) in the required tree planting zone.
The applicant is proposing to provide 6 street trees on McKinney Avenue only with trees planted in other locations in the front yard.
 2. The applicant is required to be located 5’ – 12’ from the curb and with 6’ width.
The applicant is providing a few areas of sidewalk in the required areas but predominantly placed alongside the curb.
 3. The applicant is required to provide screening of all off-street parking.
The applicant is proposing to provide no screening of the parking lot on Howell Street.
 4. The applicant is required to provide 10% (60% of the front yard) of the lot as landscape site area, 12% or more of the front yard as general planting area, and 6% or more of the front yard as special planting area.
Although not tabulated, the site is likely to comply with or exceed these provisions.

Review of the site demonstrated possible violation of the garbage storage area landscaping in the required front yard along Howell Street. Any garbage dumpster located in view of Howell Street would need to be located outside the required front yard and be screened per the ordinance.

- Factors for consideration:
 - The property was developed in 1984-85 prior to the council adoption of PD 193.
 - City of Dallas improvements to McKinney Avenue since 2002 included sidewalk and landscaping improvements along the street front under a TIF project. Trees in tree grates were added to the McKinney Avenue street front.
 - All site improvements are being constructed along McKinney Avenue.
- Recommendation:
 - Approval of existing landscape, subject to the following conditions:
 1. Existing planting areas and tree selections must be maintained in their current locations as specified on the submitted landscape plan for the Property.
 2. Any future plant changes must conform to the general location and plant type specifications designated per this plan and must be approved by the Building Official. Any removed large tree must be replaced with another tree at a minimum of 3.5” caliper and be of the same species, except that:

- Due to potential overhead utility conflicts, any tree that is removed along the Howell Street tree planting zone must be replaced with a small tree species allowed in PD 193 unless an alternate selection is specified by the Tax Increment Finance District and approved by the Building Official.
 - Due to potential overhead utility conflicts, any tree that is removed along the McKinney Avenue tree planting zone must be replaced with a small tree species allowed in PD 193 unless an alternate selection is specified by the Tax Increment Finance District and approved by the Building Official.
3. All existing plant materials at the date of the hearing must be maintained under the General Maintenance requirements of PD 193. All outside garbage dumpsters must be screened per PD 193 specifications.
 4. All conditions for tree preservation under Article X apply to this Property.
 5. When any additional work on the lot is performed that increases the existing building height, floor area, or nonpermeable coverage of the lot, the landscape requirements of PD 193 must be applied to the property.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	PD No. 193 (LC) (Planned Development Light Commercial)
<u>North:</u>	PD No. 193 (LC) (Planned Development Light Commercial)
<u>South:</u>	PD No. 193 (LC) (Planned Development Light Commercial)
<u>East:</u>	PD No. 193 (LC) (Planned Development Light Commercial)
<u>West:</u>	PD No. 193 (GR) (Planned Development General Retail)

Land Use:

The subject site is developed with a mixed use structure. The areas to the north, east, south, and west are developed with a mix of residential, retail, and office uses.

Zoning/BDA History:

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

Timeline:

February 28, 2008: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

March 20, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

- March 20, 2008: 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 March 31st deadline to submit additional evidence for staff to factor into their analysis;
 - the April 4th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and, if not, may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the April public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- March 21 & 31, 2008: The applicant submitted additional information to the Board Administrator (see Attachment A).
- April 1, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- April 16, 2008: The Board of Adjustment conducted a public hearing where the board delayed action on this matter until May 21, 2008 in part to allow the applicant an opportunity to add a request for a landscape special exception to the application.
- April 21, 2008: The Board Administrator contacted the applicant and shared the following information by email:
- the May 5th deadline to submit additional evidence for staff to factor into their analysis;
 - the May 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and, if not, may result in delay of action on the appeal or denial.

- May 2, 2008: The Building Inspection Development Code Specialist forwarded a revised Building Official's Report to the Board Administrator which added a special exception to the landscape regulations.
- May 6, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Assistant Director of Development Services, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- May 6, 2008: The Building Inspection Development Code Specialist forwarded an alternate landscape plan that the applicant had submitted to him (see Attachment B).
- May 8 & 9, 2008: The applicant submitted additional information to the Board Administrator (see Attachments C and D).
- May 9, 2008 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment E).

STAFF ANALYSIS (related to the front yard variance):

- The applicant has made a front yard variance request to allow the construction and maintenance of a covered patio structure in the site's 10' McKinney Avenue front yard setback for an existing restaurant that is one of approximately five ground level suites in the site's multi-story mixed use structure. Although photos of the site submitted by the applicant show what could possibly be a patio "structure" in the front yard setback as well, no application has been made to "vary" any structure other than a canopy over the existing patio.
- The applicant has stated that the suite/storefront that is the focus of this variance request (Christi's Restaurant) was issued a permit in 1991 for an awning that already exists on the site – an existing canopy that is different in form and function that what is proposed on the site but similar in that it appears to be located in a front yard setback, too. (The existing canopy on the site that the applicant states obtained a permit in 1991 is perpendicularly-oriented to McKinney Avenue that appears to function as a covered walkway between the street and the entrance door to the restaurant while the proposed canopy is horizontally-oriented to McKinney Avenue that would appear to function as a covered-dining space).
- It appears from a revised site plan submitted on March 25th that about 1/2 of the proposed "covered patio"/canopy structure would be located in the site's 10' front yard setback on McKinney Avenue.
- The site is flat, irregular in shape, and according to the application, 1.38 acres in area. The site is zoned PD No. 193 (LC). The site has three, 10' front yard setbacks which is typical of any lot that has a street frontage and is not zoned single family,

duplex, or agricultural. The site is, according to DCAD, developed with an approximately 80,000 square foot office building, an approximately 95,000 square foot parking garage, an approximately 16,500 square foot retail strip, and an approximately 6,500 square foot restaurant all built in 1984.

- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations requested in conjunction with constructing and maintaining a canopy structure over an existing patio 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 mixed use structure built in 1984, that is flat, irregular in shape, and 1.4 acres 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 PD No. 193 (LC) 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 PD No. 193 (LC) zoning classification.
- If the Board were to grant the front yard variance request, imposing a condition whereby the applicant must comply with the submitted revised site plan, the structure in the front yard setback would be limited to what is shown on this plan – which in this case is a structure labeled “covered patio” located as close as 2’ from the site’s McKinney Avenue front property line (or as much as 8’ into the 10’ front yard setback).
- If the board were inclined to additionally want to impose an elevation/section of the proposed canopy, the board may request that an accurately scaled section/elevation showing the canopy’s length, width, height, (possibly) materials, and relationship to the McKinney Avenue front property line be submitted at the public hearing.

STAFF ANALYSIS (related to the landscape special exception) :

- This landscape special exception request is triggered by the proposed construction/maintenance of an approximately 700 square foot covered patio structure for an existing restaurant that is one of approximately five ground level suites in the site’s multi-story circa 1985 mixed use structure, part of which is proposed to be located in the site’s 10’ McKinney Avenue front yard setback. The applicant seeks exception from the landscape requirements in the following ways: 1) providing only 6 of the required 26 street trees in their required; 2) providing “a few areas” that may have sidewalks in their required locations between 5’ – 12’ from the back of curb; 3) not providing required of off-street parking along Howell Street; 4) possibly (but not probably) providing the un-tabulated amounts of landscape site area, general planting area, and special planting area; and 5) possibly not providing the required garbage storage area landscaping in the required front yard along Howell Street.

- The City of Dallas Chief Arborist supports the request with the imposition of 5 specific conditions that are detailed in his May 9th memo to staff (see Attachment E).
- The applicant has the burden of proof in establishing the following:
 - The special exception (where an alternate landscape plan has been submitted that is deficient in meeting the street tree, sidewalk location, off-street parking screen, possibly (but not likely) landscape site area, general planting area, and special planting area requirements; and possibly the garbage storage area landscaping provisions of the PD No. 193 landscape regulations) will not compromise the spirit and intent of the section of the ordinance (Section 26: Landscape, streetscape, screening, and fencing standards).
- If the Board were to grant this request and impose the 5 conditions suggested by staff/the Chief Arborist, the site would be clearly “excepted” from compliance to the street tree, sidewalk, parking lot screening requirements of the Oak Lawn PD landscape ordinance; and possibly (but not likely) the landscape site area, general planting area, and special planting area requirements of the ordinance.

BOARD OF ADJUSTMENT ACTION: APRIL 16, 2008

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

APPEARING IN OPPOSITION: Leslie Brosi, 3030 McKinney Avenue, Dallas, TX

MOTION #1: Chernock

I move that the Board of Adjustment, in Appeal No. **BDA 078-050**, hold this matter under advisement until **May 21, 2008**.

SECONDED: Reynolds

AYES: 5–Gillespie, Beikman, Chernock, Sorrells, Reynolds

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 078-065

BUILDING OFFICIAL'S REPORT:

Application of Shelley Barrineau for a variance to the off-street parking regulations at 5332 Edmondson Avenue. This property is more fully described as Lot 11 in City Block F/2478 and is zoned R-7.5(A) which requires a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley. The applicant proposes to construct a structure and provide an enclosed parking space with a setback of 5 feet which will require a variance of 15 feet.

LOCATION: 5332 Edmondson Avenue

APPLICANT: Shelley Barrineau

REQUEST:

- A variance to the off-street parking regulations of 15' is requested in conjunction with constructing and maintaining enclosed parking spaces in a two-vehicle garage/laundry room addition that would attach to an existing single family home. The enclosed parking spaces in the proposed addition would be located less than the required 20' distance from an alley right-of-way line.

STAFF RECOMMENDATION:

Denial

Rationale:

- Staff identified that the size of the lot, which according to the applicant, is 14' narrower, 9' shallower, and 35% smaller than 24 other lots in the 3800-3900 block of Fairfax Avenue and the 5200-5300 block of Edmondson Avenue precluded it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification – in this case with, according to information submitted by the applicant, an expanded single family home/garage that would be about 1,200 square feet lesser in size than the average living area and about 80 square feet lesser in size than the average garage area of the 24 other homes on the block. However, regardless of the demonstration of property hardship of the lot, staff is recommending denial of the request because the applicant had not substantiated how granting the request would not be contrary to public interest. Although the applicant's spreadsheet and the Board Administrator's field visit indicate that the only homes that access rear garages from the alley are at the end of the blocks (near Westside Street and Bordeaux Street), the Development Services Senior Engineer recommends that this request be denied commenting that

the traffic on the alley may be impeded with only a 5' distance between the enclosed parking spaces/garage door and the alley right-of-way line.

STANDARD FOR A VARIANCE:

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

GENERAL FACTS:

- The Dallas Development Code requires that a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley.
A revised scaled "plot"/site plan has been submitted that indicates enclosed parking spaces or a garage door) located 5' from the alley right of way line on the south side of the site. A floor plan has been submitted (with a non-standard scale) that denotes a 5' distance between the alley right-of-way line and the garage door of the 20.5' x 19' attached garage. The floor plan denotes that the addition towards the alley is comprised of a garage, a mud/laundry room, and powder room.
- The submitted revised scaled "plot"/site plan shows that the existing covered (one-vehicle) carport on the north side of the site facing Edmonson Avenue is proposed to be converted to living area with the new garage and laundry addition structure to be added onto the existing single family home on the south side of the site – enclosed parking spaces in the garage that would face the alley.
- The site is flat, virtually rectangular in shape (80' on the north, 75' on the south, and 120' on the east and west), and approximately 9,200 square feet in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet. Although not indicated on either the submitted revised site plan or floor plan, the applicant contends that an existing Live Oak tree (that is over 10' in diameter) precludes locating the garage in the front yard with a swing-in driveway.
- According to DCAD records, the property is developed with the following:
 - a single family home in "very good" condition built in 1950 with 1,896 square feet of living area; and
 - a 400 square foot attached carport.

- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a copy of an accurately scaled “plot”/site plan;
 - a document that further explains the merits of the request;
 - an “Edmondson Lot Comparison” spreadsheet that establishes that the subject site is 14’ narrower, 9’ shallower, and 35% smaller than 24 other lots in the 3800-3900 block of Fairfax Avenue and the 5200-5300 block of Edmondson Avenue; that the alley on which the garage/enclosed parking spaces is to be located is only used by 2-3 homes on each end of the block, and that the proposed living space for the expanded house on the site is 1,806 square feet (relative to the average of the 24 homes in the area at 3,008 square feet) and that the proposed garage to be added on the site is 400 square feet (relative to the average of the garages on the 24 lots in the area at 488 square feet);
 - a “Plot Plan B” attachment showing how a garage in the rear of the property in compliance with the parking regulations would result in eliminating all interior views to the back yard; and
 - a recent article from the Dallas Morning News that discusses the value of mid-century modern architecture – the style of the home on the subject site.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

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:

March 20, 2008: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

April 17, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

- April 21, 2008: 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 May 5th deadline to submit additional evidence for staff to factor into their analysis;
 - the May 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and, if not, may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the May public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- May 2, 2008 The applicant submitted additional information to the Board Administrator (see Attachment A).
- May 6, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Assistant Director of Development Services, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- May 12, 2008 The Development Services Senior Engineer forwarded a review comment sheet marked "Recommends that this be denied" commenting "Traffic on alley may be impeded."

STAFF ANALYSIS:

- This request is made to allow the applicant the ability to enclose parking spaces in a proposed garage/laundry room addition that would face/access to an alley. The proposed addition complies with all development standards with the exception of the 20' spacing/distance requirement that is required to be provided between an enclosed parking space and an alley right of way line. As a result, the proposed extension/addition could be constructed and maintained on the site as shown on the submitted site plan *without* a garage door (on enclosed parking spaces) if this request were denied.
- The Development Services Senior Engineer has submitted a review comment sheet marked "Recommends that this be denied." The engineer has commented that

“traffic on alley may be impeded”. (Note that a spreadsheet created/submitted by the applicant shows that alley is used by 2-3 homes at each end of the alley, and that this finding was also corroborated by the Board Administrator in a field visit of the site).

- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the parking regulations of 15’ to construct and maintain a garage structure addition with enclosed parking spaces 5’ away from an alley right of way line 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 to the parking regulations of 15’ requested to construct and maintain a garage structure addition with enclosed parking spaces 5’ away from an alley right of way line would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.
- Typically, when the Board has found that this type of variance request is warranted, they have imposed the following conditions:
 1. Compliance with the submitted site plan is required.
 2. An automatic garage door must be installed and maintained in working order at all times.
 3. At no time may the area in front of the garage be utilized for parking of vehicles.
 4. All applicable permits must be obtained.

These conditions are imposed to help assure that the variance will not be contrary to public interest.
- If the Board were to grant the variance request of 15’, imposing a condition whereby the applicant must comply with the submitted scaled “plot”/site plan, the garage structure extension/addition could be constructed and maintained as shown on the site plan with a garage door or enclosed parking spaces that is 5’ away from the alley right of way line (or 15’ into the 20’ setback/distance requirement).

FILE NUMBER: BDA 078-066(K)

BUILDING OFFICIAL'S REPORT:

Application of Robert Ernst for a special exception to the fence height regulations and for a special exception to the visibility obstruction regulations at 4710 Alta Vista Lane. This property is more fully described as Lot 10 in City Block 6/6392 and is zoned R-16(A) which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct a 7 foot fence in a required front yard setback which will require a 3 foot special exception to the fence regulations, and to construct and maintain a fence in a required visibility obstruction triangle which will require a special exception to the visibility obstruction regulations.

LOCATION: 4710 Alta Vista Lane

APPLICANT: Robert Ernst

REQUESTS:

A special exception to the visibility obstruction regulation is requested in conjunction with constructing and maintaining a nonresidential structure.

A special exception to the fence height regulations of 3 feet is requested in conjunction with maintaining a 7' high fence in the site's front yard setback

STAFF RECOMMENDATION (visibility obstruction):

Denial

Rationale:

- The Development Services Senior Engineer submitted a comment sheet recommending denial stating "it appears that there is a distance of 13' from the gate edge of pavement, thus a regular vehicle is expected to block part of the roadway (see attachment A)."

STAFF RECOMMENDATION (fence height):

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 THE VISIBILITY OBSTRUCTION REGULATIONS:

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

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 site is zoned R-16(A) which requires a visibility triangle of 20’.
- R-16(A) requires a front yard setback of 35 feet.
- The proposed fence and gate will be 7’ high.

BACKGROUND INFORMATION:

Zoning:

Site: R-16(A) (single family residential 16,000 square feet).
North: R-16(A) (single family residential 16,000 square feet).
South: R-16(A) (single family residential 16,000 square feet).
East: R-16(A) (single family residential 16,000 square feet).
West: R-16(A) (single family residential 16,000 square feet).

Land Use:

The subject site is developed with a residential structure. The areas to the north, south, east and west are developed with residential structures.

Zoning/BDA History:

B067-090 Alta Vista Circle: On June 13, 2007 the Board of Adjustment Panel B granted a request for a special exception to the fence height regulations of 3 feet.

Timeline:

March 26, 2008: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

April 16, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

April 21, 2008: The Board Senior Planner mailed the applicant's representative a letter that contained the following information:

- the public hearing date and panel that will consider the application;
- the criteria and standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the May 5th deadline to submit additional evidence for staff to factor into their analysis and recommendation;
- the May 9th 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 May public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.

May 6, 2008 : The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

The Development Services Senior Engineer submitted a review comment sheet showing he recommends denial to the special exception to the visibility obstruction (see attachment A).

STAFF ANALYSIS:

- The applicant proposes to construct and maintain a 7' high fence and gate in the required front yard setback.
- The site is zoned R-16(A) where properties are typically 16,000 square feet.
- The required front yard setback for R-16(A) zoning is 35 feet.
- The property is encumbered by two front yard setbacks one on Alta Vista Lane and one on College Park Drive.
- The proposed fence will be in the College Park Drive front yard setback.

- Neither the submitted site plan nor elevation indicates the materials of the fence and gate.
- The Board of Adjustment's Senior Planner reviewed the submitted site plans and observed the following:
 1. The proposed 7' fence (of unspecified materials) will be located 2' from the College Park Drive property line running a total of 76' in length.
 2. The gate will be 7' high and 18' wide.
- The City's Senior Engineer reviewed the plans and submitted a comment sheet showing "Recommend that this be denied for the following reasons:
 1. Cannot support the request,
 2. From the submitted (scaled 1"=20') site plan, it appears that there is a distance of 13' from the gate to edge of the pavement, thus a regular vehicle is expected to block part of the roadway (see attachment A)."
- The applicant has the burden of proof in establishing that granting the special exception to the visibility obstruction regulations does not constitute a traffic hazard
- If the Board were to grant the special exception to the visibility obstruction regulations, it may impose compliance with submitted site plan and elevation.
- The applicant has the burden of proof in establishing that granting the special exception to the fence height regulation (a 7' high fence) will not adversely impact neighboring properties.
- Should the Board grant the special expectation to the fence height regulation it may impose compliance with submitted site plan and elevation.

FILE NUMBER: BDA 078-068

BUILDING OFFICIAL'S REPORT:

Application of Richard and Trea Yip, represented by Robert Baldwin, for special exceptions to the fence height and visual obstruction regulations at 4949 Calleja Way. This property is more fully described as Lot 3A in City Block 5524 and is zoned R-1ac(A) which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct a 12 foot fence in a required front yard setback and to construct and maintain items in required visibility obstruction triangles which will require a special exception to the fence regulations of 8' and special exceptions to the visual obstruction regulations.

LOCATION: 4949 Calleja Way

APPLICANT: Richard and Trea Yip
Represented by Robert Baldwin

REQUESTS:

- The following appeals have been made in this application on a site that is currently developed with a single family home:
 1. A special exception to the fence height regulations of 8' is requested in conjunction with constructing and maintaining the following in the site's 40' front yard setback:
 - an 8' high solid stone veneer wall with cast stone cap with 10' high cast stone columns; and
 - an 11' 6" open iron picket entry gate with 12' high entry columns.
 2. A special exception to the visual obstruction regulations is requested in conjunction with constructing and maintaining the two entry columns and an approximately 8 foot long portion of the solid 8' high solid stone veneer wall in the site's 20' visibility triangles at the drive approach into the site from Calleja Way.

Note that in May of 2007, the applicant had made application to (and was granted by) the Board of Adjustment for the following on the subject site:

- A special exception to the fence height regulations of 8' was requested in conjunction with constructing and maintaining the following in the site's 40' front yard setback:
 - a 7' 11" – 8' high *iron picket* fence with 10' high cast stone columns; and
 - an 11' 6" iron picket entry gate with 12' high entry columns.
- A special exception to the visual obstruction regulations was requested in conjunction with constructing and maintaining a portion of the fence and/or columns in the site's 20' visibility triangles at the drive approach into the site from Calleja Way.

STAFF RECOMMENDATION (fence height special exception):

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

STAFF RECOMMENDATION (visual obstruction special exception):

Denial

Rationale:

- The City's Development Services Senior Engineer recommends that this be denied (i.e. that the entry columns and wall in the visibility triangles will constitute a traffic hazard).

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 VISUAL OBSTRUCTION REGULATIONS:

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

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

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
The applicant has submitted a site plan/elevation document indicating a wall/column/gate proposal that would reach a maximum height of 12 feet.
- The following additional information was gleaned from the submitted site plan on the site plan/elevation document:
 - The proposal appears to be approximately 140' in length parallel to the curved Calleja Way, generally on the front property line or and approximately 8' from the pavement line.
- The following additional information was gleaned from the submitted full elevation on the site plan/elevation document:
 - Seven stone veneer wall panels ranging in length from 16' 6" – 19' 1".
 - Seven, 8' high "24" sq. stone columns with 2' high decorative finials atop.
 - An 11' 6" high "decorative entry gate with decorative iron scroll work and pickets with solid iron panels at base."
 - Two, 12' high "cast stone column w/ cast stone base and cap. gas lantern T.B.D."

- There are no single family homes that would have direct frontage to the proposed fence/gate/columns to be located in the site's front yard setback since the site is located at the end of a cul-de-sac where only one other home is located.
- 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. Columns above 4' were noted on the property immediately northwest of the subject site – columns that appear to have been “excepted” by the Board of Adjustment in June of 2004 in conjunction with BDA034-154 where the board granted a fence special exception on this site to construct a 9' high open wrought iron fence with 9' 8” high columns, 8' 8” high solid masonry wing walls on either side of 14' 2” high entry gates on Calleja Way (BDA 034-154). (The fence between the existing columns on this property has not been constructed as of April 2008).
- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included a letter providing additional details about the request, and photos of the site and surrounding area.

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

- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at intersections and 20-foot visibility triangles at drive approaches); and
 - between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
 A site plan/elevation document has been submitted that shows two, 12' high stone entry gate columns located in the 20' visibility triangles (one on both sides of the drive approach into the site from Calleja Way), and an approximately 8' long portion of the 8' high solid stone veneer wall to be located in the southern 20' visibility triangle at the drive approach into the site from Calleja Way.
- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included a letter providing additional details about the request, and photos of the site and surrounding area.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. Miscellaneous Item #2, BDA067-072, Property at 4949 Calleja Way (the subject site)

On March 19, 2008, the Board of Adjustment Panel B granted the applicant's request to waive the two year limitation on requests for special exceptions to the fence height and visual obstruction regulations that were granted with conditions by Board of Adjustment Panel B on May 16, 2007.

2. BDA 067-072, Property at 4949 Calleja Way (the subject site)

On May 16, 2007, the Board of Adjustment Panel B took the following actions:

 1. Granted a request for a special exception to the fence height regulations of 8' (subject to compliance with the submitted revised site plan/elevation document); and
 2. Granted a request for a special exception to the visual obstruction regulations ((subject to compliance with the submitted revised site plan/elevation document).

The case reports states that a special exception to the fence height regulations of 8' was requested in conjunction with constructing and maintaining an 7' 11" – 8' high iron picket fence with 10' high cast stone columns; and an 11' 6" iron picket entry gate with 12' high entry columns; and that a special exception to the visibility obstruction regulations was requested in conjunction with constructing and maintaining a portion of the fence and/or columns in the site's 20' visibility triangles at the drive approach into the site from Calleja Way.

3. BDA 034-154, Property at 10430 Strait Lane (the lot immediately west of the subject site)

On June 22, 2004, the Board of Adjustment Panel A took the following actions:

 1. Granted a request to preserve an existing tree as a special exception to the minimum front yard requirements (subject to compliance with a submitted plan).
 2. Denied a request for a variance to the

front yard setback regulations without prejudice.

3. Granted a request for a variance to the height regulations (subject to compliance with a plan and elevation).
4. Granted a request to maintain a 14' 2" fence as a special exception along Calleja Way (subject to compliance with a site plan, "Planting Plan," and fence elevation).
5. Denied a request for a fence height special exception along Strait Lane without prejudice.

The case reports states that the requests were made in conjunction with constructing a 51.5'-high single family home partially located in the Calleja Way front yard setback, and a 9' high open wrought iron fence with 9'8" high columns, 8' 8" high masonry wing walls on either side of 14' 2" high entry gates (with 10' 10" high entry columns) along Strait Lane and Calleja Way.

Timeline:

March 28, 2008: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

April 17, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."

April 18, 2008: 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 May 5th deadline to submit additional evidence for staff to factor into their analysis;
- the May 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to

“documentary evidence,” and, if not, may result in delay of action on the appeal or denial; and

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

May 6, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Assistant Director of Development Services, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

May 9, 2008 The applicant’s representative submitted additional information to the Board Administrator (see Attachment A).

May 12, 2007 The Development Services Senior Engineer submitted a review comment sheet marked “Recommends that this be denied” with the following comments:

1. “Cannot see any reason to support the request.
2. Only 5 lots with potential access to this short cul-de-sac, thus a traffic hazard is not anticipated.”

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

- This request focuses on generally seeking an amendment to an elevation plan that was imposed as a condition in conjunction with a fence height special exception granted by the Board of Adjustment Panel B in May of 2007. The applicant’s representative has stated that the “only change in the request (from last year) is that the fence section will be constructed of masonry with wrought iron panels inserted. All other details will remain the same.”
- A site plan/elevation document has been submitted that indicates the proposed wall/columns/gate to be located in the site’s front yard setback. The site plan shows that the proposal is about 140’ in length curved/parallel to Calleja Way, generally on the property line (or about 8’ from the pavement line).
- The elevation on the site plan/elevation document indicates the maximum height of the wall (8’), the wall columns (10’), the gate (11’ 6”), and the entry gate columns (12’). The elevation denotes the materials of the wall (solid stone veneer with cast stone cap), columns (cast stone), and gate (open iron picket).
- There are no single family homes that have direct frontage to the proposal since it is located at the end of a cul-de-sac where only one other home other than the one on the subject site is located.
- No other fences were noted in the immediate area above 4’ in height in a front yard setback. Columns above 4’ were noted on the property immediately northwest of the subject site – columns that appear to have been “excepted” by the Board of

Adjustment in June of 2004 in conjunction with BDA034-154 where the board granted a fence special exception on this site to construct a 9' high open wrought iron fence with 9' 8" high columns, 8' 8" high solid masonry wing walls on either side of 14' 2" high entry gates on Calleja Way (BDA 034-154). (The fence between the existing columns on this property has not been constructed as of April 2008).

- As of May 12th no letters had been submitted to staff either in support or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 8' (whereby a proposal that would reach a maximum 12' in height) will not adversely affect neighboring property.
- Granting this special exception to the fence height regulations of 8' with conditions imposed that the applicant complies with the submitted site plan/elevation document would assure that the proposal would be constructed and maintained in the location and of the heights and materials as shown on this document.

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

- This request focuses on generally seeking an amendment to an elevation plan that was imposed as a condition in conjunction with a fence height special exception granted by the Board of Adjustment Panel B in May of 2007. The applicant's representative has stated that the "only change in the request (from last year) is that the fence section will be constructed of masonry with wrought iron panels inserted. All other details will remain the same."
- The submitted site plan/elevation document shows two, 12' high stone entry gate columns located in the 20' visibility triangles (one on both sides of the drive approach into the site from Calleja Way), and an approximately 8' long portion of the 8' high solid stone veneer wall to be located in the southern 20' visibility triangle at the drive approach into the site from Calleja Way.
- The Development Services Senior Engineer has altered his position from the previous 2007 proposal where he had submitted a review comment sheet marked "Has no objections" to this request. The engineer has submitted a review comment sheet marked "Recommends that this be denied" commenting: 1) "Cannot see any reason to support the request; and 2) Only 5 lots with potential access to this short cul-de-sac, thus a traffic hazard is not anticipated."
- The applicant has the burden of proof in establishing the following:
 - Granting the special exception to the visual obstruction regulations (whereby, according to the submitted site plan/elevation, two entry columns and a portion of a solid stone veneer wall would be located in the two, 20' visibility triangles at drive approach into the site from Calleja Way) will not constitute a traffic hazard.
- If this request is granted, subject to compliance with the submitted site plan/elevation, a portion of the 8' high stone veneer wall and two 12' high stone entry columns would be "excepted" into the two, 20' visibility triangles at the drive approach into the site from Calleja Way.