

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM
WEDNESDAY, JUNE 20 2012**

MEMBERS PRESENT AT BRIEFING: Darlene Reynolds, Vice Chair, David Wilson, regular member, Paula Leone, regular member and Robert Agnich, alternate member

MEMBERS ABSENT FROM BRIEFING: Sam Gillespie, Panel Vice Chair, Christian Chernock, regular member

MEMBERS PRESENT AT HEARING: Darlene Reynolds, Vice Chair, David Wilson, regular member, Paula Leone, regular member and Robert Agnich, alternate member

MEMBERS ABSENT FROM HEARING: Sam Gillespie, Panel Vice Chair, Christian Chernock, regular member

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Tammy Palomino, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, and Trena Law, Board Secretary

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11:10 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **June 20, 2012 docket.**

1:10 P.M.
The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel B May 16, 2012 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: JUNE 20, 2012

MOTION: Agnich

I move approval of the **Wednesday, May 16, 2012** Board of Adjustment Public Hearing minutes.

SECONDED: Wilson

AYES: 4– Reynolds, Wilson, Leone, Agnich

NAYS: 0 –

MOTION PASSED 4 – 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: BDA 112-009

REQUEST: To extend the time period to file an application for a building permit or certificate of occupancy an additional 12 months beyond the 180 days from the Board of Adjustment’s favorable action on a request for variance to the height regulations of 95’ granted by Board of Adjustment Panel B on January 18, 2012, subject to the revised conceptual height limit site plan diagram submitted at the 1-18-13 public hearing and the submitted conceptual height limit elevation.

LOCATION: 2001 McKinney Avenue

APPLICANT: Jackson Walker, LLP
Represented by Jonathan Vinson

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

The Dallas Development Code Section 51A-4.703(d)(6) states that the applicant shall file an application for a building permit or certificate of occupancy within 180 days from 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 extensions of time:

- 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:

- January 18, 2012: The Board of Adjustment Panel B granted a request for variance to the height regulations of 95' and imposed the revised conceptual height limit site plan diagram submitted at the 1-18-13 public hearing and the submitted conceptual height limit elevation as a condition to the request. The case report stated that the request was made in conjunction with constructing and maintaining a structure (described by the applicant as a "mixed use project, primarily office but with retail and residential components"), part of which would exceed the 240' maximum height permitted for structures on properties zoned PD No. 193 (HC Subdistrict) on a site that is currently undeveloped.
- January 24, 2012: The Board Administrator wrote the applicant a letter documenting the January 18th 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."
- May 18, 2012: The applicant 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 an additional one year (or 12 months) beyond the 180 days they had to do so from the January 18, 2012 favorable action (see Attachment A).
- March 13, 2012: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the June 8th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- June 8, 2012: The applicant submitted additional information to staff regarding this request (see Attachment B).

BOARD OF ADJUSTMENT ACTION: JUNE 20, 2012

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

APPEARING IN OPPOSITION: No one

MOTION: **Agnich**

I move that the Board of Adjustment grant the request to extend the time period to file an application for a building permit or certificate of occupancy an additional 12 months beyond the 180 days from the Board of Adjustment's favorable action on a request for variance to the height regulations of 95' granted by Board of Adjustment Panel B on January 18, 2012, subject to the revised conceptual height limit site plan diagram submitted at the 1-18-12 public hearing and the submitted conceptual height limit elevation.

SECONDED: **Wilson**

AYES: 4– Reynolds, Wilson, Leone, Agnich

NAYS: 0 –

MOTION PASSED 4 – 0 (unanimously)

FILE NUMBER: BDA 112-056

BUILDING OFFICIAL'S REPORT:

Application of Judson Griggs for a special exception to the fence height regulations at 4723 Royal Lane. This property is more fully described as Lot 4 in City Block 1/5503 and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain an 8 foot 6 inch high fence in a required front, yard which will require a special exception of 4 feet 6 inches.

LOCATION: 4723 Royal Lane

APPLICANT: Judson Griggs

June 20, 2012 Public Hearing Notes:

- The applicant submitted a planting plan to the Board at the public hearing.

REQUEST:

- A special exception to the fence height regulations of 4' 6' is requested along with constructing and maintaining a 6' 6" high solid masonry wall with 7' high stone columns, and two 8' 6" high arched open wrought iron entry gates in the site's 40' front yard setback on a lot developed with a single family home.

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

Dallas Development Code Section 51A-4.602 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 person shall not erect or maintain a fence in a required yard more than 9’ above grade, and additionally states that in all residential districts except multifamily districts, a fence may not exceed 4’ above grade when located in the required front yard.
- The applicant has submitted a partial site plan and elevation indicating that the proposal in the required front yard setback reaches a maximum height of 8’ 6”.
- The following additional information was gleaned from the submitted site plan:
 - The proposal is approximately 180’ in length parallel to the street and approximately 16’ in length *perpendicular* to the street on the east and west sides of the site in the front yard setback.
 - The fence proposal is shown to be located approximately 0’ – 24’ from the site’s front property line. (No pavement line is indicated on the site plan therefore no distance can be given of the fence location relative to the pavement line).
- The submitted site plan denotes “assumed location of ex. Trees, make sure wall falls behind these.”
- On June 8, 2012, a person who the applicant designated to assist with the application submitted additional information for the board’s consideration beyond what was submitted with the original application (see Attachment A). (Note that within this additional information was a copy of a further enhanced site/landscape plan with an additional note/list: climbing fig, Asian jasmine, existing Live Oak, Burford holly, loropetulam, “Nellie R. Stevens” holly, and existing turf).

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

Zoning/BDA History:

1. BDA 101-034, Property at 4723 Royal Lane (the subject site)

On April 20, 2011, the Board of Adjustment Panel B granted a request for a special exception to the fence height regulations of 6' and imposed the submitted site plan and a elevation as a condition. The case report stated that the request was made in conjunction with constructing and maintaining the following in the site's 40' front yard setback on a lot being developed with a single family home: parallel to the street in the front yard setback: an 8' high open iron wrought fence with 9' high cast stone columns, and two 10' high arched open wrought iron entry gates with 9' 6" high cast stone columns; and perpendicular to the street in the front yard setback: an 8' high combination solid cast stone/open wrought iron fence (open wrought iron fence atop a 2' 4" high solid cast stone base) with 9' 6" high cast stone columns.
2. BDA 88-119, Property at 4707 Royal Lane (the lot immediately west of subject site)

On November 8, 1988, the Board of Adjustment followed the staff recommendation and granted a request for a special exception to the fence height regulations to maintain a 6'10" open metal fence with brick columns, subject to a site plan and a landscape plan.
3. BDA 056-225, Property at 10770 Lennox Lane (the lot southwest of subject site)

On November 13, 2006, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 5' and imposed the following as a condition to the request: Compliance with the submitted revised site plan, Option B elevation, and landscape plan is required. The case report stated that the request was made in conjunction constructing and maintaining an 8' high solid stucco fence with 9' high stucco columns and a sliding gate to be located in the site's Lennox Lane and Royal Lane 40' front yard setback on a site developed with a single family home.
4. BDA 978-230, Property at 4720 Royal Lane (the lot immediately

On September 22, 1998, the Board of Adjustment Panel A denied a request for a

south of subject site)

special exception to the fence height regulations of 4' without prejudice. The case report stated that the request was made in conjunction with requested in conjunction with constructing and maintaining an 8' high solid masonry wall.

5. BDA 023-067, Property at 10770 Strait Lane (two lots immediately southeast of subject site)

On April 21, 2003, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 3' 8" along Royal Lane and imposed the following the submitted site plan, landscape plan, and fence elevations as a condition to the request. The case report stated that the request was made in conjunction with maintaining a 6' 5" high solid stucco wall with 7' 8" high stucco columns in the site's Royal Lane front yard setback.

Timeline:

- April 3, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 16, 2012: 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."
- May 17, 2012: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the May 30th deadline to submit additional evidence for staff to factor into their analysis; and the June 8th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the requests; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- May 29, 2012: The Board Administrator emailed the applicant the following concerns:
- That his submitted site plan/elevation does not denote the location of the Royal Lane pavement line; and while this line may not be required for what you have applied for (fence height

special exception), the plan does not allow the City to determine that his site is complying with visual obstruction regulations.

- since no application for a special exception to the visual obstruction regulations has been made, his application as submitted will not provide any to any existing or proposed item that may in turn be deemed non-compliant with these regulations.

June 5, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings.

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

June 8, 2012: A person who the applicant designated to assist with the application submitted additional information for the board's consideration beyond what was submitted with the original application (see Attachment A).

STAFF ANALYSIS:

- This request focuses on constructing and maintaining a 6' 6" high solid masonry wall with 7' high stone columns, and two 8' 6" high arched open wrought iron entry gates in the site's 40' front yard setback on a lot developed with a single family home.
- The Board of Adjustment Panel B granted a fence height special exception request on the site in April 2011 (BDA 101-034). The request made in 2011 was to construct and maintain an 8' high open iron wrought fence with 9' high cast stone columns, and two 10' high arched open wrought iron entry gates with 9' 6" high cast stone columns on the site parallel to the street; and constructing and maintaining an 8' high combination solid cast stone/open wrought iron fence (open wrought iron fence atop a 2' 4" high solid cast stone base) with 9' 6" high cast stone columns perpendicular to the street on the two sides of the site in the front yard setback on a property that at that time was being developed with a single family home.
- The submitted partial site plan and elevation documents the location, height, and materials of the fence over 4' in height in the required front yard setback. The site plan indicates that the proposal is about 180' in length parallel to the street and approximately 16' in length *perpendicular* to the street on the east and west sides of the site in the front yard setback. The plan shows the fence to be located approximately 0' – 24' from the site's front property line. (No pavement line is indicated on the site plan therefore no distance can be given of the fence location relative to the pavement line).
- The submitted site plan denotes "assumed location of ex. Trees, make sure wall falls behind these." On June 8, 2012, a copy of a further enhanced site/landscape plan was submitted with an additional note/list: climbing fig, Asian jasmine, existing Live Oak, Burford holly, loropetulam, "Nellie R. Stevens" holly, and existing turf).
- Three single family homes "front" to the proposal on the subject site, one of which appears to have a fence higher than 4' in height in its front yard setback. The lot immediately southwest of the site has an approximately 8' high combination solid

- The Board Administrator conducted a field visit of the site and surrounding area and noted two other fences above 4 feet high in the immediate area which appeared to be located in a front yard setback beyond what was previously described:
 1. an approximately 7' high open metal fence immediately west of the site almost completely hidden by a tall hedge that appears to be a result of an approved fence height special exception from November of 1988- BDA 88-119; and
 2. an approximately 7' high solid stucco wall two lots southeast of the site that appears to be the result of an approved fence height special exception from April of 2003- BDA 023-067.
- As of June 11, 2012, no letters had been submitted to staff 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' 6" will not adversely affect neighboring property.
- If the board were to grant this special exception of 4' 6", imposing a condition that the applicant complies with the submitted partial site plan and elevation would assure that the proposal exceeding 4' in height in the front yard setback would be maintained in the location, heights, and materials as shown on these documents.
- Granting this special exception to the fence height regulations would not provide any relief to any existing or proposed item that may in turn be deemed non-compliant with visual obstruction regulations.

BOARD OF ADJUSTMENT ACTION: JUNE 20, 2012

APPEARING IN FAVOR: Willie Cothrum, 900 Jackson Street, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Wilson**

I move that the Board of Adjustment, in Appeal No. **BDA 112-056**, on application of Judson Griggs, **grant** the request of this applicant to construct and maintain an 8-foot 6-inch-high fence on the property as a special exception to the height requirement for fences in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: **Reynolds**

AYES: 4– Reynolds, Wilson, Leone, Agnich

NAYS: 0 –

MOTION PASSED 4 – 0 (unanimously)

1:55 P.M.: Break

2:03 P.M.: Resumed

FILE NUMBER: BDA 112-060

BUILDING OFFICIAL’S REPORT:

Application of Robert Hunt for variances to the front yard setback regulations at 2237 Madera Street. This property is more fully described as Lot 1 in City Block D/1979 and is zoned R-7.5(A), which requires a front yard setback of 25 feet. The applicant proposes to construct and maintain a structure with double frontage and provide a 16 foot front yard setback and a 7 foot front yard setback, which will require variances to the front yard setback regulations of 9 feet and 18 feet, respectively.

LOCATION: 2237 Madera Street

APPLICANT: Robert Hunt

REQUESTS:

- Requests for variances of up to 18’ are requested in conjunction with replacing (according to DCAD) an existing approximately 1,500 square foot, one-story single family home with a two-story single family home that will have (according to the applicant) about 2,800 square foot of air-conditioned space, part of which would be located in the site’s Madera Avenue 25’ front yard setback on the northeast and the site’s Glencoe Avenue 25’ front yard setback on the southwest.

STAFF RECOMMENDATION:

Approval, subject to compliance with the submitted site plan

Rationale:

- The lot’s restrictive area (encumbered by a lot size that is about 2,500 square feet less than other R-7.5(A) zoned lots and with two 25’ front yard setbacks) and irregular shape preclude its development in a manner commensurate with other developments found on similarly-zoned R-7.5(A) lots – which in this case, according to the applicant’s submittals, is a single family home not to exceed 2,850 square feet. The width of development on this irregular shaped property once two 25’ front yard setbacks are accounted for ranges from about 14’ – 42’ in depth.

STANDARD FOR A VARIANCE:

The Dallas Development Code Section 51A-3.102(d)(10) 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 for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

- (A) not 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;

- (B) necessary to permit development of a specific parcel of land that 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 with the same zoning; and
- (C) not 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 with the same zoning.

GENERAL FACTS:

- For R-7.5(A) Single Family zoned properties, a 25’ front yard setback is required. This site is deemed to have two front yard setbacks because the Dallas Development Code states the following with regard to front yard provisions for residential district:
 - If a lot runs from one street to another and has double frontage, a required front yard must be provided on both streets. If access is prohibited on one frontage by plat or by the city, the following structures in the yard along that frontage are governed by the rear yard regulations: swimming pool, game courts, fences, garages, accessory storage buildings.”
- The site is a full “block-deep” and since Building Inspection has interpreted that access to the site along Glencoe is NOT prohibited by plat or the city.
- A site plan has been submitted indicating a structure/building footprint is as close as 16’ from the Madera Street front property line (or 9’ into the 25’ front yard setback along Madera Street) and as close as 7’ from the Glencoe Street front property line (or 18’ into the Glencoe Street front yard setback).
- The site is flat, irregular in shape (approximately 52’ on the northwest, 72’ on the southeast, 121’ on the northeast, and 70’ on the southwest), and approximately 5,000 square feet in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area. The site has two 25’ front yard setbacks. Most lots in R-7.5(A) zoning have one front yard setback and do not have double frontage.
- According to DCAD records, the “main improvement” at 2237 Madera Street is a structure built in 1918 with 1,356 square feet of living area; with “additional improvements” being a “storage building” with 400 square feet, a “detached carport” with 252 square feet, and a “room addition” with 144 square feet.
- The applicant forwarded additional information beyond what was submitted with the original application (see Attachment A).

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, east, south, and west appear to be developed with residential uses.

Zoning/BDA History:

1. BDA 056-245, Property at 2237 Madera Avenue (the subject site)

On November 15, 2006, the Board of Adjustment Panel B granted requests for variances to the front yard setback regulations of up to 17 feet and imposed to the submitted site plan as a condition to the request.

The case report stated that the requests were made in conjunction with either tearing down the existing one story structure and building a two story single family home, a stairwell in the Madera Street front yard setback and a garage in the Glencoe Street front yard setback; or reconstructing the existing home and adding a second floor over the footprint with two small additions: a stairwell in the Madera Street front yard setback and a garage in the Glencoe Street front yard setback.

Timeline:

March 28, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

May 16, 2012: 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."

May 17, 2012: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the May 30th deadline to submit additional evidence for staff to factor into their analysis; and the June 8th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the requests; and

- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

May 25, 2012: The applicant forwarded additional information beyond what was submitted with the original application (see Attachment A).

June 5, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings.

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

STAFF ANALYSIS:

- These requests focus on replacing an existing one-story single family home with a two-story single family home, part of which will be located in the site's two 25' front yard setbacks on a site that is a full "block-deep."
- The submitted site plan indicates a structure/building footprint is as close as 16' from the Madera Street front property line (or 9' into the 25' front yard setback along Madera Street) and as close as 7' from the Glencoe Street front property line (or 18' into the Glencoe Street front yard setback).
- Approximately 225 square feet (or about 8 percent) of the proposed structure is located in the site's Madera Avenue front yard setback, and approximately 1,500 square feet (or about 1/2) of the proposed structure is located in the site's Glencoe Avenue front yard setback. The width of development on this irregular shaped property once two 25' front yard setbacks are accounted for ranges from about 14' – 42' in depth.
- The site is flat, irregular in shape (approximately 52' on the northwest, 72' on the southeast, 121' on the northeast, and 70' on the southwest), and approximately 5,000 square feet in area.
- The applicant has the burden of proof in establishing the following:
 - That granting the variances to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variances to front yard setback regulations are necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.
 - The variances to front yard setback regulations would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.
- If the Board were to grant the front yard variance requests, imposing a condition whereby the applicant must comply with the submitted site plan, the structure in the front yard setbacks would be limited to that what is shown on the submitted plan – a

structure that could be located close as 16' from the Madera Street front property line (or 9' into the 25' front yard setback along Madera Street) and as close as 7' from the Glencoe Street front property line (or 18' into the Glencoe Street front yard setback)

BOARD OF ADJUSTMENT ACTION: **JUNE 20, 2012**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Leone

I move that the Board of Adjustment grant application **BDA 112-060** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted site plan is required.

SECONDED: Agnich

AYES: 4– Reynolds, Wilson, Leone, Agnich

NAYS: 0 –

MOTION PASSED 4 – 0 (unanimously)

FILE NUMBER: BDA 112-063

BUILDING OFFICIAL’S REPORT:

Application of Chad Sargent, represented by Ronnie Deford, for special exceptions to the fence height regulations at 1528, 1530, 1534, 1536, and 1537 Sienna Court. This property is more fully described as Lots 31C, 31D, 31E, 31F, and 31K in City Block 5/642 and is zoned PD-298 (Subarea 8), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain an 8 foot high fence in required front yard setbacks, which will require special exceptions of 4 feet.

LOCATION: 1528, 1530, 1534, 1536, and 1537 Sienna Court.

APPLICANT: Chad Sargent
 Represented by Ronnie Deford

REQUESTS:

- The following appeals have been made on a site that is currently being developed with townhomes:
 1. a special exception to the fence height regulations of 4’ is requested along with constructing and maintaining a 6’ high “see through iron” fence atop an existing

- 2' high stone retaining wall to be located in the front yard setback along N. Haskell Avenue; and
2. a special exception to the fence height regulations of 4' is requested along with constructing and maintaining a 7' high "see through metal" sliding gate to be located in the front yard setback along San Jacinto Street.

STAFF RECOMMENDATION (fence height special exceptions):

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:

- PD No. 298 states that for all residential uses, maximum fence height in the required front yard is 4 feet. PD No. 298 states that the front yard setback in Subarea 8 is not less than 5' and not more than 15'.
- The subject site is located at the southern corner of San Jacinto Street and N. Haskell Avenue with front yard setbacks on both streets. The applicant had submitted a site plan and elevation indicating that the proposal in the required front yard setbacks on N. Haskell Avenue and San Jacinto Street reaches a maximum height of 8'.
- With regard to the proposal along N. Haskell Avenue, the following additional information was gleaned from the submitted site plan:
 - The proposal is shown to be approximately 130' in length parallel to the street and approximately 8' – 11.5' in length perpendicular to the street on the northwest and southeast sides in the front yard setbacks.
 - The proposed is shown to be located approximately on the front property line or about 13' from the projected curb/pavement line.
- Regarding the proposal along N. Haskell Boulevard, no single family home "fronts" to the subject site.
- Regarding the proposal along San Jacinto Street, the following additional information was gleaned from the submitted site plan:
 - The proposal is shown to be approximately 18' in length parallel to the street.
 - The proposed is shown to be located approximately 9' from the front property line or about 22' from the projected curb/pavement line.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 298 (Planned Development)

North: PD No. 298 (Planned Development)
South: PD No. 298 (Planned Development)
East: PD No. 298 (Planned Development)
West: PD No. 298 (Planned Development)

Land Use:

The subject site is being developed with a townhome development. The areas to the north, east, and south are developed with residential uses, and the area to the west is developed with retail use.

Zoning/BDA History:

1. BDA 101-103, Property at 1528, 1530, 1534, 1536, and 1537 Sienna Court (the subject site) On November 16, 2011, the Board of Adjustment Panel B denied requests for special exceptions to the fence height regulations of 4' without prejudice. The case report stated that the request was made in conjunction with constructing and maintaining a 6' high solid cedar board-on-board fence atop a 2' high stone retaining wall to be located in the front yard setback along N. Haskell Avenue; and an 8' high open wrought iron sliding gate to be located in the front yard setback along San Jacinto Street on a property developed with a townhome development.

Timeline:

- April 20, 2012: 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."
- May 17, 2012: The Board Administrator emailed the applicant's representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the May 30th deadline to submit additional evidence for staff to factor into their analysis; and the June 8th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the requests; and

- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

June 5, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings.

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

STAFF ANALYSIS:

- These requests focus on constructing and maintaining a 6’ high “see through iron” fence atop a 2’ high stone retaining wall to be located in the front yard setback along N. Haskell Avenue, and a 7’ high open “see through iron” sliding gate to be located in the front yard setback along San Jacinto Street on a site developed with a townhome development.
- The Board Administrator conducted a field visit of the site and surrounding area and noted one other fence above 4 feet high, which appeared to be located in a front yard setback – an approximately 6’ high open metal/wire fence atop a solid stone retaining wall located immediately north of the site with no recorded BDA history.
- As of June 11, 2012, no letters have been submitted in support or opposition to the request.
- The applicant has the burden of proof in establishing that the special exceptions to the fence height regulations of 4’ will not adversely affect neighboring property.
- Granting these special exceptions of 4’ with a condition imposed that the applicant complies with the submitted site plan and elevation would provide assurance that the proposal exceeding 4’ in height in the required front yards would be constructed and maintained in the locations and of the heights and materials as shown on these documents.

BOARD OF ADJUSTMENT ACTION: JUNE 20, 2012

APPEARING IN FAVOR: Eric Williamson, 3507 Bryan Street, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Wilson

I move that the Board of Adjustment, in Appeal No. **BDA 112-063**, on application of Chad Sargent, represented by Ronnie Deford, **grant** the request of this applicant to construct and maintain an 8-foot-high fence along Haskell Avenue and San Jacinto Street as a special exception to the height requirement for fences in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Agnich

AYES: 4– Reynolds, Wilson, Leone, Agnich

NAYS: 0 –

MOTION PASSED 4 – 0 (unanimously)

FILE NUMBER: BDA 112-064

BUILDING OFFICIAL’S REPORT:

Application of Robert Baldwin for a special exception to the fence height regulations at 5629 Bent Tree Drive. This property is more fully described as Lot 27A in City Block 1/8209 and is zoned R-1/2ac(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain an 8 foot 8 inch high fence in a required front yard setback, which will require a special exception of 4 feet 8 inches.

LOCATION: 5629 Bent Tree Drive

APPLICANT: Rob Baldwin

REQUEST:

- A special exception to the fence height regulations of 4’ 8” is requested along with constructing and maintaining a 7’ high open wrought iron picket fence with 7’ 8” high masonry columns and an 8’ high open wrought iron picket gate with 8’ 8” high masonry entry gate columns in the site’s 40’ required front yard on property being developed with a single family home.

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The Dallas Development Code states that a fence may not exceed 4’ above grade when located in the required front yard in all residential districts except multifamily districts.
- The subject site is zoned R-1/2ac (A) and has a 40’ platted building line.

- The applicant has submitted a scaled site plan and elevation indicating a fence/column/gate proposal that would be located in the site's required front yard and reaches a maximum height of 8' 8".
- A site plan has been submitted that indicates the location of the proposal in the front yard setback. The following additional information was gleaned from this site plan:
 - The proposal would be approximately 50' in length parallel to the curved street and approximately 25' in length perpendicular to the street on the west and southeast sides of the site in the required front yard.
 - The proposed fence is shown to be located approximately 15' 6" from the front property line (or approximately 28' from the pavement line).
- The applicant forwarded additional information beyond what was submitted with the original application (see Attachment A).

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	R-1/2ac (A) (Single family district 1 acre)
<u>North:</u>	R-1/2ac (A) (Single family district 1 acre)
<u>South:</u>	R-1/2ac (A) (Single family district 1 acre)
<u>East:</u>	R-1/2ac (A) (Single family district 1 acre)
<u>West:</u>	R-1/2ac (A) (Single family district 1 acre)

Land Use:

The subject site is being developed with a single family home. The area to the north appears to be developed as open space, and the areas to the east, south, and west are developed with single family uses.

Zoning/BDA History:

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

Timeline:

- April 10, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 16, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- May 17, 2012: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the May 30th deadline to submit additional evidence for staff to factor into their analysis;

and the June 8th deadline to submit additional evidence to be incorporated into the Board's docket materials;

- the criteria/standard that the board will use in their decision to approve or deny the requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

May 29, 2012: The applicant forwarded additional information beyond what was submitted with the original application (see Attachment A).

June 5, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings.

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

STAFF ANALYSIS:

- The request focuses on constructing and maintaining a 7' high open wrought iron picket fence with 7' 8" high masonry columns and an 8' high open wrought iron picket gate with 8' 8" high masonry entry gate columns in the site's 40' required front yard on property being developed with a single family home.
- The proposed fence will be located on a site where no single family home would have direct frontage since the property immediately across the street fronts southeast to Bent Tree Drive.
- The Board Administrator conducted a field visit of the site and surrounding area and noted not other fences that appeared to be located in front yards and over 4' in height.
- As of June 11, 2012, no letters had been submitted to staff in opposition or in support to the proposal.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal that would reach 8' 8" in height) will not adversely affect neighboring property.
- Granting this special exception of 4' 8" with a condition imposed that the applicant complies with the submitted site plan/elevation document would require the proposal exceeding 4' in height in the required front yard to be constructed/maintained in the location and of the heights and materials as shown on this document.

BOARD OF ADJUSTMENT ACTION: JUNE 20, 2012

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Leone

I move that the Board of Adjustment grant application **BDA 112-064** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas

Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

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

SECONDED: Agnich

AYES: 4– Reynolds, Wilson, Leone, Agnich

NAYS: 0 –

MOTION PASSED 4 – 0 (unanimously)

FILE NUMBER: BDA 112-065

BUILDING OFFICIAL’S REPORT:

Application of George M. Underwood III, represented by Robert Reeves, for a variance to the side yard setback regulations at 15635 Coit Road. This property is more fully described as a part of Tract C, a 4.236 acre tract in City Block 35/8196 and is zoned CR, which requires a side yard setback of 20 feet where there is residential adjacency. The applicant proposes to construct and maintain a structure and provide a 5 foot side yard setback, which will require a variance of 15 feet.

LOCATION: 15635 Coit Road

APPLICANT: George M. Underwood III
Represented by Robert Reeves

June 20, 2012 Public Hearing Notes:

- The applicant submitted additional written documentation to the Board at the public hearing.

REQUEST:

- A variance to the side yard setback regulations of 15’ is requested in conjunction with constructing and maintaining an approximately 2,600 square foot retail structure, a portion of which would be located in the site’s southern 20’ side yard setback on a property developed with a retail strip center (Spanish Village Shopping Center).

STAFF RECOMMENDATION:

Denial

Rationale:

- Although granting this variance request would allow another structure in the site’s 20’ southern side yard setback (an existing structure on the site was varied by the

Board of Adjustment in 1968 just 2' away from the southern property line), the applicant had not substantiated in this case how the subject site differs from other lots zoned CR where its restrictive size, shape, or slope precludes it from being developed in a manner commensurate with the development upon other parcels of land with the same CR zoning. The site is flat, somewhat irregular in shape, and is (according to the application) 4.236 acres (or approximately 184,000 square feet) in area. The corner property with two street frontages has two front yard setbacks as any corner property with two street frontages would that is not zoned agricultural, single family, or duplex.

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 for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

- not 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;
- necessary to permit development of a specific parcel of land that 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 with the same zoning; and
- not 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 with the same zoning.

GENERAL FACTS:

- The subject site is located at the southwest corner of Arapaho Road and Coit Road. The subject site is zoned CR (Community Retail).
- The minimum side yard setback on a lot zoned CR is 20 feet where adjacent to or directly across an alley from a single family, duplex, townhouse, or multifamily zoning district; or no minimum in all other cases. The subject site directly abuts an MF-1(A) (multifamily) zoning district to the south – an area that is developed with a multifamily development.
- The applicant has submitted a site plan indicating a “proposed 2,640 SF” structure that is located 5' on from the site's southern side property line (or 15' into the required 20' side yard setback).
- The site is flat, somewhat irregular in shape, and is (according to the application) 4.236 acres (or approximately 184,000 square feet) in area. The corner property with two street frontages has two front yard setbacks as any corner property with two street frontages would that is not zoned agricultural, single family, or duplex.
- On May 30, 2012, the applicant's representative submitted additional information for the board's consideration beyond what was submitted with the original application (see Attachment A).

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail)
North: CR (Community Retail)
South: MF-1(A) (Multifamily)
East: City of Richardson
West: MF-1(A) (Multifamily)

Land Use:

The subject site is developed with a retail strip center (Spanish Village Shopping Center). The areas to the north and east are developed with retail uses; and the areas to the south, and west are developed with multifamily uses.

Zoning/BDA History:

1. BDA 68-163, Property at 15635 Coit Road (a portion of the subject site)

On November 22, 1968, the Board of Adjustment granted an application for “a permit to construct a one-story masonry office building requesting setback from the property line adjacent to the MF-1 zoned district 2 feet instead of the required 20 feet which would require a variance of 18 feet.” The minutes state among other things how “at the time of platting, they did not realize by dedicating an alley on this site that they would be creating a property line there and naturally would not have done that; they would have probably uses an alley easement.” (Note that this granted application on this property is most likely why the applicant with the current application has not requested variance for the “Existing 3,150 SF” structure on his submitted site plan that is located in the site yard setback between Coit Road and the proposed structure that is the focus of the current application).

Timeline:

April 9, 2012: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

- May 16, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- May 17, 2012: The Board Administrator emailed the applicant's representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the May 30th deadline to submit additional evidence for staff to factor into their analysis; and the June 8th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the requests; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- May 30, 2012: The applicant's representative forwarded additional information beyond what was submitted with the original application (see Attachment A).
- June 5, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings.
No review comment sheets with comments were submitted in conjunction with this application.

STAFF ANALYSIS:

- This request focuses constructing and maintaining an approximately 2,600 square foot retail structure, a portion of which would be located in the site's southern 20' side yard setback on a property developed with a retail strip center (Spanish Village Shopping Center).
- According to calculations made by the Board Administrator from the submitted site plan, approximately 1,100 square feet (or about 40 percent) of the approximately 2,600 square foot proposed structure would be located in the site's southern 20' side yard setback.
- According to DCAD records, the "main improvements" for property at "15635 Coit Road" is a "free standing retail store" with 3,150 square feet built in 1969.
- The structure proposed to be located in the site's southern side yard setback would be located 3' further away from this side property line than that of an existing structure on the property varied into this setback by the Board of Adjustment in 1968 (BDA 68-163) – a request made to construct an office building in this setback that (according to minutes of this hearing) was prompted by the creation of a property line that the owner did not realize would occur when he dedicated an alley on the south side of the subject site.
- The site is flat, somewhat irregular in shape, and is 4.236 acres in area. The corner property with two street frontages has two front yard setbacks as any corner property with two street frontages would that is not zoned agricultural, single family, or duplex.
- The applicant has the burden of proof in establishing the following:

- That granting the variance to the side yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
- The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same CR (Community Retail) 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 CR (Community Retail) zoning classification.
- If the Board grants the side yard variance of 15', imposing the submitted site plan as a condition, the structure encroachment into the setback would be limited to what is shown on this plan, which in this case is a portion of proposed retail structure located 5' from the site's southern side property line or 15' into this 20' side yard setback.

BOARD OF ADJUSTMENT ACTION: JUNE 20, 2012

APPEARING IN FAVOR: Robert Reeves, 900 Jackson Street, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Leone

I move that the Board of Adjustment, in Appeal No. **BDA 112-065**, on application of George M. Underwood, III, represented by Robert Reeves, **grant** a 15-foot 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: Wilson

AYES: 3 – Wilson, Leone, Agnich

NAYS: 1 – Reynolds

MOTION FAILED 3 -1

MOTION #2: Leone

I move that the Board of Adjustment, in Appeal No. **BDA 112-065**, on application of George M. Underwood, III, represented by Robert Reeves, **deny** the side yard setback variance **without prejudice**, because our evaluation of the property and the 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 not result in unnecessary hardship to this applicant.

SECONDED: Agnich

AYES: 0 –

NAYS: 4 – Reynolds, Wilson, Leone, Agnich

MOTION FAILED 4 -0

MOTION #3: Leone

I move that the Board of Adjustment, in Appeal No. **BDA 112-065**, hold this matter under advisement until **August 15, 2012**.

SECONDED: Wilson

AYES: 4 – Reynolds, Wilson, Leone, Agnich

NAYS: 0 –

MOTION PASSED 4 -0 (unanimously)

MOTION: Wilson

I move to adjourn this meeting.

SECONDED: Leone

AYES: 4– Reynolds, Wilson, Leone, Agnich

NAYS: 0 -

MOTION PASSED 4– 0 (unanimously)

2:32 P.M. - Board Meeting adjourned for **June 20, 2012**.

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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