

NOTICE FOR POSTING
MEETING OF
BOARD OF ADJUSTMENT, PANEL B
WEDNESDAY, NOVEMBER 15, 2006

| | | |
|------------------------|-------------------|--|
| Briefing: | 10:00 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**

tl
11-15-2006

ZONING BOARD OF ADJUSTMENT, PANEL B
WEDNESDAY, NOVEMBER 15 2006
AGENDA

| | | |
|----------------|-----------------------------------|-----------|
| BRIEFING | L1FN CONFERENCE CENTER AUDITORIUM | 10:00A.M. |
| PUBLIC HEARING | L1FN CONFERENCE CENTER AUDITORIUM | 1:00 P.M. |

Donnie Moore, Chief Planner
Steve Long, Board Administrator
Jennifer Hiromoto, Senior Planner

MISCELLANEOUS ITEMS

| | |
|--|----|
| Approval of the Wednesday, October 18, 2006 Board of Adjustment Public Meeting Minutes | M1 |
| Approval of Panel B's 2007 Public Hearing Schedule | M2 |

UNCONTESTED CASES

| | | |
|----------------|--|---|
| BDA 056-220 | 1831 Conner Drive REQUEST: Application of Jose Ledezma for a special exception to the fence height regulations | 1 |
| BDA 056-227 | 3600 McKinney Avenue REQUEST: Application of Retail Brand Alliance, Inc. represented by Jonathan Vinson, for a special exception to the off-street parking regulations | 2 |
| BDA 056-244 | 10522 Aledo Drive REQUEST: Application of Rosa Puente for a special exception to the fence height regulations | 3 |
| BDA 056-245 | 2237 Madera Street REQUEST: Application of Robert Hunt for variances to the front yard setback regulations | 4 |
| BDA 056-252(J) | 4212, 4218 and 4236 Hall Street REQUEST: Application of Boulevard Builders/Palo Alto Townhomes L.P. represented by Karl A Crawley for a special exception to the landscaping regulations | 5 |
| BDA 056-259(J) | 1922 Lakeland Drive | 6 |

REQUEST: Application of Joseph Lane for a variance to the front yard setback regulations

HOLDOVER CASE

BDA 056-230(J) 12160 and 12170 Abrams Road 7
REQUEST: Application of Landgem Office Limited, represented by Dallas Cothrum, for a special exception to the off-street parking regulations

REGULAR CASES

BDA 056-236 3836 Turtle Creek Drive 8
REQUEST: Application of Robert M. Edsel, represented by Jackson Walker L.L.P. / Susan Mead and Jonathan Vinson, for a special exception to the fence height regulations

BDA 056-237 3828 Turtle Creek Drive 9
REQUEST: Application of Robert M. Edsel, represented by Jackson Walker L.L.P. / Susan Mead and Jonathan Vinson, for a special exception to the fence height regulations

BDA 056-238 3820-24 Turtle Creek Drive 10
REQUEST: Application of Robert M. Edsel, represented by Jackson Walker L.L.P. / Susan Mead and Jonathan Vinson, for a special exception to the fence height regulations, a variance to the front yard setback regulations, and a special exception to the visibility obstruction regulations

BDA 056-243 3816 Turtle Creek Drive 11
REQUEST: Application of Steve Arnold for a special exception to the fence height regulations and for a special exception to the visibility 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 October 18, 2006 public hearing minutes.

MISCELLANEOUS ITEM NO. 2

To approve the Board of Adjustment Panel B's 2007 Public Hearing Schedule (see Attachment A for proposed schedule).

FILE NUMBER: BDA 056-220

BUILDING OFFICIAL'S REPORT:

Application of Jose Ledezma for a special exception to the fence height regulations at 1831 Conner Drive. This property is more fully described as Lot 10 in City Block A/6307 and is zoned R-7.5(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to maintain an existing 6 foot fence in the required front yard setback which would require a special exception of 2 feet.

LOCATION: 1831 Conner Drive

APPLICANT: Jose Ledezma

REQUEST:

- A special exception to the fence height regulations of 2' is requested in conjunction with maintaining seven, 4' 9" high columns and two, 6' high arched gates located in the site's 25' front yard setback on a site developed with a single family home. (Although the application states that this request is made to "maintain a 6 foot fence in the front yard," the applicant's daughter has informed the Board Administrator that the submitted elevation indicating that the height of the existing fence on the site at 4' is correct. As a result the existing 4' high fence on the site is permitted by right, and not part of the special exception request).

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
The applicant has submitted an elevation indicating a column/gate that reaches a maximum height of 6'.

- The following additional information was gleaned from the site plan:
 - The existing fence/columns/gate is approximately 80' in length parallel to Conner Drive and approximately 22' in length perpendicular to Conner Drive in the front yard setback. (The fence is 4' in height therefore is not part of the special exception request).
 - The existing columns/gates are located about 3' from the front property line or 20' from the pavement line.
- Specifications pertaining to the building materials of the existing columns/gates have not been specified.
- No information related to landscape materials to be proposed in conjunction with this request has been submitted.
- Three single family homes have either direct or indirect frontage to the existing columns/gates.
- The Board Administrator conducted a field visit of the site and surrounding area along Conner Drive (approximately 500' north and south of the subject site) and noted no other fences above four (4) feet high which appeared to be located in the front yard setback.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included a petition signed by 8 neighbors/owners in the area who support the request.

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: PD 366 (Planned Development District)

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 developed with retail uses.

Zoning/BDA History:

1. Unassigned, 1831 Conner Drive (the subject site) On March 16, 2005, the Board of Adjustment Panel B denied a request to waive the filing fee to be submitted in conjunction with this request.

Timeline:

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

October 17, 2006: 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 any preliminary action is required on a case, including but not limited to a fee waiver or waiver of the two year waiting period, the case must be returned to the panel taking the preliminary action."

October 19, 2006: The Board Administrator contacted the applicant's daughter and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the October 26th deadline to submit additional evidence for staff to factor into their analysis;
- the November 3rd 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 November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

October 27, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, and the Assistant City Attorney to the Board.

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

November 1, 2006 The applicant submitted information beyond what was submitted with the original application (see Attachment A).

STAFF ANALYSIS:

- A site plan has been submitted that documents the location of the existing seven columns and two vehicular gates in the site's front yard setback. The columns and gates are shown to be located about 3' from the front property line and about 20' from the pavement line.
- An elevation has been submitted that denotes a 4' high fence, seven 4' 9" high columns, and two 6' high arched entry gates. (The elevation does not note the building materials).
- No information related to landscape materials to be proposed in conjunction with this request has been submitted.
- Three single family homes have either direct or indirect frontage to the existing columns/gates.
- No other fences/columns/gates were noted along Conner Drive (approximately 500' north and south of the subject site) above four (4) feet high which appeared to be located in the front yard setback.
- As of November 6th, no letters had been submitted in opposition to the special exception, and a petition signed by 8 neighbors/owners had been submitted in support.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 2' (whereby the existing seven 4' 9" high columns and two 6' high arched entry gates) will not adversely affect neighboring property.
- Granting this special exception of 2' with conditions imposed that the applicant complies with the submitted site plan and elevation would assure that the existing columns and gates are maintained as shown on these documents.

FILE NUMBER: BDA 056-227

BUILDING OFFICIAL'S REPORT:

Application of Retail Brand Alliance, Inc. represented by Jonathan Vinson, for a special exception to the off-street parking regulations at 3600 McKinney Avenue. This property is more fully described as Lot 1 in City Block A/977 and is zoned PD-305 which requires parking to be provided for additions. The applicant proposes to construct an addition to an existing mixed use development which requires 387 parking spaces and provides 472 parking spaces. The addition would require 14 additional spaces and the applicant proposes to provide 9 of the additional spaces which would require a special exception of 5 spaces.

LOCATION: 3600 McKinney Avenue

APPLICANT: Retail Brand Alliance, Inc.
Represented by Jonathan Vinson

REQUEST:

- A special exception to the off-street parking regulations of 5 spaces is requested, according to a letter submitted by the applicant's representative, to not have to "park" (or provide five additional spaces for) an approximately 1,000 square foot non-public storage mezzanine planned to be located inside a proposed retail store (Brooks Brothers) currently underway on a site developed with an existing multifamily, office, and retail development.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The special exception of 5 spaces shall automatically and immediately terminate if and when the restaurant, retail, office, and multifamily uses on the site are changed or discontinued.

Rationale:

- The applicant's representative has submitted a document identifying how the 5 space reduction represents a reduction of just over one percent of the total number of spaces on the entire lot of 472.
- The Development Services Senior Engineer supports the request.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
 - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
 - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
 - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
 - (E) The availability of public transit and the likelihood of its use.
 - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
 - (A) establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
 - (B) impose restrictions on access to or from the subject property; or
 - (C) impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
 - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
 - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

GENERAL FACTS:

- The Dallas Development Code requires the following parking requirement for the proposed retail/mezzanine use proposed in this request:
 - 1 space is required per 200 square feet of floor area.
- The applicant's representative has submitted a document stating that this special exception pertains to a specific retail use under development on the subject site – a retail use that is floor-planned for approximately 9,606 square feet of retail sales floor area.
- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a letter that provides additional details about the request; and
 - a copy of a conditional support letter that was written to him from the Oak Lawn Committee .
- The applicant's representative submitted additional information beyond what was submitted with the original application and beyond what was discussed at the October 27th staff review team meeting (see Attachment B). This information included the following:
 - a letter that provides additional details about the request; and
 - a series of color photographs of the applicant's property and neighboring properties.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 305 (Planned Development District)
North: PD No. 305 (Planned Development District)
South: PD No. 372 (Planned Development District)
East: PD No. 305 (Planned Development District)
West: PD No. 305 (Planned Development District)

Land Use:

The subject site is developed with a mixed use development that includes residential, office, and retail uses. The areas to the north, east, and west are developed with a mixture of retail, office, and residential uses; and the area to the south is developed with retail use.

Zoning/BDA History:

1. BDA 056-013, 3636 McKinney Avenue (the lot north of the subject site)

On October 19, 2005, the Board of Adjustment Panel B granted a request of 5' to the front yard setback regulations; granted a request for a variance to the height regulations of 25', and granted a request for a special exception to the landscape regulations. The board imposed the following conditions in conjunction with these requests: compliance with the submitted site plan, revised elevations, and revised landscape plan is required. The case report stated that these requests were made in conjunction with constructing/maintaining a 19 story retail/office/residential tower, a 12 story retail/residential tower, a 7 story retail/office/residential tower, a 2.5 story parking tower, and a restaurant on a site developed as a recreation use (The Hank Haney Golf driving range).

Timeline:

- August 25, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- October 24, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- October 24, 2006: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the October 26th deadline to submit additional evidence for staff to factor into their analysis;
 - the November 3rd 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 November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- October 26, 2006 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).
- October 27, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, and the Assistant City Attorney to the Board.
- October 31, 2006: The Building Inspection Development Code Specialist forwarded a revised Building Official's Report that increased the special exception request from 3 spaces to 5 spaces per the applicant's request.
- October 31, 2006 The Development Services Senior Engineer submitted a review comment sheet marked "Has no objections" commenting "Per parking analysis dated October 18, 2006."
- November 3, 2006 The applicant's representative submitted information beyond what was submitted with the original application, and beyond what was discussed at the October 27th staff review team meeting (see Attachment B).

STAFF ANALYSIS:

- The special exception of 5 spaces in this case is triggered by an approximately 1,000 square foot non-public storage mezzanine that would be located inside a retail use currently under development on the subject site.
- The applicant's representative has submitted a document stating that this special exception pertains to a specific retail use under development on the subject site – a retail use that is floor-planned for approximately 9,606 square feet of retail sales floor area.
- The applicant's representative has submitted a document identifying how the 5 space reduction represents a reduction of just over one percent of the total number of spaces on the entire lot of 472.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the proposed approximately 1,000 square foot non-public storage mezzanine area does not warrant the number of off-street parking spaces required; and
 - The special exception of 5 spaces (an amount that is just over 1% of the off-street parking provided on the site) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- Granting this request, subject to the condition that the special exception of 5 spaces automatically and immediately terminates if and when the restaurant, retail, office,

and multifamily uses on the site are changed or discontinued, would allow the approximately 1,000 square foot mezzanine to be located inside this retail use on the subject site.

- The Development Services Senior Engineer has commented that he has no objections to this request based on the applicant's parking analysis dated October 18, 2006.

FILE NUMBER: BDA 056-244

BUILDING OFFICIAL'S REPORT:

Application of Rosa Puente for a special exception to the fence height regulations at 10522 Aledo Drive. This property is more fully described as Lot 12 in City Block 14/5361 and is zoned R-7.5(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to maintain a 6 foot fence in the required front yard setback, which would require a special exception of 2 feet.

LOCATION: 10522 Aledo Drive

APPLICANT: Rosa Puente

REQUEST:

- A special exception to the fence height regulations of 2' is requested in conjunction with maintaining a 6' high wood fence/trellis located in the site's 25' front yard setback on a site developed with a single family home.

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
The applicant has submitted an elevation and site plan indicating a wood fence/trellis that reaches a maximum height of 6'.
- The following additional information was gleaned from the submitted site plan:
 - The existing fence/trellis in the front yard setback has a total length of 32' and is located perpendicular to Aledo Drive. (The amount of this 32' long trellis that is in the 25' front yard setback cannot be detected from the submitted site plan since the property line has not been provided).

- The existing fence/trellis is located 18' from the pavement line.
- Specifications pertaining to the building materials of the existing fence/trellis were added to the originally submitted elevation by the Board Administrator per the applicant's request. A note was added to the originally submitted elevation on October 25th noting that the fence/trellis is comprised of wood (see Attachment A).
- No information related to landscape materials to be proposed in conjunction with this request has been submitted.
- No single family home has direct frontage to the existing fence/trellis given its orientation perpendicular to the street.
- The Board Administrator conducted a field visit of the site and surrounding area along Aldeo Drive (approximately 500' north and south of the subject site) and noted no other fences above four (4) feet high which appeared to be located in the front yard setback.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment B). This information included a petition signed by 30 neighbors/owners in the area who support the request.

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 are developed with single family uses.

Zoning/BDA History:

1. Unassigned, 10522 Aledo Drive (the subject site) On August 16, 2006, the Board of Adjustment Panel B granted a request to waive the filing fee to be submitted in conjunction with this request.

Timeline:

- Sept. 26, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- October 17, 2006: 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 any preliminary action is required on a case, including but not limited to a fee waiver or waiver of the two year waiting period, the case must be returned to the panel taking the preliminary action."

October 19, 2006: The Board Administrator contacted the applicant and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the October 26th deadline to submit additional evidence for staff to factor into their analysis;
- the November 3rd 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 November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

October 25, 2006: The applicant authorized the Board Administrator to add the word "wood" on the originally submitted elevation in order to document what the fence/trellis was comprised of.

October 27, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, and the Assistant City Attorney to the Board.

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

November 3, 2006 The applicant submitted information beyond what was submitted with the original application (see Attachment B).

STAFF ANALYSIS:

- A site plan has been submitted that documents the location of the existing fence/trellis in the site's front yard setback. The amount of this 32' long trellis that is in the 25' front yard setback cannot be detected from the submitted site plan since the property line has not been provided, however, the fence/trellis is located 18' from the pavement line.
- A revised elevation has been submitted indicating the materials of fence/trellis (wood) and its maximum height (6').
- No information related to landscape materials to be proposed in conjunction with this request has been submitted.
- No single family homes has direct frontage to the existing fence/trellis given its orientation perpendicular to the street.
- No other fences above four (4) feet high which appeared to be located in the front yard setback were noted in the surrounding area along Aldeo Drive.
- As of November 6th, no letters had been submitted in opposition to the special exception, and a petition signed by 30 neighbors/owners had been submitted in support.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 2' (whereby the existing 6' high wood fence/trellis) does not adversely affect neighboring property.
- Granting this special exception of 2' with conditions imposed that the applicant complies with the submitted site plan and revised elevation would assure that the existing fence/trellis is maintained as shown on these documents.

FILE NUMBER: BDA 056-245

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 maintain/construct a structure and additions and provide an 8 foot front yard setback which would require a variance of 17 feet.

LOCATION: 2237 Madera Street

APPLICANT: Robert Hunt

REQUESTS:

- The following appeals were made in this application:
 1. a variance to front yard setback regulations of 9' along Madera Street; and
 2. a variance to the front yard setback regulations of 17' along Glencoe Street.These appeals are requested 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.

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 a lot 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.
- Granting the variance, subject to compliance with the submitted site plan, would limit the front yard encroachments to what is shown on the plan: either a new or remodeled 2 story house with about a 1,500 square foot building footprint and a 550 square foot garage.

STANDARD FOR A VARIANCE:

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

GENERAL FACTS:

- A 25' front yard setback is required on R-7.5(A) zoned properties.
The 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 nor can be prohibited by the city.
A revised site plan has been submitted indicating that either the existing structure (with second floor) or new structure will be located 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 8' from the Glencoe Street front property line (or 17' into the Glencoe Street front yard setback). The applicant representative has submitted a document stating: “Either way the requested footprint, size and look of the finished product is the same.”
A scaled site plan has not been submitted to determine how much of the structure will encroach into the setbacks. The applicant has written that the home as designed (either as a remodel or a new house) will have a 550 square foot garage and 1,475 square feet of air conditioned space on the 1st floor for a total of 2,025 square feet or lot coverage at 40.8% as opposed to the 45% allowed in R-7.5 zoning. Although the applicant has requested that the permit application date be within a year of the board decision rather than 180 days, the Board Administrator has informed the applicant that the request for a variance should be considered first, and if granted, the time extension to make application for permits can be extended at a subsequent hearing by the board upon such request of the applicant.
- The site is flat, is irregular in shape (approximately 52' on the northwest, approximately 72' on the southeast, approximately 121' on the northeast, and

approximately 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.

- DCAD records indicate that the site is developed with a single family structure built in 1918 in “very good” condition with 1,356 square feet of living area; a 400 square foot storage building; a 252 square foot detached carport; and a 144 square foot room addition.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a letter that provides additional details about the request; and
 - an amended site plan and first floor plan.

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:

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

Timeline:

- Sept. 26, 2006 The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- October 17, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- October 19, 2006: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;

- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the October 26th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
- the November 3rd 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 November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

October 25, 2006 The applicant submitted information beyond what was submitted with the original application (see Attachment A).

October 27, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The site is flat, is irregular in shape (approximately 52' on the northwest, approximately 72' on the southeast, approximately 121' on the northeast, and approximately 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.
- Calculations cannot be made as to how much of the structures encroach into the setbacks since only a reduction of a scaled plan has been submitted. The applicant has written that the home as designed (either as a remodel or a new house) will have a 550 square foot garage and 1,475 square feet of air conditioned space on the 1st floor for a total of 2,025 square feet or lot coverage at 40.8% as opposed to the 45% allowed in R-7.5 zoning.
- The applicant has the burden of proof in establishing the following related to the front yard variance requests:
 - That granting the variances to the front yard setback regulations of up to 17' requested to either add a 2nd floor and construct a garage and stairwell or to construct and maintain a new 2 story house with garage and stairwell 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 of up to 17' is necessary to permit development of the subject site (a site that has two front yard setbacks, is flat, is irregular in shape, approximately 5,000 square feet in area zoned R-7.5(A) where lots are typically 7,500 square feet in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.
- The variances to front yard setback regulations of up to 17' 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 structures in the front yard setbacks would be limited to that what is shown on the submitted plan – structures that would be located as close as 8' from a front property line (or as much as 17' into the 25' front yard setback).

FILE NUMBER: BDA 056-252(J)

BUILDING OFFICIAL'S REPORT:

Application of Boulevard Builders/Palo Alto Townhomes L.P. represented by Karl A Crawley for a special exception to the landscape regulations at 4212, 4218 and 4236 Hall Street. This property is more fully described as Lot 1A in City Block 5/1499 and lot 1A in City Block G/1499 and is zoned PD 193 which requires mandatory landscaping for new construction. The applicant proposes to construct a building and provide an alternate landscape plan which would require a special exception.

LOCATION: 4212, 4218 and 4236 Hall Street

APPLICANT: Boulevard Builders/Palo Alto Townhomes L.P.
Represented by Karl A Crawley

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with constructing 55 multifamily units.

STAFF RECOMMENDATION:

Approval of providing landscaping in phases, subject to the applicant fully complying with the landscape requirements of the Oak Lawn Landscape Regulations, where landscaping for each phase must be completed prior to the final Certificate of Occupancy for the last building of that phase.

BASIS FOR A REQUEST 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 finding 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:

- The applicant proposes to meet the Landscape Requirements of PD No. 193 but is requesting to allow the installation of landscaping to coincide with the phasing of 9 proposed structures on the site.
- Landscape provisions of PD No. 193 require landscaping to be completed for the entire lot prior to the final inspection/issuance of a certificate of occupancy for any building on the lot.

- Sec. 51P-193.126. Landscape, streetscape, screening, and fencing standards. (b) (8) states “When landscaping must be completed.” This section states “If a landscape plan is required under this section, all landscaping must be completed in accordance with the approved landscape plan before the final inspection of any structure on the lot or, if no final inspection is required, within 120 days of the date of issuance of the landscape permit.”
- Building Inspection staff states that if a certificate of occupancy (CO) and a final inspection is requested on the site as each of the 9 proposed structures/phases is completed, then all required landscaping for the site must be installed before a CO for any phase is issued.
- The applicant states the first building will be ready for occupancy while the other structures/phases are under construction. Landscape materials are intended to be installed on the site in phases and in tandem with the construction plans to complete all 9 structures/phases.
- The request for a landscape special exception in this case is only regarding when the required landscaping must be installed. In this case, the applicant seeks the board’s approval to allow landscaping to be installed on the site in increments/phases in order to obtain certificates of occupancy for each building, prior to the completion of the last phase/completion of the ninth building on the site. Otherwise, the applicant will not be able to occupy any of the structures until all of the required landscaping is placed on the site.

BACKGROUND INFORMATION:

Zoning:

- Site: PD No. 193 (MF-2 Multifamily Subdistrict)
- North: PD No. 193 (MF-2 Multifamily Subdistrict)
- South: PD No. 193 (O-2 Office Subdistrict) and PD No. 300
- East: PD No. 193 (MF-2 Multifamily Subdistrict) and PD No. 193 (O-2 Office Subdistrict)
- West: PD No. 193 (MF-2 Multifamily Subdistrict)

Land Use:

The 2.53-acre subject site is under development. The areas to the north, east, south, and west are developed with multifamily, office and medical 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:

- Sept. 29, 2006 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- October 17, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- October 24, 2006: The Board Senior Planner contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the 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;
 - that a site plan with landscape materials has been submitted that may or may not (depending on the height of the landscape materials at the drive approach) violate the City's visibility obstruction regulations;
 - the November 3rd 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 November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- October 27, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board of Adjustment Administrator, the Development Services Senior Engineer, the Building Inspection Chief Planner, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.
- October 31, 2006 The Chief Arborist submitted a memo containing review comments.

STAFF ANALYSIS:

- The intent behind requiring landscaping to be completed for the entire site prior to final inspection and the issuance of any certificates of occupancy was to assure that no use began or no structure was occupied until there was an assurance that the landscape requirements had been fulfilled.

- Approval of the request (with imposing the staff suggested condition) will result in allowing the site to be occupied and landscaped incrementally, whereby full compliance with the landscape regulations would be achieved once the final building has been completed on the site.
- Denial of the request will result in the applicant being required to either: 1) install all required landscaping on the site in order to obtain a Certificate of Occupancy or final inspection for the first of nine buildings on the site which may compromise the landscaping due to construction on the remaining 9 structures; or 2) delay the use of all structures on the site that have been completed until all 9 structures are built.
- If the board imposes the condition that staff has suggested, staff concluded that granting this special exception request will not compromise the spirit and intent of the PD's landscape requirements since the site will fully meet these requirements as each of the proposed 9 structures/phases are completed.

FILE NUMBER: BDA 056-259(J)

BUILDING OFFICIAL'S REPORT:

Application of Joseph Lane for a variance to the front yard setback regulations at 1922 Lakeland Drive. This property is more fully described as Lot 6 in City Block 16/5243 and is zoned R-7.5(A), which requires a front yard setback of 25 feet. The applicant proposes to construct a single family dwelling and provide a 10 foot front yard setback which would require a variance of 15 feet.

LOCATION: 1922 Lakeland Drive

APPLICANT: Joseph Lane

REQUEST:

- A variance to the front yard setback regulations of 15 feet requested in conjunction with constructing a single family structure.

STAFF RECOMMENDATION:

Approval

Rationale:

- The request site is 60 feet in width and has two front yards according to the Dallas Development Code. If the applicant were to comply with the 25' front yard setback adjacent to Groveland Drive and the 5' side yard setback from the interior property line, the site would be limited to a maximum building width of 30' (restrictive site area).

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 request site is currently developed with a single family residential structure.
- The property is zoned R-7.5(A) which requires a front yard setback of 25 feet.
- The request site has front yards on both Lakeland Drive and Groveland Drive. The yard adjacent to Lakeland Drive is the shorter of the two frontages, but the yard adjacent to Groveland Drive has a front yard requirement due to the single family use to the northeast having a front yard on Groveland Drive. The continuity of the established Groveland Drive front yard must be maintained as required in the front yard regulations of Dallas Development Code.
- The submitted site plan shows the proposed single family structure will provide a setback of 15 foot front yard setback adjacent to Groveland Drive and a 35 foot front yard setback adjacent to Lakeland Drive.
- The plat map shows that the request site is 60 feet by 155 feet, or 9,300 square feet in area.
- The site appears to be flat, rectangular in shape, and approximately 9,300 (60'x 155') in area.
- The submitted site plan shows a footprint of approximately 40' x 88' (or 3,520 square feet).
- DCAD indicates that the request site is developed with a 1,266 square foot residential structure that was in good condition built in 1945.

BACKGROUND INFORMATION:

Zoning:

| | |
|-----------------------------|---|
| <u>Request Site:</u> | R-7.5(A) (Single Family Residential 7,500 square feet) |
| <u>North:</u> | R-7.5(A) (Single Family Residential 7,500 square feet) |
| <u>South:</u> | R-7.5(A) (Single Family Residential 7,500 square feet) and R-10(A) (Single Family Residential 10,000 square feet) |
| <u>East:</u> | R-7.5(A) (Single Family Residential 7,500 square feet) |
| <u>West:</u> | R-10(A) (Single Family Residential 10,000 square feet) |

Land Use:

The request site is developed with a single family use. The areas to the north, south, east and west are developed with single family residential. The area immediately to the south is undeveloped.

Zoning/BDA History:

Timeline:

October 5, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

October 17, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

October 27, 2006: The Board Administrator contacted the applicant via email and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the November 3rd deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

October 27, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board of Adjustment Administrator, the Development Services Senior Engineer, the Building Inspection Chief Planner, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

November 2, 2006: The applicant submitted a letter further explaining the request (Attachment A).

STAFF ANALYSIS:

- Granting this variance, subject to the submitted site plan and elevation, would allow a single family structure to encroach 15 feet into the required Groveland Drive front yard.

- The applicant has the burden of proof in establishing the following in regards to the front yard setback variance request:
 - That granting the variance 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 appears to be flat, rectangular in shape, and approximately 9,300 square feet in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.
 - The variance would not to 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.

FILE NUMBER: BDA 056-230(J)

BUILDING OFFICIAL'S REPORT:

Application of Landgem Office Limited, represented by Dallas Cothrum, for a special exception to the off-street parking regulations at 12160 and 12170 Abrams Road. This property is more fully described as Lot 2A in City Block A/8417 and is zoned P.D. 238 which requires parking to be provided for a business school. The applicant proposes to convert an existing office use to a business school and provide 566 of the required 692 parking spaces, which would require a special exception of 126 parking spaces (or 18.2%).

LOCATION: 12160 and 12170 Abrams Road

APPLICANT: Landgem Office Limited
Represented by Dallas Cothrum

REQUEST:

- A special exception to the off-street parking regulations of 126 spaces (or 18% of the required off-street parking) is requested in conjunction with reallocating approximately 32,235 square feet of "office" use within an existing approximately 166,500 square foot office campus to "business school" use.

STAFF RECOMMENDATION:

Approval.

Rationale:

- The Development Services Senior Engineer has reviewed revised documents that reduces the request from a special exception to the off-street parking regulations of 126 spaces to 94 spaces and has indicated "NO OBJECTION" to this scenario.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial

amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.

- 2) In determining whether to grant a special exception, the board shall consider the following factors:
 - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
 - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
 - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
 - (E) The availability of public transit and the likelihood of its use.
 - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
 - (A) establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
 - (B) impose restrictions on access to or from the subject property; or
 - (C) impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
 - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
 - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

GENERAL FACTS:

- The Dallas Development Code requires the following parking requirements for the existing and planned uses on the subject site:
 - 1 space is required per 333 square feet of floor area for "office" use.
 - 0.3 spaces for each fixed seat or if no fixed seat, 0.3 spaces per 7 square feet of classroom is required for "business school" use.

The applicant proposes to provide 566 (or 82%) of the total approximately 32,235 square feet of office use within the 2-story office on the site to "business school" use

with 6,570 square feet of classroom space on a site developed with two office buildings and an above-ground parking structure.

- The request site has a remote parking agreement filed with the City that designates 83 spaces to the property to the south, which is developed with office uses.
- The Dallas Development Code defines “business school” as a “business enterprise offering instruction and training in a service or the arts such as secretarial, barber, commercial artist, computer software, and similar training.”
- No enlargement or addition to the existing structure on the subject site is planned in conjunction with this request. This special exception request is triggered by the applicant’s intent to transition/convert a part of an existing office structure on the site from “office” use on the site (which that portion required 97 off-street parking spaces) to a “business school” use (which would require 289 off-street parking spaces for that portion).
- The applicant submitted additional information to Development Services Senior Engineer Nguyen, a floor plan of the building where the proposed business school would be located, and a revised narrative explaining the request.
- In the revised narrative, the applicant states the property is developed with a mid-rise tower consisting of 123,273 square feet and a second two story building consisting of 43,235 square feet. He states that the two-story building where the business school is proposed would leave 11,000 square feet of office space after the business school occupies the second floor and a portion of the first floor. From this information, the proposed business school would occupy approximately 32,235 square feet, of which 6,750 square feet would be allocated to classroom space.

BACKGROUND INFORMATION:

Zoning:

| | |
|---------------|---|
| <u>Site:</u> | PD No. 238 (Planned Development District) |
| <u>North:</u> | MF-1 (A) (Multiple family) |
| <u>South:</u> | LO-1 (Limited Office) |
| <u>East:</u> | TH-2(A) (Town House) |
| <u>West:</u> | MU-1 (Mixed Use) |

Land Use:

The subject site is developed with vacant structure previously occupied with “office” use, a structure occupied with an office use, and an above-ground parking structure. The areas to the north and northwest are developed with multifamily uses; the area to the east is developed with townhouse uses; south is developed with office uses; and the area to the west is developed with retail uses.

Zoning/BDA History:

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

Timeline:

- August 25, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Sept. 20, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Sept. 25, 2006: The Board of Adjustment Senior Planner mailed the applicant a letter to convey the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the October 6th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the October public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- October 2, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.
- October 5, 2006 The applicant submitted a revised parking study to Development Services Senior Engineer Nguyen.
- October 6, 2006 The applicant submitted a revised narrative, presentation materials that include color photos, and floor plans to the building where the proposed business school would be located.
- October 3, 2006 The Development Services Senior Engineer submitted a review comment sheet marked "recommends denial."
- October 9, 2006 The Engineer Nguyen emailed additional comments.

November 2, 2006 The applicant submitted a revised narrative and parking study (Attachment A) and proposed conditions (Attachment B).

November 7, 2006 The Engineer Nguyen emailed additional comments indicating that he has reviewed revised documents that reduces the request from a special exception to the off-street parking regulations of 126 spaces to 94 spaces and has indicated "NO OBJECTION" to this scenario.

STAFF ANALYSIS:

- 82 percent of the required off-street parking spaces is proposed to be provided in conjunction with the transitioning the use of part of an existing structure from "office" use to a "business school" use.
- No enlargement or addition to the existing structure on the site is planned in conjunction with this request. This special exception request is triggered by the applicant's intent to transition the use within part of an existing office structure to a business school use which has a higher parking requirement.
- Granting this request, subject to the condition that the special exception of 126 spaces automatically and immediately terminates if and when the proposed office and business school uses, limited to 6,750 square feet of classroom space, on the site is changed or discontinued, would allow the site to be developed with these uses.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the proposed combination of office and business school does not warrant the number of off-street parking spaces required, and
 - The special exception of 126 spaces (or 12% of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- The Development Services Senior Engineer has commented that he is not supportive of the request based on the information provided by the applicant with the application and from the information submitted to him on October 5, 2006.
- On November 7, 2006, the Development Services Senior Engineer reviewed revised documents that reduces the request from a special exception to the off-street parking regulations of 126 spaces to 94 spaces and has indicated "NO OBJECTION" to this scenario.

BOARD OF ADJUSTMENT ACTION: OCTOBER 18, 2006

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Gillespie

I move that the Board of Adjustment in Appeal No. BDA 056-230, **hold** this matter under advisement until **November 15, 2006**.

SECONDED: **Beikman**

AYES: 5 – Cox, Brannon, Gillespie, Beikman, Chernock

NAYS: 0 –

MOTION PASSED – 5-0 (unanimously)

FILE NUMBER: BDA 056-236

BUILDING OFFICIAL'S REPORT:

Application of Robert M. Edsel, represented by Jackson Walker L.L.P. / Susan Mead and Jonathan Vinson, for a special exception to the fence height regulations at 3836 Turtle Creek Drive. This property is more fully described as Lots 4 and 5 and part of 6 in City Block B/2024 and is zoned PD-193 (R 7.5 Subdistrict) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 7 foot fence in the required front yard setback which would require a special exception of 3 feet.

LOCATION: 3836 Turtle Creek Drive

APPLICANT: Robert M. Edsel
Represented by Jackson Walker L.L.P. / Susan Mead and Jonathan Vinson

REQUEST:

- A special exception to the fence height regulations of 3' is requested in conjunction with replacing (according to the submitted site plan/elevation) a "7+ feet" high open metal fence with a 7' high wall of unspecified building materials in a site's 40' front yard setback on a site that is undeveloped. (This site is part of two other Board of Adjustment cases that share boundaries/property owner to be considered by Board of Adjustment Panel B on November 15th located immediately south of the subject site: BDA056-237 and 238).

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.

The applicant has submitted a site plan/elevation indicating a wall (of unspecified building materials) that reaches a maximum height of 7'.

- The following additional information was gleaned from the site plan:
 - The existing fence/wall is approximately 200 in length parallel to Turtle Creek Drive and approximately 22' in length perpendicular to Turtle Creek Drive in the front yard setback.
 - The existing fence/wall is located about 3' from the front property line or 20' from the pavement line.
 - A note stating "Existing Wrought Iron and Solid Column Fence to be converted to Solid Fence."
- Specifications pertaining to the building materials of the proposed wall have not been specified other than a general notation referencing "Existing Wrought Iron and Solid Column Fence to be converted to Solid Fence."
- The wall elevation indicates landscape materials to be placed on the street side of the proposed wall but no specifications as to the sizes, species, or number of these materials have been noted.
- Two single family homes have either direct or indirect frontage to the proposed wall.
- The Board Administrator conducted a field visit of the site and surrounding area along Turtle Creek Drive (approximately 500' north and south of the subject site) and noted one other fence above four (4) feet high which appeared to be located in the front yard setback. This fence/wall is approximately 8' high solid brick wall located at the site located at the northwest corner of Blackburn Street and Turtle Creek Drive approximately three lots south of the subject site.
- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a letter that provides additional details about the request;
 - a copy of an old plat map and an excerpt from a Sanborn map showing the subject site and the other two adjacent sites which have historically been considered by the City as three separate building sites; and
 - a topographic map of the subject site for case BDA056-238.
- The applicant's representative submitted additional information beyond what was submitted with the original application and beyond what was discussed at the October 27th staff review team meeting (see Attachment B). This information included the following:
 - a letter that provides additional details about the requests;
 - a copy of the submitted site plan/elevation;
 - a copy of the approval letter and other information related to BDA 92-102 at 3828 Turtle Creek Drive;
 - support letters from neighboring property owners;
 - a topographic map; and
 - a series of color photographs of the applicant's property and neighboring properties.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (R-7.5 Subdistrict) (Planned Development District, Single family)
North: PD No. 193 (R-7.5 Subdistrict) (Planned Development District, Single family)
South: PD No. 193 (R-7.5 Subdistrict) (Planned Development District, Single family)
East: PD No. 193 (R-7.5 Subdistrict) (Planned Development District, Single family)
West: PD No. 193 (R-7.5 Subdistrict) (Planned Development District, Single family)

Land Use:

The subject site is developed with a single family home. The area to the north is undeveloped; the areas to the east and south are developed with single family uses; and the area to the west is developed as open space (Turtle Creek).

Zoning/BDA History:

1. BDA 056-237, 3828 Turtle Creek Drive (the lot south of the subject site) On November 15, 2006, the Board of Adjustment Panel B will consider a request for a special exception to the fence height regulations of 6 feet to construct a 10' high wall in the front yard setback.
2. BDA 056-238, 3820-24 Turtle Creek Drive (two lots south of the subject site) On November 15, 2006, the Board of Adjustment Panel B will consider a request for a special exception to the fence height regulations of 3 feet to construct a 7' high wall in the front yard setback; a request for a special exception to visibility obstruction regulations to construct and maintain a fence in drive approach visibility triangles; and a variance to the front yard setback regulations of 24' to construct and maintain a dwelling unit in the front yard setback.
3. BDA 056-243, 3816 Turtle Creek Drive (three lots south of the subject site) On November 15, 2006, the Board of Adjustment Panel B will consider a request for a special exception to the fence height regulations of 8 feet to construct and maintain an 8' high wall with 12' high arched entry gates in the front yard setback; and a request for a special exception to visibility obstruction regulations to construct and maintain this fence in drive approach visibility triangles.

4. BDA 023-107, 3806 Turtle Creek Drive (two lots southeast of the subject site)

On September 9, 2003, the Board of Adjustment Panel B granted a request for a variance to the front yard setback regulations of 15', subject to compliance with the submitted revised site plan and elevation. These requests were needed in conjunction with constructing and maintaining a 3-level single family home in the front yard setback.

5. BDA 989-283, 3406 Blackburn Street (three lots southeast of the subject site)

On August 16, 1999, the Board of Adjustment Panel B followed the staff recommendation and granted requests for variances to the front and side yard setback regulations, a variance to the height regulations, and special exceptions to the fence height and visibility obstruction regulations, subject to compliance with the submitted site/elevation plan. These requests were needed in conjunction with constructing and maintaining an approximately 4,300 square foot home.

6. BDA 012-234, 3806 Turtle Creek Drive (two lots southeast of the subject site)

On October 8, 2002, the Board of Adjustment Panel B followed the staff recommendation and granted requests for a variance to the front yard setback regulations of 14' 11" and a variance to the rear yard setback regulations of 1", subject to compliance with the submitted revised site plan and building elevations. These requests were needed in conjunction with constructing and maintaining a 3-level single family home in the front yard setback, and a swimming pool deck in the rear yard setback.

7. BDA 92-102, 3828 Turtle Creek Drive (the lot south of the subject site)

On September 8, 1992, the Board of Adjustment granted a request for a special exception to the fence height regulations of 7', "subject to the landscaping adjacent to the fence being planted within 90 days from the date the fence is completed." The case report states that the applicant proposes to erect a 7 foot wrought iron fence to match the existing fence.

Timeline:

- Sept. 6, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- October 17, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- October 19, 2006: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the October 26th deadline to submit additional evidence for staff to factor into their analysis;
 - the November 3rd 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 November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- October 26, 2006 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).
- October 27, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- November 3, 2006 The applicant's representative submitted information beyond what was submitted with the original application, and beyond what was discussed at the October 27th staff review team meeting (see Attachment B).

STAFF ANALYSIS:

- A scaled site plan/elevation document has been submitted that documents the location of the entire proposed fence/wall proposal in the site's front yard setback (about 200' long parallel to Turtle Creek Drive), and its location relative to the front property line (about 3' off) and pavement line (about 20' off).
- The scaled site plan/elevation document indicates the maximum height of the proposed fence/wall (7' max.) but does not provide any documentation with regard to building materials other than a reference noting "Existing Wrought Iron and Solid Column Fence to be converted to Solid Fence."
- The site plan/elevation indicates landscape materials to be placed on the street side of the proposed wall but no specifications as to the sizes, species, or number of these materials have been noted.
- Two single family homes have either direct or indirect frontage to the proposed wall.
- The Board Administrator conducted a field visit of the site and surrounding area along Turtle Creek Drive (approximately 500' north and south of the subject site) and noted one other fence above four (4) feet high which appeared to be located in the front yard setback. This fence/wall is approximately 8' high solid brick wall located at the northwest corner of Blackburn Street and Turtle Creek Drive approximately three lots south of the subject site.
- As of November 6th, no letters had been submitted in opposition to the special exception and 5 letters from neighbors/owners have been submitted in support.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 3' (whereby the proposed 7' high solid fence of unspecified building materials located behind unspecified landscape materials) will not adversely affect neighboring property.
- Granting this special exception of 3' with conditions imposed that the applicant complies with the submitted site plan/elevation would provide assure that the proposed wall would be constructed and maintained as shown on this document, in this case, in a specific location with a specific maximum height.
- The board may want the applicant to note the materials of the proposed wall on the submitted site plan/elevation (or impose a condition that the wall must be constructed/maintained of a specific material) to ensure that the proposed wall over 4' in height is constructed/maintained of a certain material. If no specification is made the wall could be constructed/maintained of any solid material (i.e. solid board, solid brick, solid corrugated metal, plywood, etc).
- If the board is inclined to grant the request on the notion that certain landscape materials are shown on the submitted site plan/elevation that will reduce the wall's impact on neighboring property, the board may want the applicant to specify the species, number and sizes of these landscape materials beyond what is merely shown in a conceptual form on this document. Otherwise, the City would have very little (if any) enforcement power to ensure that the landscape materials shown conceptually on the submitted site plan/elevation are put in place in conjunction with the fence height special exception request.

FILE NUMBER: BDA 056-237

BUILDING OFFICIAL'S REPORT:

Application of Robert M. Edsel, represented by Jackson Walker L.L.P. / Susan Mead and Jonathan Vinson, for a special exception to the fence height regulations at 3828 Turtle Creek Drive. This property is more fully described as Lot 7 and part of Lot 6 in City Block B/2024 and is zoned PD 193 (R 7.5 Subdistrict) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 10 foot fence in the required front yard setback which would require a special exception of 6 feet.

LOCATION: 3828 Turtle Creek Drive

APPLICANT: Robert M. Edsel
Jackson Walker L.L.P. / Susan Mead and Jonathan Vinson

REQUEST:

- A special exception to the fence height regulations of 6' is requested in conjunction with replacing (according to the submitted site plan/elevation) a "7+ feet" high open metal fence with a 7' high wall of unspecified building materials and a 10' high "Pedestrian Entry" wall of unspecified materials in site's 40' front yard setback on a site that is developed with a single family home. (This site is part of two other Board of Adjustment cases that share boundaries/property owner to be considered by Board of Adjustment Panel B on November 15th located immediately north and south of the subject site: BDA056-236 and 238).

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.

The applicant has submitted a site plan/elevation indicating walls (of unspecified building materials) that reaches a maximum height of 10'.

- The following additional information was gleaned from the site plan:
 - The proposed walls/pedestrian gate are approximately 180 in length parallel to Turtle Creek Drive and will connect to walls of similar height requested north and south of the subject site. (Of the approximately 180' length, approximately 28' is shown to be a wall that reaches 10' in height).
 - The proposed walls/pedestrian gate are to be located about 6' from the front property line or 26' from the pavement line.
 - Notes stating "Existing 10' ht fence to be lowered to 7' ht" and "10' ht. Section All other is 7' ht."
- Specifications pertaining to the building materials of the proposed walls/pedestrian gate have not been specified.
- The wall elevation indicates landscape materials to be placed on the street side of the proposed wall but no specifications as to the sizes, species, or number of these materials have been noted.
- Two single family homes have either direct or indirect frontage to the proposed wall/gate.
- The Board Administrator conducted a field visit of the site and surrounding area along Turtle Creek Drive (approximately 500' north and south of the subject site) and noted one other fence above four (4) feet high which appeared to be located in the front yard setback. This fence/wall is approximately 8' high solid brick wall located at the northwest corner of Blackburn Street and Turtle Creek Drive approximately four lots south of the subject site.
- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a letter that provides additional details about the request;
 - a copy of an old plat map and an excerpt from a Sanborn map showing the subject site and the other two adjacent sites which have historically been considered by the City as three separate building sites; and
 - a topographic map of the subject site for case BDA056-238.
- The applicant's representative submitted additional information beyond what was submitted with the original application and beyond what was discussed at the October 27th staff review team meeting (see Attachment B). This information included the following:
 - a letter that provides additional details about the requests;
 - a copy of the submitted site plan/elevation;
 - a copy of the approval letter and other information related to BDA 92-102 at 3828 Turtle Creek Drive;
 - support letters from neighboring property owners;
 - a topographic map; and
 - a series of color photographs of the applicant's property and neighboring properties.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (R-7.5 Subdistrict) (Planned Development District, Single family)
North: PD No. 193 (R-7.5 Subdistrict) (Planned Development District, Single family)
South: PD No. 193 (R-7.5 Subdistrict) (Planned Development District, Single family)
East: PD No. 193 (R-7.5 Subdistrict) (Planned Development District, Single family)
West: PD No. 193 (R-7.5 Subdistrict) (Planned Development District, Single family)

Land Use:

The subject site is developed with a single family home that is being remodeled. The areas to the north and south are undeveloped; the area to the east is developed with single family uses; and the area to the west is developed as open space (Turtle Creek).

Zoning/BDA History:

1. BDA 056-236, 3828 Turtle Creek Drive (the lot north of the subject site) On November 15, 2006, the Board of Adjustment Panel B will consider a request for a special exception to the fence height regulations of 3 feet to construct a 7' high wall in the front yard setback.
2. BDA 056-238, 3820-24 Turtle Creek Drive (the lot south of the subject site) On November 15, 2006, the Board of Adjustment Panel B will consider a request for a special exception to the fence height regulations of 3 feet to construct a 7' high wall in the front yard setback; a request for a special exception to visibility obstruction regulations to construct and maintain a fence in drive approach visibility triangles; and a variance to the front yard setback regulations of 24' to construct and maintain a dwelling unit in the front yard setback.
3. BDA 056-243, 3816 Turtle Creek Drive (two lots south of the subject site) On November 15, 2006, the Board of Adjustment Panel B will consider a request for a special exception to the fence height regulations of 8 feet to construct and maintain an 8' high wall with 12' high arched entry gates in the front yard setback; and a request for a special exception to visibility obstruction regulations to construct and maintain this fence in drive approach visibility triangles.

4. BDA 023-107, 3806 Turtle Creek Drive (one lot southeast of the subject site)

On September 9, 2003, the Board of Adjustment Panel B granted a request for a variance to the front yard setback regulations of 15', subject to compliance with the submitted revised site plan and elevation. These requests were needed in conjunction with constructing and maintaining a 3-level single family home in the front yard setback.

5. BDA 989-283, 3406 Blackburn Street (two lots southeast of the subject site)

On August 16, 1999, the Board of Adjustment Panel B followed the staff recommendation and granted requests for variances to the front and side yard setback regulations, a variance to the height regulations, and special exceptions to the fence height and visibility obstruction regulations, subject to compliance with the submitted site/elevation plan. These requests were needed in conjunction with constructing and maintaining an approximately 4,300 square foot home.

6. BDA 012-234, 3806 Turtle Creek Drive (one lot southeast of the subject site)

On October 8, 2002, the Board of Adjustment Panel B followed the staff recommendation and granted requests for a variance to the front yard setback regulations of 14' 11" and a variance to the rear yard setback regulations of 1", subject to compliance with the submitted revised site plan and building elevations. These requests were needed in conjunction with constructing and maintaining a 3-level single family home in the front yard setback, and a swimming pool deck in the rear yard setback.

7. BDA 92-102, 3828 Turtle Creek Drive (the subject site)

On September 8, 1992, the Board of Adjustment granted a request for a special exception to the fence height regulations of 7', "subject to the landscaping adjacent to the fence being planted within 90 days from the date the fence is completed." The case report states that the applicant proposes to erect a 7 foot wrought iron fence to match the existing fence.

Timeline:

- Sept. 6, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- October 17, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- October 19, 2006: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the October 26th deadline to submit additional evidence for staff to factor into their analysis;
 - the November 3rd 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 November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- October 26, 2006 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).
- October 27, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- October 31, 2006: The Building Inspection Development Code Specialist forwarded a revised Building Official's Report that increased the special exception request from 3 feet to 6 feet.
- November 3, 2006 The applicant's representative submitted information beyond what was submitted with the original application, and beyond what was

discussed at the October 27th staff review team meeting (see Attachment B).

STAFF ANALYSIS:

- A scaled site plan/elevation document has been submitted including that documents the location of the entire proposed wall/gate proposal in the site's front yard setback (about 180' long parallel to Turtle Creek Drive), and its location relative to the front property line (about 6' off) and pavement line (about 26' off). The site plan indicates that the wall is 7' in height for about 154' of its length, and 10' in height for the remaining 26' in length.
- The scaled site plan/elevation document indicates the maximum height of the proposed wall/gate (10' max.) but does not provide any documentation with regard to building materials.
- The site plan/elevation indicates landscape materials to be placed on the street side of the proposed walls but no specifications as to the sizes, species, or number of these materials have been noted.
- Two single family homes have either direct or indirect frontage to the proposed wall/gate.
- The Board Administrator conducted a field visit of the site and surrounding area along Turtle Creek Drive (approximately 500' north and south of the subject site) and noted one other fence above four (4) feet high which appeared to be located in the front yard setback. This fence/wall is approximately 8' high solid brick wall located at the northwest corner of Blackburn Street and Turtle Creek Drive approximately four lots south of the subject site.
- As of November 6th, no letters had been submitted in opposition to the special exception and 5 letters from neighbors/owners have been submitted in support.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 6' (whereby the proposed maximum 10' high solid fence of unspecified building materials located behind unspecified landscape materials) will not adversely affect neighboring property.
- Granting this special exception of 6' with conditions imposed that the applicant complies with the submitted site plan/elevation would provide assure that the proposed wall would be constructed and maintained as shown on this document, in this case, in a specific location with specific maximum heights.
- The board may want the applicant to note the materials of the proposed wall on the submitted site plan/elevation (or impose a condition that the walls/gate must be constructed/maintained of a specific material) to ensure that the proposed walls over 4' in height are constructed/maintained of a certain material. If no specification is made the walls/gate could be constructed/maintained of any solid material (i.e. solid board, solid brick, solid corrugated metal, plywood, etc).
- If the board is inclined to grant the request on the notion that certain landscape materials are shown on the submitted site plan/elevation that will reduce the walls' impact on neighboring property, the board may want the applicant to specify the species, number and sizes of these landscape materials beyond what is merely shown in a conceptual form on this document. Otherwise, the City would have very little (if any) enforcement power to ensure that the landscape materials shown conceptually on the submitted site plan/elevation are put in place in conjunction with the fence height special exception request.

FILE NUMBER: BDA 056-238

BUILDING OFFICIAL'S REPORT:

Application of Robert M. Edsel, represented by Jackson Walker L.L.P. / Susan Mead and Jonathan Vinson, for a special exception to the fence height regulations, a variance to the front yard setback regulations, and a special exception to the visibility obstruction regulations at 3820-24 Turtle Creek Drive. This property is more fully described as Lots 8 and 9 and part of Lot 10 in City Block B/2024 and is zoned PD-193 R-7.5 which limits the height of a fence in the front yard to 4 feet, requires a 20 foot visibility triangle at drive approaches, and requires a front yard setback of 40 feet. The applicant proposes to construct a 7 foot fence in the required front yard setback which would require a special exception of 3 feet to the fence regulations; to construct a structure and provide a 16 foot front yard setback which would require a variance of 24 feet to the front yard setback regulations; and to locate and maintain items within required visibility triangles which would require a special exception to the visibility obstruction regulations.

LOCATION: 3820-24 Turtle Creek Drive

APPLICANT: Robert M. Edsel
Represented by Jackson Walker L.L.P. / Susan Mead and Jonathan Vinson

REQUESTS:

- The following appeals have been made in this application on a site that is currently undeveloped:
 1. A special exception to the fence height regulations of 3' is requested in conjunction with constructing and maintaining a 7' vehicular gate and a 7' high wall of unspecified building materials that would connect with an approximately 7' high "wrought iron and solid column fence" in the site's 40' front yard setback.
 2. A special exception to the visibility obstruction regulations is requested in conjunction with constructing and maintaining a 7' high wall of unspecified building materials in the site's 20' visibility triangles at the drive approach.
 3. A variance to the front yard setback regulations of 24' is requested in conjunction with constructing and maintaining an approximately 1,300 square foot "Dwelling Unit."

(This site is part of two other Board of Adjustment cases that share boundaries/property owner to be considered by Board of Adjustment Panel B on November 15th located immediately north of the subject site: BDA056-236 and 237).

STAFF RECOMMENDATION (fence height special exception):

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

STAFF RECOMMENDATION (visibility obstruction special exception):

Denial

Rationale:

- The applicant has not substantiated how the proposed 7' high wall and columns proposed to be located in the two 20' drive approach visibility triangles into the site will not constitute a traffic hazard.
- The City's Development Services Senior Engineer does not support this request.

STAFF RECOMMENDATION (front yard variance):

Denial

Rationale:

- Although staff recognized that the slope of the site appeared to preclude the proposed dwelling unit from being located further south in the site, there did not appear to be any physical site constraint that would preclude the dwelling unit from being relocated westward on the site out of the 40' front yard setback.
- The site is zoned PD No. 193 (R-7.5 Subdistrict) where lots are typically 7,500 square feet in area. According to the submitted application, the site is 0.876 acres in area (or 38,159 square feet in area).
- The applicant had not substantiated with the information submitted prior to the October 27th staff review team meeting how the site's restrictive area, shape and/or slope precluded its development (in this case, with a structure that appeared to be able to meet the applicable development standards including 40' front yard setback) in a manner commensurate with other developments found on other similarly-zoned PD No. 193 (R-7.5 Subdistrict) lots.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STANDARD FOR A SPECIAL EXCEPTION TO THE VISIBILITY OBSTRUCTION REGULATIONS:

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

STANDARD FOR A VARIANCE:

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

GENERAL FACTS (related to the 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 indicating a wall and gate (of unspecified building materials) that reaches a maximum height of 7'. (The site plan differentiates where "Existing Wrought Iron and Solid Column Fence (No Change)" of unspecified height ends and where the 7' high wall begins on the subject site.
- The following additional information was gleaned from the site plan:
 - The proposed 7' high wall is approximately 70 in length parallel to Turtle Creek Drive and will connect to a proposed wall of similar height requested north of the subject site and to an existing wrought iron fence (of unspecified height) on the subject site.
 - The proposed wall is to be located about 6' from the front property line or 26' from the pavement line.
- Specifications pertaining to the building materials of the proposed wall/gate have not been specified.
- The wall elevation indicates landscape materials to be placed on the street side of the proposed wall but no specifications as to the sizes, species, or number of these materials have been noted.
- Two single family homes would have either direct or indirect frontage to the proposed fence/columns/gate.
- The Board Administrator conducted a field visit of the site and surrounding area along Turtle Creek Drive (approximately 500' north and south of the subject site) and noted one other fence above four (4) feet high which appeared to be located in the front yard setback. This fence/wall is approximately 8' high solid brick wall located at the northwest corner of Blackburn Street and Turtle Creek Drive approximately four lots south of the subject site.
- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:

- a letter that provides additional details about the request;
- a copy of an old plat map and an excerpt from a Sanborn map showing the subject site and the other two adjacent sites which have historically been considered by the City as three separate building sites; and
- a topographic map of the subject site for case BDA056-238.
- The applicant's representative submitted additional information beyond what was submitted with the original application and beyond what was discussed at the October 27th staff review team meeting (see Attachment B). This information included the following:
 - a letter that provides additional details about the requests;
 - a copy of the submitted site plan/elevation;
 - a copy of the approval letter and other information related to BDA 92-102 at 3828 Turtle Creek Drive;
 - support letters from neighboring property owners;
 - a topographic map; and
 - a series of color photographs of the applicant's property and neighboring properties.

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

- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at intersections and 20-foot visibility triangles at drive approaches); and
 - between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
 The applicant requests to construct and maintain a 7' high wall and columns in the 20'-visibility triangles at the drive approach to the subject site.
- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a letter that provides additional details about the request;
 - a copy of an old plat map and an excerpt from a Sanborn map showing the subject site and the other two adjacent sites which have historically been considered by the City as three separate building sites; and
 - a topographic map of the subject site for case BDA056-238.
- The applicant's representative submitted additional information beyond what was submitted with the original application and beyond what was discussed at the October 27th staff review team meeting where staff recommendations were made on the visibility obstruction special exception and variance requests (see Attachment B). This information included the following:
 - a letter that provides additional details about the requests;
 - a copy of the submitted site plan/elevation;
 - a copy of the approval letter and other information related to BDA 92-102 at 3828 Turtle Creek Drive;
 - support letters from neighboring property owners;
 - a topographic map; and

- a series of color photographs of the applicant's property and neighboring properties.

GENERAL FACTS (related to the variance):

- The front yard provisions for property in single family and duplex subdistricts of PD No. 193 setback state the following:
 - Where two or more main buildings exist in a blockface, any new building must have a minimum front yard setback that is the average of the front yard setbacks of the two main buildings that are closest to the lot in the same blockface; however, in no case is a new building required to have a front yard setback greater than 40 feet.

The applicant has submitted a site plan that notes the location of the proposed "Dwelling Unit" structure as well as a "25' Front yard Setback." The Board Administrator has been informed by the applicant's representative of his reliance on the Building Official's determination that the front yard setback for this site is 40'. As a result, the Building Official's Report conveys that the applicant is proposing to provide a 16' front yard setback which will require a variance of 24' to the 40' front yard setback regulations.
- The Board Administrator has calculated from the submitted site plan that about 550 square feet of total approximately 1,300 square foot building footprint would be located in the site's 40' front yard setback.
- A contour/topographic map of the site has been submitted. The site appears to slope from Turtle Creek Drive towards Turtle Creek to the west and towards Blackburn Street to the south. The site is generally rectangular in shape (approximately 200' on the north, approximately 222' on the south, approximately 143' on the west, and approximately 170' on the east) and, according to the application, 0.876 acres in area.
- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a letter that provides additional details about the request;
 - a copy of an old plat map and an excerpt from a Sanborn map showing the subject site and the other two adjacent sites which have historically been considered by the City as three separate building sites; and
 - a topographic map of the subject site for case BDA056-238.
- The applicant's representative submitted additional information beyond what was submitted with the original application and beyond what was discussed at the October 27th staff review team meeting where staff recommendations were made on the visibility obstruction special exception and variance requests (see Attachment B). This information included the following:
 - a letter that provides additional details about the requests;
 - a copy of the submitted site plan/elevation;
 - a copy of the approval letter and other information related to BDA 92-102 at 3828 Turtle Creek Drive;
 - support letters from neighboring property owners;
 - a topographic map; and

- a series of color photographs of the applicant's property and neighboring properties.

BACKGROUND INFORMATION:

Zoning:

| | |
|---------------|--|
| <u>Site:</u> | PD No. 193 (R-7.5 Subdistrict) (Planned Development District, Single family) |
| <u>North:</u> | PD No. 193 (R-7.5 Subdistrict) (Planned Development District, Single family) |
| <u>South:</u> | PD No. 193 (R-7.5 Subdistrict) (Planned Development District, Single family) |
| <u>East:</u> | PD No. 193 (R-7.5 Subdistrict) (Planned Development District, Single family) |
| <u>West:</u> | PD No. 193 (R-7.5 Subdistrict) (Planned Development District, Single family) |

Land Use:

The subject site is undeveloped. The areas to the north, east and south are developed with single family uses; and the area to the west is developed as open space (Turtle Creek).

Zoning/BDA History:

1. BDA 056-236, 3836 Turtle Creek Drive (two lots north of the subject site)
On November 15, 2006, the Board of Adjustment Panel B will consider a request for a special exception to the fence height regulations of 3 feet to construct a 7' high wall in the front yard setback.
2. BDA 056-237, 3828 Turtle Creek Drive (one lot north of the subject site)
On November 15, 2006, the Board of Adjustment Panel B will consider a request for a special exception to the fence height regulations of 6 feet to construct a 10' high wall in the front yard setback.
3. BDA 056-243, 3816 Turtle Creek Drive (one lot south of the subject site)
On November 15, 2006, the Board of Adjustment Panel B will consider a request for a special exception to the fence height regulations of 8 feet to construct and maintain an 8' high wall with 12' high arched entry gates in the front yard setback; and a request for a special exception to visibility obstruction regulations to construct and maintain this fence in drive approach visibility triangles.

4. BDA 023-107, 3806 Turtle Creek Drive (one lot northeast of the subject site)

On September 9, 2003, the Board of Adjustment Panel B granted a request for a variance to the front yard setback regulations of 15', subject to compliance with the submitted revised site plan and elevation. These requests were needed in conjunction with constructing and maintaining a 3-level single family home in the front yard setback.

5. BDA 989-283, 3406 Blackburn Street (one lot east of the subject site)

On August 16, 1999, the Board of Adjustment Panel B followed the staff recommendation and granted requests for variances to the front and side yard setback regulations, a variance to the height regulations, and special exceptions to the fence height and visibility obstruction regulations, subject to compliance with the submitted site/elevation plan. These requests were needed in conjunction with constructing and maintaining an approximately 4,300 square foot home.

6. BDA 012-234, 3806 Turtle Creek Drive (one lot northeast of the subject site)

On October 8, 2002, the Board of Adjustment Panel B followed the staff recommendation and granted requests for a variance to the front yard setback regulations of 14' 11" and a variance to the rear yard setback regulations of 1", subject to compliance with the submitted revised site plan and building elevations. These requests were needed in conjunction with constructing and maintaining a 3-level single family home in the front yard setback, and a swimming pool deck in the rear yard setback.

7. BDA 92-102, 3828 Turtle Creek Drive (one lot north of the subject site)

On September 8, 1992, the Board of Adjustment granted a request for a special exception to the fence height regulations of 7', "subject to the landscaping adjacent to the fence being planted within 90 days from the date the fence is completed." The case report states that the applicant proposes to erect a 7 foot wrought iron fence to match the existing fence.

Timeline:

- Sept. 6, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- October 17, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- October 19, 2006: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the October 26th deadline to submit additional evidence for staff to factor into their analysis;
 - the November 3rd 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 November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- October 26, 2006 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).
- October 27, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- October 31, 2006 The Development Services Senior Engineer submitted a review comment sheet marked "Recommends that this be denied" commenting "Sight distance will be reduced by both the curve of the street and the proposed fence."

November 3, 2006 The applicant's representative submitted information beyond what was submitted with the original application, and beyond what was discussed at the October 27th staff review team meeting where staff recommendations were made on the requests for the visibility obstruction special exception and the front yard variance (see Attachment B).

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

- A scaled site plan/elevation document has been submitted including that documents the location of the entire proposed wall/gate proposal in the site's front yard setback (about 70' long parallel to Turtle Creek Drive), and its location relative to the front property line (about 6' off) and pavement line (about 26' off).
- The scaled site plan/elevation document indicates the maximum height of the proposed wall/gate (7' max.) but does not provide any documentation with regard to building materials.
- The site plan/elevation indicates landscape materials to be placed on the street side of the proposed wall but no specifications as to the sizes, species, or number of these materials have been noted.
- Two single family homes have either direct or indirect frontage to the proposed wall.
- The Board Administrator conducted a field visit of the site and surrounding area along Turtle Creek Drive (approximately 500' north and south of the subject site) and noted one other fence above four (4) feet high which appeared to be located in the front yard setback. This fence/wall is approximately 8' high solid brick wall located at the northwest corner of Blackburn Street and Turtle Creek Drive approximately three lots south of the subject site.
- As of November 6th, no letters had been submitted in opposition to the special exception and 5 letters from neighbors/owners have been submitted in support.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 3' (whereby the proposed 7' high wall and gate of unspecified building materials located behind unspecified landscape materials) will not adversely affect neighboring property.
- Granting this special exception of 3' with conditions imposed that the applicant complies with the submitted site plan/elevation would provide assure that the proposed wall/gate would be constructed and maintained as shown on this document, in this case, in a specific location with a specific maximum height.
- The board may want the applicant to note the materials of the proposed wall and gate on the submitted site plan/elevation (or impose a condition that the wall must be constructed/maintained of a specific material) to ensure that the proposed wall and gate over 4' in height are constructed/maintained of a certain material. If no specification is made the wall and gate could be constructed/maintained of any solid material (i.e. solid board, solid brick, solid corrugated metal, plywood, etc).
- If the board is inclined to grant the request on the notion that certain landscape materials are shown on the submitted site plan/elevation that will reduce the wall and gate's impact on neighboring property, the board may want the applicant to specify the species, number and sizes of these landscape materials beyond what is merely shown in a conceptual form on this document. Otherwise, the City would have very little (if any) enforcement power to ensure that the landscape materials shown conceptually on the submitted site plan/elevation are put in place in conjunction with the fence height special exception request.

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

- The Development Services Senior Engineer has submitted a review comment sheet indicating that he recommends that this request be denied stating that “the sight distance will be reduced by both the curve of the street and the proposed fence.”
- The applicant has the burden of proof in establishing the following:
 - Granting the special exception to the visibility obstruction regulations (whereby, according to the submitted site plan and elevation, a solid wall and columns that are proposed to be located in the two drive approach visibility triangles into the site) will not constitute a traffic hazard.
- If this request is granted, subject to compliance with the submitted site plan/elevation, a 7’ high solid wall and columns would be “excepted” into the two 20’ drive approach visibility triangles.

STAFF ANALYSIS (related to the variance):

- A contour/topographic map of the site has been submitted. The site appears to slope from Turtle Creek Drive towards Turtle Creek to the west and towards Blackburn Street to the south. The site is generally rectangular in shape (approximately 200’ on the north, approximately 222’ on the south, approximately 143’ on the west, and approximately 170’ on the east) and, according to the application, 0.876 acres in area.
- According to calculations made by the Board Administrator from the submitted site plan, it appears that about 550 square feet of total approximately 1,300 square foot building footprint would be located in the site’s 40’ front yard setback.
- The applicant has the burden of proof in establishing the following related to the variance request:
 - That granting the variance to the front yard setback regulations of 24’ requested to construct and maintain an approximately 1,300 square foot “Dwelling Unit” 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 front yard setback regulations of 24’ is necessary to permit development of the subject site (a site that is undeveloped, sloped, approximately 0.9 acres or about 39,000 square feet in a R-7.5 Subdistrict where lots are typically 7,500 square feet in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 193 (R-7.5 Subdistrict) zoning classification.
 - The variance to front yard setback regulations of 24’ 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 not permitted by this chapter to other parcels of land in districts with the same PD No. 193 (R-7.5 Subdistrict) zoning classification.
- If the Board were to grant the front yard variance request of 24’, imposing a condition whereby the applicant must comply with the submitted site/elevation plan,

a dwelling unit structure could be located 16' from the site's front property line (or 24' into the 40' front yard setback).

FILE NUMBER: BDA 056-243

BUILDING OFFICIAL'S REPORT:

Application of Steve Arnold for a special exception to the fence height regulations and for a special exception to the visibility obstruction regulations at 3816 Turtle Creek Drive. This property is more fully described as Lot 10A in City Block B/2024 and is zoned PD-193 (R-7.5 which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at drive approaches. The applicant proposes to construct a 12 foot fence in the required front yard setback which would require a special exception of 8 feet to the fence regulations, and to locate and maintain items within the required visibility triangles which would require a special exception to the visibility obstruction regulations.

LOCATION: 3816 Turtle Creek Drive

APPLICANT: Steve Arnold

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 a 8' fence and/or wall and two, 12' high gates (of "undecided" building materials) in site's 40' front yard setback.
 2. A special exception to the visibility obstruction regulations is requested in conjunction with constructing and maintaining the fence and/or wall of undecided building materials in the site's 20' visibility triangles at the two drive approaches.

(This site is immediately south of three other Board of Adjustment cases to be considered by Board of Adjustment Panel B on November 15th: BDA056-236, 237, and 238).

STAFF RECOMMENDATION (fence height special exception):

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

STAFF RECOMMENDATION (visibility obstruction special exception):

Denial

Rationale:

- The applicant has not substantiated how the proposed 8' high fence and/or wall and columns proposed to be located in the four 20' visibility triangles at the two drive approaches into the site will not constitute a traffic hazard.
- The City's Development Services Senior Engineer does not support this request.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STANDARD FOR A SPECIAL EXCEPTION TO THE VISIBILITY OBSTRUCTION REGULATIONS:

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

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

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
The applicant has submitted a site plan and elevation indicating a fence and/or wall and two gates (of unspecified building materials) that reaches a maximum height of 12'.
- The following additional information was gleaned from the site plan:
 - The proposed fence and/or wall and gates appear to be approximately 130' in length parallel to Turtle Creek Drive.
 - The proposed fence and/or wall and gates appear to be located about 5' from the front property line. (No dimension of the distance between the proposal and the Turtle Creek Drive pavement line can be given since the site plan does not indicate the location of the pavement line).
- Specifications pertaining to the building materials on the originally submitted elevation were not defined but included the following notations: cement block, stucco, iron rails, and undecided. On October 30th, the applicant's representative authorized the Board Administrator to delete all references (and arrows) on the submitted elevation other than the descriptive word: "Undecided."
- No information related to landscape materials to be proposed in conjunction with this request has been submitted.
- Two single family homes would have either direct or indirect frontage to the proposed fence and/or wall and gates.
- The Board Administrator conducted a field visit of the site and surrounding area along Turtle Creek Drive (approximately 500' north and south of the subject site) and noted one other fence above four (4) feet high which appeared to be located in the front yard setback. This fence/wall is approximately 8' high solid brick wall located at

the northwest corner of Blackburn Street and Turtle Creek Drive approximately four lots south of the subject site.

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

- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at intersections and 20-foot visibility triangles at drive approaches); and
 - between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).The applicant requests to construct and maintain an 8' high fence and/or wall of undecided building materials in the four 20' visibility triangles at the two drive approach to the subject site.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (R-7.5 Subdistrict) (Planned Development District, Single family)
North: PD No. 193 (R-7.5 Subdistrict) (Planned Development District, Single family)
South: PD No. 193 (R-7.5 Subdistrict) (Planned Development District, Single family)
East: PD No. 193 (R-7.5 Subdistrict) (Planned Development District, Single family)
West: PD No. 193 (R-7.5 Subdistrict) (Planned Development District, Single family)

Land Use:

The subject site is being 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 developed as open space (Turtle Creek).

Zoning/BDA History:

1. BDA 056-236, 3836 Turtle Creek Drive (three lots north of the subject site) On November 15, 2006, the Board of Adjustment Panel B will consider a request for a special exception to the fence height regulations of 3 feet to construct a 7' high wall in the front yard setback.
2. BDA 056-237, 3828 Turtle Creek Drive (two lots north of the subject site) On November 15, 2006, the Board of Adjustment Panel B will consider a request for a special exception to the fence height regulations of 6 feet to construct a 10' high wall in the front yard setback.

3. BDA 056-238, 3820-24 Turtle Creek Drive (one lot north of the subject site)

On November 15, 2006, the Board of Adjustment Panel B will consider a request for a special exception to the fence height regulations of 3 feet to construct a 7' high wall in the front yard setback; a request for a special exception to visibility obstruction regulations to construct and maintain a fence in drive approach visibility triangles; and a variance to the front yard setback regulations of 24' to construct and maintain a dwelling unit in the front yard setback.

4. BDA 023-107, 3806 Turtle Creek Drive (one lot northeast of the subject site)

On September 9, 2003, the Board of Adjustment Panel B granted a request for a variance to the front yard setback regulations of 15', subject to compliance with the submitted revised site plan and elevation. These requests were needed in conjunction with constructing and maintaining a 3-level single family home in the front yard setback.

1. BDA 989-283, 3406 Blackburn Street (east of the subject site)

On August 16, 1999, the Board of Adjustment Panel B followed the staff recommendation and granted requests for variances to the front and side yard setback regulations, a variance to the height regulations, and special exceptions to the fence height and visibility obstruction regulations, subject to compliance with the submitted site/elevation plan. These requests were needed in conjunction with constructing and maintaining an approximately 4,300 square foot home.

6. BDA 012-234, 3806 Turtle Creek Drive (one lot northeast of the subject site)

On October 8, 2002, the Board of Adjustment Panel B followed the staff recommendation and granted requests for a variance to the front yard setback regulations of 14' 11" and a variance to the rear yard setback regulations of 1", subject to compliance with the submitted revised site plan and building elevations. These requests were needed in conjunction with constructing and maintaining a 3-level single family home in the front yard setback, and a swimming pool deck in the rear yard setback.

7. BDA 92-102, 3828 Turtle Creek Drive (two lots north of the subject site)

On September 8, 1992, the Board of Adjustment granted a request for a special exception to the fence height regulations of 7', "subject to the landscaping adjacent to the fence being planted within 90 days from the date the fence is completed." The case report states that the applicant proposes to erect a 7 foot wrought iron fence to match the existing fence.

Timeline:

- Sept. 21, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- October 17, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- October 19, 2006: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the October 26th deadline to submit additional evidence for staff to factor into their analysis;
 - the November 3rd 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 November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- October 27, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief

Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, and the Assistant City Attorney to the Board.

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

- October 31, 2006 The Development Services Senior Engineer submitted a review comment sheet marked "Recommends that this be denied" commenting:
1. "Fence and gates appear to be 5' from the street curb.
 2. Fence and gate are shown to encroach onto utility easement (grantee of easement must give express written approval.)"

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

- A site plan has been submitted that appears to indicate the proposed fence/wall location with a red line. If the red line on the site plan is indeed the location of the proposed fence/wall, then it is about 130' in length and about 5' from the property line. (The pavement line is not shown on the site plan, therefore the distance of the fence/wall to the pavement line cannot be assessed).
- An elevation has been submitted that indicates the maximum height of the fence/wall (8'), and gate (12').
- Specifications pertaining to the building materials on the originally submitted elevation were not defined but included the following notations: cement block, stucco, iron rails, and undecided. On October 30th, the applicant's representative authorized the Board Administrator to delete all references (and arrows) on the submitted elevation other than the descriptive word: "Undecided."
 - No information related to landscape materials to be proposed in conjunction with this request has been submitted.
- Two single family homes would have either direct or indirect frontage to the proposed fence and/or wall and gates.
- The Board Administrator conducted a field visit of the site and surrounding area along Turtle Creek Drive (approximately 500' north and south of the subject site) and noted one other fence above four (4) feet high which appeared to be located in the front yard setback. This fence/wall is approximately 8' high solid brick wall located at the northwest corner of Blackburn Street and Turtle Creek Drive approximately four lots south of the subject site.
- No information related to landscape materials to be proposed in conjunction with this request has been submitted.
- As of November 6th, no letters had been submitted in support or in opposition to the special exception.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 8' (whereby the proposed 8' high fence and/or wall and 12' high gates of undecided building materials) will not adversely affect neighboring property.
- Granting this special exception of 8' with conditions imposed that the applicant complies with the submitted site plan and elevation may provide some assure as to

the location of the fence and/or wall (if the red line on the submitted site plan is indeed the location of the proposal), and would provide assurance to the height of the fence and/or wall and gates.

- The board may want the applicant to decide and to specify the materials of the proposed fence and/or wall and gates on the submitted elevation (or impose a condition that the fence and/or wall must be constructed/maintained of a specific material) to ensure that the proposed fence and/or wall and gates over 4' in height are constructed/maintained of a certain material. If no specification is made, the fence and/or wall and gate could be constructed/maintained of any material (i.e. chicken wire, open wrought iron, solid board, solid brick, solid corrugated metal, plywood, etc).
- The board may want the applicant to denote the location of the fence and/or wall, and the location of the pavement line on the site plan. If no specific location is made on the site plan, the fence and/or wall could be located anywhere and of any length/configuration in the front yard setback.

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

- The Development Services Senior Engineer has submitted a review comment sheet indicating that he recommends that this request be denied. The engineer commented that the fence and gates appear to be 5' from the street curb, and are shown to encroach onto utility easement (grantee of easement must give express written notice).
- The applicant has the burden of proof in establishing the following:
 - Granting the special exception to the visibility obstruction regulations (whereby, according to the submitted site plan and elevation, an 8' high fence and/or wall of undecided materials is proposed to be located in four 20' visibility triangles at two drive approaches into the site) will not constitute a traffic hazard.
- If this request is granted, subject to compliance with the submitted site plan and elevation, an 8' high fence and/or wall of undecided materials would be "excepted" into the four 20' visibility triangles at the two drive approaches into the site.